

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

**In Re: Application of ProvGas for the Construction
and Siting of a Liquefied Natural Gas (LNG)
Transfer Station**

Docket No. SB-00-1

FINAL ORDER

I. INTRODUCTION

On August 23, 2000, Providence Gas Company, a Division of Southern Union Company ("ProvGas"),¹ filed an application with the Energy Facility Siting Board ("EFSB" or "Board") for the construction and siting of a liquefied natural gas ("LNG") transfer station. ProvGas proposed to build a facility that will operate as a transfer station providing supplementary natural gas to Aquidneck Island in times of peak demand during the coldest periods of the winter (the "Project"). The application was amended on December 26, 2000 changing only the design of the transfer station.

In response to the filing, the Board conducted a preliminary hearing on February 15, 2001 to determine the issues to be considered in evaluating the application, to designate those agencies which were to act at the direction of the Board for the purpose of rendering advisory opinions, and to identify those licenses, if any, required by the Project which are under the direct control of the Department of Environmental Management ("DEM") and the Coastal Resources Management Council ("CRMC"). As a result of the evidence proffered by the parties at the EFSB preliminary hearing, and in accordance with R.I. Gen. Laws § 42-98-9(b), the Board issued a Preliminary Order which identified those agencies having jurisdiction over the Project and which designated the state and local agencies and political subdivisions who would act at the

direction of the EFSB for the purpose of rendering advisory opinions on the issues to be considered by the Board. Accordingly, the Board ordered that the following agencies provide advisory opinions: the Rhode Island Public Utilities Commission; the Rhode Island State Planning Council; the Rhode Island Department of Environmental Management; the Town of Middletown Town Council and Zoning Board of Review; and the Motor Carrier Section of the Division of Public Utilities and Carriers. For each of these agencies, the Board identified the issue or issues on which the particular agency was to render an advisory opinion.

In its preliminary order, the Board required all advisory opinions to be submitted not later than June 1, 2001. On May 8, 2001, ProvGas filed a Motion for Continuance, which was subsequently granted, extending the deadline for advisory opinions to July 2, 2001. After the advisory opinions had been submitted, the Board held a hearing for the purpose of receiving public comment on ProvGas' application on September 5, 2001 at Middletown Town Hall. Additionally, the Board held its final hearing in this docket on September 6, 2001. Based upon the advisory opinions provided, and the evidence presented at all of the hearings, the Board hereby issues the following decision granting a license for the Project.

II. THE PROJECT

As described in the application, the Project is a transfer station located on Navy property in the Town of Middletown. The proposed site is located on the former Derecktor Shipyard site at the Naval Station Newport in Middletown, Rhode Island, on approximately 4.3 acres of land.

The transfer station will consist of a truck unloading facility, an LNG pumping/vaporization system, a send-out metering and odorization system, a control facility, a

¹ The application was filed on behalf of the Providence Gas Company. Since the filing of the original application and the amended application, the Providence Gas Company has become a Division of Southern Union Company.

hazard detection system, a security system, an emergency shut-down system and the necessary control valves, instrumentation and associated piping and attachments. The entire transfer station will be enclosed within a security fence and will be equipped with industry-approved fire and gas detection equipment.

Natural gas will be delivered to the transfer station in its liquid form by special tank trucks owned and operated by licensed and experienced transportation companies. The LNG will be unloaded into the pumping/vaporization system at the transfer station. The unloading system and related equipment will be located within an impoundment area that is designed to hold and retain the liquid volume of any truck in the unlikely event of a spill. The pumping/vaporization system and related equipment will also be located within a similarly designed impoundment area. Once vaporized from its liquid state and odorized, the gas will flow from the transfer station through 900 feet of 12" gas pipe, to ProvGas' existing 99-psig distribution system located approximately 200 feet to the east of the site. The 12" gas pipe will be above ground within the site, and will be below ground from the exterior of the site to the connection with the 99-psig system.

