

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

IN RE: THE NARRAGANSETT ELECTRIC :
COMPANY – E-183 115 kV TRANSMISSION : DOCKET NO. SB-2003-01
LINE RELOCATION PROJECT :

REPORT AND ORDER

I. TRAVEL OF THE CASE

A. Introduction

On April 9, 2003, The Narragansett Electric Company (“Narragansett”) filed a Notice of Intent Application for modification of its E-183 115 kV Transmission Line (the “E-183 Line”) with the Energy Facility Siting Board (“EFSB” or “Board”) In its Application, Narragansett sought approval for the relocation of approximately 6200 feet of the E-183 Line pursuant to R.I.G.L. §§ 42-98-1 et seq. and Rule 1.6(f) of the Board’s Rules of Practice and Procedure (“EFSB Rules.”) Following Narragansett’s filing, Patrick C. Lynch, Rhode Island Attorney General, and the Cities of Providence and East Providence (collectively “Intervenors”) intervened in this proceeding.

B. The Board’s review under Rule 1.6(f)

Narragansett filed its application pursuant to Rule 1.6(f), which provides for an abbreviated application, a public hearing “in one or more of the cities or towns affected by [the] application” and a determination within sixty (60) days of the filing as to whether the project “may result in a significant impact on the environment or the public health, safety and welfare.” If the Board determines that a project may result in such an impact, it conducts a full review of the project as provided in its Rules. On the other hand, if it determines that the project will not result in a significant impact on the environment or the public health, safety and welfare, the

project does not constitute an “alteration” and the project may proceed without further EFSB review.

In conformity with Rules 1.6(f) and (g), the Board convened an evening hearing at the Vartan Gregorian School in Providence on June 11, 2003. At this hearing, nineteen (19) members of the public made statements and the Board heard testimony from two company engineers, David J. Beron, P.E. and David M. Campilii, P.E., and from Edmund T. Parker, Jr., P.E., Chief Engineer of RIDOT. The hearings continued at the offices of the Public Utilities Commission on July 10 and 15 with statements from additional members of the public and testimony by Messrs. Campilii and Parker and by Narragansett’s environmental witness, Susan Moberg of VHB. The Board held an evening hearing on August 5, 2003 in the East Providence City Hall to take additional statements from the public. On August 6, 2003 the EFSB conducted a final hearing at the PUC offices. At this hearing, two Narragansett witnesses, Ms. Moberg and William H. Bailey, Ph.D., testified.

At the end of the hearing on August 6, several of the Intervenors stated their intention to file motions to convert the proceedings to a full hearing. At the same time, the Intervenors sought to reserve their right to present witnesses and evidence if the Board denied their motions.

C. Procedural Stipulation

On September 30, 2003, the parties filed a Stipulation and Consent Order (“Procedural Stipulation”), which provided a framework for further proceedings in this case without converting it to a full proceeding. The Stipulation proposed that certain specified state and local agencies would be asked for written advisory opinions. According to the Procedural Stipulation, following receipt of the advisory opinions by the Board, the parties would file pre-filed testimony and the Board would conduct a final hearing on the Project.

The Board discussed the Procedural Stipulation at an open meeting on October 10, 2003 and determined that, with several minor modifications, the Procedural Stipulation was reasonable and should be approved.

Thus, in accordance with the Procedural Stipulation, the Board designated the following agencies to provide advisory opinions on the identified issues regarding the expected impacts of the Project:

- Rhode Island Department of Health – the potential public health effects relating to electromagnetic fields.
- Rhode Island Department of Environmental Management – the potential impact on the natural environment.
- Statewide Planning Program – planning and land use issues.
- Public Utilities Commission with the participation of Division of Public Utilities and Carriers and State Energy Office – alternatives (which shall include Narragansett’s proposal) including routes and configuration, verification of the reasonableness of the costs of constructing any of the alternatives, and safety issues related to alternatives.
- Providence Planning Board – whether the proposed land use would be consistent with its comprehensive plan.
- East Providence Planning Board – whether the proposed land use is consistent with its comprehensive plan.

We approved the Procedural Stipulation in Order No. 51 dated October 28, 2003 and requested that each of the designated agencies provide its advisory opinion by December 12, 2003.

