

RIPUC DOCKET NO. 3731

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS ENERGY FACILITY SITING BOARD

IN RE: The Application of Narragansett Electric
Company d/b/a National Grid, Southern Rhode
Island Transmission Project

Docket SB-2005-1

NOTICE OF DESIGNATION TO AN AGENCY TO RENDER AN ADVISORY OPINION

In the enclosed order, the Public Utilities Commission has been designated as an agency of the State of Rhode Island which shall act at the direction of the Energy Facility Siting Board in reviewing an application of the Narragansett Electric Company d/b/a National Grid (the Applicant) to construct and alter major transmission lines and facilities in the municipalities of Warwick, East Greenwich, North Kingstown, Exeter, South Kingstown and Charlestown.

As a "Designated Agency" the Public Utilities Commission is required to render an advisory opinion to the Energy Facility Siting Board as described in the enclosed Preliminary Order in Docket Number SB-2005-1, dated March 3rd, 2006, pursuant to authority granted by the Energy Facility Siting Act, Rhode Island General Laws 42-98-1 et seq., specifically, Sections 9(a) and 10 of that Act.

The Board requests that your agency review Narragansett's application which the Applicant will ship you separately, any information that may be provided by the Intervenor relative thereto, and to provide a written advisory opinion as described in the enclosed Preliminary Order to the Board by the date listed below. Each Designated Agency may, and shall at the direction of the Board's Chair, make a witness available to sponsor and be examined on its advisory opinion at the hearing to be scheduled and held following the due date. The advisory opinion is to be rendered, to the extent possible, using procedures that you would follow absent designation by the Siting Board.

Advisory Opinions must be submitted to the Energy Facility Siting Board, 89 Jefferson Boulevard, Warwick, Rhode Island, on or before September 5th, 2006. If an advisory opinion is not submitted by that date, the Energy Facility Siting Act provides that the agency's right to exercise this function is forfeited to the Board.

A certified copy of the Siting Board's Preliminary Decision and Order is enclosed. Should you have any questions or if I may help you in any way, please call me at 780-2157.

Energy Facility Siting Board

Douglas W. Hartley
Coordinator
March 3rd, 2006

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

In re The Narragansett Electric :
Company (Southern Rhode Island :
Transmission Project) :

Docket No. SB-2005-01

PRELIMINARY DECISION AND ORDER

I. INTRODUCTION

On November 18, 2005, The Narragansett Electric Company d/b/a National Grid, a Rhode Island corporation and franchised public utility (“Narragansett” or the “Company”), filed with the Energy Facility Siting Board (“EFSB” or the “Board”) an application to construct and alter major energy facilities. Narragansett proposes to construct a new 115 kilovolt (kV) transmission line and 115 kV tap lines, reconductor existing 115 kV transmission lines, construct a new 115–12.47 kV substation and expand and modify an existing substation (collectively the “Project.”) The application was docketed on December 14, 2005 and, after public notice, a preliminary hearing was held on February 2, 2006.

The purpose of the preliminary hearing was to determine the issues to be considered by the Board in evaluating the application and to designate those state and local agencies that will act at the direction of the Board for the purpose of rendering advisory opinions on such issues, to consider petitions for intervention and to determine other matters relevant to the issuance of a preliminary decision in this proceeding. The following counsel entered appearances at the preliminary hearing:

For Narragansett:

Peter V. Lacouture, Esq.
Nixon Peabody LLP

Paige Graening, Esq.
National Grid

For Attorney General Patrick C. Lynch: Paul J. Roberti, Esq.
Office of Rhode Island Attorney General
Patrick C. Lynch

For the Division: Leo Wold, Esq.
Office of Rhode Island Attorney General
Patrick C. Lynch

For the Town of North Kingstown: W. Mark Russo, Esq.
Ferrucci Russo P.C.

For the Town of South Kingstown: Nancy E. Letendre, Esq.
Ursillo Teitz & Ritch, Ltd.

For the Board: Steven Frias, Esq.

