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Peter F. Neronha
Attorney General

July 11, 2022

VIA HAND-DELIVERY and ELECTRONIC Mail

Emma Rodvien
Siting Board Coordinator
RI Energy Facility Siting Board
89 Jefferson Blvd.
Warwick, RI 02888
emma.rodvien@puc.ri.gov

RE: *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)

Dear Ms. Rodvien:

Enclosed please find for filing an original and four (4) copies of the Attorney General's Memorandum with Respect to Scope of Application Review, in the above-referenced docket. An additional copy is provided for the Division of Public Utilities. Paper copies are also being mailed to Meredith Brady, Associate Director of Planning and Terrence Gray, Director of Department of Environmental Management.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Nicholas Vaz

Special Assistant Attorney General

Enclosures

Copy to: Service List

**STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD**

**In Re: The Narragansett Electric
Company Application for a License
to Mobilize and Operate a Liquefied
Natural Gas Vaporization Facility at
Old Mill Lane (Portsmouth, RI)**

Docket No. SB-2021-04

**RHODE ISLAND ATTORNEY GENERAL'S
MEMORANDUM WITH RESPECT TO
SCOPE OF APPLICATION REVIEW**

NOW HERE COMES the Rhode Island Attorney General, Peter F. Neronha (hereinafter “RIAG”), and hereby requests that the Energy Facility Siting Board (hereinafter “EFSB” or “Board”) consider the following memorandum when determining what opinions it will solicit and what topics will be considered during the review of the April 1, 2022, application submitted in the above-captioned docket. Pursuant to EFSB Rule 1.9(A), the Board will “convene a preliminary hearing to determine the issues to be considered by the Board in evaluating [the] application, to designate those agencies which shall act at the direction of the Board for the purpose of rendering advisory opinions, and to identify those licenses required by the facility which are under the direct control of DEM and CRMC.”

I. Background

It is well known that there was a natural gas shortage on Aquidneck Island in January 2019. Since that shortage, the Narragansett Electric Company – now operating as Rhode Island Energy (“RI Energy” or “Company”) - has been operating a portable liquefied natural gas (“LNG”) vaporization facility on Old Mill Lane in Portsmouth, RI each winter to provide emergency backup supply. While there were several errors leading to the 2019 shortage and the resultant heating

outage crisis, as evidenced in the report issued by the PUC on October 30, 2019¹, the fact remains that Aquidneck Island and its approximately 12,500 residential and 1,800 business customers who rely on natural gas sit in a vulnerable position at the end of the Algonquin Gas Transmission, LLC's pipeline.

The Company's amended application (hereinafter the "Application"), completed in June 2022, proposes to continue seasonal operation of the current RI Energy facility at Old Mill Lane (the "Project"). Thus, the Project would continue responding to the issue in the way the Company has these past two winters for an indefinite period of time.

II. Issues of Concern

Pursuant to EFSB Rule 1.9(E)(1), the Board "shall consider the ability of the proposed facility to meet the requirements of the laws, rules, regulations and ordinances under which, absent the Act, the applicant would be required to obtain a license." Additionally, the Board has the discretion to identify "all issues of any type which in its discretion it finds should be considered in the Board's final hearing." EFSB Rule 1.9(E)(2). Moreover, as may become necessary, the Board also has broad authority to later identify needed opinions and/or to expand the scope of its inquiry into the Application. EFSB Rule 1.9(F).

At this early stage, RIAG urges the Board to consider certain key identifiable issues, such as the application of the Act on Climate and whether the Project as proposed truly addresses the state's present and future needs, in setting the scope of these proceedings in accordance with EFSB Rule 1.9. The issues raised here are in no way meant to represent a comprehensive list of issues to be considered, and as this process moves forward and additional information is provided, RIAG

¹ The PUC's investigation report can be found at:
https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/AI_Report.pdf.

welcomes consideration of further inquiries and advisory opinions.

A. The Act on Climate and Environmental Concerns

The RIAG cannot emphasize enough the need for careful consideration of the 2021 Act on Climate and consistency with Rhode Island’s fossil fuel policies and plans for the future of natural gas. The Act on Climate states that it is within the “*powers, duties, and obligations of all state departments, agencies, commissions, councils, and instrumentalities*” to address “climate change mitigation, adaptation, and resilience in so far as climate change affects its mission, duties, responsibilities, projects, or programs.” R.I. Gen. Laws § 42-6.2-8 (emphasis added). The Act on Climate also sets greenhouse gas emission reduction mandates on the path to net-zero emissions by 2050. R.I. Gen. Laws § 42-6.2-9. This is especially relevant when considering the Project, which by its very nature seeks to facilitate the burning of fossil fuels during the winter months for heat in residential and commercial settings. Therefore, the EFSB, *as well as all state boards and/or agencies providing advisory opinions with respect to the Application*, must carefully consider the effects of the Project on the state’s climate and energy goals. This is consistent with the EFSB’s commitment to fulfilling its obligations and to ensuring adequate analysis is required of all applicants evidencing how the proposed activity impacts the State’s ability to meet its long-term greenhouse gas emission reduction mandates and climate goals as set forth in the Board’s Order 153 issued in Docket No. SB-2021-03 (the “Sea 3 Decision”). Similar to the decision in that case, no permit should be approved without analysis of emissions directly contributed by the site and the emissions contributed by the use of LNG supplied through the site.