ProvGas anticipates operation of the transfer station only during periods of peak demand, which occurs during the coldest days of the year. Past experience indicates that usage will occur, on average, during 8-10 days per heating season. During the unloading process, and at all times trucks are on-site, trained ProvGas personnel will be both on-site, monitoring the operations first-hand, and remotely monitoring operations through use of the ProvGas Supervisory Control and Data Acquisition ("SCADA") System at ProvGas' Allens Avenue facility in Providence.

III. TRAVEL OF THE CASE

ProvGas' application was docketed on August 23, 2000. ProvGas' amended application was docketed on December 26, 2000.

On February 15, 2001, after public notice, the EFSB conducted a preliminary hearing. The purpose of the hearing was to determine the issues to be considered by the Board in evaluating ProvGas' application, to designate those agencies which were to act at the direction of the Board for the purpose of rendering advisory opinions, to identify those licenses, if any, required by the transfer station which are under the direct control of the Department of Environmental Management ("DEM") and the Coastal Resources Management Council ("CRMC"), and to consider ProvGas' request for expedited consideration of the amended application. At the hearing, ProvGas provided testimony from Gary S. Munroe, Director of Systems Planning, and offered 10 exhibits. Subsequent to the hearing, pursuant to a Preliminary Order dated March 15, 2001 ("Preliminary Order"), the Board certified the Project as being of critical economic need, granted ProvGas' request for expedited consideration, and ordered designated agencies to submit their advisory opinions to the Board no later than June 1, 2001. The Board identified for each agency required to provide an advisory opinion, the scope of that agency's review, and the issues on which the designated agency should render an advisory opinion. Such advisory opinions were submitted to the Board on or about July 2, 2001². Such advisory opinions are outlined below.

On September 5, 2001, after public notice, the EFSB conducted a hearing for the purpose of receiving public comment on ProvGas' application. The hearing was held at Middletown Town Hall, in Middletown, Rhode Island. At such hearing, ProvGas gave an opening statement outlining the Project, and public comment was heard.

On September 6, 2001, after public notice, the EFSB conducted a Final Hearing (“Final Hearing”). The purpose of the Final Hearing was to receive testimony and evidence regarding ProvGas’ application, and to address those issues raised in the advisory opinions, as outlined below. Jeffrey H. Gladstone, Esquire, on behalf of ProvGas, summarized the conclusions in the advisory opinions, and explained that the Project complies with the statutory standards by which an application must be judged as enumerated in the Energy Facility Siting Act (R.I. Gen. Laws § 42-98-1 et seq.). Public comment in support of the Project was provided by Keith W. Stokes, Executive Director of the Newport County Chamber of Commerce. ProvGas provided testimony from Charles Buckley, Senior Vice President of TransGas, Inc., an LNG transporter, and from Gary S. Munroe, Director of Systems Planning, in response to issues raised at the public hearing, and issues raised in the advisory opinions. Members of the Board directed questions to the witnesses and to Mr. Gladstone. ProvGas offered for admission the eight exhibits from the preliminary hearing, as well as two additional exhibits, all of which were admitted. Six advisory opinions were also admitted as exhibits. At the hearing, ProvGas, the public, and all other parties in the proceeding were provided the opportunity to address in a single forum, and from a consolidated, statewide perspective, the issues reviewed, and the recommendations made in the proceedings before those agencies who provided advisory opinions. After a review of the evidence, the Board approved the Project, subject to those conditions as outlined below, and subject to ProvGas returning on September 11, 2001, to provide the final costs of its lease with the Navy.

On September 11, 2001, the Board heard testimony from William E. Coyle, III regarding the value of the property on which ProvGas proposed to construct the transfer station. The Board was satisfied from Mr. Coyle’s testimony, and from the costs of the property transfer

² On May 8, 2001, ProvGas filed a Motion for Continuance, which was subsequently granted, extending the

as presented by Mr. Gladstone, that the Project is cost justified pursuant to R.I. Gen. Laws §42-98-11(B)(2). Additionally, Mr. Gladstone indicated that those concerns raised by the Board regarding the presence of functional warning systems at all railroad crossings were being addressed by ProvGas. Accordingly, the Board gave its final approval for the Project.

