



STATE OF RHODE ISLAND  
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*Peter F. Neronha*  
*Attorney General*

July 23, 2021

VIA HAND-DELIVERY and ELECTRONIC Mail

Emma Rodvien  
Siting Board Coordinator  
RI Energy Facility Siting Board  
89 Jefferson Blvd.  
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[emma.rodvien@puc.ri.gov](mailto:emma.rodvien@puc.ri.gov)

**RE: *SB-2021-04***  
***The Narragansett Electric Company d/b/a National Grid Application for License to Mobilize and Operate a Liquefied Natural Gas (LNG) Vaporization Facility at Old Mill Lane (Portsmouth, RI)***

Dear Ms. Rodvien:

Enclosed please find for filing an original and seven (7) copies of the Attorney General's Motion to Intervene in the above-referenced docket.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

*/s/ Nicholas Vaz*

Special Assistant Attorney General  
[nvaz@riag.ri.gov](mailto:nvaz@riag.ri.gov)

Enclosures

Copy to:      Service List

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

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**In Re: The Narragansett Electric  
Company d/b/a National Grid  
(Portable LNG Vaporization Project  
Old Mill Lane, Portsmouth, RI)**

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**Docket No. SB-2021-04**

**THE RHODE ISLAND ATTORNEY GENERAL’S**

**MOTION TO INTERVENE**

(Memorandum of Law Incorporated Herein)

**NOW COMES** the Attorney General for the State of Rhode Island, Peter F. Neronha, and moves to intervene in the above-captioned matter, pursuant to the Energy Facility Siting Board’s (hereinafter, the “EFSB”) Rules of Practice and Procedure 445-RICR-00-00 (hereinafter, the “EFSB Rules”) § 1.10. In support hereof, the Attorney General further provides the following:

**I. INTRODUCTION AND BACKGROUND**

On May 19, 2021, The Narragansett Electric Company d/b/a National Grid (hereinafter, “Narragansett” or “National Grid”) filed its application with the EFSB (hereinafter, the “Application”) in the instant Docket. The Application seeks a license from the EFSB for the use of liquified natural gas (hereinafter, “LNG”) portable equipment for both storage and vaporization at National Grid’s approximately five (5) acre property on Old Mill Lane in Portsmouth, Rhode Island (hereinafter, the “Property”). If approved, National Grid would bring seasonal equipment into a 30,000 square foot area on the Property (hereinafter, the “Project Site”) each year including, but not limited to: portable vaporizers, portable booster pumps, portable storage tanks, portable generator(s), and a mobile office (hereinafter, the “Equipment”). The Project Site would then be used for the storage of large amounts of LNG, its conversion from liquid to gas form, and its

transfer into the transmission system in the event of a shortage of natural gas (such as during the crisis in the winter of 2019 which left many on Aquidneck Island without heat for days).

Pursuant to the Energy Facility Siting Act, the EFSB is “the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state.” R.I. Gen. Laws § 42-98-7. As plainly stated in R.I. Gen. Laws § 42-98-4: “[n]o person shall site, construct, or alter a major energy facility within the state without first obtaining a license from the [EFSB]. . . .” (*emphasis added*).

In 2020, National Grid sought a declaratory order that this “temporary” installation and operation of portable LNG equipment did not fall under the jurisdiction of the EFSB. *See* EFSB Docket Number SB-2020-02. However, as determined in Order 147, the EFSB has jurisdiction over this proposed annual mobilization because, *inter alia*, this is not a temporary or emergency solution. Rather, National Grid is seeking to mobilize and operate the Equipment each and every year, indefinitely.<sup>1</sup>

The Attorney General is obligated to protect and represent the public interest. Moreover, there is an undeniable public interest in ensuring a long-term and viable means of meeting the heating needs of Aquidneck Island residents that provides general safety for the surrounding communities and responds to the State’s mandates set forth in the Act on Climate. Not only does the Attorney General have a statutory right to intervene in this matter pursuant to Rhode Island’s Environmental Rights Act, R.I. Gen. Laws § 10-20-1, *et seq.*, but, as explained below, the EFSB need only find that the public interest *may be* affected by the Petition in order to allow intervention pursuant to EFSB Rule 1.10(B). There is more than enough evidence to suggest that this low bar

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<sup>1</sup> A copy of Order 147 is attached hereto as **Exhibit A**.

has been met, as there is no question this project could potentially affect the safety, health and welfare of the Rhode Islanders living in the surrounding areas. Accordingly, the EFSB must allow the Attorney General to intervene and be heard.

