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March 13, 2023

Via Regular Mail and Email

Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No. 22-42-NG
In re: Issuance of Advisory Opinion to Energy Facility Siting Board (EFSB)
Application to Construct LNG Vaporization Facility on Old Mill Lane,
Portsmouth, RI

Dear Ms. Massaro:

Enclosed please find the Town of Portsmouth's Objection to TNEC d/b/a R.I. Energy's First Set of Data Requests directed to the Town of Portsmouth.

Very truly yours,

/s/ Kevin P. Gavin

Kevin P. Gavin
Portsmouth Town Solicitor

Enclosures
cc: Service List

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: ISSUANCE OF ADVISORY :
OPINION TO ENERGY FACILITY SITING :
BOARD RE: THE NARRAGANSETT :
ELECTRIC COMPANY’S APPLICATION : **DOCKET NO. 22-42-NG**
TO CONSTRUCT LNG VAPORIZATION :
FACILITY ON OLD MILL LANE, :
PORTSMOUTH, RI :

**OBJECTION OF THE TOWN OF PORTSMOUTH
TO FIRST SET OF DATA REQUESTS ISSUED BY
THE NARRAGANSETT ELECTRIC COMPANY
D/B/A RHODE ISLAND ENERGY**

Pursuant to Rule 1.19(C)(3) of the Rhode Island Public Utilities Commission (“PUC”) Rules of Practice and Procedure, 810-RICR-00-00-1.19(c)(3), the Town of Portsmouth (the “Town” or “Portsmouth”) hereby objects to the First Set of Data Requests by The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company”) issued to the Town on March 3, 2023.

I. INTRODUCTION AND BACKGROUND

The Company has a pending application to the Rhode Island Energy Facility Siting Board (“EFSB”), Docket No. SB-2021-04, for a license to construct and operate, on a permanent basis, a liquified natural gas (LNG) vaporization facility in a residential zoning district at 111 Old Mill Lane in Portsmouth, Rhode Island (the “Project”). The Town of Portsmouth, as the municipality in which the proposed energy facility is located, filed a notice of intervention (as a matter of right) in the EFSB docket.

On October 19, 2022, the EFSB, pursuant to R.I. Gen. Laws § 42-98-10, issued Preliminary Decision and Order No. 156 (the “Preliminary Order”) designating the PUC as one

of several agencies from which advisory opinions would be required. The EFSB specifically directed the PUC to render an advisory opinion addressing the following issues:

- (i) whether the proposed Facility is needed, as such opinion from the PUC is required by the Siting Act. The need analysis should also include the potential duration of the license, whether the license should contain a contingent expiration date, identifying the conditions that would need to be met for granting an extension, and proposing such a date if a contingent expiration is deemed appropriate. The PUC should also advise on the extent to which a moratorium on new gas connections on Aquidneck Island could materially contribute to shortening the period over which the proposed Facility would be needed.
- (ii) whether the Facility is cost-justified. The cost justification analysis should include an evaluation of alternatives. As part of its assessment of cost and alternatives, the PUC should include in its advisory opinion an evaluation of the extent to which there are any cost-effective, non-infrastructure options (such as energy efficiency, heating conversions, and demand response initiatives) which would avoid the need for the Facility. In performing the evaluation of any non-infrastructure options, the PUC should determine the extent to which there are technically feasible solutions available at a reasonable cost to ratepayers that could eliminate the need for the Facility, and whether any such solutions could be reasonably relied upon to eliminate the need for the Facility within a reasonable period of time. As part of this analysis, the PUC should evaluate the Applicant's assumptions related to fuel switching and the relative emissions of different heating sources.
- (iii) whether the Facility is expected to produce energy (i.e., provide and vaporize liquified natural gas) at the lowest reasonable cost and perform its reliability function at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed Facility will be accomplished in compliance with all of the requirements of the laws, rules, and regulations.

Preliminary Order, at 17-18 (footnotes omitted).

The PUC opened the present docket in response to the EFSB's Preliminary Order, to address the EFSB's directive.

