Robinson+Cole

STEVEN J. BOYAJIAN

One Financial Plaza, 14th Floor
Providence, RI 02903-2485
Main (401) 709-3300
Fax (401) 709-3399
sboyajian@rc.com
Direct (401) 709-3359

Also admitted in Massachusetts

March 23, 2023

VIA HAND DELIVERY & ELECTRONIC MAIL

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

RE: Docket No. 22-42-NG – Issuance of Advisory Opinion to EFSB re RIE Application to Construct an LNG Vaporization Facility on Old Mill Lane, Portsmouth, RI Omnibus Response to Data Request Objections and Motion to Compel Responses

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company, I have enclosed the Omnibus Response of The Narragansett Electric Company to Objections to Data Requests and Motion to Compel Responses in the above-referenced docket.

Thank you for your attention to this matter. If you have any questions, please contact me at (401) 709-3359.

Sincerely,

Steven J. Boyajian

Enclosures

cc: Docket 22-42-NG Service List

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate were electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.

Heidi J. Seddon

March 23, 2023
Date

Docket No. 22-42-NG – Needs Advisory Opinion to EFSB regarding Narragansett Electric LNG Vaporization Facility at Old Mill, Portsmouth, RI
Service List update 2/13/2023

Name/Address	E-mail	Phone
The Narragansett Electric Co. George Watson, Esq. Robinson & Cole LLP One Financial Plaza, 14th Floor Providence, RI 02903 Celia O'Brien Narragansett Electric Co.	gwatson@rc.com; LPimentel@rc.com; SBoyajian@rc.com; RJReybitz@pplweb.com; COBrien@pplweb.com; jscanlon@pplweb.com; NSUcci@RIEnergy.com;	
Division of Public Utilities and Carriers Tiffany Parenteau, Esq.	TParenteau@riag.ri.gov; Christy.hetherington@dpuc.ri.gov; Al.mancini@dpuc.ri.gov; John.bell@dpuc.ri.gov; Margaret.l.hogan@dpuc.ri.gov; Paul.roberti@dpuc.ri.gov; ellen.golde@puc.ri.gov;	
Bruce Oliver	br.oliver@verizon.net;	
Office of Energy Resources Albert Vitali, Esq. Christopher Kearns	Albert.Vitali@doa.ri.gov; Christopher.Kearns@energy.ri.gov; William.Owen@energy.ri.gov;	

	Nancy.russolino@doa.ri.gov;	
Statewide Planning Department Mary-Rose Pellegrino, Esq. Roberta Groch	MaryRose.Pellegrino@doa.ri.gov; Roberta.Groch@doa.ri.gov;	
Town of Portsmouth Terence J. Tierney, Esq. Kevin Gavin, Town Solicitor Richard Rainer, Jr., Town Administrator Jennifer West, Town Clerk	Tierneylaw@yahoo.com; kevingavinlaw@gmail.com; rrainer@portsmouthri.com; clerkoffice@portsmouthri.com;	
Acadia Center Hank Webster, Esq. - RI Director & Sr. Policy Advocate	HWebster@acadiacenter.org;	
Town of Middletown Marisa Desautel, Esq. Wendy Marshall, Town Clerk	Marisa@desautelesq.com; wmarshall@middletownri.com; jeff.loiter@gmail.com; mdewey@desautelesq.com;	
Conservation Law Foundation James Crowley, Esq. Margaret E. Curran, Esq David Hill Earnest White	jcrowley@clf.org; mcurran@clf.org; dhill@energyfuturesgroup.com; ewhite@energyfuturesgroup.com;	
RI Attorney General Nicholas M. Vaz, Esq.	NVaz@riag.ri.gov;	
Luly E. Massaro, Commission Clerk **Public Utilities Commission** 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov; Cynthia.WilsonFrias@puc.ri.gov; Alan.nault@puc.ri.gov; Todd.bianco@puc.ri.gov;	401-780-2107
Interested Parties:		
Gabrielle Stebbins	gstebbins@energyfuturesgroup.com;	
Matt Sullivan (Green Dev)	ms@green-ri.com;	

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 TO CONSTRUCT LNG VAPORIZATION FACILITY ON OLD MILL LANE, PORTSMOUTH, RI	**:**	**DOCKET NO. 22-42-NG**

