

November 12, 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
Sur-Reply in Opposition to Power Survey's Motion to Intervene**

Dear Ms. Massaro:

Enclosed is The Narragansett Electric Company's d/b/a National Grid Sur-Reply in opposition to Power Survey Company's motion to intervene in concerning 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

November 12, 2013
Date

**Docket No. 4237 – Commission’s Proceeding Relating to Stray
and Contact Voltage Pursuant to Enacted Legislation
Service List updated 6/25/13**

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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
SUR-REPLY IN OPPOSITION TO POWER SURVEY COMPANY'S
MOTION TO INTERVENE

I. INTRODUCTION

The Rhode Island Public Utilities Commission (the “Commission”) opened this proceeding solely 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”). Neither Power Survey Company’s (“Power Survey”) motion to intervene, nor its Reply to Objections to Motion to Intervene (“Reply”) identify any interest Power Survey has in this compliance proceeding. The reason Power Survey does not articulate the nature of its interest is because Power Survey only seeks a competitive business advantage in the hope of providing the mobile technology used in National Grid’s contact voltage detection program. The Commission and the Rhode Island Supreme Court, however, have determined that such an interest is insufficient to permit intervention.

Additionally, the issues Power Survey identifies and seeks to address are not the subject of this compliance proceeding. Power Survey seeks to have the Commission assess the selection of the mobile technology National Grid used for its contact voltage testing program. The Commission already approved National Grid’s contact voltage program, including the method by which National Grid selected the mobile technology vendor. National Grid did not select Power Survey as its mobile technology vendor for the program, in part, because Power Survey refused

to participate in the request for proposal process approved by the Commission for that selection. The Commission already determined that process met the statutory requirements.

This proceeding addresses only whether National Grid complied with the statutory requirements in its annual report of the results of the contact voltage testing. Power Survey cannot intervene to re-litigate previously decided matters with the goal of benefitting itself. Power Survey has no interest in the subject matter of this proceeding and its intervention would not serve the public interest. The Commission should deny Power Survey's motion to intervene.

II. ARGUMENT

A. Power Survey Has No Interest in this Proceeding

The Commission's Rules of Practice and Procedure ("Commission Rules") require a party seeking to intervene to demonstrate an interest in the proceeding. Commission Rule 1.13(b). The intervener's interest must either be one "not adequately represented by existing parties" or one for which "the movant's participation may be in the public interest." *Id.* Power Survey has not met its burden to demonstrate such an interest.

Power Survey is a losing bidder in the contest to provide the mobile technology National Grid uses in its approved contact voltage detection program. Power Survey's competitive interest in seeking to reopen the process of selecting a mobile technology vendor is not an interest that supports intervention. Unsuccessful competitive bidders do not have standing to intervene in subsequent matters reviewing the program in which they unsuccessfully bid. *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. (denying motion to intervene of competing bidder for design/build of water treatment plant in subsequent proceeding to review adequacy of plant because competitor's interest was "not the subject of the instant docket." *See also*

Commission Order No. 14572 (rejecting motion to intervene from a competitor ferry company in a rate case because any interest the competitor had was indirect at best). The Rhode Island Supreme Court has said that it is unwise for the Commission to allow a competitive bidder on a project pending before the Commission to intervene in proceedings regarding the failed bid. *In re Island Hi-Speed Ferry, LLC*, 746 A.2d 1240, 1245-46 (R.I. 2000).

Power Survey's motion to intervene and Reply do not articulate any interest it has in this limited compliance proceeding. The Commission's determination as to whether National Grid's annual report of the results of its contact voltage testing program meets the statutory requirements has no impact on Power Survey – an out-of-state vendor of mobile technology for contact voltage testing. Power Survey makes only unsupported statements that it has some form of evidence it wishes to present to show that the mobile technology National Grid selected in the previously approved process did not perform adequately. This position is a disguise for Power Survey's real interest: replacing the vendor National Grid selected to provide mobile technology for National Grid's contact voltage detection program. This interest does not provide grounds for intervention before the Commission. *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. Power Survey does not meet the criteria of Commission Rule 1.13(b) – it has no interest in this limited proceeding.

