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August 24, 2021

Emma Rodvien, Coordinator
Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

**Re: The Narragansett Electric Company d/b/a National Grid
(Portable LNG Vaporization Project Old Mill Lane, Portsmouth, RI)
Docket No. SB-2021-04**

Dear Ms. Rodvien:

Enclosed please find an original and 7 copies of The Narragansett Electric Company d/b/a National Grid's (the "Company") Response to Acadia's, CLF's and Town of Middletown's Objections to the Company's Petition for Waiver Extension.

Please do not hesitate to contact me with any questions.

Sincerely,



George W. Watson III

Enclosure

Copy to: Docket SB-2021-04 Service List (by electronic mail)

SB-2021-04 The Narragansett Electric Company d/b/a National Grid Application for License to Mobilize and Operate a Liquefied Natural Gas (LNG) Vaporization Facility at Old Mill Lane (Portsmouth, RI)

Updated August 19, 2021

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STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD

In re: The Narragansett Electric Company	:	
d/b/a National Grid	:	Docket No. SB-2021-04
(Portable LNG Vaporization Project	:	
Old Mill Lane, Portsmouth, RI)	:	

**Response to Acadia’s, CLF’s and Town of Middletown’s Objections to
The Narragansett Electric Company d/b/a National Grid’s
Petition for Waiver Extension**

The Narragansett Electric Company d/b/a National Grid (the “Company”) hereby responds to the Proposed Conditions to Extension of Emergency Waiver filed jointly by Acadia Center (“Acadia”) and the Conservation Law Foundation (“CLF”), and the Town of Middletown’s (“Middletown”) Objection to the Petition of Waiver (Acadia, CLF and Middletown are herein collectively referred to as the “Objecting Parties”). For the reasons stated herein and outlined in the Petition for Waiver Extension, the Company requests that the Board grant its one-year waiver without any of the conditions proposed.

I. BACKGROUND

On May 19, 2021, the Company submitted to the Board a Petition for Waiver Extension (“Waiver Extension”) seeking a one-year extension of the waiver previously granted by the Board on January 8, 2020 to continue the mobilization and operation of a liquified natural gas (“LNG”) vaporization facility at the Company-owned property located on Old Mill Lane in Portsmouth during the upcoming winter of 2021-2022 (the “Project”). Simultaneously with the Waiver Extension, the Company also filed an application to the Board seeking a temporary license for the operation of the Project at Old Mill Lane (the “Application”) until a long-term solution to the

identified needs is licensed and placed into service. The Company was instructed to request an extension of the waiver pending the resolution of the Application.¹ On August 12, 2021 the Board held a Preliminary Hearing on the underlying Application and Waiver Extension. On August 18, 2021, Acadia and CLF filed Proposed Conditions to Extension of Emergency Waiver (“Proposed Conditions”) and Middletown filed an Objection to the Waiver Extension (“Objection”). On August 19, 2021, the Board issued a Notice of Hearing continuing the Preliminary Hearing to August 26, 2021. The Notice established a deadline of August 24, 2021, for all written responses to the Proposed Conditions and Objection.

II. DISCUSSION

As noted in the Petition for Waiver Extension, the Company is requesting a one-year extension of the Board’s existing waiver so that it may operate the Project during the upcoming 2021-2022 winter while its Application is processed by the EFSB.

The Board should grant the Waiver Extension as requested and without the proposed conditions of the Objecting Parties because: (1) the Objecting Parties have not challenged the need for the Waiver Extension for the winter of 2021-2022; (2) a moratorium on new gas connections on Aquidneck Island would be wholly inappropriate for several reasons discussed herein; and (3) the requested waiver is only needed until the Board rules on the pending Application. The Company addresses these arguments in turn below.

¹ EFSB December 18, 2020 Open Meeting, Docket No. SB-2020-02 at 9:00 (available at <https://video.ibm.com/recorded/128942952>).

A. The Objecting Parties Do Not Challenge the Need for a Waiver Extension

Nothing in the Proposed Conditions or the Objection filed by the Objecting Parties challenges the need for the requested Waiver Extension. This alone is sufficient for the Board to grant the requested Waiver Extension. Granting the Waiver Extension becomes even more compelling when the Objecting Parties' failure to challenge the need is coupled with the information and knowledge that the Board has before it regarding (a) the need to maintain a reliable natural gas system to all customers on Aquidneck Island, and (b) the Project's critical role in ensuring that reliable gas service is available to all customers on Aquidneck Island, especially on cold winter days. The bottom line is that the risk of an interruption in service is heightened without the facility in service. Acadia and CLF should not be allowed to bootstrap their long-term policy agenda onto this Waiver Extension.