## II. STATEMENT OF RELEVANT FACTS

As explained in the Application, National Grid proposes to mobilize the Equipment each November and demobilize each April. National Grid claims that this is “the only viable option for the peak-shaving and emergency backup of the Aquidneck Island natural gas distribution system at this time.” *See Application* at page 3. The Application then goes on to immediately state that “[National Grid] is in the process of completing its review of other options to meet the identified need and this Project is needed *until the preferred option is identified, permitted, and placed into service.*” *Id.* (emphasis added). These statements are, at least to some extent, at odds with each other.

Moreover, pursuant to EFSB Rule 1.6(B)(16), the Application must include, *inter alia*:

A study of the alternatives to the proposed facility, including alternatives as to energy sources, methods of energy production and transmission and sites for the facility, together with the reasons for the applicant's rejection of such alternatives. The study shall include estimates of facility costs and unit energy costs of alternatives considered.

Despite this, National Grid spent just four short pages dismissing any alternatives to their proposed operations. Their assessment included only the results of an internal review of a few other options and does not appear to include any alternatives still being considered for long-term future use in replacement the mobile use of the Project Site each winter.

Additionally, the Application assumes that demand for natural gas will continue to grow in coming years. This seemingly does not take into full account efforts throughout Rhode Island and the region to reduce reliance on and use of fossil fuels. In fact, the “Gas Demand Forecast” provided in Section 2.2.1 of the Application states that the company “employs a comprehensive

methodology for forecasting customer gas demand using a series of econometric models to determine the annual growth expected for Residential Heating, Residential Non-Heating, Commercial, and Industrial markets.” The results were then apparently “downscaled” to apply to Aquidneck Island. *See id.* However, Aquidneck Island is a unique area of the State, and it remains unknown whether this simple down-scaling is an effective means of determining potential future demand. Like much of the Application, the limited information presented by National Grid leaves more questions than answers.

Additionally, there are certain questions raised by the potential sale of Narragansett, which is currently being reviewed by the Division of Public Utilities and Carriers. Were Narragansett sold, it is unclear what effects that might have on operations suggested in the Application. For instance, Narragansett lauds National Grid-related entities’ experience with mobilized LNG. This is particularly highlighted in the “Safety Record” found at Section 3.2.1 of the Application. However, the meaning of this experience and track record is brought into question when it is possible Narragansett could potentially be under new ownership by the time the company mobilizes for this coming winter.

Accordingly, far more information and accountability are required to determine the appropriateness of the Application. Unless conditioned in some way by the EFSB, the permit sought would, in effect, allow for operation of the Project on a perpetual basis without any deadlines or need for additional reviews, until such time as National Grid determines that some alternative option may be worth advancing. Additionally, the responsibility of any future owner of Narragansett to seek a long-term solution for Aquidneck Island is, at best, in doubt.

### III. STANDARD OF REVIEW

The EFSB Rules provide that: “[P]articipation in a proceeding as an intervenor may be initiated [...] [b]y order of the [EFSB] upon a motion to intervene.” EFSB Rules § 1.10(A)(2). Further, a party may intervene in EFSB proceedings by “claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate[.]” Said rights and interests include:

1. A right conferred by statute.
2. An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the [EFSB]'s action in the proceeding.
3. Any other interest of such nature that petitioner's participation may be in the public interest.

EFSB Rules § 1.10(B). Accordingly, a party should be allowed to intervene in proceedings before the EFSB if any one of the aforementioned rights can be demonstrated. As explained in greater detail below, all three bases for intervention are applicable here. The Attorney General has a statutory right to intervene, represents the interests of persons not currently represented by parties in these proceedings, and is charged with protecting and representing the public interest.

### IV. GROUNDS FOR INTERVENTION

#### **a. The Attorney General has a statutory right to intervene in the proceeding pursuant to the Environmental Rights Act, R.I. Gen. Laws § 10-20-1 *et seq.***

EFSB Rules § 1.10(B)(1) allows for intervention where a “right [is] conferred by statute.” Here, the Attorney General, through his designated Environmental Advocate, and pursuant to the Environmental Rights Act, R.I. Gen. Laws § 10-20-1, *et seq.*, has a separate statutory right and obligation to “take all possible action” for “the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state.” *See* R.I. Gen. Laws § 10-20-1 and § 10-20-3(d)(5). The proposed operations represent a potential for increases in air pollution

resulting from additional truck traffic, as well as potential increased risk of gas releases into the atmosphere during operations as LNG is gasified and transferred into the transmission infrastructure. Furthermore, the proposed continuation of this mobile operation at the Project Site and its need in light of National Grid's projections for natural gas demand increases represents a continued investment in expanded fossil fuel infrastructure and consumer reliance on fossil fuels in a State with a mandatory obligation to reduce greenhouse gas emissions and reliance on fossil fuels.

