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Kathleen Mignanelli  
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Energy Facility Siting Board  
89 Jefferson Boulevard  
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VIA FIRST CLASS AND ELECTRONIC MAIL

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

Dear Ms. Mignanelli:

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

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

Respectfully submitted  
The Town of Middletown  
By and through its attorney,

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## **STATE OF RHODE ISLAND ENERGY FACILITIES SITING BOARD**

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

### **THE TOWN OF MIDDLETOWN'S MOTION TO INTERVENE**

NOW COMES the Town of Middletown ("Town"), and by and through its undersigned counsel, hereby moves to intervene in the above-captioned proceeding. In support thereof, the Town avers the following.

#### **I. STANDARD OF REVIEW**

Pursuant to 445-RICR-00-00-1, the Energy Facility Siting Board's ("EFSB") Rules of Practice and Procedure (the "EFSB Rules"), "[p]articipation in a proceeding as an intervenor may be initiated as follows:...2. By order of the [EFSB] upon a motion to intervene." Rule 1.10. Further, a party may intervene by "claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate..." and "[s]uch right or interest may be:

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." Rule 1.10.

In accordance with the EFSB's Rules, the Town's motion sets out below clear and concise facts which form the nature of the Town's interest in this case, grounds for the Town's proposed intervention, and the Town's position in this proceeding.

## **II. BACKGROUND**

On September 16, 2020, the Narragansett Electric Company d/b/a National Grid (“National Grid”) filed a Petition for Declaratory Judgment with the EFSB (the “Petition”), seeking a declaration that the temporary installation and operation of portable liquefied natural gas (“LNG”) vaporization equipment located on Old Mill Lane in Portsmouth, RI, is not subject to the jurisdiction of the EFSB. The Petition asserts that the LNG vaporization equipment is not a “major energy facility” or an “alteration” to an existing major energy facility as defined by the Energy Facility Siting Act, RIGL §42-98-3(d) (the “Act”), and Rule 1.3(16) of the EFSB’s Rules of Practice and Procedure.

The Petition was filed as a result of a previous EFSB proceeding, SB-2019-04. In that docket, on October 24, 2019, National Grid filed with the EFSB a Petition for a Waiver for Temporary LNG Vaporization Facility at the same Portsmouth property. In its 2019 petition, National Grid asked the EFSB to waive the licensing requirement to set up and operate the LNG temporary portable vaporization facility to provide emergency backup natural gas supply to Aquidneck Island. The EFSB granted the waiver by Order issued on January 8, 2020 (the “Order”).

In its Order, the EFSB granted the waiver request “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 made the following statements:

“Addressing [National Grid]’s reference to the treatment of prior temporary installations, the [EFSB] stated that the lack of prior licensing for temporary facilities provided no substantial support for [National Grid]’s waiver argument...[National Grid] provided no instances of the [EFSB] refusing to exercise jurisdiction over facilities for which a license had been requested.

The [EFSB] then raised its previous decision in SB-00-01, which [National Grid] failed to cite, noting that it appears to conflict with, if not

directly contravene, [National Grid]'s position in this docket. In SB-00-01, National Grid's predecessor gas distribution utility, the Providence Gas Company...filed an application with the [EFSB] 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 [EFSB] granted that requested license. In addressing that prior proceeding, the [EFSB] 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 [National Grid] 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." Thus [National Grid]'s own description of the now-abandoned licensed facility indicates the difficulty in distinguishing it from the present project." Order p.3-4.

### **III. ARGUMENT**

The Act makes clear that the Town should be allowed to intervene in this matter because of the attention paid by the Act to public input, including participation of and requiring notice to municipalities. The attempt by National Grid to circumvent the EFSB's jurisdiction here runs afoul of the statutory mandates of the Act and the EFSB's previous decisions and orders. The Town has an interest of such unique and exclusive nature that intervention is necessary and appropriate, in accordance with the EFSB Rules.

#### **A. FACTUAL BASIS FOR THE TOWN'S INTEREST IN THIS CASE**

The factual basis for the Town's interest in this case relates to the proposed project's close proximity to the Town's boundary and the legitimate, actual, and potential negative impacts related thereto. In fact, the project is directly adjacent to the Portsmouth/Middletown town line. A review of the exhibits to National Grid's Petition reveals that the project is immediately abutting many residential properties in Middletown. The Middletown residents and property owners will be directly impacted by the construction and operation of the proposed project. Further, the Town's infrastructure and staff will be utilized and relied upon throughout the life of the project.