IV. THE ENERGY FACILITY SITING ACT

The Energy Facility Siting Act (“EFSA” or “Act”) consolidates in the Board, with two exceptions, all state and local governmental regulatory authority for the siting, construction or alteration of major energy facilities. Thus the Board 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 the siting, construction or alteration of a major energy facility in the state of Rhode Island.” R.I.G.L. § 42-98-7(A). A Board decision in favor of an application to site a major energy facility in Rhode Island “shall constitute a granting of all permits, licenses, variances or assents which under any law, rule, regulation or ordinance of the state or of a political subdivision thereof which would, absent [the EFSA] be required.” R.I.G.L. § 47-98-11(C).

Although the EFSB does consider and act upon each of the permits, licenses, variances and assents, the board does so in a comprehensive manner that is distinct in nature from the review that would be performed by the several agencies absent the EFSA. Whereas each such agency would review its respective permitting, licensing, variance or assent issues according to its own particular mandates or concerns, the Board evaluates all of such issues in a single and comprehensive decision based upon the “overall impact of the facilities upon the public health and safety, the environment and the economy of the state.” R.I.G.L. § 42-98-1(A).

Thus, the role of the Board is substantially distinct from, and more expansive than, a mere aggregation of the various agency processes that would occur absent the EFSA.

While the EFSA makes the Board the final licensing authority, an applicant for a Board license must still apply to all state and local government bodies for permits and licenses that would, absent the EFSA, be required. Instead of issuing a permit or license, however, the state or local agency must act at the direction of the Board and issue an advisory opinion to the EFSB regarding such permit or license. The Board has authority to designate “those agencies of state government and political subdivisions of the state which shall act at the discretion of the Board for the purpose of rendering advisory opinions.” R.I.G.L. § 42-98-9(A). Each such agency must follow “the procedures established by statute, ordinances, and/or regulation provided for determining the permit, license, assent or variance * * * [and] shall forward its findings from the proceeding, together with that record supporting the findings and a recommendation for final action, to the siting board.” R.I.G.L. § 42-98-7(A)(2). Such advisory opinions must be submitted to the Board not later than six months following designation by the Board of the agency that will render the advisory opinion, or within such lesser time as the EFSB specifies. R.I.G.L. § 42-98-10(A). The advisory opinions will be considered by the Board before it renders its final decision. A state or local governmental body which renders an advisory opinion to the Board as a designated agency may also intervene as a matter of right and participate in Board hearings. EFSB Rules of Practice and Procedure (“EFSB Rules”), Rule 1.10(a)(1).

In addition to those advisory opinions specifically authorized under R.I.G.L. § 42-98-7, § 42-98-9(B) and 42-98-10 from the agencies that, in the absence of the EFSA, would have permit, license or variance authority, the Board may require further advice from state and local

agencies in order to assist the Board in assessing the overall impact of a facility. The EFSA clearly envisions that the Board shall have the benefit of the full range of technical expertise available within other existing agencies in making its decisions. R.I.G.L. § 42-98-1(D). Accordingly, the Board may request the opinion of various agencies on matters in addition to those covered by specific permits, licenses, assents or variances that would be required absent the Act.

The primary discussion of issues to be considered in the review of a major energy facility application, and the designation of agencies to act at the Board's discretion, occur at the Board's preliminary hearing. Following the preliminary hearing, the Board issues a preliminary order establishing the agenda of issues for the Board's final hearings and designating agencies to act at the Board's discretion. Such agenda may be modified and additional agencies and issues may be designated and determined as needed. Rule 1.9(f). The advisory Opinions directed by this Preliminary Order and as requested by ProvGas' Request for Expedited Consideration must be submitted to the Board by June 1, 2001. Final Board hearings must begin not later than forty-five days after the date for submission of advisory opinions, whether or not such opinions are submitted. A hearing will be held in Middletown prior to the commencement of final hearings.

The purpose of the final hearing shall not be to rehear evidence presented in the hearings before designated agencies providing advisory opinions , but rather to provide the parties and the public the opportunity to address in a single forum, from a consolidated statewide perspective, the issues reviewed and the recommendations made by such agencies. R.I.G.L. § 42-98-11(A). The final hearing shall be concluded not more than sixty days after its initiation, and the Board shall issue its final decision sixty days after the conclusion of the final hearing. A final decision favoring the application shall constitute a granting of all required and jurisdictional

permits, licenses, variances and assents, and such final decision may be issued on any condition the Board deems warranted by the record. R.I.G.L. § 42-98-11(B) and C).