Thus, the Attorney General has a statutory right to intervene in this proceeding to ensure that the health and environmental effects of a permit to continue indefinite operation for six months each year are appropriately weighed and that the State's climate goals are considered. The Application is lacking relevant and essential information, which should be provided during the EFSB review process in the within Docket.

**b. The Attorney General has an interest in protecting the public from environmental harms and general safety concerns, and in ensuring the State's long-term energy and climate goals are not undermined.**

EFSB Rules § 1.10(B)(2) allows for intervention where an "interest which may be directly affected, and which is not adequately represented by existing parties and as to which petitioners may be bound by the [EFSB]'s action in the proceeding." Additionally, EFSB Rules § 1.10(B)(3) allows for intervention where "[a]ny other interest of such nature that petitioner's participation may be in the public interest."

The Attorney General is the only party that can represent the public's interest in this matter, as well as protect the State's commitment to reduce its reliance on fossil fuels and curb emissions of greenhouse gasses. Recently, the Rhode Island 2021 Act on Climate imposed mandated reductions in statewide greenhouse gas emissions. In fact, greenhouse gasses must be reduced by

45% from 1990 levels by 2030, by 80% from 1990 levels by 2040, and the State must attain net-zero emissions by 2050. *See* R.I. Gen. Laws § 42-6.2-9. As such, the State and the public have a vested interest in ensuring that immediate expansion of fossil fuel infrastructure does not come at the cost of failing to achieve the State’s long-term energy goals and efforts to combat climate change.

Moreover, the Attorney General “has a common law duty to protect the public interest.” State v. Lead Indus., Ass'n, Inc., 951 A.2d 428, 471 (R.I. 2008) (*quoting* Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032 (R.I. 2005)). Specifically, the Attorney General has an interest in ensuring that the EFSB considers carefully, the effects the proposed annual mobilization would have on the public, especially in light of the fact that the Application is suggesting that a “temporary” and emergency solution should be continued indefinitely.

National Grid contends that the proposed project is necessary to meet future demand for natural gas and LNG in the region. However, any determinations with respect to future need for the proposed expansion should consider the State’s and the region’s commitment to reducing the use of fossil fuels and replacing antiquated energy sources with cleaner alternatives. Rhode Island’s aggressive mandates for the reduction of greenhouse gas emissions will necessarily affect demand for LNG and other fossil fuels in coming years. It is unclear whether the 2021 Act on Climate was considered in National Grid’s demand analysis (although it seems unlikely given that it is not addressed in the Application).

Additionally, there are very real safety concerns posed by the Project Site and its close proximity to a public way. The Portsmouth Fire Department, with National Grid, has prepared an Emergency Evacuation Notification Plan for the Facility should one or more of the large LNG tanks rupture or explode. That evacuation plan identifies a three-tier evacuation zone of over a



mile. The Property is surrounded by many residential homes, and many of those residences fall within the established evacuation zone and would be affected in the event of an emergency. Clearly, there are very real safety concerns, and the Attorney General has an obvious interest in ensuring that the Application is fully vetted.

The Attorney General has a clear interest in seeing that the potential effects of the proposed expansion are carefully reviewed by the EFSB so that the safety, health, and welfare of the neighboring citizens are adequately considered and protected.

#### **V. THE ATTORNEY GENERAL'S POSITION IN THE PROCEEDING**

Pursuant to EFSB Rules § 1.10(C) a Motion to Intervene shall not only set out the relevant facts and grounds for intervention (as provided above) but must also include the position of the movant in the proceeding. National Grid's proposed continued seasonal mobilization at the Project Site must be fully reviewed and vetted to ensure that all of the Application criteria are satisfied. As it stands, the Attorney General does not believe this to be the case, and feels that intervention is necessary to ensure that additional questions are answered to ensure that any decision on the Application properly weighs the public interest and takes into account potential effects on the environment and ability to address the long-term needs of the community.

As such, it is the Attorney General's position at this time that National Grid should provide additional information to afford a full review of the Application and the proposed operations' effects on the surrounding communities and the State as a whole. Additionally, to the extent the Application may be granted, any permit should be conditioned on requirement for review and assessment of need on a regular basis so that other potential long-term solutions can be fully explored.

**VI. CONCLUSION**

For the reasons stated herein, the Attorney General respectfully requests that the EFSB allow its intervention in the above-captioned matter to present arguments before the EFSB and bring his and his office's expertise to the EFSB's aid in reviewing the Application.

