

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

IN RE: THE NARRANSETT ELECTRIC COMPANY D/B/A :  
NATIONAL GRID APPLICATION TO CONSTRUCT AND : DOCKET No. SB-2021-04  
OPERATE A PORTABLE LNG VAPORIZATION FACILITY :  
ON OLD MILL LANE IN PORTSMOUTH, RHODE ISLAND :

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT’S ADVISORY OPINION  
TO THE ENERGY FACILITY SITING BOARD  
PURSUANT TO THE NOTICE OF DESIGNATION ISSUED OCTOBER 19, 2022**

On April 1, 2022, The Narragansett Electric Company (“TNEC” or “Applicant”) filed with the State of Rhode Island Energy Facility Siting Board (“EFSB”) a Supplemental Application to its May 19, 2021 Application to operate a portable liquified natural gas (LNG) vaporization facility (the “Facility”) on Old Mill Lane in the Town of Portsmouth, Rhode Island (the “Application”). On October 19, 2022, the EFSB issued an Order which, among other things, requested an Advisory Opinion from the Rhode Island Department of Environmental Management (“DEM”) on two questions:

- (i) the impact on vegetative community, fish and wildlife that will be caused by disruption of the habitat and (ii) whether the Facilities will present an unacceptable harm to the environment.<sup>1</sup>

Pursuant to the Order and Notice of Designation, the DEM offers this advisory opinion.

**I. Energy Facility Siting Act**

The Energy Facility Siting Act (the “Siting Act”)<sup>2</sup> consolidates in the EFSB, with two exceptions, all state and local governmental regulatory authority for the siting, construction, operation and alteration of energy facilities “designed or capable of operating at a gross capacity of 40 megawatts or more” of electricity.<sup>3</sup> Subject to the exceptions, EFSB’s decision in favor of

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<sup>1</sup> EFSB Order No. 156 (Issued October 19, 2022).

<sup>2</sup> R.I. GEN. LAWS § 42-98-1 *et seq.*

<sup>3</sup> R.I. GEN. LAWS § 42-98-3(d).

an application to locate a major energy facility in Rhode Island constitutes the granting of all permits, licenses, variances or assents, under the EFSB's authority, which would be required for a proposed facility.<sup>4</sup>

Importantly, DEM remains the permitting authority where it exercises a permitting or licensing function under the delegated authority of federal law.<sup>5</sup> In addition, permits required pursuant to the State's Freshwater Wetlands Act (the "Wetlands Act") remain under the jurisdiction of DEM. Consequently, the EFSB's decision cannot act as a grant of any permit or license which is issued by DEM pursuant to its federally delegated authority or the Wetlands Act. For further discussion of the permitting requirements applicable to this particular proposed Facility, see Part II(ii) herein.

## **II. Advisory Opinions**

### ***(i) The impact on vegetative community, fish and wildlife that will be caused by disruption of the habitat***

The Division of Fish & Wildlife finds that the potential impact to freshwater fisheries would be minimal. Several small ponds and streams are in the vicinity of the site. Little Creek, the larger of these waterbodies, is located a few feet west of the vaporization site. It is an intermittent stream that was surveyed a few years ago and found to contain American eel, banded killifish, bluegill, and golden shiner. American eel is a species of greatest conservation need that can be found in almost every stream with a connection to the sea. Since the Facility will only operate as needed during the winter months when the stream will be its coldest, the operation of this Facility should have little or no effect on any fish that could be in the area as the activity of most fish will be minimal during the winter months.

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<sup>4</sup> *Id* at § 1(a).

<sup>5</sup> *Id* at 7(a)(3)

DEM does not anticipate any significant adverse impacts to marine species based on the information presented in the Application.

However, the Division of Fish & Wildlife has identified potential impact on other wildlife species. Liquefied natural gas poses a danger to wildlife and plants when it is vaporized and produces nitrogen-oxides. Resulting reduced air quality can harm wildlife in the area, including in particular bats and birds that use Rhode Island for nesting, hibernacula, and stop-overs, especially species of greatest conservation need and Federally Endangered species. Additionally, if any contaminants were to leak into the surrounding wetlands, further harm would result.

Effective air quality and water quality monitoring is necessary to avoid harm or take of bats, including the vulnerable and endangered species that use the area to forage, drink, raise their young, or pass-through during migration to nearby hibernacula where endangered and vulnerable species have been documented. One such hibernacula is located approx. 5.5 miles away from the facility, and there are additional hibernacula located around Narragansett Bay in the vicinity of the proposed area. Bats spending the active season or migrating through the area will be targeting the limited freshwater sources adjacent to the facility for hydration, leaving them susceptible to harmful pollutants, if present.