On November 6, 2003, the PUC requested an extension of time until January 30, 2004 to submit its advisory opinion. Narragansett advised that it did not object to the extension and suggested that the extension be granted to all of the designated agencies. The Board considered the request and by Order No. 51A (November 14, 2003), we granted the extension.

Each of the designated agencies has filed an advisory opinion with the EFSB.

On February 26, 2004, the Attorney General pre-filed testimony of eight witnesses and on March 31, 2004, Narragansett also filed testimony of eight witnesses, including testimony from Ms. Moberg and Messrs. Beron and Campilii, all of whom had testified previously.

On April 8, Narragansett filed a motion and supporting memorandum seeking to strike certain of the pre-filed testimony of the Attorney General. Shortly thereafter the parties sought a postponement of our final hearings in order to discuss settlement of the case.

On May 25, 2004, the parties presented a settlement agreement (the “Settlement Agreement”) to us and on May 28, 2004 we conducted a hearing on the settlement agreement at which Narragansett provided two witnesses, Messrs. Beron and Parker.

At the conclusion of the hearing, the Board discussed the Settlement Agreement and approved it from the bench. This order approving the Settlement Agreement formalizes our findings and conclusions.

II. THE PROJECT

The E-183 Line extends 16.2 miles between Franklin Square Substation in Providence and the Brayton Point Power Station in Somerset, Massachusetts. The Project proposed by Narragansett was the relocation of approximately 6200 feet of the E-183 Line from the west bank of the Providence River, across the Providence River, India Point and the Seekonk River to the east bank of the Seekonk River in East Providence. The relocation of the E-183 Line between the east bank of Providence River and the west bank of the Seekonk River is necessitated by the Rhode Island Department of Transportation’s (“RIDOT”) plans to relocate I-195. Narragansett has also proposed to reconstruct the E-183 crossings of the Providence and Seekonk River because of the age, condition and configuration of the transmission structures at the river crossings.

The issues which the Board must determine in making its final decision are those specified in § 42-98-11(b) of the Siting Act which directs the Board to grant a license only after it determines:

1. Construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility.
2. The proposed facility 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 of the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter, a permit, license, variance, or assent would be required, or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver of some part of the requirements when compliance cannot be assured.
3. The proposed facility will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.

III. THE SETTLEMENT AGREEMENT

The Settlement Agreement, a copy of which is attached to this Order and incorporated herein, provides for the relocation of the E-183 Line in two phases. Narragansett will relocate the portion of the line between the east side of the Providence River and a new pole to be located southeasterly of the Radisson Hotel, near the west side of the Seekonk River on new overhead poles as Phase I. This relocation will enable RIDOT to continue with its I-195 relocation project without disruption. The ends of the relocated Phase I of the E-183 Line will be temporarily connected to the existing river crossings.

At the same time, the parties have agreed to work toward burying the line between Franklin Square substation on the west bank of the Providence River and the east bank of the Seekonk River in East Providence. Although the process for accomplishing this is spelled out in great detail in the Settlement Agreement, in summary the parties will agree on an alignment for an underground relocation, Narragansett will prepare a design and construction grade estimate,

the Attorney General will obtain clear and certain commitments of funding for the additional cost of the underground alignment and various parties will obtain and convey to Narragansett the property rights that are needed to construct the underground alignment.

The Settlement Agreement provides further that if the parties are unable to accomplish the burial of the E-183 Line as provided in the Settlement Agreement, because the Attorney General can not obtain sufficient and certain funding to bury the power lines then Narragansett will relocate Phase 2 using one of four overhead alignments, subject to our review.

At our May 28, 2004 hearing on the Settlement Agreement, Narragansett presented Mr. Beron who sponsored the Settlement Agreement and provided an overview of the terms of the agreement. Mr. Beron described generally the underground and overhead alternatives that are contained in the Settlement Agreement and described in detail the proposed underground alignment. He testified that the incremental cost of the underground alignment would not be paid by Narragansett customers and that the settlement was consistent with the advisory opinions of a number of the agencies which had preferred the underground alternative to Narragansett's overhead proposal.

