



## Public Service Commission

### Public Service Commission

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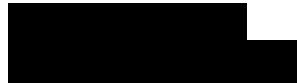
**Michelle L. Phillips**

Secretary

Three Empire State Plaza, Albany, NY 12223-1350  
www.dps.ny.gov

August 19, 2020

Mr. Daniel Pinkowski



Re: Case 19-E-0491 (948302)  
Daniel Pinkowski vs. National Grid

Dear Mr. Pinkowski:

At its session on August 13, 2020, the Public Service Commission reviewed the appeal from the informal hearing officer's June 13, 2019 decision in the above-referenced case. As discussed below, the appeal is denied because the relief you seek "is beyond the power of the informal hearing officer to provide."<sup>1</sup> Indeed, in certain respects the relief sought is beyond the power of the Commission.

Pursuant to 16 NYCRR §12.13(b), and as explained at the end of the hearing officer's decision, an appeal must be based on one or more of the following grounds:

1. The hearing officer or reviewer made a mistake in the facts in the case or in the interpretation of laws or regulations which affected his or her decision.
2. The hearing officer or reviewer did not consider evidence, presented at the hearing or review, which resulted in an unfavorable decision.
3. New facts or evidence, not available at the time of the hearing or review, have become available, which would have affected the decision on the complaint.

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<sup>1</sup> 16 NYCRR §12.5(a)(2).

The Commission has reviewed the appeal and determined that it (1) fails to show any error by the hearing officer or failure to consider evidence presented that affected the decision, and (2) does not demonstrate that any new facts or evidence have become available that could affect the decision.

In the appeal, it is alleged that a National Grid guy wire anchor exists in front of your home, in violation of National Grid specifications and/or National Electrical Code standards,<sup>2</sup> but offers no evidence or facts to support the claims.<sup>3</sup> It is also alleged that the guy wire anchor is located too close to a nearby utility pole and underground utility trench. Again, the appeal fails to allege any associated safety concerns or service issues in the original complaint or appeal. It is further alleged that National Grid should have relocated the utility pole and the guy wire, which were set in 1990, prior to the 2012 construction of your house. Your home was purchased in 2013 with the existing facilities (pole and guy wire) in place, and you expressed no safety concerns or service issues at that time. Finally, it is alleged that the guy wire would prevent emergency vehicles access to the east side of your home; however, there is no evidence that the guy wire actually restricts access to your home. As a remedy, the appeal requests that National Grid to relocate the guy wire at no cost to you.

National Grid responded to the complaint by stating that poles and anchors on your street are within the highway right of way. National Grid claims that it followed protocols set by the municipality as well as its tariff and company standards when it comes to setting the guy wire and anchor.<sup>4</sup> Their calculations are based on the pole attachments, the direction of the anchor, as

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<sup>2</sup> Case 19-G-0491, In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR in Relation to Complaint Procedures - Appeal by Daniel Pinkowski of the Informal Decision Rendered in Favor of the Niagara Mohawk Power Corporation d/b/a National Grid.

<sup>3</sup> 12 NYCRR §12.1(c) provides, among other things, that: “A customer making a complaint is responsible for providing staff with any facts that he or she possesses in support of his or her position.”

<sup>4</sup> See National Grid, Tariff, PSC No: 220 Electricity Leaf: 146, Niagara Mohawk Power Corporation Revision: 3, Initial Effective Date: February 16, 2016, Rule 28. Special Services Performed by Company for Customer at a Charge. “28.2 The occasion may arise to cause Company to provide additional facilities and/or services beyond those normally required to supply customer's total requirements. When customer requests Company to do so and it is mutually agreed, such additional facilities shall be installed and/or services shall be provided by Company for any reasonable purpose of customer . . . . In that event . . . customer shall have the option of paying the Company, in addition to the charges for electric service, a non-refundable cash contribution upfront or a monthly surcharge of 1.5% for a ten (10) year period on the cost incurred by the Company. The remainder of any surcharge shall be collected from any subsequent owner(s) of the premises served.”

well as other safety factors. National Grid verified that its facilities were installed in 1990, and that the nearby homes were not built until the 2011-2012 time frame. As noted above, you purchased your current home in 2013, after the anchor was already installed.

The Commission agrees with the hearing officer's denial of a hearing because the relief that you seek is beyond the power of the hearing officer to provide.<sup>5</sup> The appeal is not related to any utility electric service that National Grid provides and there are no allegations that the company's electric service is not otherwise safe and adequate. As a remedy, the appeal seeks to relocate the guy wire on your property at no cost to you, but there is no evidence in the record that the wire poses a safety concern or a service issue. Such an expenditure is not authorized under the company's tariff. This position was communicated to you earlier in the complaint process by National Grid.<sup>6</sup> As a result, you will be responsible for any associated charges if you seek to pursue removal of the facilities at issue.<sup>7</sup> Finally, there is evidence in the case file that the structures you want removed are correctly within the right of way of the City of Glens Falls.<sup>8</sup> Whether you have other possible remedies to obtain relief sought here, *e.g.*, in a court of competent jurisdiction, it is beyond the scope of the Department's consumer complaint procedures to address.

Because the appeal has not stated grounds warranting appeal, the appeal has been denied by the Commission and the informal hearing decision upheld.

The Commission's decision, effective the date of this letter, may be challenged through judicial review pursuant to Article 78 of the Civil Practice Law and Rules, or may be the subject of a petition for rehearing. A petition for rehearing must, pursuant to Section 22 of the Public Service Law, be sent to the Secretary to the Commission at the above address (or by electronic mail to [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)) and must be received at the Secretary's office no later than 30 days from the date of this letter. Petitions that are untimely may be rejected.

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<sup>5</sup> 12 NYCRR §12.5(a)(2). See also Appeal by Case 91-E-0523, Appeal by George and Raymond Jemzura of the Informal Decision Rendered in Favor of New York State Electric & Gas Corporation, Commission Determination (issued October 23, 1991); Case 18-E-0082, Appeal by Brendan Bannigan of the Informal Decision Rendered in Favor of National Grid – Upstate, Commission Determination (issued April 24, 2018).

<sup>6</sup> Supra Note 2. Email dated January 30, 2019, from Patricia Pesaturo, National Grid, to Daniel Pinkowski.

<sup>7</sup> Supra Note 4.

<sup>8</sup> Supra Note 2. Utility response dated February 14, 2019, from Benjamin Rucho, Sr. Commercial Account Representative, NY Team Lead, National Grid US, to Greg Ladd at National Grid.

A petition for rehearing must also meet the requirements of the Commission's rules and regulations, specifically here 16 NYCRR §3.7(b), which states:

Rehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination. A petition for rehearing shall separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.

A rehearing petition that does not meet the requirement for separate identification of each alleged error or new circumstance, or specifically explain and support each alleged error or new circumstance said to warrant rehearing, may be rejected.

Judicial review may be sought without first requesting rehearing by the Commission. The time limit under state law for commencing an Article 78 proceeding to obtain judicial review of a Commission determination is four months from the date that the Commission determination becomes final and binding on the party seeking review.

By direction of the Commission,

Michelle L. Phillips  
Secretary

cc: Mr. Gregory A. Ladd  
Senior Supervisor  
Customer Policy & Satisfaction  
National Grid – Upstate  
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Syracuse, NY 13202