Loud noises associated with construction and operation can be a deterrent to wildlife species both in their natural habitats surrounding the site and again, during their migration through Rhode Island. Increased road traffic in the area could increase wildlife-vehicle collisions and mortalities.

Light pollution from the facility could also affect foraging, roosting, and migrating bats within the area. Artificial lighting can affect bats in a number of ways. Some bat species are

attracted to the increased insect activity surrounding the light source, which leaves them susceptible to predation, especially less-coordinated juvenile bats. Other species will practice avoidance of lighted areas, greatly reducing their foraging area. Light pollution also changes insect species composition around the illuminated area, in similar ways, altering area bats' food sources. Artificial light also can impact bats' migration behavior and timing of rousing for foraging.

DEM's Division of Fish & Wildlife suggests that wetland culverts could be improved for wildlife underpass. There are two culverts associated with the property that allow waterflow underneath the roadway. These provide access and connectivity for wildlife species between the two sections of the wetland. One of the culverts is small and may not provide the degree of transportation that is needed by all species which could lead to increased road crossings.

Finally, it should be noted that potential impacts associated with wetlands are being addressed through DEM's wetland permitting process. Regardless of the EFSB's decision, as the wetlands permit is exempt from the EFSB's authority, the Applicant must obtain a wetlands permit prior to construction. The full impact on wetlands on and around the site will be addressed through that permitting process. Avoidance and mitigation of impacts to wetland habitats is especially important for the potential effect on herptiles (species of greatest conservation need).

**Respondent: Philip Edwards**  
**Chief, Division of Fish & Wildlife**

*(ii) Whether the Facility will present an unacceptable harm to the environment*

DEM is charged with determining whether projects and activities present an acceptable harm to the environment through the various permits, licenses, and reviews authorized under the Rhode Island General Laws and the associated rules and regulations promulgated thereunder. Projects and activities determined to be compliant with the thresholds and standards set for acceptability in those various rules and regulations, in the context of harm to the environment, are approved, often through the issuance of permits. Conversely, projects and activities that have an unacceptable level of harm to the environment either result in denial of permits and approvals for the proposed project or activity, or enforcement actions to stop and mitigate the harm for conditions not considered under an application before DEM.

The judgement as to whether the Facility, as a whole, will present an unacceptable harm to the environment will depend on the analysis and decision on each and every permit application required under these laws and regulations. Failure to receive ANY of these required permits would represent a determination by DEM that the proposed Facility presents an unacceptable harm to the environment.

The Facility is subject to the following permitting actions separate and apart from the EFSB process:

- Freshwater wetlands permit(s) issued pursuant to the Freshwater Wetlands Act, R.I. Gen. Laws § 2-1-21 and the *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*; including a Water Quality review pursuant to the authority to delegated to DEM by EPA pursuant to the Clean Water Act, 33 U.S.C. sec. §§ 1251-1387, R.I. Gen. Laws § 46-12-1 *et seq.*; and the *Water Quality Regulations*. An Application to Alter Freshwater Wetlands was submitted to DEM on June 29, 2022. With the review of the Wetlands Application, DEM will also conduct a Rhode Island Pollution Discharge Elimination System (RIPDES) Construction Activity General Permit stormwater review under authority delegated to DEM by EPA pursuant to the Clean Water Act, 33 U.S.C. sec. §§ 1251-1387.

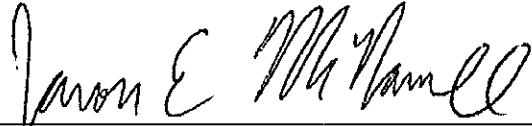
- The DEM Office of Air Resources may require preconstruction permitting if the applicant meets the thresholds described in the *Air Pollution Control Permits Regulation, 250-RICR-20-05-9*. To date, the applicant has not submitted an application for such permitting nor other information to the Office.<sup>6</sup>

Because the permitting decisions are still pending, DEM cannot yet render an opinion as to whether the Facility presents an unacceptable harm to the environment.

**Respondent: Jason McNamee**  
**Deputy Director for Natural Resources**

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<sup>6</sup> To the extent that the proposed Facility may require additional permits, licenses, approvals, etc. from DEM pursuant to its delegated authority under federal law which are not listed above, DEM expressly reserves its jurisdiction.



Jason McNamee, Deputy Director for  
Natural Resources, DEM  
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**CERTIFICATE OF SERVICE**

I hereby certify that on 5/8/23, I sent a true copy of the following to the Energy Facilities Siting Board via first class mail, postage pre-paid and electronic mail, and to the parties on the attached service list via electronic mail.



Jenna Giguere, Esq.