V. AGENCY ADVISORY OPINIONS

A. The Public Utilities Commission. In its Preliminary Order, and in accordance with R.I. Gen. Laws § 42-98-9(D), the EFSB directed the Rhode Island Public Utilities Commission Commission (“Commission”) to conduct an investigation (with the participation of the State Planning Council, the Governor’s Office of Energy Assistance and the Division), and to provide an advisory opinion as to the need for the proposed transfer station.

On June 6, 2001, the Division of Public Utilities and Carriers and the State Energy Office jointly filed comments with the Commission regarding the need for the Project. The Division represented that the comments and findings were based upon a “thorough investigation of [the Company’s] proposal including a careful review of the Company’s submissions relating to this proposal, substantial discovery, and numerous discussions with ProvGas personnel.” The Commission conducted a duly noticed public hearing on June 18, 2001 in which testimony was received from ProvGas and Division witnesses, and in which documentary evidence was presented. At an open meeting held on June 27, 2001, the Commission considered the evidence presented to determine whether the record supported a conclusion of the need for the Project, and found that such need is present. Accordingly, on July 2, 2001, the Commission issued its written advisory opinion finding, “after review and due deliberation of the evidence presented in this proceeding, that there is a need for the proposed LNG transfer station.” Exhibit EFSB 1 at p. 9.

In its advisory opinion, the Commission expressed its concern regarding the long-term economics of the proposed LNG facility with respect to the ability of ProvGas to provide

LNG storage at the site at some point in the future. At the time of the Commission hearings, a provision in the proposed grant of easement from the Navy to ProvGas appeared to bar the storage of LNG at the Project site. The Commission indicated in its advisory opinion that “ProvGas should use its best efforts to obtain the right to provide LNG storage at the site to improve the long-term economics and reliability of the investment.” Exhibit EFSB 1 at p. 8.

At the Final Hearing, Mr. Gladstone indicated that the Commission’s concerns have been adequately addressed because the latest version of the lease with the Navy specifically states that although no permanent storage of LNG is allowed under the terms of the lease, such prohibition does not preclude ProvGas from requesting storage under a separate governmental application and approval process at some point in the future. The Board also expressed concern that ProvGas make reasonable efforts to address the long-term supply needs of natural gas on Aquidneck Island. Accordingly, the Board recommended that ProvGas consult with city and town officials on Aquidneck Island and other appropriate state agencies to develop a long term strategy to supply natural gas to these island communities, and to report on their activities within a year of this order.

At the September 11, 2001 hearing, Mr. Gladstone explained that toward the end of August 2001, ProvGas became aware that the Navy wanted to renegotiate the cost of and terms of their agreement with ProvGas regarding use of Navy property. At the hearings before the Public Utilities Commission in June 2001, ProvGas had stated that the cost of the easement would be a one-time expense of approximately \$500,000. At the Final Hearing before this Board, Mr. Gladstone stated that the Navy wanted a lease agreement with ProvGas instead of an easement. The lease agreement with the Navy would be a one-time expense of approximately \$900,000. Mr. Gladstone argued that the case should not be remanded back to the Public

Utilities Commission. He stated the cost of any alternative project would greatly exceed the cost of the LNG facility on Navy's property. Furthermore, he noted that construction needed to begin immediately in order for the facility to be in place for the winter of 2001-2002.

2. The State Planning Council. In its Preliminary Order, and in accordance with R.I. Gen. Laws § 42-98-9, the EFSB directed the State Planning Council to conduct an investigation and render an advisory opinion as to the socioeconomic impact of the proposed facility and its construction and consistency with the State Guide Plan.