OMNIBUS RESPONSE OF THE NARRAGANSETT ELECTRIC COMPANY
TO OBJECTIONS TO DATA REQUESTS AND MOTION TO COMPEL RESPONSES

I. BACKGROUND

In April 2022, The Narragansett Electric Company ("Company") filed an Application of The Narragansett Electric Company for License to Construct and Alter Major Energy Facilities for the Aquidneck Island Gas Reliability Project (the "Application") and the supporting Siting Report dated April 2022 (the "Siting Report") with the Energy Facility Siting Board ("EFSB" or the "Board") to construct and operate a portable liquefied natural gas ("LNG") vaporization facility on Company-owned property located at Old Mill Lane in Portsmouth, Rhode Island (the "Project").[1] As part of the Board's review of the Application, the Board has sought an advisory opinion from the Rhode Island Public Utilities Commission ("PUC" or the "Commission") on the issues of the need for the proposed facility and its costs.[2] As explained in the Application and the supporting Siting Report, the Project is intended to address the need for a backup supply of natural gas to Aquidneck Island during: (1) any supply interruptions resulting from the island's location at the end of a single gas transmission pipeline, and (2) periods of

[1] EFSB Docket No. SB-2021-04.

[2] PUC Docket No. 22-42-NG.

extraordinarily high demand when the gas supply requirements of Aquidneck Island customers exceed the volumes available to the Company through the pipeline serving Aquidneck Island.

The Towns of Middletown and Portsmouth, Peter F. Neronha, Attorney General for the State of Rhode Island (the "Attorney General"), and the Conservation Law Foundation ("CLF") filed motions to intervene in this docket.[3] These motions to intervene were deemed granted without objection pursuant to Rule 1.14(E). The Division of Public Utilities and Carriers (the "Division") has also intervened. On March 3, 2023, the Company issued substantively identical sets of data requests to each of the intervenors to determine: (1) whether they disputed the need for LNG vaporization and injection capabilities to supplement the supply of natural gas to Aquidneck Island; and (2) whether any dispute regarding the need for the Project was based upon the existence of a feasible cost-effective alternative or preferable location. In general terms, the data requests asked the intervenors to indicate whether they disputed the need for LNG vaporization and injection capabilities to protect Aquidneck Island residents from the consequences of a loss of gas supply and, if so, to provide certain information regarding any alternatives that might make the Project unnecessary, including the time in which such alternatives could be implemented and relied upon and the cost of implementation. CLF responded to the Company's data requests. All of the other intervenors asserted legally insufficient objections and refused to indicate whether they disputed the need for some means of maintaining a reliable supply of natural gas to the thousands of Aquidneck Island residents that rely upon natural gas for heat.

The intervenors' legally insufficient objections to the data requests are addressed in detail below. By way of this response, the Company requests that the Commission: (1) overrule the

[3] Acadia Center also intervened. Acadia Center has since withdrawn its motion to intervene.

intervenors' objections to the Company's data requests; and (2) compel complete responses to the data requests that the Company issued.

II. STANDARD OF CONSIDERATION

With respect to the use of discovery generally, Rule 1.19 of the Commission's Rules of Practice and Procedure[4] provides, in part:

> A. General.
>
> 1. The Commission favors **prompt and complete disclosure and exchange of information** and encourages informal arrangements amongst the parties for this exchange. It is further the Commission's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.
>
> 2. Techniques of pre-hearing discovery permitted in state civil actions may be employed by any party. Upon experiencing any difficulties in obtaining discovery, the parties may seek relief from the Commission by filing a proper motion.

(Emphasis added.) With respect to data requests specifically, the Rule 1.19(C) provides, in part:

> C. Data Requests.
>
> 1. In any proceeding pending before the Commission, the Commission staff and **any party may request** such data, studies, workpapers, reports, and information as are reasonably relevant to the proceeding and are permitted by these rules or by statute.

(Emphasis added.) Rule 1.19 does not prohibit a petitioner or applicant bearing the burden of proof on an issue from requesting information from intervenors.

In assessing the relevance of the information sought through data requests, the Rules provide that the Commission shall apply the relevance standards of Superior Court Rule of Civil Procedure 26. Superior Court Rule of Civil Procedure 26(b)(1) permits parties to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved

[4] Codified at 810-RICR-00-00-1 (the "Rules").

