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VIA HAND DELIVERY

July 24, 2009

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

Re: The Narragansett Electric Company d/b/a National Grid
v. The Town of Hopkinton, et al

Dear Luly:

Enclosed please find an original and nine copies of a Petition for Review under R.I.G.L. §39-1-30 regarding the Town of Hopkinton. I am also sending this document to you electronically.

Please acknowledge receipt of the enclosed Petition by date and time stamping the enclosed copy and returning it with my messenger to my office. Thank you.

Sincerely,



Peter V. Lacouture



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Enclosures

cc: Patricia A. Buckley, Esq.
Hopkinton Town Clerk
Leo J. Wold, Esq.
Patricia S. Lucarelli, Esq.
John Spirito, Jr., Esq.
Joel Norwood, Esq.

PROV1-614089-1

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 HOPKINTON; THOMAS :
E. BUCK; SYLVIA THOMPSON; :
BARBARA CAPALBO; BEVERLY :
KENNEY; and WILLIAM FELKNER, in :
their official capacities as members of the :
Hopkinton Town Council, :
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 preemption or modification of a zoning ordinance amendment purporting to allow electrical substations, which was enacted by the Hopkinton Town Council on July 20, 2009.

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, franchise, and obligation to maintain and upgrade its electric infrastructure in the State, including building electric substations.

5. Prior July 20, 2009, the Zoning Ordinance of the Town of Hopkinton (the “Ordinance”) did not list electrical substations or other electric utility uses in its table of uses for any zone.

6. Ordinance § 5 provides that “all uses not so permitted in a district are thereby prohibited therein.”

7. On March 17, 2009, National Grid applied to the Hopkinton Town Council to amend the Ordinance to add electrical substations as a use permitted by special-use permit in the RFR-80 and other zones.

8. As part of its application, National Grid explained that it sought the regulation amendment to apply for permission to construct an electrical substation on 8 acres of a 12-acre parcel it owns, located on Main Street (Route 3), at Assessor’s Plat 22, Lot 19 (the “Property”), which is zoned RFR-80.

9. National Grid’s 115 kV 1870 transmission line crosses over a portion of the Property.

10. By locating the substation on the Property, National Grid would be able to connect it to the existing transmission line with a short tap line consisting of one pole structure.

11. On July 20, 2009, the Hopkinton Town Council amended the Ordinance to add “Electrical Substations (115 kV or less)” to the list of uses in the use table but specified that the use would be prohibited in all districts except the Manufacturing zone, where it is allowed by special-use permit (the “Ordinance Amendment”).

12. The Hopkinton Town Council further amended the Ordinance to add a new footnote 7 to Ordinance § 6, which imposes the following requirements for electrical substations: 200-foot setbacks from residential uses, maximum lot coverage of 12%, and a 12-acre minimum lot size.

13. Upon information and belief, there are only a few vacant parcels of land in Hopkinton which meet the Ordinance requirements. All are located 3 to 4 miles from the nearest point of access to the existing 115 kV transmission line ROW.

14. The Hopkinton Town Council's amendment is tantamount to a denial of National Grid's petition because the Ordinance as adopted prohibits National Grid from building a substation at the Property or on other sites adjacent to the existing electric transmission right-of-way in Hopkinton.

LEGAL CLAIMS

15. The Ordinance Amendment 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.

16. 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"

17. The Ordinance Amendment effectively prohibits National Grid from constructing a substation on or adjacent to its existing transmission line right-of-way in Hopkinton, and is therefore unreasonable and constitutes an unlawful exercise of authority. See Town of East Greenwich v. O'Neil, 617 A.2d 104 (R.I. 1992).

18. The Ordinance Amendment is arbitrary, capricious, and serves no reasonable purpose.

19. By effectively prohibiting National Grid from constructing a substation on the Property or adjacent to the right-of-way in Hopkinton, the Ordinance Amendment attempts to usurp the PUC's exclusive power to regulate National Grid and is therefore preempted by the PUC's regulatory authority.

20. By effectively prohibiting National Grid from constructing a substation on the Property or adjacent to the right-of-way in Hopkinton, the Ordinance Amendment attempts to regulate electrical substations, which as essential components of the regional and statewide electrical infrastructure, have profound extraterritorial implications outside Hopkinton and the Town Council's actions to approve the Ordinance Amendment are therefore *ultra vires* and invalid.

WHEREFORE, National Grid respectfully requests that the PUC, pursuant to R.I. Gen. Laws

§ 39-1-30,

- (a) review and modify the Ordinance Amendment as adopted to allow electrical substations in all zoning districts and modify the dimensional requirements to be consistent with the dimensions of the Property;
- (b) issue a judgment preempting the Town of Hopkinton's zoning authority in this instance as an illegal attempt to interfere with the PUC's exclusive regulatory authority over National Grid and an *ultra vires* act involving extra-territorial impacts on the State's electrical infrastructure, and order the Town to approve National Grid's construction of a substation on the Property; 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,

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Dated: July 24, 2009

CERTIFICATION

I hereby certify that a copy of this Petition for Review Under § 39-1-30 has been sent via first class mail or courier on this 24 day of July, 2009 to the following counsel:

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