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November 3, 2008

VIA HAND DELIVERY

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

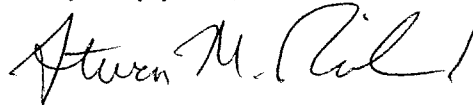
Re: The Narragansett Electric Company v. Town of Lincoln, et al.,

Dear Luly:

Enclosed please find an original and nine copies of the following document:

Petition for Review Under R.I.G.L. § 39-1-30.

Very truly yours,



Steven M. Richard

SMR:crp
Enclosures

cc: Lincoln Town Clerk
John Spirito, Jr., Esq.
Cindy Wilson Frias, Esq.
Patricia Lucarelli, Esq.
Paul J. Roberti, Esq.
Thomas Teehan, Esq.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a NATIONAL GRID, :
Plaintiff, :

v. :

Docket No. _____

THE TOWN OF LINCOLN; JEREMIAH :
O'GRADY; JAMES JAHNZ; JOHN :
FLYNN; KEITH MARKSOUD; and :
RONALD McKENNA, in their :
official capacities as members of the :
Lincoln Town Council; and JOHN :
MACQUEEN, in his official capacity :
as Director of Public Works. :
Defendants. :

PETITION FOR REVIEW UNDER R.I.G.L. § 39-1-30

1. The Narragansett Electric Company d/b/a National Grid (“National Grid”) brings this Petition under R.I. Gen. Laws § 39-1-30 and Rule 1.10 of the Public Utilities Commission’s (“PUC”) Rules of Practice and Procedure seeking review and nullification of a sunset provision contained in a recent amendment to § 220-4 of the Code of the Town of Lincoln, which was enacted by the Lincoln Town Council on October 22, 2008.

JURISDICTION AND FACTS

2. National Grid is a Rhode Island chartered public utility under the supervision of the PUC.

3. National Grid serves approximately 245,000 natural gas customers in 33 towns and cities and approximately 475,000 electric customers in 38 towns and cities in Rhode Island.

4. As a Rhode Island chartered public utility, National Grid has the right and franchise to install its gas and electric lines within public ways of the State.

5. Upon information and belief, prior to October 22, 2008, § 220-4 of the Code of the Town of Lincoln required “curb to curb” repaving in all excavation projects.

6. Upon information and belief, on October 22, 2008, the Lincoln Town Council enacted Ordinance 08-01, which amended § 220-4 to delineate different repaving obligations depending on the nature and extent of the excavation project. (A copy of Ordinance 08-01 is attached as Exhibit A).

7. Upon information and belief, the amended § 220-4 will “sunset” on December 31, 2008. The Town of Lincoln has not provided any reason or justification for the sunset provision.

8. The sunset provision is unreasonable and should be stricken from the amended § 220-4. Apparently, the Town of Lincoln intends to revert back to a “curb to curb” repaving requirement for all excavations as of January 1, 2009, which is unreasonable, unnecessary and unduly burdensome.

LEGAL CLAIMS

9. The sunset provision in the amended § 220-4 adversely “affect[s] the mode or manner of operation or the placing or maintenance of the plant and equipment of [National Grid]” and is therefore subject to the PUC’s review under R.I.G.L. § 39-1-30.

10. The sunset provision violates R.I. Gen. Laws § 45-6-1(a), which grants to cities and town the power to adopt ordinances, inter alia, “to regulate the putting up and maintenance of telegraph and other wires and the appurtenances,” but does not authorize Lincoln to impose unduly burdensome and improper requirements relating to the locating, replacing, repairing, or installing underground gas or other utility lines.

11. The sunset provision unreasonably interferes with the use of the public right-of-way which National Grid has the right to use in common with the public for its facilities. See R.I. Gen. Laws § 24-1-1.

12. R.I. Gen. Laws § 39-1-1(c) vests in the PUC “the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy”

13. The Town of Lincoln’s unreasonable and unexplained imposition of a sunset provision in the amended § 220-4 constitutes an unlawful exercise of authority. Town of East Greenwich v. O’Neil, 617 A.2d 104 (R.I. 1992).

14. The sunset provision in the amended § 220-4 is arbitrary, capricious, and serves no reasonable purpose.

15. Upon the sunset of the amended § 220-4, the Town of Lincoln seeks to impose unreasonable and unjustified repaving burdens, costs and requirements upon National Grid, its facilities, and its customers.

WHEREFORE, National Grid respectfully requests that the PUC, pursuant to R.I. Gen. Laws § 39-1-30,

- (a) review and nullify the sunset provision contained in § 220-4, as amended;
- and
- (b) issue such other and further relief as is within its power and is just and proper.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC CO.
d/b/a NATIONAL GRID

By its attorneys,

Of Counsel:

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The Narragansett Electric Co.
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Dated: November 3, 2008

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via courier on this 3rd day of November, 2008 to the following counsel:

Lincoln Town Clerk
Lincoln Town Hall
100 Old River Road
Lincoln, RI 02865

Cindy Wilson Frias, Esq.
Patricia Lucarelli, Esq.
Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Paul J. Roberti, Esq.
Assistant Attorney General
150 South Main Street
Providence, RI 02903

John Spirito, Jr., Esq.
Chief of Legal Services
Rhode Island Division of Public Utilities
89 Jefferson Boulevard
Warwick, RI 02888

Steven M. Richard

EXHIBIT A

Ordinance 08-01

An Ordinance Amending § 220-4 of the Lincoln Town Code
The Town Council of the Town of Lincoln hereby ordains as follows:

§ 220-4 of the Lincoln Town Code is hereby amended by adding the following:

§ 220-4. Excavations.

Every person, firm, business or utility desiring to dig up any part of any street or highway in the Town to lay or connect any type of pipe, electronic device or for any purpose whatsoever, shall first obtain permission from the Town Engineer. Every person, firm, business or utility digging or making any excavation in any street or highway of the Town, or who shall cause the same to be done, shall fill up the same as soon as possible thereafter and shall leave such street or highway in as good condition as before the commencement of work.

If the excavation is made longitudinally along the shoulder of the road, and not extend great than three (3) feet into the road, from the curb, then the excavated portion must be repaired and repaved in a manner that shall leave it in as good condition as before the commencement of work, and is satisfactory to and approved by the Town Engineer.

If the excavation is made in a perpendicular manner, or extends greater than three (3) feet into the travel lane of the road or three or more adjacent cuts are made, then the road shall be repaved across the entire length of the travel lane. If the excavation crosses the centerline of the road, the entire road within the right-of-way shall be repaved from curb to curb over the excavated area and left in a condition satisfactory to and approved by the Town Engineer. In case such highway or street is not left in a manner satisfactory to and approved by the Town Engineer, the Town Engineer shall cause the same to be properly done and the expense thereof shall be charged to and paid by the person, firm, business or utility digging up such street or highway or making excavation therein.

Any person, firm, business or utility authorized and permitted to perform the digging up or any other type of construction in or on the any street or highway shall first obtain and furnish to the Town a bond with surety or sureties in an amount sufficient to satisfy the Town Engineer and the Director of the Finance Department, guaranteeing full performance by the permittee/applicant for three (3) years, and will make repairs as many times as is necessary. No work shall commence unless and until said bond is furnished and approved by the Town Engineer and the Director of the Department of Finance.

This Ordinance shall include a sunset provision of December 31, 2008.