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**." (Emphasis added.) The scope of permissible discovery is broad by design since the purpose of discovery, both in the Commission's Rules, and in the Superior Court Rules of Civil Procedure, is to streamline the exchange and presentation of evidence. *See* Rule 1.19(A)(1) (stating, "It is further the Commission's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes."); Cabral v. Arruda, 556 A.2d 47, 48 (R.I. 1989) (stating, "The philosophy underlying modern discovery is that prior to trial, all data relevant to the pending controversy should be disclosed unless the data is privileged. 8 Wright & Miller, *Federal Practice and Procedure:* Civil § 2001 at 15 (1970). The rationale for such disclosure is that controversies should be decided on their merits rather than upon tactical strategies. *Id.* at 14.").

Discovery need not seek admissible evidence. Rather, discovery requests are proper if they are "reasonably calculated to lead to the discovery of admissible evidence." Super. Ct. R. Civ. P. 26(b)(1). The burden of establishing that discovery is not relevant, or that responding to discovery would pose an undue burden, rests firmly with the party resisting discovery. Long v. Women & Infants Hosp. of Rhode Island, No. C.A. PC/03-0589, 2006 WL 2666198, at *2 (R.I. Super. Sept. 11, 2006); Cipriani v. Migliori, No. PC 2002-6206, 2005 WL 668368, at *3 (R.I. Super. Mar. 4, 2005) (stating, "Consistent with the goal that discovery provide the parties with all relevant information, the party resisting production bears the burden of establishing lack of relevancy or undue burden."). To establish that responding to discovery would constitute an undue burden, the party making that assertion must do more than make a generalized claim that formulating a response would be a burden. In Cipriani, the Superior Court explained:

> The "mere statement by a party that the interrogatory [or request for production] was 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection." *St. Paul Reinsurance Co. v. Commer. Fin. Corp.,* 198 F.R.D. 508, 511–12 (N.D.Ia.2000) (citing *Josephs v. Harris Corp.,* 677 F.2d 985, 992 (3d Cir.1982) (quoting *Roesberg v. Johns–Manville Corp.,* 85 F.R.D. 292, 296–97 (E.D.Pa.1980))). *See also Oleson,* 175 F.R.D. 560 at 565 ("[t]he litany of overly burdensome, oppressive, and irrelevant does not alone constitute a successful objection to a discovery request") (citation omitted). "On the contrary, the party resisting discovery 'must show specifically how ... each interrogatory [or request for production] is not relevant or how each question is overly broad, burdensome or oppressive.'" *Id.* at 512 (citing *Josephs* 677 F.2d at 992 (quoting *Roesberg,* 85 F.R.D. at 296–97)). *See also Oleson,* 175 F.R.D. 560 at 565 ("[t]he objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden"); *Cipollone v. Liggett Group, Inc.,* 785 F.2d 1108, 1121 (3d Cir.1986) (holding that it is not sufficient to merely state a generalized objection, but, rather, objecting party must demonstrate that a particularized harm is likely to occur if the discovery be had by the party seeking it); *Degnan,* 130 F.R.D. at 331 (D.N.J.1990) (same).

Cipriani, 2005 WL 668368, at *3.

III. ARGUMENT

When measured against the well-established standards explained above, each of the objections of the intervenors to the Company's data requests should be overruled, and the Commission should order the intervenors to respond to the Company's discovery. Each of the Company's data requests, and the intervenors objections thereto, are addressed in turn below.

A. Data Request TNEC 1-1

Data Request TNEC 1-1 to each of the intervenors is as follows: "Does [the intervenor] 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?" The intervenors asserted the following objections to TNEC 1-1.

- **Division** – The Division objected to TNEC 1-1 claiming: (1) that the word "necessary" is vague; (2) that it is the Company's burden to demonstrate the need for the Project; and

(3) that TNEC 1-1 sought work product and conclusions while discovery remains ongoing.

- **Attorney General** – The Attorney General objected to TNEC 1-1 claiming: (1) it improperly seeks the Attorney General's position with respect to an ongoing docket; and (2) that the request was vague, overbroad, unduly burdensome, and not properly limited as to scope.

- **Portsmouth** – Portsmouth did not raise any particularized objection to TNEC 1-1 but made generalized assertions that it is the Company's burden to establish the need for the Project and that the Company's data requests were vague, overly broad, and unduly burdensome.

- **Middletown** – Middletown did not object to TNEC 1-1 but offered unresponsive boilerplate that merely repeated the objections of the other intervenors.