While neither CLF, Acadia, nor Middletown contest the Company's assertion that operation of the Project during the winter of 2021-2022 is needed to ensure reliable service to its customers, Acadia and CLF propose that a "temporary moratorium" be placed as a condition of the Waiver Extension. However, they completely fail to explain how that temporary moratorium would alter in any way the need for the Project for the 2021-2022 winter. Instead, Acadia and CLF raise arguments that relate to long-term supply constraints on Aquidneck Island. Their arguments are addressed in greater detail below, but again, they fail to address or challenge the Company's *present* need to mobilize in the winter of 2021-2022. Moreover, Middletown's Objection, also discussed below, raises only one concern: "the waiver request before the EFSB is lacking information on whether the request is subject to resurrection in the following years." Objection at 1. Middletown too does not challenge that the Project is needed for 2021-2022 but is concerned that the Company may need a waiver for other winters as well. The Objecting Parties'

failure to articulate any argument specific to the mobilization needed for the 2021-2022 winter should render that issue settled for purposes of the Waiver Extension.²

B. A Moratorium on New Gas Connections on Aquidneck Island is Inappropriate and Wholly Unrelated to the Relief Requested by National Grid

Acadia's and CLF's request for a moratorium on new gas connections on Aquidneck Island is completely inappropriate and should be denied by this Board. Acadia and CLF request that the Board place a "temporary moratorium"³ on new gas connections on Aquidneck Island as a condition of granting the one-year Waiver Extension being sought by the Company. According to Acadia and CLF, "[i]nitiating a moratorium now will keep today's claimed gas constraint problem from growing, and will help preserve all available strategies to mitigate the risks posed by said problem while a permanent solution is investigated." Proposed Conditions at 1. Acadia and CLF assert that a moratorium would benefit "today's gas customers by reducing strain on the system and increasing the likelihood that Narragansett will be able to provide adequate gas service during times of peak demand." Proposed Conditions at 4.⁴

The Company respectfully, but vigorously, disagrees that a moratorium is appropriate for three reasons: First, the arguments in favor of a moratorium address long-term concerns on

² The Company fully appreciates that the EFSB has expressed that it will not hold a parties' failure to object to the Waiver Extension as a concession that the Project is needed when the Application is being considered. As such, the Company's assertion that the need is undisputed relates exclusively to the Waiver Extension.

³ CLF's and Acadia's request should more accurately be described as one for an indefinite moratorium since they do not indicate what they mean by "temporary" and place no end date on their requested moratorium.

⁴ Acadia and CLF also speculate that a moratorium may have the "added benefit" of avoiding potential greenhouse gas emissions resulting from connections to the gas distribution system and may further the goals of the newly-enacted Act on Climate, § 42-6.2-9. Proposed Conditions at 6-7. This claim presumes that residents and businesses would opt to electrify their homes and businesses and ignores the fact that heating oil and propane are also available options. According to a report prepared by The Brattle Group, over 34% of Rhode Island residents rely on delivered fuel. Heating Sector Transformation in Rhode Island, The Brattle Group, Page 6, Figure 4 (available at [https://brattlefiles.blob.core.windows.net/webfiles/Brattle_Heating%20Sector%20Transformation%20in%20Rhode%20Island%20\(2020-04\).pdf](https://brattlefiles.blob.core.windows.net/webfiles/Brattle_Heating%20Sector%20Transformation%20in%20Rhode%20Island%20(2020-04).pdf)). The number may be even higher based on Office of Energy Resources' Rhode Island Renewable Thermal Market Development Strategy. Rhode Island Renewable Thermal Market Development Strategy, Rhode Island Office of Energy Resources, January 2017, Page 25, Figure 2 (available at <http://www.energy.ri.gov/documents/Efficiency/Rhode%20Island%20Renewable%20Thermal%20Market%20Development%20Strategy%20January%202017.pdf>).

Aquidneck Island which are completely distinct from the one-year waiver being sought; second, only the PUC has the authority to regulate the Company's distribution system; and third, a moratorium would have no impact on the need for the Waiver Extension.

1. The Moratorium Arguments Address Long-Term Concerns and are Completely Immaterial to the Current Short-Term Waiver Request

Instead of arguing that a Waiver Extension is not necessary, Acadia and CLF use their response to the Waiver Extension to advance long-term policy goals that bear no relationship to the need to operate the facility this winter. In fact, Acadia proposed this exact moratorium earlier this year in its comments on the Company's FY 2022 Gas Infrastructure, Safety and Reliability Plan filing. RIPUC Docket No. 5099, Public Comments of Acadia Center (March 8, 2021). A moratorium on new gas connections, however, would not resolve the twofold need for the Project with regards to capacity constraints and vulnerability. Nor will ceasing new gas connections obviate the need or affect the scale or duration of the deployment of equipment for the proposed winter 2021-2022 mobilization. Acadia's and CLF's characterization of the moratorium as "lowest risk strategy, in the near-and long-term, to ensure that the claimed gas constraints gap does not grow, or at least grow significantly due to new gas customer connections" makes it transparent that this request is unrelated to the existing reliability need that justifies this Waiver Extension. Proposed Conditions at 4.

Further, the issuance of a moratorium in the context of a siting application would be irresponsible and would create serious due process concerns. Imposing a gas moratorium on the communities of Aquidneck Island is a major, complex policy matter that demands a full evaluation by the regulators, the regulated, and the affected communities. Even if the Board had the authority to impose the requested moratorium, which it does not, it would be wholly irresponsible to make

such a far-reaching and highly impactful decision based on one hearing for a Waiver Extension. Furthermore, there are undoubtedly myriad persons and entities – residential, commercial and industrial customers; elected officials; industry associations; and labor organizations – who would want to have a voice in the decision on whether to institute a gas moratorium. Imposing a moratorium without hearing from affected stakeholders would raise serious due process issues. The Board should decline the request to make sweeping policy decisions for an entire segment of the state.