II. TESTIMONY AT PRELIMINARY HEARING

Narragansett presented two witnesses at the preliminary hearing. The first, Michael F. Ryan, its Executive Vice President for Business Services and Public Affairs, introduced the Project to the Board, sponsored Narragansett's application (National Grid Ex. 1-4) and presented a general, non-technical overview of the Project. The second witness, David J. Beron, National Grid Project Manager, was called at the behest of counsel for the Town of North Kingstown to explain the steps taken by Narragansett, to date, to analyze alternative substation site locations. Mr. Beron also addressed Project related questions from Board members and other counsel.

III. THE FACILITY

Narragansett proposes to construct and alter 115 kV transmission lines which, under § 42-98-3(d) of the Energy Facility Siting Act, constitute major energy facilities. In the past, we have interpreted the definition of "major energy facility" in a case involving a power plant "to include not only actual generating facilities but also ancillary facilities integral and dedicated to the energy generating process." In re The Narragansett Electric Company and New England

Power Company (Manchester Street Station Repowering Project), Docket No. SB-89-1, Final Report and Order, p. 14 (Order No. 12, December 17, 1990). In this case the proposed Tower Hill Substation and the upgrade to the existing West Kingston Substation constitute “ancillary facilities integral and dedicated” to the transmission of electricity at 115 kV. As a result, the entire project is subject to the Board’s jurisdiction under § 42-98-4.

The proposed transmission system improvements are listed in Table 2-1 and described in Section 4 of Narragansett’s Environmental Report for the Project (the “ER”.) The Project components, lengths and affected municipalities are described below.

A. Reconductor 5.3 miles of the existing L-190 115 kV transmission line.

Narragansett proposes to reconductor the 5.3 miles of the existing L-190 transmission line between the Kent County Substation and the Old Baptist Road Tap Point, in Warwick, East Greenwich and North Kingstown. Reconductoring is the replacement of the existing conductors or wires with larger conductors which can carry more power. Narragansett reports that it will also replace some existing pole structures as part of reconductoring. The voltage of the transmission lines will not change. Two miles of this line consist of single-circuit, primarily wood pole, structures. The existing single-circuit wood structures will be replaced as part of the reconductoring to provide the required strength and clearances for the new, larger conductors. The rest of the L-190 line (3.3 miles) consists of double-circuit steel structures which are adequate to support the new conductors and therefore will not be replaced.

B. Construct a new 12.3 mile extension of the L-190 115 kV transmission line.

Narragansett proposes to build a 12.3 mile extension of the L-190 115 kV transmission line from its existing southern terminus at the Old Baptist Road Tap Point to the existing West

Kingston Substation, in the towns of East Greenwich, North Kingstown, Exeter and South Kingstown.

This new line will be constructed within the existing right-of-way (“ROW”), west of and adjacent to the existing lines on the ROW, primarily with single-shaft steel pole davit arm structures. Narragansett estimates that a total of 148 structures will be required for this new line extension. Depending on the width and cleared area of the ROW, it will be necessary to clear between 34 and 65 feet, leaving an uncleared area ranging from 55 to 127 feet wide at the west edge of the ROW (Figures 4-3 and 4-4).

C. Reconductor 4.3 miles of the existing 1870N 115 kV transmission line.

Narragansett proposes to reconductor its 1870N 115 kV transmission line between the West Kingston Substation and the Kenyon Substation, in South Kingstown and Charlestown. This line was constructed of wood pole structures, primarily H-frame structures, approximately 40 years ago. As a result, Narragansett will replace most of the existing structures to provide both the required strength and ground clearances for the new conductors.

D. Reconductor 3.9 miles of the existing 1870 115 kV transmission line.

The fourth component of the Project is the reconductoring of the existing 1870 115 kV transmission line between the Kenyon Substation and the Wood River Substation, in Charlestown. This line is primarily constructed of wood pole H-frame structures, and Narragansett estimates that 45 of the 49 structures will be replaced as part of the Project.

E. Expansion and modifications at West Kingston Substation.

As part of the Project, the West Kingston Substation will become the southern terminus of the L-190 transmission line. In order to accommodate this new line, Narragansett proposes to upgrade and expand the existing substation. The site currently consists of two separate fenced

areas which will be combined. New equipment including circuit breakers and disconnect switches will be installed in the upgraded substation.