It should also be noted that the Act on Climate is not the only authority requiring the Board to consider the climate impacts of the Application, as the Energy Facility Siting Act also requires the EFSB to pursue:

... the objective of ensuring that the construction, operation, and decommissioning of the facility [which] shall produce the fewest possible adverse effects on the quality of the state's environment; most particularly, its land and its wildlife and resources, the health and safety of its citizens, the purity of its air and water, its aquatic and marine life, and its esthetic and recreational value to the public.

R.I. Gen. Laws § 42-98-2(3). Moreover, pursuant to the Siting Act, the Project must be “consistent with the state's established energy plans, goals, and policy.” R.I. Gen. Laws § 42-98-2(6). This, of course, includes consistency with the Act on Climate, but also extends to other laws and policies. As evidenced by the recent passage of a bill requiring Rhode Island to increase its use of renewable energy resources in the electric sector each year in order to reach 100% renewable energy by 2033, the State is leading the nation with a rapid movement towards clean and environmentally sustainable energy.² See R.I. Gen. Laws § 39-26-4(a). Accordingly, the Board must consider any available alternatives and/or conditions to approval that will reduce fossil fuel and CO2 emissions and create greater consistency with the State’s energy goals. This will likely require additional information from the Company, as well as studies and reports identifying the likely impacts of any proposed continued reliance on gas and LNG going into the future. The scope of the proceeding should extend to consideration of whether appropriate emissions offsets and payment mechanisms for such offsets are warranted if it is determined that there is an ongoing temporary need for the project.

B. Need for the Project

In tandem with the responsibility to apply the Act on Climate and to consider the impacts of the Project on the state’s ability to achieve its climate and energy mandates, the Board must also

² It should be noted that the referenced law allows for this electric energy goal to be met by certain renewable energy certificates and offsets, such that Rhode Island would not need 100% carbon-free energy to meet this goal. See generally, R.I. Gen. Laws § 39-26-4(b)-(d). However, fossil fuel heating is one area where renewable electricity can substitute perfectly for fossil fuel heating through the use of electric heating technology. Reliance on offsets in this setting may not be appropriate for achieving Rhode Island’s entire portfolio of mid-term energy goals.

consider and ultimately confirm the need for the Project. Although the applicant contends that the Project is necessary, the Project Siting Report submitted with the Application (the “Siting Report”) notes that “[t]he duration that the Project will be needed remains open as the Company is reviewing other infrastructure and non-infrastructure options.” *Siting Report* at 1. Thus, even the Company admits that the Project is only needed “until the preferred long-term solution is identified and in service.” *Id.* at 2. The process of reviewing the Application should shed light on this issue and identify whether there are ways to responsibly decrease the need for the seasonal LNG operations at Old Mill Lane and to manage a shift away from the currently problematic reliance on natural gas. This is especially true as the future of natural gas throughout the state will be considered in the Public Utilities Commission’s (“PUC”) recently opened Docket No. 22-01-NG.

In the Sea 3 Decision, this Board acknowledged that ensuring supply of fossil fuels has a direct correlated impact on demand for those fuel sources. Order No. 153 at 41. Thus, to the extent the Project as proposed may ensure additional gas hookups that must then be protected from experiencing supply issues, the Board should examine whether the availability of backup may actually increase demand and further exacerbate reliance on fossil fuel heating in the state. Of course, any alternatives must be weighed alongside the necessity to ensure safe and reliable service for those currently relying on natural gas.

Relatedly, inquiry should also be made into whether the Company’s demand forecasts, design day, and design year calculations accurately reflect conditions on Aquidneck Island. According to the Site Plan, the Company simply scaled down its Rhode Island statewide data to forecast natural gas demand growth in an area the size of Aquidneck Island, but it did not use data specific to the region in question. See *Siting Report* at 4, fn. 3. Similarly, the worst-case temperature scenarios contemplated design hours, days, and years relied upon to evidence the need

for the Project seem to have been based on state-wide data. See *Siting Report* at 5. However, Aquidneck Island is a unique coastal community that experiences, on average, warmer winter temperatures than more inland areas in the state. See generally, <http://www.dem.ri.gov/climate/climate-overview-ri.php>. Thus, review of the Application would likely benefit from a more targeted analysis of the actual conditions and demand in the three towns potentially served by the Project. This consideration should also take into account potential changes in demand as the state continues to work towards its policy goal of ensuring further reliance on non-fossil fuel heat sources.

