

**STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD**

**IN RE: THE NARRAGANSETT ELECTRIC :
COMPANY’S NOTICE OF INTENT APPLICATION :
FOR THE REVOLUTION WIND 115 kV :
TRANSMISSION LINE UPGRADE PROJECT : DOCKET NO. SB-2022-05
IN EAST GREENWICH, NORTH KINGSTOWN, :
AND WARWICK, RHODE ISLAND :**

DECISION AND ORDER

On November 28, 2022, The Narragansett Electric Company (TNEC or Company) filed a Notice of Intent Application (NOI Application) with the Energy Facility Siting Board (EFSB or Board) pursuant to Rule 1.6(F) of the Board’s Rules of Practice and Procedure (Rules).¹ The application proposed modifications to four existing 115 kV transmission lines in order to reliably receive delivery of power from the Revolution Wind Offshore Wind Farm into the regional transmission system.² The four lines are referred to as the G185N, K189, G185S and L190 (Lines). They traverse through Warwick, East Greenwich, and North Kingstown. The Company maintains in its NOI Application that the project will not result in a significant impact on the environment or the public health, safety, or welfare. Therefore, according to the Company, “the Board should

¹ Rule 1.6(F) provides for an abbreviated review of an application for the construction of power lines of more than 1,000 feet, but less than 6,000 feet, or the modification or relocation of existing power lines. After the application is filed and a public hearing held in one or more of the cities or towns affected by the project, the Board must make a determination within sixty days of the filing as to whether the project “may result in a significant impact on the environment or the public health, safety and welfare.” If the Board finds no significant impact, the project does not constitute an alteration of a major energy facility, and the applicant may proceed without further review.

² The Revolution Wind Farm is an offshore wind farm located on the outer continental shelf in federal waters which is projected to deliver approximately 704 megawatts (MW) of renewable energy to Rhode Island and Connecticut. The offshore facilities in Rhode Island waters and onshore facilities associated with the Revolution Wind Farm were approved by the Board in Order No. 154 in Docket No. 2021-01. The Narragansett Electric Company was a party in those proceedings.

determine that the Project does not constitute an alteration and is not subject to the full EFSB permitting process.”³

When an applicant intends to construct or relocate power lines of more than 1,000 feet, section 1.6(F) of the Board’s Rules⁴ requires the NOI Application⁵ to be filed with the Council of the municipality affected by the construction of said lines at least ninety days before construction is to commence. On November 28, 2022, TNEC filed the NOI Application with the Town Clerks in Warwick, East Greenwich, and North Kingstown for distribution to the respective City/Town Councils within each municipality. The Rule also allows the municipality, or any intervenor, up to thirty days after the filing to file an objection with the Board. No such objections were received by the Board.

Project Description in the NOI Application

In its NOI Application, the Company described each of the four Lines and its history. The G185N and K189 Lines were originally built in 2002 and were upgraded in 2008 as part of a prior project referred to as the New England East-West Solution Project. They run for approximately 1 mile between the Drumrock Substation and the Kent County Substation and share the same cleared and maintained right-of-way (ROW). Originating at the Kent County Substation, the G185S and L190 Lines transition from a single-circuit configuration to a double-circuit configuration and back to a single-circuit configuration during their approximate 4.2 mile route in a common ROW to the Davisville Tap. The Lines were originally constructed in 1992 and reconductored and upgraded in 2007 and 2015, respectively. The G185S and L190 Lines continue to travel for approximately 3 miles from the Davisville Tap, which was constructed in 1992, to the Davisville Substation.

³ Notice of Intent Application at 5 (Nov. 28, 2022).

⁴ 445-RICR-00-00-1.6(F)

⁵ Rule 1.6(F) refers to the notice as a “Notice of Intent.”

From the Kent County Substation to the Davisville Tap, the G185S and L190 Lines transition from a single-circuit configuration to a double-circuit configuration and back to a single-circuit configuration. The various structures supporting the Lines consist of steel monopoles, steel and wood H-Frame, and 3-pole structures.

According to the information provided in the NOI Application, all of the proposed work activities will occur within the existing ROWs. As set forth above, the work is needed to improve system capacity to enable the system to handle the load that the Revolution Wind Farm will add to the system. The proposed work that extends approximately 9 miles consists of the following:

1. A full rebuild of the G185N and K189 lines between the Drumrock and Kent County Substations,
2. A full rebuild of the G185S and L190 lines between the Kent County Substation and the Davisville Tap,
3. A full rebuild of the G185S and L190 lines between the Davisville Tap and the Davisville Substation, and
4. Replacement of the existing shield wire with optical ground wire on the K189, G185N, and portions of the G185S Lines.