Respectfully submitted,

THE STATE OF RHODE ISLAND

PETER F. NERONHA  
ATTORNEY GENERAL

By:

/s/ Nicholas M. Vaz

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Certificate of Service

I certify that on July 23, 2021, the original and seven hard photocopies of this Motion were hand-delivered to the Clerk of the Energy Facility Siting Board at 89 Jefferson Blvd., Warwick, RI 02888. In addition, electronic copies of this Motion were served, via electronic mail, to all parties on the attached service list for this Docket on July 23, 2021.

/s/ Nicholas M. Vaz

**SB-2021-04 The Narragansett Electric Company d/b/a National Grid Application for License to Mobilize and Operate a Liquefied Natural Gas (LNG) Vaporization Facility at Old Mill Lane (Portsmouth, RI)**

**Updated July 22, 2021**

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ENERGY FACILITY SITING BOARD**

**In re: The Narragansett Electric   :**  
**Company d/b/a National Grid   :**  
**Petition for Declaratory Order Regarding   :**   **Docket No. SB-2020-02**  
**Portable LNG Vaporization Equipment   :**  
**Old Mill Lane, Portsmouth, Rhode Island   :**

**ORDER**

On September 16, 2020, The Narragansett Electric Company d/b/a National Grid (National Grid or Company) filed with the Energy Facility Siting Board (the Board) a Petition for Declaratory Order Regarding Portable LNG Vaporization Equipment (Petition). Currently, National Grid is storing and vaporizing liquified natural gas (LNG) on Old Mill Lane, in Portsmouth, Rhode Island (Town). In its Petition, National Grid asked the Board for a declaration that the temporary installation and operation of portable LNG vaporization equipment (Equipment) are not subject to the jurisdiction of the Board. The Company asserts that the Equipment does not constitute a major energy facility or an alteration of a major energy facility as defined by R.I. Gen. Laws §§ 42-98-3(b) and 42-98-3(d) and Rules 1.3(4) and 1.3(16) of the Board’s Rules of Practice and Procedure and therefore, is not subject to the siting and licensing requirements of the Energy Facility Siting Act (Act), R.I. Gen. Laws §§ 42-98-1 to 42-98-20. On December 10, 2020, the Board heard oral argument on the Petition. On December 18, 2020, the Board convened an Open Meeting and unanimously found that the storage and vaporization of LNG at Old Mill Lane are within the Board’s jurisdiction and ordered National Grid to file a full application to site a major energy facility with the Board by June 1, 2021.

## FACTS AND TRAVEL

In May 2018, National Grid mobilized the Equipment on Old Mill Lane in Portsmouth, Rhode Island after being notified that the owner of the Algonquin interstate pipeline serving Aquidneck Island was scheduling a maintenance inspection that could affect service to the island.<sup>1</sup> The Equipment was removed in June 2018 after the inspection was completed. No filing was made with the Board in connection with the 2018 deployment.

In January 2019, National Grid experienced a service interruption caused by low-pressure transmission supply from the Algonquin pipeline system. A large number of customers were left without heat during extremely cold temperature conditions.<sup>2</sup> To respond to this emergency situation, National Grid mobilized the Equipment to Portsmouth. The Company then made a determination that ongoing transmission supply constraints to Aquidneck Island created system reliability risks which necessitated retaining the Equipment at the location during the winter season for at least several years. The Company subsequently began working on a long-term solution, including consideration of alternative sites to operate the Equipment.<sup>3</sup>

On October 24, 2020 and immediately before the start of the winter heating season,<sup>4</sup> National Grid filed a Petition for Waiver of licensing requirements of the Act (Waiver Petition) in order to operate a temporary portable LNG vaporization facility on Old Mill Lane in Portsmouth,

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<sup>1</sup> Petition for Declaratory Order Regarding Portable LNG Vaporization Equipment at 6 (Sept. 16, 2020).

<sup>2</sup> While the Petition did not provide much detail of the January 2019 event, it was a significant event reported in the press and the subject of a lengthy review and report by the Division of Public Utilities and Carriers. The public report can be found at: [http://www.ripuc.ri.gov/eventsactions/AI\\_Report.pdf](http://www.ripuc.ri.gov/eventsactions/AI_Report.pdf)

<sup>3</sup> See Petition at 8-11 (Sept. 16, 2020). In conducting an analysis of alternative sites, National Grid applied the following criteria: 1) ownership and/or control of the site; 2) accessibility for the LNG trucks; 3) parcel size; 4) travel route; 5) electrical supply; 6) phone service; and 7) delivery of LNG into the 99 pounds per square inch (psig) system. A review of approximately five sites in addition to the property on Old Mill Lane left only two viable alternatives: 1) Old Mill Lane and 2) the Naval Station where the prior facility had operated. Access issues eliminated use of the Naval Station leaving only Old Mill Lane as a viable option where the Company could connect into the 99 psig system which was crucial to support the Aquidneck Island system in the event that supply from the transmission system was constrained or lost.

