

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: THE ISSUANCE OF ADVISORY OPINION :
TO THE ENERGY FACILITY SITING BOARD :
REGARDING THE NARRAGANSETT ELECTRIC :
COMPANY d/b/a RHODE ISLAND ENERGY : DOCKET NO. 22-42-NG
APPLICATION TO CONSTRUCT AN LNG :
VAPORIZATION FACILITY ON OLD MILL LANE, :
PORTSMOUTH, RHODE ISLAND :

PRESIDING COMMISSIONER’S RULING ON
OBJECTIONS TO CERTAIN RHODE ISLAND ENERGY’S DATA REQUESTS AND
RHODE ISLAND ENERGY’S MOTION TO COMPEL

On April 1, 2022, The Narragansett Electric Company (TNEC or Applicant) filed with the Energy Facility Siting Board (EFSB or Board) a Supplemental Application to its May 19, 2021 Application to operate a portable liquified natural gas (LNG) Vaporization facility (facility) on Old Mill Lane in the Town of Portsmouth Rhode Island (Portsmouth). The alleged purpose of the facility is to provide standby peak-shaving and backup supply to the Aquidneck Island natural gas distribution system.¹

On October 22, 2022, the EFSB issued an Order directing the Public Utilities Commission (Commission) to provide an Advisory Opinion with respect to the need, duration of need, and cost. Additionally, the EFSB also requested the PUC to estimate a range of hypothetical emissions impacts if an island-wide moratorium on new gas connections was imposed, considering the alternative heating choices available to the public.²

¹ EFSB Order No. 156 at 1 (Oct. 22, 2022).

² EFSB Order; The Rhode Island Public Utilities Commission is directed to render an advisory opinion on several related issues. Because this matter is unique and involves the analysis of very complex issues, a discussion of these issues is necessary to define the advice the Board is requesting from the PUC. A license is typically issued in perpetuity by the Board. But the facts associated with the license sought in this case present a different set of circumstances regarding the question of need. In most other cases, the need for a facility is indefinite. But in this case, there is a question regarding the duration of the need, given the policy underlying the Act on Climate to reduce greenhouse gas

On March 3, 2023, four days prior to the deadline for the intervenors and Division of Public Utilities and Carriers (Division) to file their direct testimony in this matter, Rhode Island Energy (RI Energy or Company) propounded identical data requests to the intervenors and Division. The data requests sought:

In general terms...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.³

The Rhode Island Attorney General (RIAG) and Town of Portsmouth (Portsmouth) objected without providing responses.⁴ The Town of Middletown (Middletown) did not object and provided responses. The Division objected and provided responses to five of the six data requests. Conservation Law Foundation (CLF) responded to the data requests and is not subject to this ruling.

On March 13, 2023, after receiving extensions of time, CLF, Middletown, and the Division submitted testimony. The RIAG submitted a position statement and Portsmouth did not file. Neither the RIAG nor Portsmouth has a witness. The RIAG and Portsmouth are limited to cross-examination and may not present new direct positions.⁵

On March 23, 2023, RI Energy filed an Omnibus Response to Objections to Data Requests and Motion to Compel Responses, arguing that the Division, RIAG, and Portsmouth objections

emissions. This issue of duration was identified by the Attorney General in his pre-hearing brief. Given that Rhode Island has a policy that is intended to reduce reliance on natural gas, there is a question relating to the extent to which natural gas demand on Aquidneck Island will increase or decrease. In turn, to the extent there is a material decrease in demand over time, it could affect the need for the continued operation of the Facility, even if the Facility is needed in the near term. Given that, the Board may choose to exercise its authority to issue a conditional license with a contingent term limitation allowing the Applicant to renew the license periodically if stipulated conditions are met. EFSB Order at 16-17 (citations omitted).

³ RI Energy Mot. To Compel at 2.

⁴ The Division filed responses that indicated they would address many of the questions asked in future testimony. Div. Objections and Responses to The Narragansett Electric Company's First Set of Data Requests (Mar. 13, 2023).

⁵ See PUC Order No. 17574 (Oct. 10, 2003).

were legally insufficient and seeking the Commission to compel more responsive answers to Middletown's responses.

A review of the dispute has been complicated by the fact that RI Energy issued data requests before direct testimony was due by the intervenors and Division. Typically, one party's discovery issued to another party is based on the most recently filed testimony, whether it be direct or rebuttal. It can also be used to follow-up on data responses that were issued after the receipt of a party's testimony. Here, the Company issued its data requests prematurely and has likely received responses to most, if not all of the questions from the parties in subsequently filed testimony. The Company's timing of the issuance of data requests appears to be an attempt to use discovery to get a party's position prior to the filing of the party's respective position. This is certainly inefficient and appears to be an inappropriate use of discovery.

Portsmouth and RIAG

Because neither Portsmouth nor the RIAG has a fact-witness and is limited to cross-examination on the parties' witnesses' testimony, and where no legal question has been asked, the Company's data requests are quashed as to those parties. Because of the absence of fact-witnesses, with respect to TNEC 1-2 through TNEC 1-6, there is no risk that these two 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."⁶ On TNEC 1-1, the question does not seek a legal opinion, but rather a factual position. The absence of a fact-witness renders the question meaningless to whether the Company will ultimately meet its burden of proof in this matter.

⁶ RI Energy Mot. To Compel at 11.

Middletown and the Division

The following represent the rulings with respect to Middletown and the Division.

TNEC 1-1: 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?

RULING: The question contains no referenced time frame and therefore, is vague. Furthermore, it appears the question has been answered in the parties' respective direct testimony. Thus, the question is moot and neither Middletown nor the Division is required to answer. The data request is quashed. If RI Energy has specific questions related to the parties' respective testimony on need, the Company can issue more targeted data requests to that stated position.

The following data requests were addressed by the Company in its Motion to Compel as a group and this ruling will address them as a group.

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 Company's Motion to Compel is overruled and the data requests are quashed. The five questions listed above represent the very reason why premature discovery is inefficient.

These questions were asked in the abstract and thus, were not only overly broad but were seeking the very information that would be expected in direct testimony. The Company's stated rationale in its Motion to Compel is unpersuasive.

First, the Company stated that:

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.”⁷

The Company appears to mistake the purpose of discovery. Discovery is used as a tool to limit cross-examination on testimony that has been filed. It is not used as a tool to fish for answers before a party has an opportunity to formulate their position. Nor is it a tool to keep parties from offering speculative testimony. Parties can offer any testimony they believe they can support and discovery can be used by the Company to explore the veracity of that testimony.

Second, the Company stated that:

[D]ata 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.”⁸

If the Intervenors' direct testimony did not present any alternatives, then the Company has its answer. To the extent the Company maintains that the parties did not provide sufficient information relative to a specific alternative upon which the witness is relying, the Company should develop targeted questions.

Finally, with respect to the Division only, the Company states that:

⁷ RI Energy Mot. To Compel at 11.

⁸ RI Energy Mot. To Compel at 12.

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 ‘*red herring*.’”⁹

It is difficult to understand how these data requests, issued before the Division’s testimony was filed, were reasonably designed to result in the discovery of admissible evidence to this alleged inconsistency in the later filed testimony. Furthermore, these data requests do not address any particular portion of the Division’s testimony.

A handwritten signature in blue ink that reads "David Anthony". The signature is written in a cursive style and is centered within a light blue rectangular box.

Presiding Commissioner

Dated and effective March 31, 2023

⁹ RI Energy Mot. To compel at 12-13.