

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: THE NARRAGANSETT ELECTRIC CO. :
d/b/a RHODE ISLAND ENERGY ISSUANCE OF :
ADVISORY OPINION TO ENERGY FACILITY SITING : **Docket No. 22-42-NG**
BOARD REGARDING THE NARRAGANSETT :
ELECTRIC CO. APPLICATION TO CONSTRUCT LNG :
VAPORIZATION FACILITY :

**THE ATTORNEY GENERAL OF THE STATE OF
RHODE ISLAND’S STATEMENT OF POSITION**

NOW HERE COMES the Rhode Island Attorney General, Peter F. Neronha (hereinafter “Attorney General”), and hereby provides the following Statement of Position in the above-referenced docket, which is currently pending before the Public Utilities Commission (“Commission”).

I. Background

In January 2019, there was a natural gas shortage on Aquidneck Island, which had unacceptable consequences for Rhode Islanders who reside there. Since that event, 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. Several errors lead to the 2019 shortage and the resultant heating outage crisis, as evidenced in the report issued by the PUC on October 30, 2019.¹ Despite identification of these errors, thousands of residential and commercial customers on Aquidneck Island are vulnerable because of their reliance

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

on natural gas supply and their position at the end of the Algonquin Gas Transmission, LLC pipeline.

In June 2022, the Company completed its amended application (hereinafter the “Application”) to the Energy Facility Siting Board (“EFSB” or the “Board”), proposing to continue seasonal operation of the current RI Energy facility at Old Mill Lane (the “Project”). The Application is currently pending before the EFSB in its Docket No. SB-2021-04. If the Application were approved as submitted, the Company would essentially continue its practice of mobilizing its Project each November and demobilizing it each April indefinitely.

Pursuant to EFSB Rule 1.9(A), the Board “convene[d] 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.” As a result, the EFSB issued its Orders 151 and 156, by which the Public Utilities Commission has been charged with rendering an advisory opinion to the EFSB on several identified issues, including: whether the Project is needed and, if it is, for how long; whether any license granted by the EFSB should be contingent on an expiration date and what conditions would be required for an extension; the potential effectiveness of a moratorium on new gas connections on Aquidneck Island; whether the Company’s proposal is cost-justified; the potential merits of alternative options for the Company (including non-infrastructure options); and whether the Project will result in reliable energy at lowest reasonable cost. *See* EFSB Order 156, 16-19.

II. Issues of Concern

The Attorney General hereby renews his concerns previously identified in EFSB Docket No. SB-2021-04. As explained in EFSB Order 156, the Commission’s charge in this matter is

different from Projects considered in the past. *See* EFSB Order 156, 16. Specifically, the EFSB and the PUC must identify how this project interacts with the State’s efforts towards achieving the greenhouse gas emission reduction mandates of the Act on Climate. State agencies such as the EFSB and the Commission must now account for the achievement of emissions mandates when considering whether the Project as proposed truly addresses the State’s present and future needs.

A. The Act on Climate and Environmental Concerns

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.

The Project by its very nature seeks to facilitate the burning of fossil fuels during the winter months for heat in residential and commercial settings. The Company is therefore requesting approval to continue emitting greenhouse gases at today’s levels indefinitely. The Commission must ensure that alternatives to the Project have been presented and evaluated when answering the EFSB’s questions, and it must consider the Project’s impact on the State’s climate and energy goals when providing its advisory opinion to the EFSB. The Commission’s consideration of the Act on Climate must align with the EFSB’s mandate to ensure adequate analysis evidencing how the proposed activity impacts the State’s ability to meet its long-term greenhouse gas emission reduction mandates and climate goals is provided by applicants, as set forth in EFSB Order 153 issued in Docket No. SB-2021-03 (the “Sea 3 Decision”). The Commission has likewise been committed to carefully considering the Act on Climate, as is evidenced by the recent opening of

its docket investigating the future of natural gas infrastructure in our State. *See* Commission Docket 22-01-NG (the “Future of Gas Docket”). That docket will begin the important work of tackling some of the extremely difficult questions facing the State as it paves a path towards its sustainable energy future.

