

October 15, 2013

VIA HAND DELIVERY & ELECTRONIC MAIL

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

RE: Docket 4237A - Commission Investigation relating to Stray and Contact Voltage Occurring in Narragansett Electric Company Territories National Grid Annual Contact Voltage Compliance Report

Dear Ms. Massaro:

Enclosed is The Narragansett Electric Company's d/b/a National Grid objection to Power Survey Company's motion to intervene in this compliance proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Cc: Docket 4237A Service List
Leo Wold, Esq.
Steve Scialabba, Division

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate were electronically transmitted to the individuals listed below. Copies of this filing were hand delivered to the RI Public Utilities Commission and to the RI Division of Public Utilities & Carriers.



Joanne M. Scanlon

October 15, 2013
Date

**Docket No. 4237 – Commission’s Proceeding Relating to Stray
and Contact Voltage Pursuant to Enacted Legislation
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STATE OF RHODEISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISISON

COMMISSION INVESTIGATION RELATING TO :
STRAY AND CONTACT VOLTAGE OCCURRING IN :
NARRAGANSETT ELECTRIC COMPANY : Docket No. 4237-A
TERRITORIES – NATIONAL GRID ANNUAL :
CONTACT VOLTAGE COMPLIANCE REPORT :
:

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID’S
OBJECTION TO THE MOTION TO INTERVENE OF POWER SURVEY COMPANY**

The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) objects to Power Survey Company’s (“Power Survey”) motion to intervene in this compliance proceeding. Power Survey does not have an interest in the subject matter of this proceeding that permits intervention under Rule 1.13(b) of the Rhode Island Public Utilities Commission Rules of Practice and Procedure (“Commission Rule 1.13(b)"). The Rhode Island Public Utilities Commission (the “Commission”) therefore should deny the motion.

I. INTRODUCTION

This proceeding is limited in scope. Its purpose, as defined by the Commission, is to “review . . . whether National Grid’s Annual Contact Voltage Compliance Report is consistent with the Contact Voltage Program approved in Commission Order 20871 (issues November 9, 2012)” (the “Process Order”). The Commission should deny the Motion to Intervene of Power Survey Company (“Motion to Intervene”)in this limited compliance proceeding for at least three reasons.

First, the issues Power Survey raises in the Motion to Intervene are not part of the subject matter of this proceeding. Power Survey contends that the Commission should consider the adequacy of the mobile technology used by National Grid in its contact voltage program. That issue has already been decided. The Commission reviewed and approved the process by which

National Grid selected a mobile technology vendor in the Process Order. The Commission then found that National Grid followed that process and properly selected a mobile technology vendor in its February 1, 2013 order (the “Compliance Order”). That issue has been resolved, and it is not properly a part of the current proceedings in this docket.

Second, Power Survey does not have an interest in the outcome of this proceeding that allows it to intervene. Power Survey is an unsuccessful competitive bidder that wanted to provide mobile technology for National Grid’s contact voltage detection program. This proceeding does not affect any interest of Power Survey.

Third, Power Survey’s proposed intervention is not in the public interest. As the Commission found previously in the Compliance Order, Power Survey is self-interested. Its public comment in the proceedings that led to the Process Order and the Compliance Order did not assist the Commission’s review of the contact voltage program, but merely delayed implementing the program. The Motion to Intervene demonstrates that Power Survey again is interested only in attacking the performance of the selected technology vendor – not in advancing the public interest.

The Commission should deny the Motion to Intervene.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background and the Underlying Orders

On June 6, 2012, the General Assembly passed R.I. Gen. Laws § 39-2-25 (the “Contact Voltage Statute”) to help protect the public from contact with stray voltage. The Contact Voltage Statute requires National Grid to submit a plan to the Commission that includes “appropriate procedures to : (1) designate contact voltage risk areas, (2) conduct an initial contact voltage survey by June 30, 2013 of 40% of all such risk areas, (3) conduct an annual

contact voltage survey of 20% of all such risk areas, (4) ensure repair of faults in the electrical distribution system that caused any detected contact voltage, (5) ensure notification to third-parties of contact voltage found on assets not owned by National Grid, and (6) provide an annual report on contact voltage findings. R.I. Gen. Laws § 39-2-25(b). The statute directed the Commission to conduct a proceeding to evaluate National Grid's plan to comply with the statute. *See id.* Once the Commission approved of National Grid's plan, the statute requires National Grid to file an annual report of the findings and results of its contact voltage program each year by September 1. *See id.*

