



STATE OF RHODE ISLAND  
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*Peter F. Neronha*  
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April 5, 2023

*Via Electronic Mail*

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

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

Dear Ms. Massaro:

On behalf of the Division of Public Utilities and Carriers (“Division”), please accept for filing the attached briefing statement in response to the Commission’s request.

Thank you for your attention to this submission.

Very truly yours,

*/s/ Tiffany A. Parenteau*

Tiffany A. Parenteau,  
Special Assistant Attorney General  
On behalf of the Division of Public Utilities and Carriers

Enclosure

cc: 22-42-NG Service List  
Linda George, Esq., Division Administrator  
John Spirito, Esq., Division Deputy Administrator  
Christy Hetherington, Esq., Division Chief Legal Counsel  
Paul Roberti, Esq., Division Chief Economic and Policy Analyst

**RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

**The Narragansett Electric Company )  
d/b/a Rhode Island Energy Issuance of )  
Advisory Opinion to Energy Facility Siting )  
Board Regarding the Narragansett Electric )  
Co. Application to Construct LNG )  
Vaporization Facility )**

**Docket Nos. 22-42-NG**

**DIVISION OF PUBLIC UTILITIES AND CARRIERS' BRIEF IN RESPONSE TO THE  
PUBLIC UTILITIES COMMISSION'S BRIEFING QUESTION**

The Division of Public Utilities and Carriers (“Division”) submits this brief in response to the Briefing Question attached to the Procedural Schedule from the Rhode Island Public Utilities Commission (“Commission”) in Docket No. 22-42-NG addressing the following question:

Whether a project designed to serve only a portion of the state, Aquidneck Island, which is served by a single natural gas pipeline, falls within the definition of “necessary to meet the needs of the state and/or region”

In responding to this question, the brief shall consider, at a minimum, the following:

- (1) Whether the possibility of a supply constraint or contingency event to one portion of the state where there are other areas of the state with no access to gas supply at all is a “need of the state” standard in the Energy Facility Siting Act.
- (2) Whether the utility has a legal/regulatory duty to serve future incremental growth in customers and/or usage and if so, how that duty correlates to a “need of the state” standard in the Energy Facility Siting Act.
- (3) Whether or how the utility’s legal/regulatory duty to provide reliable service to existing customers under the type of contingency event described in the filing correlates to a “need of the state” standard in the Energy Facility Siting Act.

## I. INTRODUCTION

The Commission's questions revolve around the interpretation of R.I. Gen. Laws § 42-98-11(b)(1). It is well settled that when the language of a statute is "clear and unambiguous," the Rhode Island Supreme Court "interpret[s] the statute literally and must give the words of the statute their plain and ordinary meanings." *See e.g., In re Narragansett Bay Commission General Rate Filing*, 808 A.2d 631, 636 (R.I. 2002). However, the Court "give[s] deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized." *In re Review of Proposed Town of New Shoreham Project*, 25 A.3d 482, 505 (R.I. 2002). To ascertain the Legislature's intention behind an ambiguous statute, the courts consider "the entire statute, keeping in mind its nature, object, language and arrangement." *Arnold v. R.I. Dept. of Labor and Training Bd. of Review*, 822 A.2d 164, 168 (R.I. 2003) (internal quotations omitted). The Court will "give deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized." *See Id.* at 169.

Section 42-98-11(b)(1) exists within the framework of the full section and further within the framework of the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-1, *et seq.*, (the "EFSA") itself. In this case there is no need to ascertain the intent of the Legislature as it is clear from the language of the EFSA. Section 42-98-11 mandates the standard the Board shall apply in deciding if a license shall be granted and requires a showing of all three parts of § 42-98-11(b) for a license to be granted. Not only must it be "necessary to meet the needs of the state"; it must be "cost-justified," and "expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring the construction and operation of the proposed facility"

will comply with all legal requirements; and it must “not cause unacceptable harm to the environment” and must “enhance the socio economic fabric of the state.” R.I.G.L. § 42-98-11(b). This is a showing that the applicant must make for the license to be granted. *Id.*, *see, e.g. Energy Facility Siting Board Order 140*, SB-2015-06, p. 32 (written order issued November 5, 2019) (“an Applicant’s failure to meet its burden of proof on any one element is dispositive”). Without a showing of a necessary need, the Energy Facility Siting Board (the “Board”) cannot grant a license. *See Board Order 140* at 32. The EFSA makes clear that the “the evaluation of proposals must recognize and consider the need for these facilities in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state.” R.I.G.L. § 42-98-1. The EFSA further declares that construction and operation of energy facilities “shall only be undertaken when those actions are justified by long term state and/or regional energy need forecasts” and “shall be consistent with the state’s established energy plans, goals, and policy,” while also making a determination “whether cost effective efficiency and conservation opportunities provide an appropriate alternative to the proposed facility.” R.I.G.L. § 42-98-2 (2), (6), & (7). It is the plain language of the EFSA that makes clear that to be necessary for a need of the state, the facility must be justified by long term energy need forecasts and consistent with the state’s energy goals and policies which include the Act on Climate.

