



For a thriving New England

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May 7, 2021

By Regular and Electronic Mail

Emma Rodvien, Coordinator
Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

**Re: Docket SB-2021-03 - Sea 3 Providence, LLC Petition for Declaratory Order
Regarding the Rail Service Incorporation Project (Providence, RI)**

Dear Ms. Rodvien:

For filing in the above-referenced docket, enclosed please find Conservation Law Foundation's memorandum of law in objection to Sea 3 Providence, LLC's Petition for a Declaratory Order regarding its Rail Service Incorporation Project.

Thank you for your attention to this matter.

Sincerely,

James Crowley
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**STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD**

In re: Sea 3 Providence, LLC Petition for Declaratory
Order Regarding the Rail Service Incorporation Project
(Providence, RI)

Docket SB-2021-03

MEMORANDUM OF CONSERVATION LAW FOUNDATION

Conservation Law Foundation (“CLF”) submits this memorandum to the Energy Facility Siting Board (“EFSB” or the “Board”) in objection to Sea 3 Providence, LLC’s (“Sea 3 Providence”) Petition for a Declaratory Order regarding its proposed Rail Service Incorporation Project.

Founded in 1966, CLF is a nonprofit, member-supported, regional environmental organization working to conserve natural resources, protect public health, and promote thriving communities for all in the New England region. CLF protects New England’s environment for the benefit of all people. We use the law, science, and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. We work to cut emissions from the heating sector, and advocate for the responsible, equitable siting of energy facilities and infrastructure across New England.

CLF offers the following comments in support of its position:

1. The proposed project is an alteration under the Energy Facility Siting Act.

In this docket, Sea 3 Providence seeks a declaration that a planned alteration to its facility located at 25 Fields Point Drive, Providence, Rhode Island (the “Facility”) is not subject to the jurisdiction of the EFSB because it isn’t an “alteration” as defined by the Energy Facility Siting

Act (the “Act”).¹ The Act’s definition of alteration is “a significant modification to a major energy facility,² which, as determined by the board, will result in a significant impact on the environment, or the public health, safety, and welfare.”³

Whether a change to a facility is an “alteration” thus turns on the Board’s determination as to whether the change will have “a significant impact on the environment, or the public health, safety, and welfare.” The proposed expansion project that is the subject of this petition would have several important impacts on Rhode Island’s environment, including increases in greenhouse gas (“GHG”) emissions, and on public health, safety, and welfare, particularly the health, safety, and welfare of some of the state’s most vulnerable and environmentally overburdened communities. As discussed in more detail below, these impacts are significant, and therefore the proposed project is an alteration under the Act, requiring the Board’s oversight.

Oversight of alterations to major energy facilities is critical to ensuring that the costs and risks of such alterations—to the communities that host those major energy facilities and to the state as a whole—are appropriately considered. The EFSB’s oversight ensures that proposed energy facilities, and alterations to those facilities, are necessary to meet state or regional energy needs, can be expected to produce energy at the lowest reasonable cost to the consumer, will not cause unacceptable harm to the environment, and will enhance the socio-economic fabric of the state.⁴

¹ R.I. Gen. Laws § 42-98-1 *et seq.*

² As acknowledged by Sea 3 Providence, the Facility is a “major energy facility” under the Act. *See* Sea 3 Providence Petition for Declaratory Order at 3. Although the Facility predates the Act and the Board and therefore did not require a permit when it began operating in 1975, it is a facility “for the conversion, gasification, treatment, transfer or storage of liquified natural and liquified petroleum gases,” and therefore a “major energy facility.” R.I. Gen. Laws § 42-98-3(d).

³ R.I. Gen. Laws § 42-98-3(b).

⁴ R.I. Gen. Laws § 42-98-11(b).

It also ensures that major energy facilities are constructed or altered in ways that maximize efficiency and minimize potentially harmful air emissions.⁵

2. The Board should carefully weigh the project’s environmental impacts, including a review of its consistency with the state’s greenhouse gas emissions reduction mandates.