National Grid submitted its contact voltage program plan to the Commission on August 17, 2012. *See* Process Order at 4. Part of National Grid's proposed program was the creation of a request for proposals ("RFP") that included a pilot test to vet potential vendors for mobile technology to detect contact voltage. *See* Process Order at 6. The Commission conducted a hearing in which both the Rhode Island Division of Public Utilities and Carriers (the "Division") and Capital Advocacy, LLC d/b/a Contact Voltage Information Center ("CVIC") intervened and participated. *See* Process Order at 8-12. The Division and CVIC submitted testimony on the record commenting on National Grid's proposed program. *See* Process Order at 8-12 (setting forth the substance of the Division's and CVIC's testimony). Power Survey did not seek to intervene in the hearing regarding National Grid's proposed program. Instead, Power Survey submitted only public comment, which the Commission found was not germane to determining whether to approve the contact voltage program.

Following the hearing, and based on the comments from the Division, CVIC and the Commission, National Grid submitted a revised program. On November 9, 2012, the Commission approved National Grid's program and issued the Process Order, which:

- Found that the RFP “represents a reasonable approach to choosing a vendor” and “specifically approve[d] the use of a pilot survey[.]” *Id.* at 29;
- Concluded that the pilot survey would verify whether one vendor is superior to another. *See id.*;
- Approved the decision to disqualify any vendor who refused to participate in the pilot survey. *See id.* at 30;
- Approved the RFP, including the revised pilot testing, as modified;
- Ordered National Grid to reissue the RFP. *See id.* at 25;
- Directed National Grid to submit the RFP responses to the Commission after National Grid selected a vendor. *See id.*; and
- Noted that the Commission would “not be choosing a vendor.” *See id.*

National Grid issued the revised RFP on November 26, 2012. *See* Compliance Order at 1-2.

Two vendors, Premier Utility Services, LLC (“Premier”) and Power Survey, submitted bid pricing to National Grid. *See id.* Premier participated in the pilot testing. *See id.* at 2-3.

Power Survey refused to do so. *See id.* Consistent with the Division’s recommendation and the Process Order, National Grid disqualified Power Survey’s bid.

National Grid filed a report on the results of the RFP process with the Commission on December 17, 2012. *See id.* at 1. Again Power Survey did not seek to intervene, but filed only public comment with the Commission alleging there were flaws in the RFP. *See id.* at 3-4. At the Open Meeting on January 31, 2013, the Commission concluded that National Grid “complied with the RFP Process approved by the Commission in” the Process Order and voted to approve National Grid’s selection of Premier. *Id.*

On February 1, 2013, the Commission issued the Compliance Order in which it:

- Expressed frustration with the conduct of Power Survey and noted that Power Survey’s public comments did not assist in the process of developing the contact

voltage program (which the Commission correctly termed “an important public safety program”). *See id.* at 8-9;

- Concluded that Power Survey’s public comments were motivated by its financial interest in the outcome of the case, geared primarily toward attacking Premier, and ultimately only served to delay the implementation of the contact voltage program. *See id.*
- Noted that Power Survey refused to participate in the pilot testing with full knowledge that this refusal would result in disqualification under the Commission’s prior order; and
- Found that National Grid complied with the Process Order.

Power Survey filed a petition for certiorari on February 8, 2013 attempting to challenge the Process Order. National Grid moved to quash the writ on April 19, 2013. In the motion to quash, National Grid argued: (1) Power Survey’s petition was untimely; (2) Power Survey is not an aggrieved party entitled to review under the R.I. Gen. Laws § 39-5-1; and (3) Power Survey did not properly preserve its arguments before the Commission. That motion to quash is pending before the Supreme Court, and the Supreme Court is expected to consider the motion at its conference on October 17, 2013.

On August 29, 2013, National Grid filed its first Annual Contact Voltage Compliance Report (“Annual Report”) to the Commission. The Annual Report sets forth the results of the first year of National Grid’s contact voltage program. It also: (1) recommends adding an additional contact voltage testing area to the second year of testing, and (2) recommends testing 100% of the contact voltage testing areas in year two of the program (as opposed to the 20% required by the statute).