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 (such as those that will hopefully result from the analysis taking place in the Future of Gas Docket). Accordingly, the Commission must consider any available alternatives, including programs to incentivize consumers to transition to lower-emissions heat sources, and conditions to EFSB approval that stand to reduce fossil fuel and greenhouse gas emissions and create greater consistency with the State’s energy goals.

B. Any Need for the Project Will Change in Time

In conjunction with its 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 EFSB must also consider, and ultimately confirm, the need for the Project. To that end, it has requested that the Commission address that issue in its advisory opinion. As noted in EFSB Order 156, while “[i]n most other cases, the need for a facility is indefinite,” here “there is a question regarding the duration of the need, given the policy underlying the Act on Climate to reduce greenhouse gas

emissions.” Order 156, 16. This is a difficult question, especially considering that Rhode Island policy is rapidly adapting to lead the charge against the dire impacts of climate change. For instance, the Future of Gas Docket stands to aid the State in its essential efforts to systematically reimagine natural gas infrastructure and policy. Depending on the outcome of that docket, other administrative proceedings, and potential legislative changes, the need for this Project could shift, even in the short-term.

To be sure, the Company has noted that under some circumstances the Project might not be needed to address capacity constraints as early as 2029. *See e.g.* Company Response to Data Request CLF 1-3(a) (noting that under certain rates of electrification non-infrastructure alternatives could make capacity constraint concerns irrelevant by the winter of 2029/30). Moreover, the Company has indicated that the Project consists of “portable non-permanent equipment so that, if the Project is no longer needed [] it can be discontinued.” Company Response to Data Request CLF 1-3(c). Accordingly, any permit should be limited in time, preferably on a schedule that would allow for multiple periodic assessments of the need for the Project before the predicted possibility of a phase-out in 2029, given changing capacity constraint and capacity vulnerability realities.

Thus, to the extent there may be instant need for the Project, any proof or data relied upon should be revisited regularly to ensure that the need still exists. Failure to do so could unintentionally commit the State to support a Project that could ultimately stand in the way of critical future efforts. Any extensions or renewals of the Company’s permit in the future (if the permit is in fact granted) should be contingent upon a finding of continued need for the period of the extension or renewal. Additionally, the extension/renewal process should include a reconsideration of the need for the full scale of the Project. Wherever possible, the EFSB should,

through the extension or renewal process, look to scale down the Project in ways that reduce its potential environmental, societal, and economic impact. Of course, just as with the initial permitting, any conditions for extension or renewal would need to be weighed alongside the necessity to ensure safe and reliable service for those currently relying on natural gas.

III. Conclusion

This docket remains ongoing, and it is expected that additional information will become available as the parties thoughtfully consider the Company's proposal and all potentially available alternatives. It is essential that all of this information be taken into account by the Commission as it carefully weighs the short and long-term impacts of the Project.

The Company may ultimately be correct that the Project is required on an interim basis to address *immediate* concerns (which remains to be determined), but this approval presents an opportunity to leverage cleaner energy sources and demand-reducing programs to replace the fossil-fuel reliant Project as these technologies become available and feasible. Any advisory opinion by the Commission or decision by the EFSB must seek a reliable and cost-effective long-term solution for Aquidneck Island that is consistent with our State's energy policies and the Act on Climate. Thus, any approval of a current plan should also note the potential for changing need for the Project, even in the short-term.

These proceedings present a unique opportunity to consider a question of natural gas infrastructure investment in light of the Act on Climate. It is paramount that any decision is a first tangible step in the State's commitment to pursue a cleaner energy portfolio while ensuring safe, reliable, and affordable heat for customers.

Respectfully submitted,

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By his attorney:

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March 2023, the original and nine hard copies of this document were sent, via electronic mail and first-class mail, to Luly Massaro, Clerk of the Public Utilities Commission, 89 Jefferson Boulevard, Warwick, RI 02888. In addition, electronic copies of the document were served via electronic mail on the service list for this Docket on this date.

/s/ Nicholas M. Vaz