Prior to the Act on Climate, the Board stated in the Invenenergy proceedings, that “adding a new natural gas plant – even a fast-start, more efficient one – does not advance the stated goals of greater fuel diversity, significantly lowered greenhouse gas emissions, or a transformed system.” *Board Order 140* at 17 (Board considered many factors when looking at need including capacity supply obligation, facility retirements, Rhode Island being located in an import-constrained zone, and growth in renewables). Following the Act on Climate, the Board made

clear that it must consider the Act on Climate and its policies, including targets set for greenhouse gas emissions, in its analysis of any application. *See Board Order 153*, SB-2021-03, p. 29-34 (written order issued May 31, 2022) (discussing applicability of the Act on Climate and stating that the greenhouse gas reduction targets are mandatory targets and must be considered); *see also Board Preliminary Order 156*, SB-2021-04, p. 13, 16-18 (written order issued October 19, 2022) (Act on Climate compliance is an issue in this docket and discussion regarding need analysis and consideration of the Act on Climate). The Act on Climate targets cannot be ignored. A showing of a necessary need is a fact-specific inquiry that requires the Applicant meet the burden and includes whether or not the need fits the energy goals and emissions targets of the state.

**II. A PROJECT DESIGNED TO SERVE A PORTION OF THE STATE MAY FALL WITHIN THE DEFINITION OF NEED BUT WHETHER OR NOT IT IS NECESSARY FOR THE NEED REQUIRES A PRACTICAL EVALUATION.**

Can a project designed to serve only a portion of the state fall within the definition of necessary to meet the needs of the state and or region? It can. Whether or not a specific project falls within that definition is a very different question, as can be seen in decisions of the Energy Facility Siting Board. It requires a practical evaluation and fact-specific inquiry that the process under the Energy Facility Siting Act is designed to ensure occurs. A supply constraint or contingency event in one portion of the State could be a need of the state dependent on the facts of the situation. How such events are treated on the system as a whole and throughout the industry should not be ignored in the analysis. Further while future incremental growth in customers and/or usage should always be a consideration in utility planning whether or not serving it is a need of the state is also a fact specific inquiry. A utility's duty to provide safe and reliable service should take into consideration growth and the duration of growth when planning

for the future. That consideration does not require a finding of need for a specific project under the Act. Further nowhere does it state, and it is not industry standard, to plan a project to address every contingency event possible.

While a project designed to serve only a portion of the state can fall within the definition of “necessary to meet the needs of the state and/or region,” it can only do so when its overall long-term impact does not harm public health and safety, the environment, and the economy of the state and does not come at a cost to customers that far outweighs the benefits provided. Stating that a project to serve only a portion of the state can be necessary to meet the needs of the state is not equivalent to stating that a project to ensure service in even the most unlikely of scenarios can fall within the definition of necessary to meet the needs of the state. An expensive project to cover any potential contingency that will no longer be needed before the useful life utilized in cost estimations does not satisfy a need of the state. In particular, a project that may not be needed in a few years due to actual localized population trends, cannot serve a need of the state. As the state works to meet its goals under the Act on Climate, a reduction in gas usage cannot be ignored going forward whether from utility programs or the choices made by individuals. Given the state’s goals, any project involving additional natural gas infrastructure must be examined very closely to ensure that it actually serves a need of the state.

All over the United States, single supply mains serve parts of gas distributor service territories. Prudence does not require gas infrastructure build out to serve a part of the system just in case of a low probability contingency event. It is not industry practice. Aside from the fact that such contingency event service is not guaranteed through expensive additional infrastructure elsewhere in the system, electricity outages during winter storms or cold days, similarly affect the heating needs of many individuals without similar infrastructure to prevent them.

Infrastructure safety and reliability planning does not include expensive alternatives to ensure that every contingency event is dealt with for those individuals.

The Company's responsibility is not to provide the "highest reliability of service possible within its means", as it stated on page 9 of its *Energy Facility Siting Board Project Siting Report*, by any means, but to provide "safe, reasonable, and adequate services and facilities" at a "reasonable and just" rate. R.I.G.L. § 39-2-1(a). That does not include putting into service a project for a need that may currently not exist, but even if it does, will not be needed in the relative near future when the utility will still be receiving payments from to cover the facility no longer being utilized. The practicality of this approach is entirely lacking. Nowhere does it state that a utility must provide service under any conditions regardless of the cost or lack of compliance with state policies and targets. If so, utilities would never be able to allow electricity to go out because of a storm or a loss of water due to a main burst, those who use electricity for heat would need to all have some sort of back up to ensure their heat is always on. This is not practical or realistic. It certainly is not practical to plan for the most extreme of events and place the costs on customers already struggling with high energy costs. Providing safe and reliable service practically speaking does not mean providing service through all exigencies, regardless of our desire it do so, but providing safe and reliable service prudently at a cost that is cost and energy efficient.

The Energy Facility Siting Act makes quite clear that construction and operation of facilities should only occur when the "actions are justified by long term state and/or regional energy need forecasts." RIGL § 42-98-2(2). Addressing a very low probability contingency event through expensive construction that is contrary to the state's established energy goals is not a need and cannot be justified. Projects to serve actual growth needs of a population or customer

base could be seen as a need of the state but whether such a project is necessary to meet the needs of the state is a fact specific inquiry that must include an economic and environmental cost analysis, as well as ensuring public health and safety will not be harmed. Alternatives that support and move the state towards its goals and targets must be properly considered. If a need exists in a particular area of the state, then it can qualify as a need of the state. However, the determination of “necessary to meet the needs of the state and/or region” ultimately rests on a cost-benefit analysis regarding various pathways that produce the best outcome in terms of reliability and cost to ratepayers all examined through the lens of the Act on Climate.

Respectfully submitted,

DIVISION OF PUBLIC UTILITIES  
AND CARRIERS

By,

PETER F. NERONHA  
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/s/ Tiffany A. Parenteau

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**CERTIFICATE OF SERVICE**

I certify that a copy of the within Brief was forwarded by e-mail to the Service Lists in Docket No. 22-42-NG on the 5<sup>th</sup> of April, 2023.

*/s/ Tiffany A. Parenteau*

Tiffany Parenteau