<sup>4</sup> National Grid has defined the winter heating season as November 1 through March 30.

Rhode Island. The matter was docketed as No. SB-2019-04. The Waiver Petition argued that although the Company did not believe the operation of the facility was within the jurisdiction of the Board, it requested a waiver from the Act's licensing requirements. It asserted that the facility was not a major energy facility.

In a supplement to the Waiver Petition filed on November 5, 2019, the Company provided additional argument that a license was not required because the facility is temporary, will only be mobilized to respond to or avert an emergency, is necessary only until the Company finds a permanent solution to the capacity constraints on Aquidneck Island, and denial of the waiver would have negative impacts on public health and safety. The Company argued that the Act is intended to apply only to permanent facilities and that to require licensing for a temporary facility "would lead to an absurd result and would not advance the Act's policies and legislative findings."<sup>5</sup> Moreover, it asserted, it would be unable to provide a timely and effective response to emergency situations if it were required to file complete applications each time situations requiring vaporization arose.

National Grid also argued that because it will be temporary and will only be operated on high-demand days, the proposed vaporization facility does not constitute an alteration of an existing major energy facility that will have a significant impact on the environment or public health, safety, or welfare. It further noted that its prior use of the property had elicited neither any interest nor objection from abutters or the Town. Finally, the Company asserted that it was not aware of any prior situation where a license was required for a temporary installation.

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<sup>5</sup> Supplement to Petition for Waiver for Temporary LNG Vaporization Facility (Nov. 5, 2019). The document contains no page numbers; this quotation appears on the third page.



National Grid represented that it had been informed of certain transmission system constraints that may occur during the following four winters and that could negatively impact its ability to provide reliable service to its Aquidneck Island customers. The constraints could be caused by emergency situations or by inspections and/or repairs of the transmission pipeline. The Company stated that its use of the site would be temporary, because the equipment need only be present on the property during the winter, from December 1 through March 31. The Company contended it had initiated a plan to resolve the constraint issues within five years.

Prior to using the property for vaporization in 2018, the Company had obtained a zoning certificate from the Town. The Company stated that the Town provided that the certificate need not be renewed for any subsequent use of the property for vaporization. National Grid represented that no other federal or local permits were required. The Company further indicated that it intended to schedule public outreach sessions within one to two months of site mobilizations.

On November 6, 2019, the Board granted National Grid a waiver of the licensing requirements of the Act emphasizing there have been long-term widespread concerns regarding the reliability of natural gas supply on Aquidneck Island and that lives could be at risk if gas were not available when needed during cold weather. Addressing the Company's reference to the treatment of prior temporary installations, the Board stated that the lack of prior licensing for temporary facilities provided no substantial support for the Company's waiver argument. The Company provided no instances of the Board refusing to exercise jurisdiction over facilities for which a license had been requested.

The Board observed that while it is not bound by precedent, it must explain decisions that diverge from prior determinations. It referred to its previous decision granting a license to construct and operate an LNG vaporization facility on the Naval Base in Middletown, Rhode Island

in SB-00-01, which the Company failed to cite, noting that it appeared to conflict with, if not directly contravene, the Company's position.<sup>6</sup> It found that the Company's own description of the now-abandoned licensed facility indicated the difficulty in distinguishing it from the present project.

Nevertheless, in order to avoid the risk of negative impacts to health and safety that could result from the lack of any emergency backup natural gas supply to Aquidneck Island, and notwithstanding the ambiguities regarding the proper treatment of National Grid's October 24, 2019 petition, the Board granted the Company a temporary waiver of the licensing requirements of the Act for the vaporization facility for a period of two years. It ordered National Grid 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, distinguishing the Portsmouth facility from the previously-licensed facility at the Naval Base in Middletown or explaining why the Board erred in exercising licensing jurisdiction over that facility.