There are several possible emergency scenarios of such magnitude that mandate the Town's intervention here. For example:

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

The safety, health, and impacts to the Town's residents, businesses, and infrastructure will be directly affected by this project. Only the Town can adequately represent these interests and there are no existing parties to this case currently representing the Town.

#### **B. GROUNDS FOR THE TOWN'S PROPOSED INTERVENTION**

Pursuant to RIGL §42-98-3(d), the Energy Facility Siting Act (the "Act"), the Town has a statutory right to intervention in this case. As National Grid indicated in its Petition for Declaratory Judgment, the Act is the applicable statute for which National Grid seeks relief. RIGL §42-98-9.1, "Public notice and hearings on construction projects in cities and towns affected," requires that specific notice would be sent to the Town in this case:

- “(a) Upon receiving a utility company's application the [EFSB] shall immediately notify, in writing, the councils of the towns and cities affected by the construction...
- (e) Public input shall be a part of the decision making process.”

As the Act states, above, Town notification of the project construction and public input shall be part of the EFSB's process. The statute is clear that notification to the Town is mandatory so that the Town may participate in the proceedings and provide input.

Even if the Act provided no basis for the Town's motion, the Town also maintains an interest which will be directly affected by this project. The interest cannot be and is not adequately represented by existing parties to the subject docket. This project is exactly the type of project contemplated by the Act; it carries major implications for the Town's infrastructure, its residents, and its businesses. Inquiry of National Grid during the regulatory process concerning these implications is the only process by which the Town may participate to ensure that its exclusive concerns are adequately addressed.

Simply stated, the Town needs a seat at the regulatory table. Because of the public concerns inherent with this project, the Town must be afforded an opportunity to be heard throughout the course of these proceedings. This is especially true, given that National Grid is contesting the very jurisdiction of the EFSB. But for the EFSB's jurisdiction, the Town's concerns would not be addressed.

### **C. THE TOWN'S POSITION IN THIS CASE**

The Town's position in this case is that the relief requested by National Grid is not appropriate. The EFSB must be involved in the permitting, construction, and operation phases for this project; that is the intent of the Act. To be sure, RIGL §42-98-2, "Declaration of policy," holds that "[i]t shall be the policy of this state to assure that:

(4) The licensure and regulatory authority of the state be consolidated in a single body, which will render the final licensing decision concerning the siting, construction, operation and/or alteration of major energy facilities."

This project meets the definition of "major energy facility;" it is a facility for "storage of liquefied natural" gas. RIGL §42-98-3(d). The EFSB was created to ensure that projects like the subject project, a major energy facility, are reviewed appropriately.

The Town does not agree with the arguments asserted by National Grid that the project is a "temporary solution" and therefore does not qualify as a "major energy facility." National Grid's definition of "major energy facility" seeks to add a temporal exception to the Act that does not currently exist.<sup>1</sup> This attempt must be rejected. The state legislature could not have intended for National Grid to self-label its projects with a non-existent exception to the statute and thereby avoid permitting and approval by the EFSB.

The Act states that its purpose is to ensure that "[c]onstruction, operation, and/or alteration of major energy facilities *shall only be undertaken when those actions are justified by long term state and/or regional energy need forecasts.*" RIGL §42-98-2. This language does not constitute an exception to the Act. Rather, its plain meaning is that the long term energy needs must be considered by the EFSB in the licensing proceedings.

As easily as National Grid dismissed the EFSB's jurisdiction over its facility, the EFSB could interpret the Act to mean that the subject project should not be permitted because it is a temporary solution; energy facilities such as the subject project should not proceed unless they are justified by long term state or regional forecasts. This issue remains to be seen. If the EFSB allows National Grid to circumvent the EFSB's jurisdiction, this question will not be heard and decided.

The Petition does not include an end date for this project. As a result, there is no way for the Town or the EFSB to determine what length of time National Grid proposes

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<sup>1</sup> "The language of the Act itself reflects the Legislative intent to require only permanent major energy facilities be subject to the Board's siting proceedings." Petition p.13.

as “temporary” for its energy facility. If the facility were truly temporary, there would be an end date for its use. Instead, National Grid proposes to use the facility on a seasonal basis but for a longer term. According to the Petition, the facility became fully operational on December 1, 2019, which begs the question of whether its almost one-year anniversary exceeds a “temporary” designation. These are questions for the EFSB.