F. New Tower Hill Substation and 115 kV Tap Lines.

Narragansett proposes to construct a new 115-12.47 kV low profile station on property owned by it on Tower Hill Road in North Kingstown. The substation equipment will be contained within a fenced area of approximately 150 feet by 255 feet. The 12.47 kV distribution feeders will be installed underground along the substation driveway to Tower Hill Road.

The proposed substation will be connected to the existing 115 kV transmission line with two new 115 kV transmission tap lines, each approximately 0.75 miles in length. These lines will be constructed along an existing ROW which contains a 34.5 kV subtransmission line. Narragansett proposes to construct each of the tap lines on single shaft steel pole davit arm structures and estimates that seven structures will be required to support each of the new tap lines.

IV. THE ENERGY FACILITY SITING ACT (The “Act”)

The Act consolidates in the Board, with two exceptions,¹ state and local governmental regulatory authority for the siting, construction or alteration of major energy facilities, including transmission lines of 69 kV or over as set forth in § 42-98-7. 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 siting, construction or alteration of a major energy facility in the state.” § 42-98-7(a)(1). A Board decision in favor of an application to site a major energy facility in Rhode Island “shall constitute

¹ Certain licenses and permits issued by the Department of Environmental Management and the Coastal Resources Management Council are exempt from Board authority. R.I. Gen. Laws § 42-98-7(a)(3).

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 would, absent [the Act], be required for the proposed facility.” R.I.Gen.Laws § 47-98-11(c).

Although the Board does consider and act upon each of such permits, licenses, variances and assents, the Board does so in a comprehensive manner which is distinct in nature from the review that would be performed by the several agencies absent the Act. Whereas each such agency would review its respective permitting, licensing, variance or assent issues according to its own particular mandates and concerns, the Board will evaluate all of such issues in a single and comprehensive decision that considers “the need for [the] facilities in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state.” R.I.Gen.Laws § 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 Act.

While the Act makes the Board the final licensing authority, an applicant for a Board license must still apply to all state and local governmental bodies for permits and licenses that would, absent the Act, 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 Board 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 direction of the board for the purpose of rendering advisory opinions on these issues. . . .” R.I.Gen.Laws § 42-98-9(a). Each such agency must follow “the procedures established by statute, ordinance, and/or regulation provided for determining the permit, license, assent, or variance . . . [and] shall forward its findings from the proceeding, together with the record supporting the findings and a

recommendation for final action, to the siting board.” R.I.Gen.Laws § 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 Board specifies. R.I.Gen.Laws § 42-98-10(a). Such 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 Rule”) 1.10(a)(1). In addition to those advisory opinions specifically authorized under R.I. Gen. Laws § 42-98-9 from agencies that, in the absence of the Act, would have permit, license, assent 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. In particular, §§ 42-98-9(d) and (e) provide for advisory opinions from the Public Utilities Commission (“PUC”) and the statewide planning program.² Due to the comprehensive nature of the ultimate issue facing the Board, the Board will often require expertise beyond the scope of those issues raised in the particular permit and license reviews at the agency level. The Act envisions that the Board shall have the benefit of the full range of technical expertise available within other existing agencies in making its decisions. Accordingly, the Board may request the opinion of various agencies on matters in addition to those issues covered by the specific permits, licenses, assents or variances that would be required in the absence of the Act.

² R.I.Gen.Laws §§42-98-9(d) refers to the division of planning and the governor’s office of energy assistance which are now the statewide planning program and the state energy office, respectively. The latter names will be used in this Order.

The primary discussion of issues to be considered in the review of a major energy facility alteration application, and the designation of agencies to act at the Board's direction, occur as the result of the Board's preliminary hearing. Following such 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 direction.

A maximum of six months is provided in § 42-98-10 (a) for filing advisory opinions. Thus advisory opinions shall be filed by September 5th, 2006. Final Board hearings must begin not later than forty-five (45) days after the date for submission of advisory opinions, whether or not such opinions are submitted. Final hearings regarding the instant application have not yet been scheduled, but should begin no later than October 20th, 2006.

