



DESAUTEL LAW

Marisa Desautel
Marisa@desautelesq.com
401.477.0023

December 9, 2020

VIA ELECTRONIC MAIL

Kathleen Mignanelli
Siting Board Coordinator
Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

**In re: The Narragansett Electric Company d/b/a National Grid Petition for
Declaratory Order Regarding Portable LNG Vaporization Equipment**

Dear Ms. Mignanelli:

Enclosed for filing please find the Town of Middletown's Objection in the above-referenced docket.

Thank you for your attention to this matter. If you have any questions, please contact me at your earliest convenience.

Respectfully,

Marisa Desautel, Esq.
Desautel Law
38 Bellevue Avenue, Suite H
Newport, RI 02840
Tel: (401) 477-0023

Enclosures

STATE OF RHODE ISLAND ENERGY FACILITY SITING BOARD

Docket No. SB-2020-02 The Narragansett Electric Company [National Grid] d/b/a National Grid Petition for Declaratory Order Regarding Portable LNG Vaporization Equipment

THE TOWN OF MIDDLETOWN'S OBJECTION

NOW COMES the Town of Middletown ("Town"), and by and through its undersigned counsel, hereby objects to the subject Petition for Declaratory Judgment ("Petition") in the above-captioned docket, and National Grid's Supplement to its Petition ("Supplement"), filed on December 9, 2020.

The Town incorporates by reference into this Objection the arguments included in its Motion to Intervene, filed with the Energy Facility Siting Board ("EFSB") on October 30, 2020. Those arguments are re-alleged herein. The Town also hereby provides additional formal response and objection to National Grid's Supplement.

At the outset, and in direct response to National Grid's contentions, the Town points the EFSB to the definitions of the Energy Facility Siting Act, RIGL § 42-98-3 (the "Act"). Under the "Definitions" section of the Act, "[m]ajor energy facility" actually does specifically include the type of facility that National Grid proposes here. The "Definitions" section employs a semi-colon to list the differing types of facilities that the Act covers. According to the Oxford Dictionary, the semi-colon is used to separate independent clauses: "used to separate the parts of a complicated sentence or *items in a detailed list...*" <https://www.oxfordlearnersdictionaries.com/> (emphasis added).

In this context, the semi-colon in the Act separates out the following independent clauses:

"facilities for the extraction, production, conversion, and processing of coal;

facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more;
transmission lines of sixty-nine (69) Kv or over;
facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases;
facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts...:
RIGL § 42-98-3 (emphasis added).

This is not a pedantic point or usage of grammar. The above list, as contained in the Act, was drafted to separate the different and independent types of facilities subject to EFSB jurisdiction. The emphasized category above covers the subject facility: “facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases.” Id. As such, the EFSB has statutory jurisdiction here.

The Town raises this point now to address National Grid’s newly filed position in its Supplement. To the extent that National Grid is now representing the subject project as an “emergency mobilization,” the Town maintains that no such exception exists in the Act. Supplement, p. 4-5. The above Definitions section of the Act applies here such that the EFSB has jurisdiction over the subject project and others like it.

Secondly, it appears that National Grid, by its Supplement, is now hinting at another legal position. That position concedes that the EFSB has jurisdiction and suggests that a new licensing process is in order. If the EFSB is inclined to create a new regulatory process to address this docket, the Town has concerns related to the long term and permanent solutions for its residents and for Aquidneck Island. These are the same concerns that the Town included in its Motion to Intervene. Regardless of whether the EFSB proceeds to a full licensing proceeding, or a new and shorter process, the Town maintains its position.

National Grid suggests that it “would also include a summary of the Company’s

efforts to complete a permanent solution to the identified need for the Equipment.” Id. A “summary” is insufficient to address a long term and permanent solution; the Town respectfully requests that deadlines for compliance be instituted as part of any regulatory process for this docket. Also, any such new regulatory process must include the issues outlined in the Town’s Motion to Intervene, as follows:

- The monitoring and regulating of transportation companies as they travel over Town roads;
- Security with respect to the number of tanks and close proximity of the tanks to municipal school buildings;
- Evacuation plans and participation by the Town’s fire department personnel in relation to these plans;
- Training for any necessary municipal staff;
- Impacts to air and groundwater quality;
- Public health and safety;
- Decommissioning of tanks at the end of project life;
- Noise and hours of operation;
- Public comment and review;
- Diminution in property values and subsequent impacts to tax revenues, and;
- Concerns with the viability of the project location and alternatives.

WHEREFORE, based on the foregoing, the Town respectfully requests that the EFSB deny the Petition’s request for declaration that the EFSB has no jurisdiction over this matter, and that any new regulatory process to address this docket be considered in light of the Town’s concerns and position as outlined in its pleadings.

Respectfully submitted,
Town of Middletown
By its Attorney

Marisa Desautel, Esq. (Bar #7556)
Desautel Law
38 Bellevue Ave, Unit H
Newport, RI 02840
Tel: (401) 477-0023

CERTIFICATION

I hereby certify that I filed an original of the within Motion with the EFSB and sent a true copy, via electronic mail, of the within Motion to the parties listed on the distribution list for Docket SB-2020-02, on this 9^h day of December, 2020.