In addition to the upgrade of the conductors and replacement of the shield wire, the Company will replace a number of structures. Of the 177 existing structures, 162 will be replaced, 5 will remain, 10 will be removed and not replaced. The new structure replacements will include double- and single-circuit steel monopole, steel vertical dead-end, steel 2-pole flyover switches, steel H-Frame suspension (tangent), H-Frame dead-end, and 3-pole dead-end and be located on or near the center of the existing ROW for the length of the project.

The Company maintains in its NOI Application that construction maintenance practices will be implemented to avoid or minimize environmental impacts. Prior to commencing construction, vegetation will be removed from the ROW and the ROW will be mowed. An environmental monitor will be present to supervise the activities throughout the project. Soil erosion and sediment controls will be installed to mitigate disruption to the environment and will be removed upon completion of the project. TNEC anticipates intermittent traffic during the construction period and is committed to coordinating with the local municipalities and the Rhode Island Department of Transportation to develop traffic management plans for local and state streets and roads. Once construction is complete, the ROW will be restored to pre-construction conditions to the extent possible.

Construction is scheduled to occur between 7:00 a.m. and 7:00 p.m. Monday through Friday, and when necessary, between 7:00 a.m. and 5:00 p.m. on Saturdays but may be required outside of those timeframes if needed to complete certain activities. TNEC has committed to notifying landowners, abutters, municipal officials, Town Public Works, and Town Police and Fire Chiefs of all planned construction.

The Company represented in the NOI Application that it had already commenced community outreach efforts to inform and educate residents, businesses, and municipal officials of the project.⁶ The proposed outreach includes meetings with municipalities and relevant governmental organizations, community open house events, door-to-door campaign and canvassing, a user-friendly website, a project hotline, fact sheets, door hangers, FAQs, timelines, and advertising. The Company also represented in the NOI Application that it had met with state and local officials in all four Towns to provide details about the project.⁷

⁶ Notice of Intent Application at 8.

⁷ *Id.* at 9.

The Company anticipates the project to cost approximately \$58.6 million all of which will be assigned to the owner of the Revolution Wind offshore wind project.⁸ Planning for and engineering of the project began in Q3 2021; construction is expected to begin Q2 2023. Facilities are expected to be in service by Q2 2024, and the area fully restored by Q2 2025.

According to the NOI Application, the Company considered six alternatives, four of which were overhead alternatives. The first alternative, the no action alternative, was rejected because the proposed upgrades to the existing lines were the only solution to addressing the overloads that would be caused by the increased capacity coming from the Revolution Wind Farm interconnection. The Company also considered an underground route alternative but rejected that because of the significant cost, schedule, environmental impacts, and operational disadvantages. Three of the overhead alternatives were found not to be feasible for a variety of reasons including cost and significant social and environmental impacts. Thus, the chosen overhead alternative, as described above, was found to be superior, because it would result in the least social and environmental impacts, would not require additional property rights, and will enhance the system to support the additional capacity being provided by the Revolution Wind Farm.

Public Hearings

February 7, 2023

A public hearing was originally scheduled for January 25, 2023 in the Town of East Greenwich but was rescheduled to February 7, 2023 due to inclement weather. At the public hearing, the Company presented the following witnesses: 1) Stephen Bartram, the Project Manager who works for Burns & McDonnell, 2) Ken Fortier, Senior Project Engineer with Power Engineers, 3) Karen Hanecak, Environmental Project Manager with POWER Engineers, and 4)

⁸ Response to EFSB 1-1 (Jan. 5, 2023).

Michael Masseur, Director of Public Relations with RDW. The witnesses described the project and were available to answer questions from the Board.

Mr. Bartram testified that he manages all activities related to the project. He noted that the approximately nine miles of line between the Davisville Substation to the Drumrock substation is being rebuilt and all work will be done within the existing ROW. He confirmed that most of the 162 structures along the route will be replaced with new structures. All of the shield wire on the project will be replaced with fiber optic ground wire. Mr. Bartram explained how the Project was needed to accept the load that will be provided by the Revolution Wind offshore windfarm. He noted that the \$58.6 million cost will be borne by the developer of the Revolution Wind project. He discussed the various alternatives considered and expressed how the chosen route resulted in the least social and environmental impacts. Mr. Fortier was responsible for the engineering design of the project. He testified that the existing ROW corridor will be utilized and will not have to be widened. Mr. Bartram noted that the Company anticipates an in-service date of Q4 2024 and full restoration of the ROW to be completed by Q2 2025.⁹

Mr. Fortier also explained how a study conducted by ISO-NE concluded that the existing lines do not have sufficient capacity to accommodate the power that will be added to the system from the Revolution Wind off-shore wind farm which is why the lines need to be rebuilt. He testified that upgrading the lines in the existing corridor as presented offered the lowest impact to getting the power from the off-shore wind farm to the electric grid. He also described the process for replacing most of the structures to support the new lines noting that they would remain primarily along the same path within the existing ROW.¹⁰

⁹ Hr'g Tr. at 15-16 (Feb. 7, 2023).