Each of the objections to TNEC 1-1 should be overruled, and the intervenors should be compelled to respond. TNEC 1-1 serves the fundamental purposes of discovery under the Commission's Rules and the Rules of Civil Procedure—to identify disputed issues in anticipation of a hearing and to avoid discovery being conducted at hearing through cross-examination. See Rule 1.9(A)(1); United States v. Procter & Gamble Co., 356 U.S. 677, 682, 78 S. Ct. 983, 986–87, 2 L. Ed. 2d 1077 (1958) (stating, "Modern instruments of discovery serve a useful purpose….They together with pretrial procedures make a trial less a game of blind man's buff and more a fair contest with *the basic issues and facts disclosed to the fullest practicable extent*." (Emphasis added.)) It would be a waste of the parties' time, the Commission's time and administrative resources to cross-examine intervenors' witnesses about a dispute over the need for LNG vaporization to serve Aquidneck Island gas customers in the event of a supply disruption if there is, in fact, no dispute. It is for this reason that that Rhode Island courts have endorsed the use of so-called "contention interrogatories." "The Superior Court Rules of Civil Procedure instruct that interrogatories calling for an answer 'which involves an opinion or contention that relates to fact, or to the application of law to fact' are not objectionable. Rather,

'[i]nterrogatories are a proper means of ascertaining the contentions of an adverse party.' 23 Am.Jur.2d § 121 *Depositions and Discovery* (2002)." Triton Realty Ltd. P'ship v. Essex Mut. Ins. Co., No. C.A. PC03-2061, 2006 WL 2243009, at *3 (R.I. Super. July 19, 2006).

The intervenors' objection that TNEC 1-1 impermissibly seeks to shift the Company's burden in this docket finds no support in law or logic. The Company does not dispute that it carries the burden of demonstrating the statutory requirements to obtain a license for the Project. The intervenors have not even attempted to explain how indicating their own position with respect to the need for the Project would relieve the Company of its burden. Rather, the intervenors seem to imply that the Company cannot inquire as to their position on the issue. For example, in the Division's insufficient response to the "yes" or "no" question posed in TNEC 1-1, it states, "It is the burden of the Company to demonstrate the need for the proposed facility….The Division will continue to analyze the application." This non-responsive answer to TNEC 1-1 was provided on the very same day that the Division submitted pre-filed testimony flippantly characterizing the Company's concerns about the reliable supply of natural gas to thousands of Aquidneck Island customers a "*red herring*."[5] The Division's objection to TNEC 1-1 does not explain why it should be able to assert a position in its pre-filed testimony that it is apparently unwilling to state in response to the Company's data requests. Although the objections of other intervenors are not so obviously contradictory, they all suffer from the same logical flaw. Either the intervenors dispute the need for the Project to address capacity vulnerability, in which case the answer to TNEC 1-1 is "yes," or they do not dispute the need for the Project to address the capacity vulnerability and can answer "no." In either event, the

[5] Pre-filed Direct Testimony of Bruce R. Oliver and Paul Roberti, at 25.

Company will still have to meet its burden of establishing for the Commission and the Board that the Project is needed.

The intervenors' apparent position—that they should not have to respond to data requests from the Company because the Company bears the burden in this matter—is inconsistent with Rule 1.19(C)(1), which permits data requests to be issued by "any party." The Rule does not differentiate based upon a party's status as an applicant or intervenor nor does it indicate that data requests can only be issued by parties who do not bear a burden of proof. The intervenors' objections to TNEC 1-1 on the basis that responding would shift the burden of proof should be overruled.

The intervenors' objections to TNEC 1-1 on the basis that it is vague, overly broad, and that responding would be unduly burdensome are similarly unavailing. TNEC 1-1 is a "yes" or "no" question, and it is no burden to respond. None of the intervenors even attempted to articulate how responding to this "yes" or "no" data request would be burdensome; this failure alone makes their objection insufficient. See Cipriani, 2005 WL 668368, at *3 (noting that a boilerplate statement of overbreadth and undue burden is not a sufficient objection and that objecting parties must show specifically by affidavit the burden associated with responding to a discovery request).