The purpose of the final hearing is not to rehear evidence presented in hearings before designated agencies providing advisory opinions, but rather to provide the parties and the public the opportunity to address in a single forum, and from a consolidated, statewide perspective, the issues reviewed and the recommendations made by such agencies. The Board at this hearing may, at its discretion, allow the presentation of new evidence by any party as to the issues considered by the agencies designated under § 42-98-9. The Board may limit the presentation of repetitive or cumulative evidence. The Act requires that the final hearing be concluded not more than sixty (60) days after its initiation, and that the Board issue its final decision within sixty (60) days after the conclusion of such 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. Gen. Laws §§ 42-98-11(b) and (c).

V. ISSUES TO BE CONSIDERED AT FINAL HEARING

The issues that will be decided by the Board in evaluating Narragansett's application were initially considered at the preliminary hearing. This Preliminary Order sets forth the Board's initial decision on such issues, and also directs certain agencies to act thereon at the direction of the Board. R.I. Gen. Laws § 42-98-9(a). The Board may, however, at a later time determine additional issues to be considered as the need arises. EFSB Rule 1.9(f). In determining the following issues to be decided during final hearings, the Board has considered the mandatory issues established by the Act, the licenses, permits, assents or variances that would be required absent the Act, the statutory standards for granting a Board license, the filing by Narragansett and the comments of interested parties.

ISSUE 1: Is the proposed Alteration necessary to meet the needs of the state and/or region for energy? R.I. Gen. Laws § 42-98-11(b)(1).

The PUC, with participation of the Division of Public Utilities and Carriers, the State Energy Office and the Statewide Planning Program, shall render a single advisory opinion as to the need for the Project, as required by § 42-98-9(d). Such opinion shall specifically consider the need for the Project based upon the projected cost of the Project, as also discussed in Issue 2A, below. The PUC shall also expressly consider the reliability of the transmission system in the area and region to be served in determining the need for the Project.

ISSUE 2: Is the proposed Project cost-justified, and can it 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 this Chapter, a permit, license, variance, or assent will be required, or that consideration of the public health, safety, welfare, security and need for the proposed Project justifies a waiver of some requirements when compliance therewith cannot be assured? R.I.Gen.Laws § 42-98-11(b)(2).

The foregoing is a broad and far-reaching issue focused more on generation than transmission. It can, however, be adapted to transmission lines and ancillary facilities and is broken down into subsidiary issues regarding cost-justification, compliance with law and waiver of certain requirements.

ISSUE 2A: Is the Project cost-justified?

The issue of whether the Project will allow the transmission of energy at the lowest reasonable cost to the consumer is one which shall be included within the advisory opinion of the PUC referenced above in Issue 1. The evaluation of the need for the Project will expressly include a determination of the reasonableness of the cost of the Project.

Such opinion of the PUC shall specifically analyze the cost impact of the Project and shall examine the economics of reasonable alternatives to the various components of the Project, including those proposed by Narragansett.

ISSUE 2B: Will the Project comply with laws applicable absent the Act? R.I. Gen. Laws § 42-98-11(b)(2).

The Board will consider whether the Project is able “to meet the requirements of the laws, rules, regulations and ordinances under which, absent [the Act], Narragansett would be required to obtain a permit, license, variance or assent.” R.I.Gen.Laws § 42-98-9(b).

Narragansett has offered its position as to which permits, licenses, variances, or assents would be so required. The Board shall require an advisory opinion as to this Issue from each of those

agencies that, absent the Act, would have authority to decide whether the Project would in fact meet the requirements of such applicable laws, rules, regulations, and ordinances. The specific advisory opinions in this regard are set forth below in Section VII(A).

ISSUE 2C: Would a waiver from certain laws be justified? R.I. Gen. Laws § 42-98-11(b)(2).

In the event that the Board decides that the construction and operation of the Project could not be accomplished in compliance with the laws, rules, regulations, and ordinances under which, absent the Act, a permit, license, variance or assent would be required, the Board will decide whether the overall benefits of the Project justify a waiver from any such requirements subject to the Board's jurisdiction.

ISSUE 3: Will the proposed Project cause unacceptable harm to the environment? R.I. Gen. Laws § 42-98-11(b)(3).