¹⁰ *Id.* at 26-33.

Mr. Masseur presented the planned community outreach that he identified as what is used by the Company for its projects. He noted that outreach would include community open houses, a project website, a project hotline, FAQ sheets, and regular mailings.¹¹ Ms. Hanecak testified about the environmental attributes associated with the site and how impacts to those attributes would be minimized through various best management practices.¹²

Several members of the public offered comment. The comments included environmental concerns, health impacts, and other impacts on the surrounding community as well as expressions of lack of public engagement prior to the hearing. It became evident from the comments, however, that in spite of the Company's representations in the NOI Application that it had commenced outreach in November, the public had not been adequately apprised of the Company's plan. Thus, it became apparent to the Board that an additional public comment hearing would be necessary after the public was fully apprised of the project by the Company. The Company was instructed that a decision would not be made on the NOI Application until after the Company had engaged further with the public.¹³

Outreach Efforts

On February 22, 2023, the Company filed a letter with the Board detailing the outreach efforts to date. The letter explained that in April of 2022, notice had been mailed to abutters regarding preparatory work planned to be conducted in the ROW. During the fall of 2022, the Company met with the North Kingstown, Warwick, and East Greenwich Planning officials, and the North Kingstown Town Administrator. The Company also met with the Audubon Society, Kate Phillips¹⁴, and neighbors at the entrance point to the ROW by the Davisville Tap, participated

¹¹ *Id.* at 20-21.

¹² *Id.* at 21-25.

¹³ *Id.* at 34-56.

¹⁴ Kate Phillips' family owns a portion of the Hunt River Preserve.

in the East Greenwich Planning Board hearing, launched the project website and hotline, and scheduled two Open Houses for February 28, 2023 and March 1, 2023.

On March 13, 2023, the Company filed an update notifying the Commission that on February 17, 2023 it mailed notices to the owners of approximately 230 parcels that abut the ROW notifying them of the two upcoming Open Houses. The Company met again with the East Greenwich Planning Board and met with the East Greenwich Municipal Land Trust. Additionally, it has responded to email and telephone calls seeking additional information. As scheduled, the Company conducted two Open Houses where it explained the project and responded to questions from the public.

March 13, 2023

A second public comment hearing was held on March 13, 2023. The Company made another presentation that was almost identical to the one at the February 7, 2023 public comment hearing. The hearing allowed for public comment in person and virtually. No member of the public offered comment.

Decision

The Company's NOI Application filed pursuant to Rule 1.6(F) seeks a finding from the Board that the modification of the existing power lines do not constitute an alteration requiring further review by the Board. If it is not an "alteration," then the project is not jurisdictional to the Board.

The legal standard arises out of the definition of an "alteration" in the Energy Facility Siting Act, which defines it as:

a significant modification to a major energy facility, which, as determined by the board, will result in a significant impact on the environment, or the public health,

*safety, and welfare. Conversion from one type of fuel to another shall not be considered to be an alteration.” (emphasis added)*¹⁵

As indicated in the statutory definition, there must be two conditions present for the Board to determine that a project constitutes an alteration. First, there must be a “significant modification.” Second, the significant modification must result in a “significant impact on the environment or the public health, safety or welfare.” The Legislature has mandated that both conditions must be present to find an “alteration” and for jurisdiction to be triggered. The Board has previously considered and discussed the standard in detail in Docket No. SB-2021-03.¹⁶ Additionally, in SB-2022-03, a case involving an extensive reconductoring project similar to what is currently proposed, the Board found that although the project constituted a significant modification, it was not an alteration because it would not result in a significant impact to the environment or public health, safety, and welfare.¹⁷

The Board’s Rules of Practice and Procedure also define “alteration.”