Mr. Parker presented a letter from RIDOT Director Capaldi supporting the Settlement Agreement. Mr. Parker testified that the key element in the settlement was the separation of the relocation into two phases which would allow the I-195 relocation project to proceed on schedule. Finally, Andrew Dzykewicz of the Rhode Island Economic Development Corporation presented a letter from EDC Executive Director McMahon supporting the Settlement Agreement.

IV. FINDINGS

As noted above, the standard that governs our decision is specified in § 42-98-11(b) of the Siting Act. Generally, an applicant must demonstrate (i) a need for the proposed facility, (ii) that the proposed facility is cost justified and will comply with applicable laws and regulations and (iii) that the proposed facility “will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.”

A. Need for the Facility

Call The need for the relocation of the E-183 Line was one of the issues which we referred to the PUC. In its advisory opinion the Commission found, based on the testimony of the witnesses presented by Narragansett and the Division, that there is a need to relocate the E-183 Line between the Franklin Square substation in Providence and East Providence as proposed by Narragansett. In re: Issuance of Advisory Opinion to Energy Facility Siting Board Regarding Narragansett Electric Company’s Application to Relocate the E-183 Transmission Line Between Providence and East Providence, Docket No. 3564, Advisory Opinion, 42, 62 (Order No. 17690, January 22, 2004) [“PUC Advisory Opinion”].

B. Cost Justification of Proposed Facility

The PUC conducted an extensive analysis of the costs of the various alternatives for the E-183 relocation project. The Commission determined that Narragansett’s cost estimates for its overhead relocation were reliable and verifiable. PUC Advisory Opinion, at 52. However, it found that the design of and costs for various other alternatives were somewhat more problematic. Id. at 52-54. It also considered the suggestion that the cost of an underground alternative would be eligible for regional cost recovery and conducted a separate hearing to consider this issue. Its conclusion was that there was no guarantee that the incremental cost of

constructing the project underground would be paid by regional rate payers. Id. 54-56. It concluded that “Narragansett’s proposed overhead configuration represents the most reasonable cost alternative to provide adequate, safe and reliable service to the region”. Id. at 62.

As Mr. Beron testified, the Settlement Agreement provides for the payment of the incremental cost of the construction of the underground alternative by parties other than Narragansett customers. As a result, we find that the facility is cost justified whether it is constructed overhead with substantial funding from RIDOT as proposed or underground with funding to be provided by third parties as anticipated in the Settlement Agreement. Regardless, as agreed to by counsel for the Attorney General at the hearing, Narragansett Electric ratepayer funds will not be utilized for burial of the power lines in this project unless it is approved by the Commission, FERC or mandated by the R.I. General Assembly.¹

C. Environmental and Socio-economic Impact of the Project

The issue of the environmental and socio-economic impact of the project was a major issue during the Board’s hearings in 2003. As noted above we asked the Departments of Health and Environmental Management, the Statewide Planning Program and the Providence and East Providence Planning Boards to comment on the environmental and socio-economic impact of the proposed project.

1. Department of Health Advisory Opinion

The Department of Health reviewed the research related to the impact of electric and magnetic fields on human health which was presented as Appendix B

¹ Tr. 5/28/04, p. 53

to Narragansett's filing with the Board. The department reached the following conclusions related to the proposed overhead relocation:

- Relocation of the transmission lines will reduce both electric and magnetic field exposures to transient populations visiting India Point Park and other commercial or industrial properties in the immediate area, which is in keeping with the NIEHS recommendation of "passive regulatory action".
- Residential areas are far enough away from the transmission line so as not to result in any significant magnetic field exposure to residents.
- Children playing in the playground or on the soccer field will not incur additional magnetic field exposure that will result in public health risks when compared to the level of concern presented by IARC. Department of Health Advisory Opinion at 3-4 (January 28, 2004).

The Department of Health was not asked to comment on the underground alternatives and did not do so.

2. Department of Environmental Management

The Department of Environmental Management commented on the impact of the overhead relocation on aesthetic and recreational resources, air quality, water quality and biological resources. It determined that the project as proposed "would have a negative impact on the aesthetic value and consequently the recreational value of India Point Park and Bold Point Park and the Providence and Seekonk Rivers." It urged that the transmission line be buried as part of the relocation project.