On May 10, 2001, the State Planning Council submitted its advisory opinion to the Board (Exhibit EFSB 2). The advisory opinion was prepared by the staff of the Statewide Planning Program, and was reviewed and approved by the State Planning Council. The State Planning Council found that ProvGas' proposal appears on balance to be beneficial to the socioeconomic fabric of Rhode Island by allowing the expansion of its energy infrastructure whereby expanding the potential use of natural gas to the residents. Exhibit EFSB 2 at p. 1. Additionally, the Planning Council found that ProvGas' proposal is in substantial conformance with the State Guide Plan. Id.

The Planning Council did recommend, however, that ProvGas submit a stormwater runoff management plan for both the construction and operational phases of the Project, and that ProvGas incorporate into the final facility design all technical recommendations of the U.S. Navy, and State and municipal fire officials regarding protection of surrounding land uses, particularly residences. At the Final Hearing, ProvGas offered, through the testimony of Gary S. Munroe, a Stormwater Management Plan, as prepared by Beta Engineering, Inc. (Exhibit ProvGas 10). ProvGas also confirmed its intentions to coordinate on matters of safety with Navy, State, and municipal fire officials.

3. Department of Environmental Management. In its Preliminary Order, the EFSB requested that DEM advise the Board whether DEM's preliminary comments of November 2, 2000, were addressed by ProvGas, and whether DEM has any final comments to the application.

On July 30, 2001, the DEM submitted its advisory opinion, which was admitted in the EFSB final hearing as Exhibit EFSB 3. In its advisory opinion, the DEM concluded that ProvGas addressed DEM's preliminary comments of November 2, 2000 adequately on all issues raised in those preliminary comments. Specifically, the DEM concluded that ProvGas adequately addressed its comments regarding waste management, air resources and water quality at the proposed LNG transfer station site at the former Derecktor Shipyard on Naval Station Newport in Middletown, Rhode Island.

4. Town of Middletown. In its Preliminary Order, the EFSB requested the Town of Middletown Town Council to supply its advisory opinion and its position on the proposed facility. The EFSB also requested the Town of Middletown Zoning Board of Review to supply its position on the proposed facility based on the standards and requirements contained in the Middletown Zoning Ordinances and the Town of Middletown Comprehensive Community Plan which, absent the act, would otherwise be required.

On March 12, 2001, a public hearing was held before the Middletown Town Council in which the Council received and reviewed the site plan submitted with ProvGas' application along with various reports and supporting data describing the proposed facility. In addition, testimony was received from James A. Grasso, Providence Gas Company's Vice President of Governmental Affairs; Gary S. Munroe, Providence Gas Company's Director of Systems Planning; and Charles Buckley, Senior Vice President of TransGas, Inc., an LNG

transporter. Based on the application, the site plan as presented and modified, the reports and analysis in support thereof, as well as the testimony of the witnesses presented at the public hearing, the Council endorsed and supported ProvGas' application for the construction and siting of an LNG transfer station in Middletown. Additionally, the Council concluded that the facility is in an area designated by the Town of Middletown Comprehensive Community Plan to be used for future industrial development; that the character of the surrounding area of the facility is predominantly industrial; that the proposed facility is compatible with the Comprehensive Community Plan of the Town of Middletown; that the facility will help ProvGas to supply all of Aquidneck Island's demand for natural gas on peak demand days; and that the facility is beneficial to the public, welfare, and convenience. Such conclusions were presented to the EFSB in an advisory opinion on June 13, 2001, admitted at the Final Hearing as Exhibit EFSB 4.

On May 24, 2001, the Town of Middletown Zoning Board of Review held a public hearing to consider ProvGas' application. During the public hearing, the Zoning Board received and reviewed the site plans, including modifications thereto, along with various reports and supporting data describing the proposed development. In addition, testimony was received from Gary S. Munroe, the Director of Systems Planning for ProvGas, Michael W. Desmond, a professional engineer/traffic expert with the firm of Bryant Associates, Inc., Charles P. Buckley, a Senior Vice President with TransGas, Inc., and J. Nathan Godfrey, a real estate expert with Newport Appraisal Group, LLC. Based on ProvGas' amended application, as presented and modified, the reports and analyses in support thereof, the plans and data submitted by ProvGas, as well as the testimony of the witnesses, the Zoning Board concluded that the proposed facility does not result in any diminution of property values in the surrounding area or district; that the proposed facility will be compatible with the Comprehensive Community Plan of the Town of