Finally, the Division objected to TNEC 1-1 on the basis that it "seeks work product."[6] The Commission should overrule this objection as facially insufficient. TNEC 1-1 does not seek anything that could be considered work product—it poses a direct question that could be answered in a single word. The data request does not seek any materials prepared in anticipation of litigation. See Super. Ct. R. Civ. P. 26(b)(3) (protecting "documents and other tangible

[6] The other objecting intervenors did not assert the work product doctrine as a basis for refusing to answer TNEC 1-1.

things" from disclosure on the basis of the work product doctrine); see also DeCurtis v. Visconti, Boren & Campbell, Ltd., 152 A.3d 413, 427 (R.I. 2017) (explaining that the work product doctrine applies to documents, tangible things, and other materials prepared or gathered in anticipation of litigation). Moreover, the party resisting discovery on the basis that the material sought is work product bears the burden of establishing its right to withhold the requested information, including through production of a log identifying the material withheld and an explanation of why it constitutes work product. See Willis v. Subaru of Am., Inc., No. C.A. NO. 93-6202, 1996 WL 936866, at *6 (R.I. Super. Jan. 9, 1996) (holding that, "The burden of proving that the doctrine applies rests on the party seeking to assert it," and requiring a party asserting the work product privilege to identify all materials withheld in such a way as to permit parties to assess the sufficiency of the claims of protection from production.) The Division has not articulated any basis on which its response to a "yes" or "no" question could be considered work product protected from disclosure. The Commission should overrule the Division's work product objection to answering TNEC 1-1.

B. Data Requests TNEC 1-2 through TNEC 1-5

Data requests TNEC 1-2 through TNEC 1-5 seek to determine whether the intervenors have identified technically feasible and cost-effective alternatives to the Project that would satisfy Aquidneck Island's customer demands for natural gas, and, if such alternatives exist, when they could be implemented and where they could be constructed. These requests are as follows:

TNEC 1-2 If [the intervenor] 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 [the intervenor] 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 [the intervenor] identified in response to Data Request TNEC 1-2.

TNEC 1-5 If [the intervenor] 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/[2]4 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.

The intervenors offered the following objections to these data requests:

- **Division** – The Division objected to TNEC 1-2 through TNEC 1-6 claiming: (1) that the Company bears the burden of analyzing alternatives to the Project; (2) that the Company had months to analyze alternatives while the Division has had to do so in a compressed timeframe and the requests are, therefore, overly burdensome; and (3) that the Company should respond to its own data requests.

- **Attorney General** – The Attorney General objected to TNEC 1-2 through TNEC 1-6 claiming: (1) that the requests seek to shift the burden to assess alternatives to the Project from the Company to intervenors and "[i]t is not the job of the Attorney General…to develop alternatives to the Project"[7]; (2) that data requests TNEC 1-2 through TNEC 1-6 were vague[8], overly broad, and that the formulation of a response would be unduly burdensome.

[7] The Attorney General's Motion Objecting to The Narragansett Electric Company's ("TNEC") First Set of Data Requests Issued to the State of Rhode Island Office of the Attorney General, at 4.

[8] The intervenors' generalized claims of vagueness are not explained in any detail in their objections to the Company's data requests. The Company does not address these unsupportable claims of vagueness in more detail because its data requests are specific and understandable by any fair measure.

- **Portsmouth** – Portsmouth did not raise any particularized objections to TNEC 1-2 through TNEC 1-6 but made generalized assertions that it is the Company's burden to establish the need for the Project and that the Company's data requests were vague, overly broad, and unduly burdensome.

- **Middletown** – Middletown did not object to TNEC 1-2 through TNEC 1-6 but offered a unresponsive answers to the data requests that merely summarized the previously filed objections of other intervenors.

All of the intervenors' objections to data requests TNEC 1-2 through TNEC 1-6 should be overruled. As explained above, the mere fact that the Company issued data requests to intervenors does not represent a shifting of burdens in this docket. Rather, the issuance of data requests is a reasonable means, provided by the Commission's own Rules, for the Company to determine what evidence the intervenors intend to adduce during the Commission's hearings. The intervenors' objections are based upon the faulty premise that they should be permitted to shirk their responsibility to respond to specific and targeted questions regarding the existence of alternatives to the Project but leave open the possibility of presenting alternatives at a hearing.[9] In the absence of discovery, the intervenors could present witnesses to offer speculative testimony about alternatives to the Project that may or may not be technically feasible, implementable on a timely basis, and cost-effective. The search for answers on these foundational subjects through cross-examination would be ineffective and a waste of administrative resources and time. It is for this very reason that Rule 1.19 "encourage[s] the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes."