Similarly, further inquiry is required into the Company's considered alternatives to the Project. Although the *Siting Report* opines that the alternatives were not desirable options, there are still questions as to whether alternative solutions may have been overlooked, or if a preferred hybrid approach might be available. Specifically, no-build and non-infrastructure alternatives were dismissed in *Siting Report* section 4.2.1, as they "[do] not respond to the immediate issue of providing peak shaving to offset natural gas demand on a peak day" and "[do] not allow the Company to meet its regulatory obligation to provide safe and reliable service." *Siting Report* at 21. However, this seemingly overlooks the issue of duration highlighted above, that is, the Company is still working to determine whether the Project will be required indefinitely, or if its yearly mobilization may become unnecessary at some future date. It is unclear at this point whether demand-reducing programs or policies might be able to aid the company in achieving a solution whereby the Project is not necessary at some future date. While the company may ultimately be correct in determining that the Project is required on an interim basis to address *immediate* concerns (which remains to be determined through this review process), that does not mean that the Project in combination with certain demand-reducing programs is not a viable solution. This

should be carefully considered throughout the review process in order to arrive at a sustainable, reliable and cost-effective long-term solution.

C. Advisory Opinions

The RIAG also urges the Board to consider soliciting several advisory opinions from state and local agencies, many of which it would likely pursue in its usual course. RIAG believes that the Rhode Island Department of Environmental Management (“RIDEM”), the PUC, the Office of Energy Resources (“OER”), the Executive Climate Change Coordinating Council (“EC4”), and the Division of Public Utilities and Carriers (“DPUC”), among others, will be invaluable in helping to analyze the Project and its potential impacts throughout the State. As with the above analysis of issues, this is not meant to suggest a comprehensive list, but rather an initial discussion of the scope of review required to ensure that the Application is fully vetted to ensure a decision that best protects the public interest.

Of course, opinions should be sought from all agencies that would have had authority over any aspect of the Project absent EFSB jurisdiction. Any such opinions should be provided, to the extent possible, pursuant to procedures that would be followed absent the Energy Facility Siting Act, as required pursuant to EFSB Rule 1.11(A). All such opinions should also conform to the provisions of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws §§ 42-35-1 to 42-35-18 regarding Decisions and Orders. EFSB Rule 1.11(C).

Specifically, RIAG believes that the listed agencies (as well as any other relevant entity the Board deems qualified related to the listed concerns) should be asked to provide advisory opinions related to, but not limited to, the following:

- 1) **RIDEM**, with respect to any wetlands or potential wildlife impacts from the Project, as well as any foreseeable air quality impacts. As noted in the Siting Report, the Project may require a Freshwater Wetlands Permit and will need an emergency generator permit, both of which would be issued by RIDEM.

- 2) **The Portsmouth Zoning Board of Review**, with respect to its opinion as to the Project, including an analysis of the noise issues associated with operation at the site and any mitigation measures that have or should be employed by the Company.
- 3) **PUC, OER, and the DPUC** (*and any other relevant entity*), with respect to:
 - a. The need for the Project to meet immediate and forecasted demand as discussed above (including the period during which any such need may exist);
 - b. The accuracy of the Company's forecasted design hours, days and years for Aquidneck Island;
 - c. The accuracy of the Company's forecasted future demand for gas in light of the Act on Climate and state energy goals and policies;
 - d. The cost-effectiveness of the Project and its continued annual operation over an indefinite period; and
 - e. Whether there are hybrid approaches or other alternatives to the plan put forth in the Application that are reliable, cost-effective, and consistent with the State's climate mandates.
- 4) **OER and EC4**, for a separate opinion as to the potential impacts of the Project on greenhouse gas emissions, the consistency of the Project with the Act on Climate, the State Energy Plan, and other applicable laws, as well as the availability, effectiveness, and costs of any demand-reduction programs available to address the natural gas constraints on Aquidneck Island.
- 5) **Department of Health**, with respect to any potential public health concerns related to the Project and the Division of Planning related to the Projects consistency with the State Guide Plan and any socio-economic impacts associated with the Project as proposed.

III. Conclusion

RIAG believes the above issues are of the utmost importance when considering the Application, and that they should be considered by the EFSB as it establishes the scope of these proceedings. In particular, this docket presents a unique opportunity to consider a question of natural gas infrastructure investment in light of the Act on Climate and the state's clear intention to pursue a cleaner energy portfolio while ensuring safe and reliable heat for customers. Additional topics and inquiries may come to light through discovery, and RIAG looks forward to the opportunity to continue to participate in this process.

Respectfully submitted,

PETER F. NERONHA
ATTORNEY GENERAL

By his attorney:

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CERTIFICATE OF SERVICE

I certify that on the 11th day of July 2022, the original and four copies of this Memorandum were delivered to the Energy Facility Siting Board, with an additional copy for the Division of Public Utilities and Carriers. Another copy was mailed to the following addresses via regular U.S. Mail: Meredith Brady, Associate Director of Planning, 235 Promenade Street, Suite 230, Providence, RI 02908 and to Terrence Gray, Director, RI Department of Environmental Management, 235 Promenade Street, Providence, RI 02908. In addition, a PDF version of this brief was served electronically on the service list of this Docket.

/s/ Ellen Golde