In the instant Petition and in the Waiver Petition, National Grid described the property where vaporization would occur as a five-acre parcel located in close proximity to the connection between its Aquidneck Island distribution system and the interstate transmission system. It was formerly a propane tank site that provided peaking capacity until Providence Gas expanded its pipeline capacity on the Algonquin pipeline in the late 1980s.<sup>7</sup> The petition listed the previous

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<sup>6</sup> In SB-00-01, National Grid's predecessor gas distribution utility, the Providence Gas Company, which during the proceeding became a division of Southern Union Company, filed an application with the Board for a license to construct, site, and operate an LNG transfer station on property leased from the United States Navy in Middletown, Rhode Island. The Board granted that requested license. In addressing that prior proceeding, the Board noted it was difficult to distinguish the presently proposed Portsmouth facility from the facility for which Providence Gas successfully sought a license in SB-00-01. When National Grid subsequently became the gas distribution utility, it too used the licensed facility. As the Company noted in its October 24, 2019 petition, it had used the Naval Base site in Middletown "when a temporary portable vaporization facility was needed to back-up the natural gas supply to the island." Final Order at 17 (Sept. 18, 2001).

<sup>7</sup> The Algonquin pipeline is a transmission line that supplies natural gas to National Grid for distribution to its customers.

mobilizations as set forth above. It also discussed the alternative locations evaluated for operation of the equipment and explained the reasons each of those alternatives were not viable for rapid mobilization necessary to provide backup to the Aquidneck Island system.

On September 16, 2020, National Grid filed the Petition in this docket, as ordered by the Board on November 6, 2019.<sup>8</sup> In the Petition, National Grid maintained that the temporary operation of portable LNG vaporization equipment does not constitute a major energy facility, arguing that interpreting the statute to include the equipment would not only frustrate the purpose of the statute but would detrimentally affect the reliability of gas service to its Rhode Island customers and lead to the absurd result that the Company may be unable to respond effectively to gas supply interruptions. The Company argued further that “requiring full EFSB permitting for the Equipment would effectively eliminate its efficacy as a tool to respond to emergency situations.”<sup>9</sup>

National Grid asserted that there is no record of a gas company ever having sought or receiving Board approval to operate portable vaporization equipment as a temporary backup to the natural gas supply in Rhode Island. The Petition attempted to distinguish the current facility on Old Mill Lane with the previously licensed facility on the Naval Base in Middletown, asserting that the permanence of the Naval Base facility was evidenced by the installation of three buildings and supporting equipment and the need for the facility to continually serve in the future which was in contrast to the intended temporary use of the Old Mill Lane facility which would be demobilized when the need for it passed. Moreover, in addition to arguing that the Equipment was not a major energy facility, National Grid also asserted that it is not an alteration of a major energy facility

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<sup>8</sup> The written order memorializing this decision was issued on January 8, 2020. See Docket No. 2019-04, Order No. 142.

<sup>9</sup> Petition for Declaratory Order Regarding Portable LNG Vaporization Equipment at 2 (Sept. 16, 2020).

because it does not have any significant or anticipated impacts to the environment or public health, safety and welfare.

In the Petition, National Grid proposed that it give notice to the Board, the Public Utilities Commission, and the Division of Public Utilities and Carriers within thirty days of mobilization of any temporary LNG facility in Rhode Island. It proposed working with the agencies to create a reporting process that would provide regulators with the opportunity to seek additional information regarding the mobilizations. It argued that this would balance regulators' interests in being informed of projects with National Grid's need to respond expeditiously to any gas constraints that would jeopardize system reliability.

On October 27, 2020, the Town of Portsmouth (Portsmouth) filed a Notice of Intervention.<sup>10</sup> Portsmouth also filed a Memorandum on November 2, 2020, in response to National Grid's Petition and argued that the law is unambiguous and must be applied as written. It asserted that National Grid's characterization of the Equipment as temporary or portable is of no relevance because the Act does not distinguish or make exception for these types of facilities. Disputing National Grid's claim that the 2018 zoning certificate allowed for continued operation, it stated that the zoning certificate was issued to allow for operation during the Algonquin Gas Transmission pipeline inspection only and that continued operation requires the issuance of a special use permit from the Zoning Board of Review.

On October 30, 2020, the Town of Middletown (Middletown) filed a Motion to Intervene asserting that it had an interest in the matter because of the close proximity of its boundary to the facility and the negative impacts related thereto. Middletown expressed that because its infrastructure and staff will be utilized and relied on throughout the mobilizations, the health and safety of

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<sup>10</sup> Rule 1.10(A)(1) gives the city or town where the proposed facility is located the right to intervene in the proceeding.

its residents will be affected. Middletown argued that the facility falls squarely within the unambiguous definition of a major energy facility because it stores LNG on the site. It also disputed National Grid's argument that the facility was not subject to Board jurisdiction because it was temporary. It asserted that not only does the Act not carve out an exception for temporary facilities, but National Grid's petition contains no end date for the project; so, there is no way to determine when it will cease to exist.

