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SERVICE DATE – LATE RELEASE AUGUST 6, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35393

PROVIDENCE AND WORCESTER RAILROAD COMPANY—PETITION FOR
DECLARATORY ORDER—GARDNER BRANCH

Decided: August 6, 2010

Providence and Worcester Railroad Company (P&W) on July 20, 2010, filed a petition for a declaratory order with respect to its Gardner Branch, a 26.1-mile line extending between Worcester and Gardner, Mass. P&W seeks to construct a second track on the Gardner Branch right-of-way but claims that it cannot do so while National Grid, through its subsidiary, New England Power Company (NEPCO), occupies a portion of the right-of-way for an electric transmission line. According to P&W, National Grid, relying on Massachusetts state law, has refused to remove the transmission line, notwithstanding that P&W has properly exercised the termination provisions of the 1966 license agreement that permitted NEPCO to install the transmission line.

P&W requests that the Board remove any uncertainty regarding its exclusive jurisdiction over P&W's use of the Gardner Branch right-of-way and find (1) that P&W has the right to the exclusive use of the right-of-way, and (2) that regulation of petitioner's use of the right-of-way under state law by the Massachusetts Department of Public Utilities is preempted under 49 U.S.C. § 10501(b).

National Grid filed a letter on July 30, 2010, requesting a 30-day extension from that date to file a reply to the declaratory order petition. The additional time, National Grid claims, is needed because it must retain expert counsel and it would be challenging during the current vacation season to expect counsel to review state and federal law and prepare a reply by August 9, 2010. National Grid states that P&W consents to the extension request.

The extension request is reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The due date for National Grid to file a reply to P&W's petition for a declaratory order is extended to August 30, 2010.

2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.