Sea 3 Providence argues in its petition that the proposed project is necessary to meet a projected increase in demand for liquefied propane gas (“LPG”) in Rhode Island and the Southern New England region. It says that Rhode Islanders presently buy approximately 30-35 million gallons of LPG each winter season, with demand of 57.9 million gallons projected for 2021.⁶ Importing LPG into the Facility by rail is intended to make LPG prices lower and less volatile, thereby making LPG a more attractive option to consumers and incentivizing conversions from oil heat. Sea 3 Providence says that the Providence area has been identified as the 11th largest growth area for LPG in the nation, and that this growth is driven by consumers’ “desire to shift away from oil as a heating source and towards a cleaner solution.”⁷

Despite Sea 3 Providence’s description of its product as “clean propane,”⁸ LPG is but one of several dirty fossil heating fuels that Rhode Island will need to transition away from in the coming years in order to achieve the emissions reductions required under the recently-passed Act on Climate.⁹ Burning propane emits 139 pounds of carbon dioxide per MMBtu of energy produced—even more than fossil gas.¹⁰ Incentivizing consumers to invest in new propane furnaces

⁵ R.I. Gen. Laws § 42-98-2.

⁶ Sea 3 Providence Petition for Declaratory Order at 6, 14.

⁷ Sea 3 Providence Site Report at 7.

⁸ *Id.* at 8.

⁹ See R.I. Gen. Laws § 42-6.2-1 *et seq.*

¹⁰ *How Much Carbon Dioxide is Produced When Different Fuels are Burned?*, U.S. Energy Info. Admin., <https://www.eia.gov/tools/faqs/faq.php?id=73&t=11> (last visited May 7, 2021).

in 2021 and beyond will make it harder, not easier, for Rhode Island to achieve emissions reductions. Doing so will only delay the transition to truly clean heating technologies like electric heat pumps. Furnaces have an average useful life of around 25 years, meaning that every conversion from oil to propane—rather than to an electric heat pump—potentially represents decades of lost emissions reductions.¹¹ Currently only 2 percent of Rhode Islanders use propane to heat their homes, but that number could grow significantly if the 32.4 percent of Rhode Islanders who use fuel oil are incentivized to convert.¹²

The heating sector is a major contributor to state carbon emissions. Rhode Island’s most recent GHG emissions inventory attributes approximately 35 percent of the state’s GHG emissions to residential heating, commercial heating, and industrial heating and processes.¹³ Rhode Island simply cannot meet its obligations under the Act on Climate without addressing its reliance on gas, oil, propane, and other dirty fossil fuels for heating. A project that is designed to deliver more fossil heating fuels to Rhode Island consumers, and make fossil heating fuels more attractive to Rhode Island consumers, necessarily impacts state GHG emissions and the state’s ability to achieve the emissions reductions required by law. The Board has a duty under the Act to ensure that major energy facilities do not cause unacceptable harm to the environment. It also has the power, the duty, and the obligation to address impacts on climate change under the Act on

¹¹ See Brattle Group, *Heating Sector Transformation in Rhode Island* 59 (2020), available at <http://www.energy.ri.gov/documents/HST/RI%20HST%20Final%20Pathways%20Report%205-27-20.pdf>.

¹² See *id.* at 6.

¹³ R.I. Dep’t of Env’tl. Mgmt., *2016 Rhode Island Greenhouse Gas Emissions Inventory* 7 (2019), available at <http://www.dem.ri.gov/programs/air/documents/ghg-emissions-inventory-16.pdf>; see also Stockholm Env’tl. Inst. & Brown Univ. Climate and Dev. Lab, *Deeper Decarbonization in the Ocean State: The 2019 Rhode Island Greenhouse Gas Reduction Study* 20–23 (2019), available at <https://www.sei.org/wp-content/uploads/2019/09/deeper-decarbonization-in-the-ocean-state.pdf> (arguing that Rhode Island dramatically undercounts emissions from gas leaks in its accounting).

Climate.¹⁴ The potential environmental impacts of Sea 3 Providence’s proposed alteration are significant, and the Board must review its proposal for consistency with both laws.

3. The Board should carefully weigh potential public health and safety impacts on communities that are already environmentally overburdened.

