



DESAUTEL LAW

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November 15, 2021

VIA USPS AND ELECTRONIC MAIL

Ms. Luly Massaro  
Rhode Island Public Utilities Commission  
98 Jefferson Boulevard  
Warwick, RI 02888  
[Luly.massaro@puc.ri.gov](mailto:Luly.massaro@puc.ri.gov)

**RE: Docket No. 5187 – Petition of Solar Breakers, LLC to Establish Private Rail Crossings**

Dear Ms. Massaro:

Enclosed herewith please find an original and four (4) copies of the Town of Middletown's Comments to be filed in the above-entitled matter.

Please be advised that an electronic copy of this document has been sent to the Service List. Thank you for your attention to this matter.

Sincerely,

Marisa A. Desautel, Esq. *(ma)*  
Enclosures

cc: Service List

**Docket No. 5187 – Solar Breakers LLC - Petition to Establish Railroad Crossings**  
**Service List updated 11/10/2021**

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<b>File an original &amp; six (6) copies w/:</b> Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	<a href="mailto:Luly.massaro@puc.ri.gov">Luly.massaro@puc.ri.gov;</a>	401-780-2017
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**STATE OF RHODE ISLAND PUBLIC UTILITIES COMMISSION**

**IN RE: Docket No. 5187 – Solar Breakers, LLC’s Petition to Establish Railroad Crossing to the Public Utilities Commission to allow and grant the Crossings of the Tracks in the form and manner as depicted on the plans submitted with said Petition to Establish Railroad Crossing**

**THE TOWN OF MIDDLETOWN’S COMMENTS**

NOW COMES the Town of Middletown (“Middletown”), and by and through its undersigned counsel, hereby submits comments as an Intervenor in the above docket. In support of its comments, Middletown avers the following:

**I. INTRODUCTION**

On or about September 24, 2021, the Public Utilities Commission (“PUC”) opened Docket #5187. In this docket, the PUC is being asked to render a decision to grant Solar Breakers, LLC’s Petition to Establish Railroad Crossings (the “Petition”).

The Petition seeks permission to cross railroad tracks operated by Newport and Narragansett Bay Railroad Co. (“N&NBRR”) along a Rhode Island Department of Transportation (“RIDOT”) owned right of way and to construct certain improvements necessary to cross said track. Solar Breakers, LLC entered into a lease with the United States Navy to construct a solar project and cites this project as the reason for its Petition. RIDOT owns the strip of land where the Crossings and subject railroad tracks are located.

Middletown filed its Motion to Intervene on October 15, 2021, in order to preserve its interests in the subject property. The United States National Park Service approved Middletown’s application to acquire approximately 15 acres of surplus Federal property (“Federal land”) on July 12, 2015, which Federal land is a portion of the subject property.

## II. COMMENTS

### A. THE PETITION, IF GRANTED, WILL NEGATIVELY IMPACT MIDDLETOWN'S INTERESTS IN THE FEDERAL LAND

Middletown acquired a property ownership interest in a portion of the subject property in 2015. Since that time, the Navy has been in process of undertaking environmental study, analysis, and cleanup to address certain subsurface investigation activities and pollutant remediation on-site. The Federal land that Middletown asserts an ownership interest in is intended for future use as a fishing pier, shoreline access point and shoreline public park. *See* attached Memorandum and Shoreline Park Master Plan drawing.

Middletown notes that the Petitioner includes the statement in its Petition that “the Town of Middletown [is] aware of the proposed Crossings and ha[s] no objection thereto...” Petition, p.3. As indicated in its Motion to Intervene, Middletown actually does have objection to the Petition.

The proposed use of the Federal land has been contemplated by Middletown since at least 2005, when the Aquidneck Island Planning Commission included it in its reuse plan. The project on the Federal land is also supported by the Rhode Island Department of Environmental Management, which is anticipated to engage in the development of the fishing pier and parking area. Middletown further proposes the development of walking trails, portage points, beaches, picnic areas, parking, and restrooms on the Federal land.

Since Middletown will eventually own and operate the subject property, concerns about public safety, access, viewshed, and conflicts of use arose when the Petition was filed. Specifically, the proposed Crossings appear to be in direct conflict with the existing parking and access points that Middletown intends to use as part of its park concept.

**B. THE RELEVANT STATUTE DOES NOT AUTHORIZE THE PETITION**

Another issue at the heart of this matter is the Petitioner's misuse of the Rhode Island Railroad Crossing Act, RIGL §39-8-1.3. That statute, entitled "Authorization for private crossing," states the following:

"No railroad owning railroad tracks within the state shall enter into any agreement of any nature whatsoever with any private party for the establishment of a private crossing at grade, unless and until the *railroad shall have obtained permission* from the commission for the establishment of the private crossing." RIGL § 39-8-1.3 (emphasis added).

In this case, the railroad does not own the subject property. From the Petitioner's pleadings, it appears that the railroad, N&NBRR, operates the railroad tracks. But it is unclear from the pleadings which entity owns the railroad tracks. In any event, since the Petitioner has invoked RIGL §39-8-1.3, the terms of that statute must apply. The statute contains mandatory language that the railroad shall obtain permission from the PUC for the establishment of the private crossings.

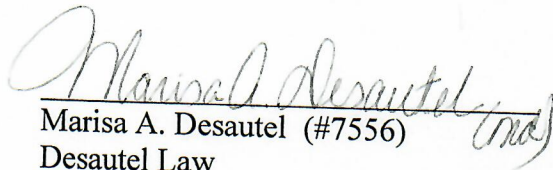
A review of the Petition and attachment reveals that only the Petitioner, a solar project developer, is requesting permission to cross railroad tracks. The solar developer is not a railroad, as contemplated by the Rhode Island Railroad Crossing Act, and cannot request permission for the establishment of the Crossings. This is not a mere technicality. The statute includes non-discretionary language that only a railroad *shall* obtain permission from the PUC. As such, the Petition is defective and should be denied.

### III. CONCLUSION

Middletown appreciates the anticipated consideration of the above comments by the PUC.

Respectfully submitted,

TOWN OF MIDDLETOWN  
By its attorney,

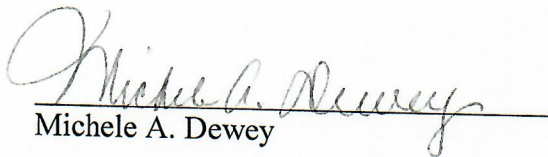


Marisa A. Desautel (#7556)  
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38 Bellevue Avenue, Unit H  
Newport, RI 02840  
(401) 477-0023

Dated: November 15, 2021

### CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2021, I delivered a true copy of the foregoing Town of Middletown's Comments via electronic mail to the parties on the Service List for Docket No. 5187.



Michele A. Dewey