II. FIRST SET OF DATA REQUESTS TO PORTSMOUTH

On March 3, 2023, the Company issued a set of data requests to the Town, as follows:

- TNEC 1-1** Does the Town of Portsmouth (“Portsmouth”) dispute that on island vaporization of LNG during heating seasons (November 1 to April 1) is necessary to ensure reliable delivery of natural gas to all customers on Aquidneck Island in the event of an upstream supply disruption?
- TNEC 1-2** If Portsmouth contends that there exist alternatives to on island LNG vaporization and injection to ensure reliable delivery of natural gas to all customers on Aquidneck Island in the event of an upstream supply disruption for any heating season from 2023/24 to 2033/34, please describe that alternative in detail and indicate in which year(s) it would achieve the intended purpose.
- TNEC 1-3** For any alternatives identified in response to Data Request TNEC 1-2, please identify the amount of customer demand, expressed in Dth/hr that Portsmouth contends could be serviced or avoided by that alternative and explain the calculations performed to arrive at that contention.
- TNEC 1-4** For any alternatives identified in response to Data Request TNEC 1-2, please provide the cost of implementation for each year in which such expenses would be incurred in order to achieve operation in time to meet customer demand for the heating season(s) that Portsmouth identified in response to Data Request TNEC 1-2.
- TNEC 1-5** If Portsmouth contends that there exists a site(s) that is preferable to Old Mill Lane for the vaporization and injection of LNG into the gas distribution system serving the Company’s customers on Aquidneck Island, please identify the site(s) and explain the reasons that the site(s) are preferable to the proposed Old Mill Lane site.
- TNEC 1-6** Please identify all preferable alternatives to natural gas heat that Portsmouth contends would satisfy the heating demands of Aquidneck Island residents presently relying upon natural gas for any heating season from 2023/34 to 2033/34 and identify the natural gas demand, expressed in Dth/hr, eliminated for each year in which such alternative(s) would be operating.

III. DISCOVERY STANDARDS

Rule 1.19(C)(3) of the PUC Rules of Practice and Procedure provides:

Objection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than ten (10) days after service of the request.... The relevancy of a request shall be

determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Procedure.

Rule 26 of the Superior Court Rules of Civil Procedure provides:

(b) Discovery: Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party....

The frequency or extent of use of the discovery methods set forth in these rules shall be limited by the court if it determines that:...

- (C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

IV. THE TOWN'S OBJECTIONS

Portsmouth submits that the Company's data requests to the Town seek information that is irrelevant to the issues set forth in the EFSB directive to the PUC, as specified in the Preliminary Order, and that is not reasonably calculated to lead to the discovery of admissible evidence pertinent to the subject matter of this docket.¹

Furthermore, the data requests are vague, overly broad, and unduly burdensome to the Town of Portsmouth. The purpose of the present docket is for the PUC to address and comply with the EFSB's directive as stated in the Preliminary Order. The Company indicated at the outset that it had no objection if the intervening parties in the underlying EFSB proceeding

¹ Indeed, this docket involves no "claims" or "defenses" by the Company against Portsmouth, or by Portsmouth against the Company.

wished to also intervene in this docket. Portsmouth intervened in this docket because it is the host community where the Company's Project is located and the Town had previously intervened as a matter of right in the underlying EFSB docket, in order to preserve the Town's right to cross-examine the Company's witnesses and to present its own witnesses, should it choose to do so.

The Town submits that the Company's data requests are an attempt to improperly shift the Company's burden of proof that it must satisfy to obtain licensing and permitting for its Project pursuant to the Siting Act, and to cause substantial unnecessary and undue burden and expense to the Town of Portsmouth. For example, it is not the Town's obligation to research, investigate, retain consultants and experts, etc. to scour Aquidneck Island in order to find, inspect, study, evaluate, and ultimately identify an appropriate site for the Company to locate an LNG vaporization facility – instead of the Company simply locating the facility on this residentially-zoned parcel the Company happens to already own in this residential neighborhood on Old Mill Lane. See data request TNEC 1-5. Indeed, the Town would need to retain outside engineers, consultants, and experts just to understand, much less respond to, these data requests.

Questions about whether this facility, in this location, is needed, cost-justified, and the lowest-cost reasonable alternative are matters of statewide concern, which is why the EFSB directed such questions to the PUC with the participation of the Division of Statewide Planning, Office of Energy Resources, and the Division of Public Utilities and Carriers, to render advisory opinions. Topics like GHG emissions over time and the wisdom and propriety of utility infrastructure strategies are for the PUC and Division to evaluate and opine upon, not the Town of Portsmouth. In its Preliminary Order, the EFSB stated that the PUC may hire experts, if needed, to assist in the performance of its evaluation, and be reimbursed by the Company

through the EFSB's statutory authority. Portsmouth has no such option. Portsmouth will provide input to the EFSB through the advisory opinion process, as directed by the EFSB.

The Company's data requests directed to the Town in this docket are inappropriate.

V. CONCLUSION

Based on the foregoing, the Town moves that its objection to the Company's data requests be sustained, and that an Order be entered that the Town need not respond to the data requests.

TOWN OF PORTSMOUTH
By its Attorneys,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the within Objection was sent via email to the Service List on the 13th day of March 2023.

Kevin P. Gavin