The Commission is not required to conduct a hearing in connection with National Grid’s annual report because it is a compliance filing. *See* Procedural Schedule. The scope of this proceeding is limited to “a review of whether National Grid’s [Annual Report] is consistent with

the Contact Voltage Program approved in [the Process Order].”¹ The Commission set October 2, 2013 as the deadline for any motion to intervene. Power Survey moved to intervene.

Power Survey’s motion to intervene seeks to expand the scope of this compliance proceeding. Despite the Commission’s definition of the scope of this proceeding, Power Survey asserts that this proceeding only appears to be a “routine ‘compliance filing.’” *See* Motion to Intervene of Power Survey Company (“Motion to Intervene”) at 4. Power Survey seeks to add an additional area of inquiry that is not a part of this proceeding – “whether the selected testing equipment performed as the Commission and National Grid were led to believe it would[.]” *Id.* The entirety of Power Survey’s motion to intervene describes arguments about alleged inadequacies in the testing equipment. *See id.* at 4-6.

III. ARGUMENT

The Commission should deny Power Survey’s Motion to Intervene. Power Survey does not have “[a]n interest which may be directly affected and which is not adequately represented by existing parties and as to which movants may be bound by the Commission’s action in the proceeding.” Commission Rule 1.13(b). Nor would Power Survey’s proposed intervention be in the “public interest.” *Id.*

A. The Issues Raised by Power Survey are Not within the Scope of this Proceeding.

The Commission defined the scope of this proceeding. It is addressed only to whether the Annual Report complies with the contact voltage program approved in the Process Order. *See* Procedural Schedule. Power Survey tacitly admits as much in the Motion to Intervene by seeking to redefine the scope of this proceeding to address the adequacy of the testing equipment used by National Grid in the first year of the program. *See* Motion to Intervene at 4 (“The issues

¹ In the Annual Report, National Grid also proposes adding an additional contact voltage testing area and testing 100% of the testing areas in the second year of the program (as opposed to the 20% required by the Contact Voltage Statute). Power Survey does not argue that its proposed intervention addresses either of these issues.

involved in this proceeding include . . . whether the selected testing equipment performed as the Commission and National Grid were led to believe it would[.]”), (“Power Survey asserts that the proof it intends to present at the hearing will show that the survey equipment missed . . . contact voltage risks . . .”),⁵ (“this Docket will . . . ensur[e] that any ruling on the propriety of the program is made with full knowledge of the severe limitations of the testing equipment being employed”), (“Before the [Commission] takes action . . ., it will certainly want to be satisfied that the selected equipment is actually working[.]”).

The Commission already approved National Grid’s program, however, in the Process Order. That program approved by the Commission included approval of an RFP for the selection of a mobile technology vendor to provide testing equipment for use in the program. That RFP included a pilot testing program to assess competing testing technology. National Grid conducted the RFP and the pilot testing and selected Premier. Power Survey refused to participate in the pilot testing. The Commission approved National Grid’s implementation of the RFP and pilot testing and its selection of Premier in the Compliance Order.

The Commission should reject Power Survey’s attempt to inject this issue into this proceeding. The Commission defined the limited scope of this proceeding – “a review of whether National Grid’s [Annual Report] is consistent with the Contact Voltage Program approved in the [Process Order].” The Annual Report does not include the selection of the mobile technology used for contact voltage testing.² This proceeding is a limited compliance filing. The mobile testing technology being used by National Grid is not at issue. Power Survey cannot seek to intervene in an attempt to relitigate issued already decided in a previous proceeding. *See Newport Elec. Corp. v. Public Utils. Comm’n*, 454 A.2d 1224, 1225 (R.I. 1983).

² Power Survey currently is seeking to raise these issues before the Rhode Island Supreme Court through a writ of certiorari. That attempt is the subject of a motion to quash, which the Supreme Court is expected to consider on October 17, 2013.

The Commission should deny the Motion to Intervene because it attempts to insert issues into this proceeding not before the Commission.

B. Power Survey has no Interest in this Proceeding.

National Grid created an RFP for the selection of a mobile technology vendor that included a pilot testing program. The Commission approved that selection process. Power Survey refused to participate in the pilot testing program. Consequently, National Grid did not select Power Survey to provide the mobile technology for its contact voltage testing. Power Survey is nothing more than a disgruntled failed bidder in this proceeding. Power Survey's dissatisfaction with not being selected is not grounds for intervention.