This issue goes to the heart of the Board's analysis of the overall impact of the Project, and involves many specific and subsidiary environmental issues. (Narr. Elec., EFSB 93-1, Pre. Order, p. 14). The Board will address potential environmental impacts of the Project in a complete and comprehensive analysis, and will involve the comments and input of all parties to this proceeding.

The Board interprets the phrase "harm to the environment" broadly, to include individual and cumulative environmental impacts including, but not limited to, impacts upon air quality, water quality, aquatic life, groundwater quality, wetlands, noise impacts, visual and cultural impacts, solid waste disposal impacts, and wastewater disposal caused by the construction and operation of the Project, including land and water transportation, traffic, and fuel and materials handling. (Narr. Elec., EFSB 93-1, Pre. Order, p. 14). The Board will address all of these concerns within Issue 3.

As was the case for Issue 2A concerning cost justification, the Board shall consider all reasonable alternatives to the various components of the Project, including those proposed by Narragansett, in evaluating whether the Project would cause unacceptable harm to the environment. R.I.Gen.Laws §§ 42-98-11(b)(3) and 42-98-8(a)(7). The Board shall review the rationale of Narragansett in selecting the particular facility type and location. Although the Board has in the past held that “in contrast to a planning body, the Board would consider applications and approve or disapprove licenses for specific energy facilities” (Ocean State Power, EFSB 87-1, Final Order, p. 9), the Board’s statutory duty to determine that the Project will not cause unacceptable harm to the environment includes analysis of the reasonable alternatives. See, AES Order, p. 19.

ISSUE 4: Will the proposed facility enhance the socio-economic fabric of the state?
R.I.Gen.Laws § 42-98-11(b)(3).

The Board shall consider, and the Statewide Planning Program and the State Planning Council shall conduct an investigation and render an opinion as to the impact of the construction and operation of the Project upon the socio-economic fabric of the State. R.I.Gen.Laws §§ 42-98-9(e) and 42-98-11(b)(3). This Issue shall include economic and reliability benefits to the local population and economy, employment benefits, and tax benefits to the towns and the State.

In addition, the term "socio-economic" includes land use and incorporates the study of alternatives, including alternative sites pursuant to R.I. Gen. Laws § 42-98-8(a)(7). Thus, Designated Agencies and the Board shall consider all reasonable alternatives to the various components of the Project, including those proposed by Narragansett.

ISSUE 5: Is the construction and operation of the Project consistent with the State Guide Plan? R.I. Gen. Laws § 42-98-9(e).

The Board shall consider whether the construction and operation of the Project is consistent with the state guide plan and the Statewide Planning Program and State Planning Council shall render an advisory opinion on this issue.

VI. EXEMPT LICENSES

The Board finds the following Department of Environmental Management (“DEM”) permits and licenses to be exempt from its jurisdiction (Act at § 42-98-7(a)):

- Freshwater wetlands alteration permits issued pursuant to the Freshwater Wetlands Act. R.I. Gen. Laws § 2-1-18, et seq.
- Water quality certification authority delegated to DEM by the Environmental Protection Agency pursuant to the Clean Water Act. R.I. Gen. Laws § 46-12-1, et seq.
- Stormwater Construction Discharges. Rhode Island Pollution Discharge Elimination System permit for point source discharge is issued by authority delegated to DEM by the Environmental Protection Agency pursuant to the Clean Water Act. 33 U.S.C. § 1251, et seq.

VII. ADVISORY OPINIONS

A. Jurisdictional Agencies

The following agencies and subdivisions of state and local governments which, absent the Act, would have authority to act upon permits, licenses, assents or variances required for the Project (the “Designated Agencies”), shall act at the direction of the Board in issuing the advisory opinions designated below. A Designated Agency shall, to the extent possible, render its advisory opinion pursuant to procedures that would be followed absent the Act and such advisory opinion shall conform to the extent possible to the provisions of the Rhode Island Administrative Procedure Act, R.I. Gen. Laws, Title 42, Chapter 35 (the “APA”), regarding Decisions and Orders. EFSB Rule 1.11(a). The Designated Agency shall, however, render an

advisory opinion to the Board regarding the issuance of the license or permit, rather than a final decision. Unless otherwise provided, if the Designated Agency does not issue its advisory opinion within six (6) months after its designation by the Board (i.e., by September 5th, 2006), the right to render an opinion shall be forfeited. R.I. Gen. Laws § 42-98-10(a). While all of the Advisory Opinions are due at the same time, we urge local agencies to act promptly so that the Statewide Planning Program and State Planning Council may have the benefit of their input in formulating their Advisory Opinion.