Also, the language of the Act dealing with “long term state and/or regional energy need forecasts” should be reviewed carefully with National Grid. RIGL §42-98-2. Questions should be asked of National Grid as to how the subject facility fits into their forecasts. That inquiry may reveal that the subject facility is actually being used to meet long term needs.

What National Grid seems to be advocating for is that the facility is somehow mobile, not temporary. Whether a facility qualifies as mobile is, again, a decision for the EFSB to make following careful inquiry and consideration. From the Town’s perspective, the Petition includes facts that indicate permanence:

- “A private security guard is always present.
- Additionally, when the Equipment is operational, there is always at least one National Grid employee and a private security officer present on the Property.
- Moreover, one or more representatives of the owner of the vaporization equipment (Stabilis) also is scheduled to be onsite whenever equipment is in use.
- [T]he Company began setting up the Equipment with the goal of having it in service at the Property from December 1st to April 1st.
- The Company is looking into adding a transformer to the Property...”  
Petition p. 5.

The Petition, on page 7, states that “Neither [National Grid] nor its predecessors have ever obtained EFSB permitting for mobile LNG facilities in Rhode Island.” The Town finds this troubling and factually inaccurate. In EFSB docket SB-00-01, National Grid’s



predecessor gas distribution utility, the Providence Gas Company, filed an application with the EFSB for a license to construct, site, and operate an LNG transfer station on property leased from the United States Navy in Middletown, RI. The facility in EFSB docket SB-00-01 was described by National Grid as a “temporary portable vaporization facility.” Petition footnote 8.

The EFSB issued the requested license in docket SB-00-01. In addressing National Grid’s 2020 Petition, the EFSB 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.” Order, p. 4 (emphasis added). If the subject facility is difficult to distinguish from the facility at issue in docket SB-00-01, how does it stand that no party has obtained EFSB permitting for mobile LNG facilities in Rhode Island?

Despite the holding in the Order, National Grid now argues that “there is no evidence that National Grid, its legacy companies or even the State of Rhode Island have ever interpreted ‘major energy facility’ to include the temporary operation of portable LNG vaporization equipment.” Petition p.13. But a license was issued in docket SB-00-01 for a temporary portable vaporization facility. Also, without a hearing to determine how the subject facility and the facility at issue in SB-00-01 differ, it is not possible to determine what constitutes “temporary” or “mobile.”

The Petition does not provide consistent analysis of the term “temporary” in terms of other facilities. On page 18, the Petition states:

“[t]he Naval Station is sometimes referred to as a portable LNG facility because the LNG arrives at the Naval Station facility via a truck and is not stored on the site. As evident by the Providence Gas’s application and the 2001 EFSB Order, however, the Naval Station facility was intended at the time as a permanent facility for the vaporization of LNG to provide natural gas to Aquidneck Island as needed...”

But in footnote 8:

“When the Company identified the Naval Station facility as a ‘temporary portable vaporization facility’ in its October 24, 2019 filing to the EFSB, it was referring to the portability of the LNG supply itself and to its temporary/seasonal use during peak demand. At the time the site was permitted, Providence Gas estimated that the facility would be used during 8-10 days per heating season.”

These two narratives oppose each other. The Naval Station was “intended as a permanent facility,” yet it was for “temporary/seasonal use during peak demand” for “8-10 days per heating season.” This scenario seems more akin to the proposed use of the subject facility, which National Grid deems both “temporary” and “mobile.” Clarification is necessary to define all of these salient terms.

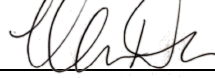
Lastly, National Grid’s Petition discusses how its suggested interpretation of the Act would prevent absurdity. To the contrary, the Town posits that the absurdity lies in National Grid’s position: announcing an exception to the relevant statute that does not exist, and then demanding to be free from regulation after applying the exception.

Clearly, there are many questions to be answered about the actual use of the subject facility and its logistics. Only the EFSB has authority to ask these questions.

#### **IV. CONCLUSION**

WHEREFORE, based on the foregoing, the Town respectfully requests that the EFSB grant its motion.

Respectfully submitted,  
Town of Middletown  
By its Attorney



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CERTIFICATION

I hereby certify that I filed an original of the within Motion with the EFSB and sent a true copy, via electronic mail, of the within Motion to the parties listed on the distribution list for Docket SB-2020-02, on this 30<sup>th</sup> day of October, 2020.



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