Unsuccessful competitive bidders do not have standing to intervene in subsequent matters reviewing the program in which they unsuccessfully bid. For example, in a proceeding to review the adequacy of a water treatment plant, the Commission rejected a motion to intervene from a company that unsuccessfully bid to design, build and operate the water treatment plant. *See In re: Investigation into the Adequacy of the Pawtucket Water Supply Board's Treatment Plant*, Docket No. 3452, Commission Order No. 17515 at 3-8. The Commission concluded that any interest the competitor may have had was "not the subject of the instant docket." *Id.* at 6. Similarly, the Commission rejected a motion to intervene from a competitor ferry company in a rate case because any interest the competitor had was indirect at best. *See* Commission Order No. 14572.

Like the competitors the Commission found had no interest worthy of intervention in the past, Power Survey also has no such interest. This proceeding deals only with whether National Grid's Annual Report complies with the requirements of the contact voltage program approved by the Commission in the Process Order. Power Survey is a competitive bidder that was not selected as a part of an approved RFP. The Commission previously held a proceeding in which

it assessed whether National Grid complied with the approved RFP, and the Commission found that National Grid did so. *See* Compliance Order at 8-9. If Power Survey has any interest in National Grid's contact voltage program, it is as a competitive bidder to serve as a technology vendor for the program. The selection of a mobile technology vendor is not at issue in this proceeding. The Commission approved the selection of Premier as the mobile technology vendor in the Compliance Order. Power Survey has no interest upon which to form the grounds for its intervention in this proceeding. *See In re: Investigation into the Adequacy of the Pawtucket Water Supply Board's Treatment Plant*, Docket No. 3452, Commission Order No. 17515 at 6.

C. Power Survey's Proposed Intervention is not in the Public Interest.

The Commission considered Power Survey's public comments in the proceedings that led to the Process Order and the Compliance Order approving National Grid's contact voltage program and approving National Grid's selection of a mobile technology vendor. The Commission concluded, however, that Power Survey's limited participation in that docket did not assist in the process of developing the contact voltage program. *See* Compliance Order at 8-9. In fact, the Commission found that Power Survey's public comments were motivated by its financial interest in the outcome of the case, geared primarily toward attacking Premier, and ultimately only served to delay the implementation of the contact voltage program. *See id.*

Power Survey is merely a potential vendor that hoped to win the contract to provide the mobile technology for National Grid's contact voltage testing. Power Survey is not a representative organization expressing concerns about the safety of the electrical distribution system on behalf of concerned citizens. The Division is a party to this proceeding, and will represent the interests of the public in regarding whether National Grid's Annual Report

complies with the Process Order. *See* R.I. Gen. Laws § 39-5-2; *Narragansett Elec. Co. v. Harsch*, 368 A.2d 1194, 1200 (R.I. 1977).

Power Survey has not and cannot demonstrate that it will provide any contribution to this proceeding. The Motion to Intervene makes no showing of how Power Survey will serve the public interest. Power Survey suggests it will present evidence that the mobile technology used to in National Grid's contact voltage program did not perform properly. *See* Motion to Intervene at 4-6. Power Survey does not, however, identify the nature or source of this supposed evidence. *See id.* Similarly, Power Survey states that it will "assist the Commission and other parties to the matter[] in taking a 'hard look' as the data accumulated by the testing contractor[.]" *See id.* at 5. Power Survey presents no argument, however, as to how it will do so. *See id.* There is no reason why the Commission and the Division are not capable of reviewing the Annual Report and determining whether it complies with the Process Order without the contributions of Power Survey – a losing bidder in the RFP to select a mobile technology vendor for the program. *See In Re: Island Hi-Speed Form of Regulation and Review of Rates*, Docket No. 3495, Order No 17452 at 8 (2003) (rejecting intervention when there is no evidence that party seeking to intervene will assist the Commission to achieve a result it otherwise could not have).

The proposed intervention by Power Survey will not serve the public interest, and it will not helpfully contribute to the Commission's review of the Annual Report. Rather, as the Commission found in the proceedings for approval of the National Grid's contact voltage program, Power Survey's intervention will only delay moving forward.

IV. CONCLUSION

The Commission should deny Power Survey's motion to intervene.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC
COMPANY**

By its attorney,



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