The Designated Agencies and their respective Advisory Opinions are as follows:

i. North Kingstown, Exeter and Charlestown Zoning Boards of Review

The North Kingstown, Exeter and Charlestown Zoning Boards of Review shall each render an advisory opinion as to whether the Project would meet the requirements of the respective zoning ordinances, and whether any required special use permit or variance should be granted (Issue 2B.) Narragansett indicates that following the issuance of this Order, it will file applications for a special use permit and use variance in North Kingstown³, a special use permit and dimensional variance in Exeter and a dimensional variance in Charlestown.

ii. East Greenwich and North Kingstown Building Inspectors

The East Greenwich and North Kingstown Building Inspectors shall each render an advisory opinion as to (i) whether the work proposed in the municipality and Narragansett's Erosion and Sediment Control Plan would conform to the municipality's Erosion and Sediment Control Ordinance, and (ii) whether the proposed facilities would meet the requirements of the applicable municipal ordinances (Issue 2B.)

³ As a preliminary step before zoning board review, Narragansett will also submit to Development Plan Review by the North Kingstown Planning Commission.

iii. Warwick, Exeter, South Kingstown and Charlestown Building Inspectors

The Warwick, Exeter, South Kingstown and Charlestown Building Inspectors shall each render an advisory opinion as to whether the proposed facilities would meet the requirements of the applicable municipal ordinances (Issue 2B.)

iv. Rhode Island Historical Preservation & Heritage Commission

The Rhode Island Historical Preservation & Heritage Commission shall render an advisory opinion as to whether the Project would be subject to its jurisdiction and, if so, whether the Project would conform with requirements relevant thereto, and whether any required approval or exception should be granted (Issue 2B.)

v. Rhode Island Department of Transportation (“RIDOT”)

Pursuant to Issue 3, RIDOT shall render an advisory opinion as to whether a Utility Permit (see R.I. Gen. Laws § 24-8-1 and § 24-10-1), Physical Alteration Permit (see R.I. Gen. Laws § 24-8-1), or any other RIDOT permits are required and should be issued for the Project, including the construction of transmission lines across state roads or highways. Such advisory opinion should specifically consider the potential impacts upon traffic associated with the project during construction (Issues 2B and 3.) RIDOT shall also address in its advisory opinion (i) the availability of RIDOT property in the Route 4 – West Allenton Road area as an alternative to the Tower Hill site for Narragansett’s proposed substation and (ii) any restrictions on or safety concerns with access from Route 4 to the site identified by the Town of North Kingstown and discussed in § 5.7.3.6 of Narragansett’s ER.

B. Non-Jurisdictional Agencies

As discussed above, the Board has both the obligation and authority to request further advisory opinions from agencies other than those that, absent the Act, would have some

specific authority over the Project. In addition to the mandatory opinions required by the Act, the Board in its discretion is also requesting informational advisory opinions from several of the agencies listed below for which there are no applicable license, permit, assent or variance proceedings required for the Project.

In the absence of such a proceeding conducted in accordance with the APA, the Board requests that each such agency prepare to have a representative appear at the final hearing of the Board to sponsor the informational advisory opinion, as well as to sponsor and enter into evidence any information outside of the record of this docket that is relied upon in the advisory opinion. At such time, Narragansett, the Board, and other interested parties would have the opportunity to cross examine such sponsor on the advisory opinion.