B. The Issues Power Survey Seeks to Address are not a Part of this Proceeding

This Commission opened this proceeding only to determine whether National Grid's annual report on the results of its contact voltage testing program complied with the requirements

under the statute.¹ The Commission is not assessing “[w]hether . . . the selected testing equipment performed as the Commission and National Grid were led to believe” in identifying potential contact voltage hazards. *See* Reply at 4. The Commission approved the process for selecting that technology in the Process Order. The Commission concluded that National Grid followed the approved process in the subsequent Compliance Order (issued February 1, 2013). The Commission is not revisiting those decisions in this proceeding.

The Commission should not “broaden the scope” of this proceeding to reconsider its prior decisions. Rule 1.13(f) of the Commission’s Rules does not direct the Commission to broaden the scope of the proceeding because a potential intervenor seeks to raise additional issues. Rather, Rule 1.13(f) binds intervenors to “agreements reached and orders entered in the proceedings prior to their intervention.” The rule only permits the Commission to “allow broadening of issues” if it determines “the public interest requires it **and** no undue prejudice or hardship will result to the other parties to the proceeding.” Commission Rule 1.13(f) (emphasis added).² Moreover, Rule 1.13(f) does not provide a basis for granting intervenor status; it only describes the parameters of an intervenor’s involvement in a proceeding. Power Survey cannot rely on that subsection to provide it with a right to intervene to introduce new issues.

Power Survey presents no basis for the Commission to conclude that the public interest requires re-litigating whether the process National Grid employed to select the mobile technology for its contact voltage testing was adequate. The Commission approved the process National Grid used to select its mobile detection technology in the Process Order. The

¹ National Grid also informed the Commission in the report that it intends to (1) add a new contact voltage risk area for testing next year and (2) test 100% of the risk areas in the second year – as opposed to the 20% required by statute. These actions expand the scope of the program beyond the original approved plan and the requirements of the statute and do not raise concerns that the program approved previously by the Commission did not satisfy the statutory requirements.

² Rule 1.13(f) also does not provide a basis for granting intervenor status. It only describes the parameters of an intervenor’s involvement in a proceeding. Power Survey cannot rely on that subsection to provide it with a right to intervene to introduce new issues.

Commission concluded that National Grid followed that approved process in the Compliance Order.³ This proceeding is a review of National Grid's report on the results of the first year of the program and limited proposals based on that report. It is not a review and approval of the components of the program. The issues that Power Survey seeks to address were the subject of an earlier proceeding. There is no public interest in addressing issues already decided by the Commission. Moreover, the Division of Public Utilities and Carriers (the "Division") is a party to this proceeding charged with representing the public interest. Power Survey has presented no basis to conclude that the public interest in the limited scope of this proceeding is not adequately protected by the Division.

Additionally, it would be an undue hardship to force National Grid and the Division to address the same subject matter previously resolved in the Process Order and the Compliance Order. The contact voltage statute requires National Grid to file an annual report of its contact voltage testing findings. R.I. Gen. Laws § 39-2-25(b)(6). This proceeding arises from the filing of that report. The purpose of this proceeding is to determine whether the contents of that report comport with the requirements of the statute. This proceeding is not a review of the previously approved contact voltage detection program implemented by National Grid – or the methods approved for National Grid's selection of a mobile technology vendor for use in the program. It would impose an undue burden on National Grid, the Division and the Commission to allow Power Survey to raise and re-litigate the already resolved issues it raises in its motion to Intervene and Reply.

³ Moreover, the contact voltage incident that resulted in the death of a young girl – to which Power Survey cites for the importance of the public safety issues involved in this case – took place in Maryland. The Maryland Public Service Commission has approved the use of the mobile technology selected by National Grid in its contact voltage detection program.

III. CONCLUSION

The Commission should deny Power Survey's Motion to Intervene.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC
COMPANY**

By its attorney,



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