In a Supplemental Memorandum filed on November 2, 2020, Portsmouth referenced a September 25, 2001 decision of the Portsmouth Zoning Board granting a special use permit to South Union Company to allow a temporary peak shaving LNG facility on the Old Mill Lane property that expired a year after issuance and was subject to special conditions. Portsmouth noted that the fact that the proposed use and its impacts were only temporary were important factors in the Zoning Board's decision to issue the permit. The Zoning Board found that the temporary nature, one year in duration, prevented objectionable features from ripening into characteristics that would have a detrimental effect on neighboring properties.

National Grid responded to Portsmouth's Supplemental Memorandum asserting that both Portsmouth and Middletown had misconstrued some of the arguments and facts set forth in its petition. The Company asserted that the Equipment on Old Mill Lane is not a permanent facility. And although the statutory definition of a major energy facility can apply to the operations on Old Mill Lane, the Company asserted that there is no emergency exception in the law that would allow it to respond to emergencies without the delay of permitting. National Grid argued that a temporary facility is not an alteration of a major energy facility as defined by the Act, because it is not a significant modification that would result in a significant impact to the environment or public

health, safety, and welfare. Further, the Company maintained that the Act does not apply to temporary facilities.

National Grid asserted that it has an obligation to provide its customers with safe and reliable service and that operating on Old Mill Lane is the only viable option for continuing to avoid emergencies that threaten this obligation. The Company represented that it anticipates the need to continue operations on Old Mill Lane for many years, but did not specify an end date for the annual winter operations.

#### DECISION

The Act states that “[n]o person shall site, construct, or alter a major energy facility within the state without first obtaining a license from the siting board pursuant to this chapter.”<sup>11</sup> A major energy facility is defined to include “facilities for the conversion, gasification, treatment, transfer, or storage of liquified natural and liquified petroleum gases.”<sup>12</sup> The issue before the Board is whether the storage and vaporization of LNG on Old Mill Lane constitute a major energy facility. For the reasons given herein, the Board finds unanimously that the Equipment is a major energy facility subject to the jurisdiction of the Board and the requirements of the Act.

The statute is clear and unambiguous. Both storage and vaporization of LNG are included in the definition of “major energy facility.”<sup>13</sup> “It is a basic tenet of statutory construction that if the language of a statute is clear on its face, then the plain meaning of the statute must be given effect.” *Caithness Rica Ltd. Partnership v. Malachowski*, 619 A.2d 833, 836 (R.I. 1993)(*citations omitted*). The Court has also made it clear that the wording of a statute must be applied literally

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<sup>11</sup> R.I. Gen. Laws § 42-98-4.

<sup>12</sup> R.I. Gen. Laws § 42-98-3(d).

<sup>13</sup> While the word vaporization is not expressly used in the definition of major energy facility, it is a process that could be defined as either the conversion or the treatment of LNG both of which are set forth in the Act.

and cannot be *interpreted or extended*. *Id.* (*emphasis added*). Here, there is no ambiguity in the definition of major energy facility.

The Board finds National Grid's argument that a denial of its Petition would prevent it from responding to emergencies to be without merit. The Board agrees that the deployment of equipment to address an emergency condition does not trigger a requirement to make a full application. To conclude otherwise would be to interpret the Energy Facility Siting Act as prohibiting common sense, necessary responses to protect the public from catastrophe. In this decision, we are not establishing requirements for an emergency deployment because in this case the Petitioner has not alleged facts that support the conclusion that its deployment of the Equipment is in response to an emergency condition. The Board's decision is based on the facts specific to this matter and makes no inference or implication that National Grid would be required to file an application with the Board prior to responding to an emergency. An emergency occurred in January 2019 to which National Grid appropriately responded by mobilizing LNG vaporization equipment on Old Mill Lane. However, after the emergency ceased and the Company removed the Equipment and LNG from Old Mill Lane, National Grid brought the Equipment back prior to the start of the next winter season and has expressed an intention to continue to do so every winter for the foreseeable future.

