

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

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

ORDER

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

FACTS AND TRAVEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nevertheless, in order to avoid the risk of negative impacts to health and safety that could result from the lack of any emergency backup natural gas supply to Aquidneck Island, and notwithstanding the ambiguities regarding the proper treatment of National Grid's October 24, 2019 petition, the Board granted the Company a temporary waiver of the licensing requirements of the Act for the vaporization facility for a period of two years. It ordered National Grid to file a Petition for a Declaratory Order that provided a more robust legal argument on the issue of why the Act should not apply to such temporary facilities, distinguishing the Portsmouth facility from the previously-licensed facility at the Naval Base in Middletown or explaining why the Board erred in exercising licensing jurisdiction over that facility.

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

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

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

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

On September 16, 2020, National Grid filed the Petition in this docket, as ordered by the Board on November 6, 2019.⁸ In the Petition, National Grid maintained that the temporary operation of portable LNG vaporization equipment does not constitute a major energy facility, arguing that interpreting the statute to include the equipment would not only frustrate the purpose of the statute but would detrimentally affect the reliability of gas service to its Rhode Island customers and lead to the absurd result that the Company may be unable to respond effectively to gas supply interruptions. The Company argued further that “requiring full EFSB permitting for the Equipment would effectively eliminate its efficacy as a tool to respond to emergency situations.”⁹

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

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

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

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

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

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

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

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

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

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

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

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

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

DECISION

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

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

¹¹ R.I. Gen. Laws § 42-98-4.

¹² R.I. Gen. Laws § 42-98-3(d).

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

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

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

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

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

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

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

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

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

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

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

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

The Plan goes on to state that:

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

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

¹⁷ *Id.* at 25.

¹⁸ *Id.*

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

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

Therefore, the Petition is denied and it is hereby:

(147) ORDERED:

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

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

ENERGY FACILITY SITING BOARD



Ronald T. Gerwatowski

Ronald T. Gerwatowski, Chairman

Janet Coit

Janet Coit, Member

Meredith E. Brady

Meredith E. Brady, Member