With respect to the intervenors' general objections that responding to data requests TNEC 1-2 through TNEC 1-6 would subject them to an undue burden, their boilerplate recitation of an

[9] *See, e.g.*, Objection of the Town of Portsmouth to First Set of Data Requests Issued by The Narragansett Electric Company d/b/a Rhode Island Energy, at 5 (indicating that Portsmouth intervened in these proceedings to "cross-examine the Company's witnesses and to present its own witnesses, should it choose to do so").

alleged undue burden is legally insufficient because none of the intervenors have identified how the burden of responding the Company's data requests is unreasonable. See Cipriani, 2005 WL 668368, at *3 (noting that a boilerplate statement of overbreadth and undue burden is not a sufficient objection and that objecting parties must show specifically by affidavit the burden associated with responding to a discovery request). Data requests TNEC 1-2 through TNEC 1-6 do not require intervenors to formulate and explain the feasibility of alternatives to the Project. Rather, data request TNEC 1-2 asks that intervenors identify alternatives to the Project that they contend exist. If the intervenors do not contend that such alternatives exist, either because they agree that feasible alternatives do not exist or because they are unaware of feasible alternatives, then, for all practical purposes, the intervenors would not have to respond to data requests TNEC 1-3 through TNEC 1-6 other than to say that they do not apply.[10]

Distinct from the legally insufficient general claims of undue burden contained in the intervenors' objections to data requests TNEC 1-2 through TNEC 1-6, the Division makes the somewhat more specific, but still insufficient, claim that Company has had many months to develop alternatives to the Project while the Company's data requests seek "accelerated development of information" by the Division.[11] The Division has been involved in seeking a solution to the capacity vulnerability and capacity constraints that jeopardize the reliable delivery of natural gas to Aquidneck Island for more than four years. Indeed, almost four years ago, the Division itself recommended the seasonal deployment of LNG vaporization equipment on Aquidneck Island to address the capacity vulnerability that its witnesses now characterize as a

[10] *See, e.g.*, the responses of the Conservation Law Foundation to The Narragansett Electric Company's First Set of Data Requests.

[11] Division's Objection to The Narragansett Electric Company's First Set of Data Requests Issued to the Division of Public Utilities and Carriers, at 4.

"*red herring*."[12] Since the Division's October 2019 recommendation that the Company seasonally deploy LNG vaporization equipment on Aquidneck Island to protect the natural gas supply to Aquidneck Island customers, the Division has been involved in proceedings in which the Company has detailed the years-long effort to identify an optimal solution to Aquidneck Island's gas supply vulnerability.[13] In light of the Division's years-long involvement in proceedings in which the Company has detailed its efforts to address the threats to the reliable delivery of natural gas to Aquidneck Island, the Division's claim that it is unduly burdened by a request to identify any known alternatives to the Project because of a need for "accelerated development of information" is not only legally insufficient, it is demonstrably incorrect.

IV. CONCLUSION

For the foregoing reasons, the objections of the Division, the Attorney General, and the Town of Portsmouth to the Company's data requests should be overruled, and the Division, the Attorney General, and the Town of Portsmouth should be compelled to provide substantive responses to the Company's data requests. The Town of Middletown, which did not timely object to the Company's data requests, should be compelled to provide substantive responses to the Company's data requests rather than submitting legally insufficient objections couched as responses.

[SIGNATURES ON NEXT PAGE]

[12] *See* Investigation Report of the Summary Investigation into the Aquidneck Island Gas Service Interruption of January 21, 2019, at 67 available at https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/AI_Report.pdf (last visited March 23, 2023); Direct Testimony of Bruce R. Oliver and Paul Roberti, at 25.

[13] The Company's alternatives analysis was presented to the Commission at a May 18, 2021 informational session conducted in connection with Docket No. 5099 in which the Division was an intervenor.

THE NARRAGANSETT ELECTRIC COMPANY

By its attorneys,

Steven J. Boyajian (#7263)
Robinson & Cole LLP
One Financial Plaza, 14th Floor
Providence, RI 02903
Tel. (401) 709-3300
Fax. (401) 709-3399
sboyajian@rc.com

George W. Watson, III (#8825)
Robinson & Cole, LLP
One Financial Plaza, 14th Floor
Providence, RI 02903-2485
Tel. (401) 709-3300
Fax. (401) 709-3399
gwatson@rc.com

-and-

Celia B. O'Brien, Esq. (#4484)
Associate General Counsel
The Narragansett Electric Company
280 Melrose Street
Providence, RI 02907
Tel: (401) 578-2700
COBrien@pplweb.com

Dated: March 23, 2023