

Act's licensing requirements. The Company asserted that the facility was not a major energy facility.

Recognizing and emphasizing that there had been widespread concerns regarding the reliability of the natural gas supply on Aquidneck Island and that lives could be at risk if gas is not available when needed during cold weather, on November 6, 2019 the Board granted TNEC a waiver of the licensing requirements of the Act for a period of two years and ordered the Company to file a Petition for a Declaratory Order that provided a more robust legal argument on the issue of why the Act should not apply to such temporary facilities.³ Filed approximately ten months after the issuance of the order, in Docket No. SB-2019-04, the Board ultimately denied the petition, finding that the portable LNG facility was a major energy facility and that TNEC must obtain a license from the Board to operate that facility. It ordered the Company to file an application to operate the facility on Old Mill Lane in Portsmouth with the Board by June 1, 2021.⁴

On May 19, 2021, TNEC filed an application and a Petition for Waiver Extension to operate during the 2021/2022 winter season. Subsequently, the Town of Portsmouth, the Town of Middletown, the Attorney General, the Conservation Law Foundation, and the Acadia Center were all granted intervenor status.⁵ Receiving no objections to the waiver extension petition, the Board granted a waiver of the licensing requirements for one year, conditioned upon a number of requirements that included TNEC filing a supplemental application identifying the long-term permanent solution to the capacity and vulnerability issues on Aquidneck Island, among other things. The Board ordered the supplemental application be filed by April 4, 2022 and stayed the

³ SB-2019-04 Order No. 142 (Jan. 8, 2020).

⁴ SB-2020-02 Order No. 147 (Jan. 29, 2021).

⁵ The Town of Portsmouth was automatically granted intervenor status because the facility is located within its borders. The other parties filed motions to intervene which were granted by the Board.

proceedings until the filing was made.⁶ The supplemental application was filed on April 1, 2022, and a preliminary hearing was held on July 25, 2022. At an Open Meeting on August 24, 2022, the Board ruled on the issues to be considered and designated a number of agencies to issue advisory opinions.⁷ The application and supplemental application to operate a portable LNG facility at the site are currently pending before the Board in this docket.

No party filed any objections to this third waiver request and, therefore, no evidence was offered to suggest that the need for a waiver has abated since the Board's last order was issued on October 4, 2022, granting the previous waiver. In fact, with the exception of the Division of Public Utilities and Carriers who did not respond to Board counsel's communication to the parties requesting that each party advise as to whether they had an objection to the petition for a waiver, all of the other parties represented that they had no objection.⁸ Further, the Board anticipates that the licensing proceeding seeking a license for the facility in this docket will be completed before the next winter season of 2024-25 which commences on November 1, 2024. For these reasons, the Board grants the request for a waiver for one additional one year, consistent with its Open Meeting decision of October 2, 2023.

During the Open Meeting on October 2, 2023, the Board counsel informed the Board that on September 29, 2023, she had received a courtesy communication from the Company's attorney informing her that a delivery of LNG to the Old Mill Lane facilities had occurred at approximately 10:00 p.m. the prior evening. This delivery was outside of the 8:00 a.m. to 5:00 p.m. delivery period that was represented in previous filings with the Board as the period during which deliveries

⁶ SB-2021-04 Order No. 150 (Sept. 17, 2021).

⁷ SB-2021-04 Order No. 156 (Oct. 19, 2022).

⁸ The Division of Public Utilities and Carriers, as the ratepayer advocate, has been participating in the proceedings and did not file a written objection within five days as prescribed by the Board's Rules of Practice and Procedure and is deemed to have waived any objection.

would occur. The Board appreciates the prompt informal notification from the Company. However, the Chairman indicated that the Company needs to make a filing with the Board formally setting forth what occurred, along with a description of the circumstances, so that the other parties would be made aware of the event and have an opportunity to respond, if they have reason to do so.

Therefore, it is hereby:

(164) ORDERED:

The Narragansett Electric Company's Petition for Third Waiver Extension is granted for an additional year, through October 31, 2024, subject to consideration of the filing to be made relating to deliveries outside of 8:00 a.m. to 5:00 p.m.

DATED AND EFFECTIVE at Warwick, Rhode Island, on October 2, 2023, pursuant to an Open Meeting decision of October 2, 2023. Written order issued October 6, 2023.

ENERGY FACILITY SITING BOARD



Ronald T. Gerwatowski, Chairman



Terrence Gray, Member



Meredith Brady (Oct 5, 2023 16:41 EDT)

Meredith E. Brady, 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.