“‘Alteration’ means a significant modification to a major energy facility which, as determined by the board, will result in a significant impact on the environment or the public health, safety or welfare. Conversion from one type of fuel to another shall not be considered to be an alteration. *Maintenance, repair or replacement of poles or transmission components by an electric utility to maintain the integrity of its transmission system shall not constitute an alteration, provided that such construction does not increase the normal carrying capacity of the transmission line.*” (emphasis added)¹⁸

While the first two sentences simply restate the statutory language, the Rule adds a third sentence which needs some clarification and is susceptible to causing confusion as to what constitutes an alteration. Read in isolation and out of context, the third sentence could be understood to mean

¹⁵ R.I. Gen. Laws § 42-98-3(b).

¹⁶ See Order No. 153 at 21 (May 31, 2022)(while this matter did not involve reconductoring or power lines it provided a detail analysis of the statutory requirements for what constitutes an alteration); https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-07/Order153_SB-2021-03_final.pdf.

¹⁷ See Order No. 157 at 7 (Sept. 7, 2022)(similar to the instant matter, this project involved that reconductoring and increasing the normal carrying capacity of the line and the replacement of numerous structures); <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-09/Order%20No%20157.pdf>.

¹⁸ 445-RICR-00-00-1.3(A)(4).

that the Board Rule is declaring that if the maintenance, repair or replacement of a transmission line increases the carrying capacity of the line, it constitutes an “alteration” which results in the proposed activity being jurisdictional to the Board. In spite of the literal words, however, this is not the intent of the rule because such an interpretation would collide with the statutory two-part test.

Read in such a manner, it would require the Board to make a blanket jurisdictional determination that an increase in capacity *in all cases, regardless of the facts*, results in a significant impact on the environment, or the public health, safety, and welfare. In other words, it would be bypassing the need for the factual determination by the Board which is expressly required in the statute that the modification “will result in a significant impact”¹⁹ In fact, the statute contains a two-part test and the Rule itself, although not ideally worded, must be read consistently with the statute.

Given the statutory requirement that the second determination must be made for jurisdiction, the Board views the purpose of the sentence in the Rule was not to declare a modification jurisdictional if it involves increasing capacity. Rather, the intent of the sentence was to declare that maintenance, repair or replacement of poles or transmission components is not a significant modification unless the capacity is being increased. If capacity is being increased, it is still necessary for the Board to determine whether it results in a significant impact to the environment, or public health, safety, and welfare. However, if there is no increase in capacity, the jurisdictional inquiry ends, and there is no need to ask the second question as to whether the activity will result in a significant impact. In that context, the sentence in question states the law accurately, because if there is no significant modification then, by definition, it is not an alteration.

¹⁹ R.I. Gen. Laws § 42-98-3(b).

The use of the term “alteration” within the sentence in question in the Rule was an unfortunate choice of wording, but it does not and cannot alter the legal requirement within the statute itself. Perhaps the rule could be amended in the future for clarity. For example, the rule would be clearer if it were amended as follows:

“Maintenance, repair or replacement of poles or transmission components by an electric utility to maintain the integrity of its transmission system shall not constitute ~~an alteration~~ a significant modification, provided that such construction does not increase the normal carrying capacity of the transmission line.”

This restatement provides a clarification of the standard as it was intended.

On April 19, 2023, the Board conducted an Open Meeting, which was properly noticed. For the reasons described below, the Board found that the project does not constitute an alteration of a major energy facility. While the proposed work is a significant modification, the Board finds that based on the evidence presented, it will not result in significant impact to the environment or public health, safety, or welfare. All of the work will occur within an existing ROW. The social and environmental impacts resulting from the construction will be temporary and minimal. The Board finds that the Company’s choice of preferred alternative was carefully and thoroughly evaluated and is the least impactful to the surrounding community and environment. Moreover, the Board was assured and is confident that the Company will engage in appropriate mitigation measures to minimize any disturbances to vegetation and soil and to the social environment. Accordingly, the Board unanimously finds that the project will not cause a significant impact on the environment, public health, safety, or welfare and, thus, is not an alteration of a major energy facility. TNEC may proceed without further review.

Accordingly, it is hereby

(161) ORDERED:

The Energy Facility Siting Board finds that the project does not constitute an alteration of a major energy facility as defined by R.I. Gen. Laws § 42-98-3(b) in that it will not result in a significant impact on the environment or public health, safety, and welfare and that The Narragansett Electric Company may proceed without further review.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND ON APRIL 19, 2023,
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED APRIL 26,
2023.

ENERGY FACILITY SITING BOARD



Ronald T. Gerwatowski, Chairman



Meredith Brady (Apr 26, 2023 09:56 EDT)

Meredith E. Brady, Member



Terrence Gray, Member



NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I. GEN. LAWS SECTION 42-98-12, ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY, WITHIN TEN (10) DAYS OF THE ISSUANCE OF THIS ORDER PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THIS ORDER.