



available when needed during cold weather, on November 6, 2019 the Board granted TNEC a waiver of the licensing requirements of the Act for a period of two years and ordered the Company to file a Petition for a Declaratory Order that provided a more robust legal argument on the issue of why the Act should not apply to such temporary facilities.<sup>3</sup>

The Petition for Declaratory Order was filed approximately ten months after the issuance of the order in Docket No. SB-2019-04. The Board ultimately denied the petition, finding that the portable LNG facility was a major energy facility and that TNEC must obtain a license from the Board to operate that facility. It ordered the Company to file an application to operate the facility on Old Mill Lane in Portsmouth with the Board by June 1, 2021.<sup>4</sup>

On May 19, 2021, TNEC filed an application and a Petition for Waiver to operate during the 2021/2022 winter season. Subsequently, the Town of Portsmouth, the Town of Middletown, the Attorney General, the Conservation Law Foundation, and the Acadia Center were all granted intervenor status.<sup>5</sup> Receiving no objections to the waiver petition, the Board granted a waiver of the licensing requirements for one year, conditioned upon a number of requirements that included TNEC filing a supplemental application identifying the long-term permanent solution to the capacity and vulnerability issues on Aquidneck Island, among other things. The Board ordered the supplemental application be filed by April 4, 2022 and stayed the proceedings until the filing was made.<sup>6</sup> The supplemental application was filed on April 1, 2022, and a preliminary hearing was held on July 25, 2022. At an Open Meeting on August 24, 2022, the Board ruled on the issues

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<sup>3</sup> SB-2019-04 Order No. 142 (Jan. 8, 2020).

<sup>4</sup> SB-2020-02 Order No. 147 (Jan. 29, 2021).

<sup>5</sup> The Town of Portsmouth was automatically granted intervenor status because the facility is located within its borders. The other parties filed motions to intervene which were granted by the Board.

<sup>6</sup> SB-2021-04 Order No. 150 (Sept. 17, 2021).

to be considered and designated a number of agencies to issue advisory opinions.<sup>7</sup> The Board did not consider the Petition for Second Waiver Extension at that time.

Although this is the second request for a waiver in this docket, the instant petition for a waiver from the licensing requirements is actually the third petition for a waiver, the first being filed in Docket No. SB-2019-04 and the second one being filed in this docket when the initial application was filed. The application and supplemental application to operate a portable LNG facility at the site are currently pending before the Board in this docket. The Company anticipated conclusion of the licensing proceedings within the two year period. During the preliminary hearing on July 25, 2022, however, counsel for the Company modified the request for a waiver to a one year period instead of the two years set forth in the petition.<sup>8</sup>

At the preliminary hearing, the Board raised the subject of the pending request for an extension of the waiver, seeking comments from the parties as to whether there would be any objections.<sup>9</sup> The Chairman indicated that if any party wished to request an evidentiary hearing on the waiver petition, a filing would need to be made with the Board prior to the Board convening an open meeting to vote on the waiver request.<sup>10</sup> The Chairman further noted that the Board would proceed to an open meeting decision in the absence of the filing of memoranda from any of the parties seeking a request for hearing.<sup>11</sup> No party raised an objection to the petition for a waiver nor did any party file a request for an evidentiary hearing. Accordingly, the Board noticed and held an open meeting on October 4, 2022.

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<sup>7</sup> SB-2021-04 Order No. 156 (Oct. 19, 2022).

<sup>8</sup> Hr'g Tr. at 86 (Jul. 25, 2022).

<sup>9</sup> *Id.* at 82-86.

<sup>10</sup> *Id.* at 85-86.

<sup>11</sup> *Id.* at 86.

No evidence was offered by any party to suggest that the need for a waiver has abated since the Board's last order was issued on September 17, 2021, granting the last waiver. Further, the Board anticipates that the licensing proceeding seeking a license for the facility in this docket will be completed before the winter season of 2023-24 which commences on November 1, 2023. For these reasons, the Board grants the request for a waiver for one additional one year, consistent with its open meeting decision of October 4, 2022.

Therefore, it is hereby:

**( 158 ) ORDERED:**

The Narragansett Electric Company's Petition for Second Waiver Extension is granted for an additional year, through October 31, 2023.

DATED AND EFFECTIVE at Warwick, Rhode Island, on October 4, 2022, pursuant to an Open Meeting decision of October 4, 2022. Written order issued October 25, 2022.

ENERGY FACILITY SITING BOARD



Ronald T. Gerwatowski, Chairman

Terrence Gray, Member

Meredith Brady (Oct 25, 2022 08:56 EDT)

Meredith E. Brady, Member

**NOTICE OF RIGHT OF APPEAL** PURSUANT TO R.I. GEN. LAWS SECTION 42-98-12, ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY, WITHIN TEN (10) DAYS OF THE ISSUANCE OF THIS ORDER PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THIS ORDER.