The Facility is located in the Washington Park neighborhood of Providence, Rhode Island, much of which is part of an area designated by the Rhode Island Department of Environmental Management (“DEM”) as an Environmental Justice¹⁵ (“EJ”) Area. ¹⁶ According to 2014-2018 U.S. Census and American Community Survey data, people of color make up 66 percent of Census Tract 1.01—which includes the Facility and surrounding neighborhoods. The same data shows a per capita income for Census Tract 1.01 of \$15,888, with 54 percent of the population categorized as low-income. Using EJSCREEN¹⁷—an EPA-developed mapping and screening tool designed to show environmental indicators, demographic indicators, and an EJ Index, which summarizes how the indicators come together in a location—to examine Census Tract 1.01 produces EJ Index results above the 70th percentile in the U.S. in all variables, above the 80th percentile statewide in all variables, and above the 90th percentile in EPA Region 1 in all variables.¹⁸

¹⁴ R.I. Gen. Laws § 42-6.2-8.

¹⁵ EPA defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.” *Learn About Environmental Justice*, U.S. Env’tl. Prot. Agency, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> (last visited May 7, 2021).

¹⁶ Following an approach developed by EPA Region 1, DEM has designated EJ areas in Rhode Island by using the 2000 Census Block Group Boundary layer to identify Census block groups with percentages in the top 15 percent of the region for low-income residents and/or non-white populations. Based on this analysis, DEM classifies much of the area near the Facility as part of an EJ area. *See Static Map of EJ Areas*, R.I. Dep’t of Env’tl. Mgmt., <http://www.dem.ri.gov/envequity/graphics/ejareas.jpg> (last visited May 7, 2021).

¹⁷ *See How Does EPA Use EJSCREEN?*, U.S. Env’tl. Prot. Agency, <https://www.epa.gov/ejscreen/how-does-epa-use-ejscreen> (last visited May 7, 2021).

¹⁸ *See EPA’s Environmental Justice Screening and Mapping Tool (Version 2020)*, U.S. Env’tl. Prot. Agency, <https://ejscreen.epa.gov/mapper> (last visited May 7, 2021).

All residents of Rhode Island have a right to a clean and healthy environment. Yet, too often, polluting facilities are concentrated in communities where people of color, low-income people, and limited English proficient speakers live and work. These EJ populations experience higher rates of pollution, disease, and other public health emergencies. For example, residents of low-income communities of color like Washington Park represent the majority of asthma-related emergency room visits in Providence.¹⁹ The COVID-19 pandemic has further demonstrated that high concentrations of pollution can lead to increased mortality from respiratory disease.

Decisions on the siting and alteration of polluting facilities play a critical role in managing pollution and safeguarding communities. There is a long history of environmental problems in and around the Port of Providence, concentrating many of Rhode Island's most concerning pollution and safety issues in neighborhoods that are economically and racially disadvantaged. Because of that history, many residents of those neighborhoods believe that their voices and health do not matter to the government that is supposed to represent and protect them. Although Sea 3 Providence argues that its proposed rail expansion project would not substantially increase pollution and safety burdens on local communities, allowing the project to move forward without EFSB oversight would continue a historical pattern of discounting the voices of the people that live in those communities. Conducting a review of the proposal would allow the Board to weigh important safety and public health impacts and provide affected communities with a chance to have their voices heard.

¹⁹ City of Providence, *Climate Justice Plan 17* (2019), available at <https://www.providenceri.gov/wp-content/uploads/2019/10/Climate-Justice-Plan-Report-FINAL-English.pdf>.

4. Conclusion

Sea 3 Providence's proposed project has several significant potential impacts on Rhode Island's environment, and on its public health, safety, and welfare. It is therefore an alteration under the Act requiring the Board's review. Oversight of alterations to major energy facilities is critical to ensuring that the costs and risks of such alterations are appropriately considered. In this case we hope that the EFSB pays special attention to the proposed alteration's GHG emissions impacts and consistency with the Act on Climate, as well the public health and safety impacts it would have on some of Rhode Island's most vulnerable and environmentally overburdened communities.

CLF respectfully requests that the Board deny the petition.

CONSERVATION LAW FOUNDATION

By its attorney,



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