A moratorium is a policy discussion on how best to meet the heating needs of Aquidneck Island customers, which is outside the scope of the Application and the Waiver Extension.⁵

2. *Only the PUC Has the Authority to Regulate the Public Utility*

Chapter 1 of Title 39 of the Rhode Island General Laws, Public Utilities and Carriers, specifically vests the PUC and the Division of Public Utilities and Carriers with the “*exclusive power and authority to supervise, regulate, and make orders governing the conduct of . . .*” the Company. § 39-1-1(c) (emphasis added). Moreover, Chapter 42 Section 98-7 of the Energy Facility Siting Act, provides that the EFSB “is the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state.” § 42-98-7(a)(1). The EFSB is also “empowered to issue any orders, rules, or regulations as may be required to effectuate the purposes of this chapter.” § 42-98-7(c).

⁵ Acadia and CLF’s assertion that a moratorium will have no impact on economic development is pure speculation. Proposed Conditions at 4-5. The report they cite to support that contention focuses on how large commercial developments can go carbon free and offers no evidence that the technologies highlighted in the report would be available, let alone economic, at the residential or small-scale commercial levels. Further, the report points to the fact that broad-based electrification can only be successful where a regulatory framework, like building codes and carbon pricing increases, drives and supports that change. Overall, CLF and Acadia provide no solid foundation for their claim that on Aquidneck Island “new natural gas connections can be met with other readily available options.” *Id.*

It is clear from the above statutory framework that the PUC is tasked with regulating the Company as a whole, while the EFSB's purview is the licensing of major energy facilities.

Acadia and CLF cite to Rule 445-RICR-00-00-1.13(E) of the EFSB Rules of Practice and Procedure ("Rule") as "authority for the EFSB to impose the requested moratorium." Proposed Conditions at 4. Rule 1.13(E) authorizes the Board to "require any modification or alteration to the proposed facility" as a precondition for a license and "place conditions on the grant" of a license. However, Acadia's and CLF's assertion that this grant of authority would permit the EFSB to place a moratorium on new gas connections on Aquidneck Island is misplaced and stretches the scope of the Rule to effectively give the Board boundless authority. The EFSB has the authority to place restrictions on the operation of the Project if it ultimately decides to grant the Company the license that is being sought. However, there is no support for the contention that EFSB is authorized to regulate how the Company provides service to its customers generally.

The Company respectfully maintains that the Board lacks the authority, under Rule 1.13(E) or other Rhode Island law, to mandate the requested moratorium, and Acadia and CLF have failed to present any condition that is relevant to the one-year Waiver Extension.

3. A Moratorium Would Not Obviate the Need for the Waiver Extension

As noted, there is an existing capacity constraint on the transmission system that will require the Project to operate on cold days. In addition, the Project is needed for capacity vulnerability should a transmission issue occur over the winter. A moratorium would not impact the identified needs nor would it reduce the scale or duration of the Project.

C. The Waiver Extension Sought Is For a One-Year Period

As noted, the Company filed its Application for the continued use of the Project while a long-term solution is being developed. The Board's determination that it had jurisdiction over the facility created a situation in which the waiver was needed as an interim measure until the Board made a final determination on the Application. Middletown's concern that the Company may request another extension in the future is misplaced. Middletown Objection at 1. If the Board makes a determination approving the Application before the winter of 2022-2023, then the facility will be licensed to operate, and a future waiver will not be necessary. Alternatively, if the Board denies the Application and refuses to license the facility, then the Company could not seek a waiver. The possibility of another extension request should not be material in any way to the pending Waiver Extension.

IV. CONCLUSION

The Objecting Parties in this proceeding do not challenge that there is a need for the Waiver Extension for the winter of 2021-2022. Instead, Acadia and CLF seek to address long-term issues and alternative solutions and raise general policy issues that fall outside the scope of the pending Waiver Extension. Moreover, Middletown's concerns that another extension may be requested by the Company in the future is both premature and immaterial to the present need of ensuring that there is reliable gas service for the upcoming winter of 2021-2022. For these reasons, the Company respectfully requests the Board deny the Objecting Parties' requests and grant the Waiver Extension without the proposed conditions.

Respectfully submitted,

THE NARRAGANSETT ELECTRIC
COMPANY

By its attorney:

A handwritten signature in black ink, appearing to read "George W. Watson III", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on August 24, 2021, the within Response to Acadia's, CLF's and the Town of Middletown's Objections to The Narragansett Electric Company d/b/a National Grid's Petition for Waiver Extension was electronically served upon the parties on the service list (attached) for Docket SB-21-04 and that the original and seven (7) hard copies were hand delivered to the Coordinator of the Energy Facility Siting Board at 89 Jefferson Boulevard, Warwick, RI 02888.