3. Statewide Planning Program

The Statewide Planning Program and State Planning Council conducted an extensive review of the project and concluded that “since the proposed project (above-ground relocation of the power lines) is, in effect, a ‘replacement in-kind’ of an existing facility, the project cannot be found to explicitly conflict with the State Guide Plan’s goals and policies, nor can the undergrounding of the lines be said to be specifically required by any recommendation in the Guide Plan.” It noted that, as proposed, there would be fewer transmission structures and some would be lower than the existing structures. It concluded that the project

to a limited extent [would] improve aesthetics and offer some enhancement to scenic view corridors. However, since the transmission corridor and its structures will continue to traverse the waterfront areas of both communities and India Point Park, the proposed project can, at best, be found to be only minimally consistent with the State Guide Plan.

The State Planning Council concluded that “burial of the power lines [would be] most consistent with good planning practice” and it encouraged the Board to “consider and encourage feasible and prudent means to effect an undergrounding alternative as being supportive of the State Guide Plan.”

4. Providence Planning Board

By letter dated January 29, 2004 the Providence Planning Board advised the EFSB that the proposed project is inconsistent with the Providence Comprehensive Plan and recommended that the E-183 Line be relocated “underground, in the highway embankment, or under the new bridges or a combination of these locations.”

5. East Providence Planning Board

By letter dated January 9, 2004 the East Providence Planning Board advised that it had determined that the project as proposed was inconsistent with the East Providence Comprehensive Plan and would hinder future development of the waterfront. It stated that the City of East Providence preferred that the line be relocated underground.

6. Discussion

The relocation of the E-183 Line is needed and will enhance the socio-economic fabric of the state by allowing (i) the relocation of I-195 as planned by RIDOT and (ii) the continued use of the E-183 Line for the transmission of electricity.

At the same time, a number of the agencies recommended that we require that Narragansett adopt the underground alternative. By entering into the Settlement Agreement, Narragansett and the other parties have agreed that the E-183 Line will be relocated underground unless it is determined that this is not feasible. For instance, the proposal that the lines be buried would not be feasible if the Attorney General was not able to obtain certain and sufficient funding by January 15, 2005, to cover the incremental cost of burying the power lines. In the event that Narragansett were to make a determination that burial is not feasible, it must provide a report to the Board and, after an opportunity for objections from the other parties, the Board will implement Section II-J of the Settlement Agreement.

7. Conclusion

Based on the advisory opinions and other evidence presented to us, we find that using the alignments as provided in the Settlement Agreement will enhance the socio-economic fabric of the state and minimize the impact on the environment.

V. CONCLUSION

During the hearing on May 28, we expressed an interest in being apprised of the progress that Narragansett and the other parties are making in fulfilling the tasks and agreements contained in the Settlement Agreement. We direct that Narragansett and each of the other parties provide a quarterly report to us on their progress under the Settlement Agreement until construction of Phase II commences. Such reports shall be filed with the Board within 15 days of the end of each calendar quarter commencing on January 15, 2005.

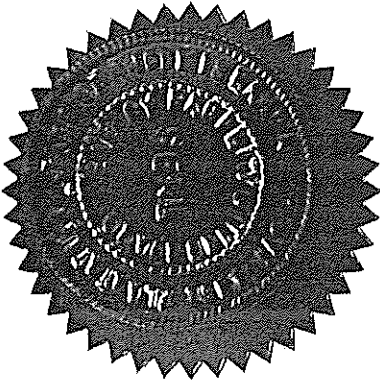
Accordingly, it is hereby:

(Order Number 54) ORDERED:

The Settlement Agreement dated May 25, 2004 is approved with the direction that the parties provide quarterly reports to the Board as discussed in §V above.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND, this the 27th day

of October, 2004.



ENERGY FACILITY SITING BOARD

Elia Germani

Elia Germani, Chairman

Robert K. Griffith, Jr.

Robert K. Griffith, Jr.

Frederick H. Vincent

Frederick H. Vincent