For each such non-jurisdictional advisory opinion, the subject agency shall request, and Narragansett shall provide, any information or evidence deemed necessary to support the subject opinion. Narragansett shall provide information in a timely manner, and shall remain responsible for seeing that the information provided to the Board and the various agencies remains up to date.

i. Public Utilities Commission

The PUC is requested to render an advisory opinion on Issues 1 and 2A as discussed above.

ii. The Statewide Planning Program and State Planning Council

As discussed above, the Statewide Planning Program and State Planning Council shall conduct an investigation and render an advisory opinion regarding Issues 4 and 5, as required by § 42-98-9(e). These agencies should also address any state and local tax benefits that would result from the Project.

iii. Department of Health (“DOH”)

The DOH is requested to render an informational advisory opinion on the potential public health concerns relating to biological responses to power frequency electric and magnetic fields associated with the operation of the Project. In particular, it should review and comment on the report from Exponent (Appendix C to Narragansett’s Environmental Report).

iv. North Kingstown Town Council

The town council is requested to render an informational advisory opinion on alternate sites, including but not limited to the zoning and land use restrictions which Narragansett cites with respect to the Indian Corner Road and Route 4 Town Well Site alternatives to the Tower Hill Road substation site (§§5.7.3.3 and 5.7.3.6 of the ER.)

v. North Kingstown Department of Water Supply (“DWS”)

DWS is requested to render an informational advisory opinion on (i) any regulatory constraints, and (ii) alternate sites, including but not limited to the implications of locating a proposed electric substation in close proximity to the Town public water supply wells as suggested in two of the alternative sites studied by Narragansett (Oak Hill Road Town Well Site and Route 4 Town Well Site, ER §§ 5.7.3.5 and 5.7.3.6.)

vi. South Kingstown Town Council and Director of Planning

The Town Council and Director of Planning are requested to render an advisory opinion as to the applicability of the Groundwater Protection Overlay District to the Project and the impact of the Project on wetlands and residential subdivisions.

vii. RIDEM Division of Freshwater Wetlands (“FWW”)

FWW is requested to render an informational advisory opinion as to the wetlands constraints cited by Narragansett for several of the alternate substation sites it has considered (ER, §§ 5.7.3.2, 5.7.3.4 and 5.7.3.6.) In asking for this advisory opinion, we are cognizant of the fact that Narragansett has not prepared full wetlands applications for alternate sites and we do not expect it to do so. However, we understand that it has done some identification of wetlands areas using GIS and other resources, further verified by field inspection. Counsel for the Town of North Kingstown suggested that FWW convene a “workshop” among the parties to assist in formulating its advisory opinion and we endorse this suggestion.

Accordingly, it is hereby

(Order Number 57) ORDERED:

(1) The following state and local agencies and political subdivisions of the state shall act at the direction of the Energy Facility Siting Board for the purpose of rendering advisory opinions on the issues determined by this Preliminary Decision and Order of the Energy Facility Siting Board:

- (i) North Kingstown Zoning Board of Review;
- (ii) North Kingstown Planning Commission
- (iii) Exeter Zoning Board of Review;
- (iv) Charlestown Zoning Board of Review;
- (v) Warwick Building Inspector;
- (vi) East Greenwich Building Inspector;
- (vii) North Kingstown Building Inspector;
- (viii) Exeter Building Inspector;
- (ix) South Kingstown Building Inspector;
- (x) Charlestown Building Inspector;
- (xi) Rhode Island Historical Preservation & Heritage Commission;
- (xii) Rhode Island Department of Transportation;
- (xiii) Public Utilities Commission;
- (xiv) The Statewide Planning Program and State Planning Council;
- (xv) Rhode Island Department of Health;
- (xvi) North Kingstown Town Council;
- (xvii) North Kingstown Department of Water Supply;
- (xviii) South Kingstown Town Council and Director of Planning; and
- (xix) Rhode Island Department of Environmental Management, Division of Freshwater Wetlands.

(2) The Coordinator of the Energy Facility Siting Board shall prepare and forward to all agencies designated in paragraph (1) above a certified copy of this Preliminary Decision and Order and a separate written notice of Designation.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND THIS 3rd DAY OF MARCH, 2006.

ENERGY FACILITY SITING BOARD

Elia Germani, Esq.
Chairman

Kevin M. Flynn

W. Michael Sullivan