Responding to an emergency is not the same as preparing a back-up plan for an emergency. They are two entirely different actions. One is an immediate, urgent response to avoid a catastrophe, the other involves putting facilities in place that provide redundancy or contingency capability to address the risk that an emergency condition could occur. The Board finds that by seasonally deploying the Equipment to address contingencies for an uncertain number of years, the Company is not responding to an emergency but rather preparing for the possibility that one may occur. Not

only is there no emergency in the instant case, but also finding jurisdiction over the seasonal deployment of Equipment in this case does not negate actual emergency deployments in other circumstances not present here.<sup>14</sup>

The other main argument made by National Grid was that the facility is “temporary.” Similar to the practical necessity of acknowledging the need to recognize that an emergency deployment does not require a full application to the Board, the Board also recognizes that there could be circumstances where the temporary deployment of facilities would not, as a practical matter, require a full application. For example, the Board observes that the Company’s activities in the spring of 2018, taken to respond to an anticipated interstate pipeline service interruption caused by a scheduled inspection certainly, could be characterized as temporary. The events that required that mobilization were for a specific period of time that was short in nature, the period during which the inspection occurred. If a full application were required, there would have been no practical way for the Company to address the risk of loss of gas supply for the duration of the brief inspection period when the interstate pipeline operations were affected. Thus, it is apparent that under limited circumstances, an LNG vaporization facility may be deployed temporarily to address short-term reliability conditions when the filing of a full application is impractical or even illogical.<sup>15</sup>

In the context of this case, the Board does not reach the question of the extent to which a temporary facility may avoid the requirement to make a full application to the Board. We do not

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<sup>14</sup> While the Board acknowledges that emergency deployment would not ordinarily require a full application, the Board advises any entity deploying LNG vaporization equipment in response to an emergency to notify the Board as soon as practicable after such deployment.

<sup>15</sup> The Board advises any entity deploying LNG vaporization equipment on a temporary basis to notify the Board of such occurrence as soon as possible either in advance or as soon as practicable after deployment, as the circumstances dictate.



reach this issue because the Board finds that the Equipment in question in this case is not “temporary” in any practical sense of the word. A temporary event is for a short period of time and has a known or fairly certain estimated end date. In contrast, in the instant matter, National Grid indicated that it intends to deploy the Equipment on Old Mill Lane until a permanent solution is determined and implemented which, in its pleadings, would be for at least the next three to four years, with no end date in sight. Thus, while the Equipment may be seasonal, it is not temporary.

The deployment is not for an isolated winter where there are unusual conditions that needed to be temporarily addressed. Rather, the deployment is a part of its overall operations strategy to ensure reliable service to Aquidneck Island every winter due to risks on the Algonquin system—(i.e., conditions that create significant risks that low pressure events on that interstate pipeline could result in the loss of gas supply to the island on the coldest days of the year). Further supporting the conclusion that the seasonal deployment cannot be characterized as “temporary” is the fact that the use of the facility is part of the Company’s long-range gas supply plan to provide reliable service to Aquidneck Island for an unspecified number of years unless and until an alternative solution is put in place.<sup>16</sup> In the Plan, the Company states that:

During the winter heating season, the Company has also installed temporary portable LNG vaporization equipment in Portsmouth to support its system on Aquidneck Island. This portable equipment provides critical pressure and supply support to Aquidneck Island *should* near-design day conditions arise. (*emphasis added*).<sup>17</sup>

The Plan goes on to state that:

The Company has agreed to temporarily utilize portable LNG operations on Aquidneck Island as a contingency *in the event* of Company or non-Company upstream issues that affect pipeline deliveries into Portsmouth. (*emphasis added*).<sup>18</sup>

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<sup>16</sup> Gas Long-Range Resources and Requirements Plan, RIPUC Docket No. 5043 (Jun. 30, 2020).

<sup>17</sup> *Id.* at 25.

<sup>18</sup> *Id.*

While the plan itself purports to describe the activity as “temporarily” utilizing portable LNG operations, the repeated annual reliance on the Equipment as a part of its *long-range* plan to assure reliability collides with that characterization. The Board rejects National Grid’s argument that the Equipment is a temporary deployment which avoids the jurisdiction of the Board. It is a seasonal deployment being relied upon by the Company to assure reliable service for many years to come.

For all these reasons, the Board finds it has jurisdiction over the storage and vaporization of LNG on Old Mill Lane in Portsmouth, Rhode Island. National Grid shall file an application to construct a major energy facility with the Board no later than June 1, 2021.

Therefore, the Petition is denied and it is hereby:

**( 147 ) ORDERED:**

National Grid shall file an application to construct a major energy facility with the Board no later than June 1, 2021.

DATED AND EFFECTIVE at Warwick, Rhode Island pursuant to an Open Meeting decision on December 18, 2020. Written order issued January 29, 2021

ENERGY FACILITY SITING BOARD



*Ronald T. Gerwatowski*

Ronald T. Gerwatowski, Chairman

*Janet Coit*

Janet Coit, Member

*Meredith E. Brady*

Meredith E. Brady, Member