Middletown; that the supply of natural gas is currently insufficient to meet the projected demand on Aquidneck Island during peak demand period; that the proposed facility would enable ProvGas to meet Aquidneck Island's demand for natural gas on peak demand days; that the proposed facility is beneficial to the public welfare and convenience; and that the proposed facility and the trucking operations associated with the facility will not have an adverse impact on traffic safety. Accordingly, the Middletown Zoning Board of Review voted to endorse and approve ProvGas' proposed use of the 4.2 acres of land at a site formerly occupied by the Derecktor Shipyard as a liquefied natural gas transfer station. Such approval was submitted to the EFSB on July 31, 2001 in the form of an advisory opinion, admitted at the Final Hearing as Exhibit EFSB 5.

5. The Division of Public Utilities and Carriers Motor Carrier Section. In its Preliminary Order, the EFSB directed the Division of Public Utilities and Carriers to provide the Board with an advisory opinion regarding the existing regulatory oversight over trucking of the type used to transport LNG, including safety regulations governing such vehicles.

On July 2, 2001, the Division responded to the Board's request in the form of a letter (Exhibit EFSB 6). The Division first indicated that primary jurisdiction concerning the transportation of LNG resides with the United States Department of Transportation ("USDOT"). Accordingly, uniform national standards govern hazardous materials transportation. In other words, any transporter of LNG that ProvGas utilizes must be in compliance with all applicable federal safety regulations contained in Part 397 of Title 49 of the Code of Federal Regulations. The primary enforcement of such regulations, however, resides with the Rhode Island State Police, which has adopted the Federal Motor Carrier Safety Regulations in their entirety. The Division, along with the Rhode Island State Police, pursuant to these regulations, recommended

that the Board require ProvGas to utilize an LNG transportation company that currently maintains a satisfactory safety rating and that has done so for at least two (2) years as evidenced by USDOT records. Exhibit EFSB 6 at p. 3.

With respect to highway routing, the Division opined that States are permitted to designate highway routing requirements that enhance public safety in the area subject to state jurisdiction. Consistent with that delegated authority, the Division conducted an inspection of the transportation route designated in ProvGas' amended application. Accordingly, the Division recommended that any transportation company bringing LNG to the proposed facility should use Route 24 across the Massachusetts border proceeding south through the Towns of Tiverton and Portsmouth, and then exiting on to Route 114 and proceeding south through the Town of Middletown until reaching the access road to the United States Naval Station in Middletown. Accordingly, the Division recommended that the Board condition the grant of the license subject to the Board's designation of the above-specified route as the sole route for all trucking companies delivered in LNG to the proposed transfer station site. Exhibit EFSB at p. 3.

The Division also considered the routes that would likely be utilized for transporting LNG to the Derecktor site within the confines of Navy property. After a thorough review, the Division recommended that the Board insure that the LNG tankers cross the railroad at points that contain functional warning systems. Furthermore, the Division recommended that the Board require annual inspection and testing of any warning systems that will be relied upon by LNG transporters. Given the absence of gates at the railroad crossings, the Division also recommended that prior to a tanker truck crossing the railroad, ProvGas have a designated person (other than the truck driver) present at the crossing to conduct a visual inspection of the railroad tracks to insure that no trains or railroad devices are approaching. At the Final Hearing,

the Board directed questions to Mr. Buckley and Mr. Gladstone regarding the issues raised by the Division. The Board made it clear that the recommendations of the Division should be made conditions of the Board's final order, particularly with respect to railroad crossings by LNG transporters occurring only at points with functional warning systems. The Board also indicated that ProvGas should on an annual basis report to the Division of Public Utilities and Carriers, and Town of Middletown regarding all deliveries of LNG to the facility located on the Navy property indicating the day it was delivered and the amount of LNG delivered. At the September 11, 2001 hearing, Mr. Gladstone assured the Board that ProvGas had investigated the situation and that ProvGas would assure the activation of functional warning systems at all railroad crossings on the designated LNG route, and would also assure the continued maintenance of such warning systems.

VI. CONCLUSION

Given the conclusions provided in the advisory opinions, the testimony at the various EFSB hearings, and all of the evidence provided, the Board concludes: that the proposed Project is necessary to meet the needs of the State of Rhode Island and/or the region for energy; that the proposed Project is cost justified and can be expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed facility will be accomplished in compliance with all the requirements of the laws, rules, regulations, and ordinances, under which, absent R.I. Gen. Laws § 42-98-1 et seq., a permit, license, variance, or assent would be required; that the proposed Project will not cause unacceptable harm to the environment; that the proposed Project enhances

the socioeconomic fabric of the State of Rhode Island; and that the construction and operation of the proposed Project is consistent with the State Guide Plan.

Accordingly, it is hereby:

(48) **ORDERED**

1. The Board accepts all those above-mentioned advisory opinions.
2. The Board grants a license for the construction and operation of the Project.
3. Such license shall constitute a granting of all permits, licenses, variances, or assents which under any law, rule, regulation, or ordinance of the state or of a political subdivision thereof which would, absent § 42-98-1 et seq., be required for the proposed Project.
4. Such license shall be issued on the following conditions:
 - (a) ProvGas shall utilize an LNG transportation company that currently maintains a satisfactory safety rating with the USDOT Federal Motor Carrier Safety Administration, and that has done so for at least two (2) years as evidenced by USDOT records.
 - (b) Any transportation company bringing LNG to the proposed facility shall use Route 24 across the Massachusetts border proceeding south through the Towns of Tiverton and Portsmouth, and then exiting on to Route 114 and proceeding south through the Town of Middletown until reaching the access road to the United States Naval Station in Middletown. Deviation from such route shall not occur except in the event of unforeseen, exigent circumstances, whereupon the LNG transportation company shall obtain the prior approval of the Division for such deviation, or in the event that prior approval is not reasonable under the circumstances, the LNG transportation company shall notify the Division of such route deviation in writing within 48 hours.
 - (c) Any transportation company bringing LNG to the proposed facility shall cross the railroad on Navy property at points that contain functional warning systems. ProvGas shall make reasonable efforts to provide for functional warning systems at all such railroad crossings, and shall make reasonable efforts to ensure the continued maintenance thereof. The Division and the Navy shall

provide the final determination as to whether such reasonable efforts have been made. Prior to a tanker truck crossing the railroad, ProvGas or an LNG transporter shall have a designated person (other than the truck driver) present at the railroad crossing to conduct a visual inspection of the railroad tracks to ensure that no trains or railroad devices are approaching.

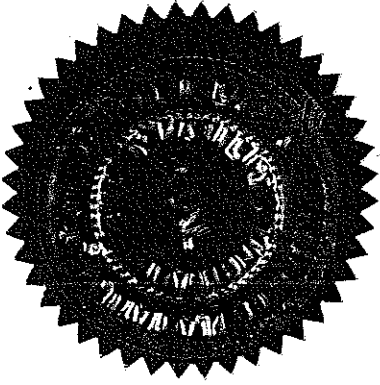
- (d) ProvGas shall incorporate into the final facility design all technical recommendations of the U.S. Navy, and State and municipal fire officials regarding protection of surrounding land uses, particularly residences.
- 5. The license holder shall respond promptly to any unforeseen adverse consequences of the facility's construction and operation, consistent with its commitment to be a "good neighbor".
- 6. ProvGas will consult with city and town officials on Aquidneck Island and other appropriate state agencies to develop a long-term strategy to supply natural gas to Aquidneck Island, and will report on their activities within a year of the date this order is issued.
- 7. ProvGas on an annual basis will report to the Division of Public Utilities and Carriers, and Town of Middletown listing all deliveries of LNG to the facility located on the Navy property, indicating the day it was delivered and the amount of LNG delivered.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND THIS 18th OF
SEPTEMBER, 2001.

ENERGY FACILITY SITING BOARD



ELIA GERMANI, CHAIRMAN





ROBERT K. GRIFFITH, MEMBER



JAN REITSMA, MEMBER