

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

IN RE: SEA 3 PROVIDENCE, LLC	:	
D/B/A SEA 3 PROVIDENCE	:	
(Rail Service Incorporation Project	:	Docket No. SB-2021-03
25 Fields Point Drive and Seaview Drive	:	
Providence, Rhode Island)	:	

**PETITIONER’S MEMORANDUM IN RESPONSE TO INTERVENORS’
MEMORANDA**

INTRODUCTION

Now comes the Petitioner, Sea 3 Providence, LLC, d/b/a Sea 3 Providence (the “Petitioner”), and hereby submits this Memorandum in Response to the memoranda of law and motions to intervene filed by the Office of the Attorney General, City of Providence and Conservation Law Foundation (the “Intervenors”). While the Petitioner did not object to the motions or notices to intervene filed by the Intervenors, the Petitioner does wish to respond to the arguments, conjecture and misapplication of the law and regulations stated in the papers submitted by the Intervenors. The Intervenors respective memoranda urge this Honorable Energy Facility Siting Board (the “Board”) to stretch its jurisdiction beyond the limits contained in R.I.Gen.Laws §42-98-1, *et seq.* and 445 RICR-00-001 (the “Regulations”). The Intervenors request that the Declaratory Petition filed by the Petitioner be denied and that a full application be submitted for review despite there being no competent evidence before this Board that the proposed lot merger and rail incorporation project “*will result in a significant impact on the environment or the public health, safety and welfare.*” [emphasis added]. The Petitioner filed a Declaratory Petitioner requesting that this Board file that the proposed Project was not an alteration pursuant to Section 1.3(a)(4) of the Regulations because the ancillary expansion and

operational enhancements proposed by the Petitioner will not have a significant impact on the environment or public health, safety and welfare. The Petitioner supported the Petition with a comprehensive Site Report prepared in collaboration with a team of professionals, engineers and experts. The Site Report was substantiated by over 500 pages of supporting expert analysis and evidence, including, without limitation, a revised Fire Safety Analysis, Traffic Study, Process Basis of Design and copies of existing permits, stormwater information, soil management strategies and construction mitigation programs. The Intervenors have offered no evidence or concrete information to contradict the substantial competent evidence before this Board which was submitted by the Petitioner. The Intervenors instead rely on conjecture and speculation that the Project *might* have *some* impact. The Intervenors arguments apply a different standard for a determination of whether modifications amount to an alteration than the clear and unambiguous terms of the Regulations and when the Board has jurisdiction over modification to existing major facilities. The Board may take jurisdiction over modifications to a major energy facility *only* when the evidence before it demonstrates that the Project *will* have a *significant* impact on the environment or public health, safety and welfare. (See Section 1.3(A)(4)). If the evidence and information before the Board does not clearly demonstrate that there is certainty that the Project will result in such a significant impact, then the Board lacks jurisdiction and the matter is properly handled by the appropriate state and local permitting authorities such as the Fire Safety Board, DEM, CRMC and the City of Providence Planning Department.

For the reasons stated herein, in addition to those from the original Petition filed by the Petitioner, this Board should enter a Declaratory Order that the Project does not constitute an alteration of a major energy facility and thus is properly reviewed by the various state and local permitting authorities which would be involved with a construction project of this nature.

ANALYSIS

I. The legally competent evidence and information before this Board establishes that this Project will not have a significant impact on the environment or public health, safety and welfare.

The overwhelming volume of information submitted to the Board demonstrates that the Petitioner's Project will not result in significant impact to the environment or the public health, safety and welfare. The Petition, together with the Site Report and supporting exhibits, provides this Board substantial information that is probative of the relevant factors to be considered by the Board when reviewing the impacts of proposed changes to a major energy facility. The Project itself represents an ancillary enhancement of the longstanding operation of the LPG terminal located in ProvPort which was first brought online in 1975. Since 1975, the Petitioner and its predecessor operators, have imported cargoes of LPG into the current location of the terminal and stored the LPG in a 19,000,000-gallon high rise tank. The LPG was then transferred from the tank to a truck rack and then taken from the site by the trucks to customers throughout the region. Thus, it is clear, that contrary to portrayal of the Project in the memoranda submitted by the Intervenors, the Petitioner is not introducing "new" sources of fuel or power that have not historically been present in the marine industrial port complex known as ProvPort for nearly 50 years. LPG, together with similar equipment, storage mechanisms, transfer apparatus and truck racks have long been present in ProvPort and will continue to be present regardless of the outcome of this matter before the Board.

A. Rail Service

The details of this Project and the nature of the proposed changes to the long-standing operation of the terminal are not new to the propane industry or ProvPort itself. There are existing rail lines within ProvPort that bring other fuel sources and hazardous substances, with a

far greater impact to the environment, than propane. Along the Providence and Worcester Railroad, which transports cargo not only through the City of Providence, but throughout the state and region, substances such as ammonia, chlorine and ethanol are transported via railcars daily. There are several tenants in the port who receive these rail deliveries and have been receiving them for years, if not decades. The port is equipped from both a personnel and security/containment perspective, to handle these deliveries. The tracks that would provide service to the Property are existing and cross an abandoned portion of Fields Point Drive in Providence that is well within the ProvPort complex, away from any residential or neighborhood areas and within a restricted security checkpoint that is heavily regulated by the U.S. Coast Guard. Additionally, on the same rail line that would bring domestic propane to the Petitioner's terminal, LPG is already conveyed via rail daily through the City of Providence on its way to a different LPG terminal located in North Kingstown, Rhode Island.

The rail transport of propane to the Property, in addition to the existing marine vessel service, does not pose a substantial threat to public health, safety and welfare. The Intervenor's offer no evidence to demonstrate a real, imminent and significant threat beyond mere "red herring" arguments that they disagree with the Federal Railroad Administration's rules and regulations. The rail cars are properly equipped and prepared to transport LPG as required by federal authorities. The rail delivery of LPG to the terminal must, and will, comply with all rules, regulations and specifications promulgated by the U.S. Department of Transportation ("USDOT"), Federal Railroad Administration and Federal Railroad Safety Act. All staff and personnel associated with the operation of the terminal will receive USDOT training on the transportation and transfer of hazardous materials. (See Section 7.12 of Site Report). This training covers safe operation of the rail cars during LPG offloading, product transfer, braking

system, wheel blocking, securing of hatches/openings, top offloading procedures, operation of the fire suppression system monitors for the rails cars and all other material procedures and protocols associated with the industry standard method of shipping LPG across this nation. The Petitioner is experienced in rail transport and transfer of LPG. The Sea 3 Newington facility located in Newington New Hampshire has already incorporated rail in addition to marine vessel into its operations. The Petitioner's sister company works collaboratively with the facility in Providence, and shares much of the same senior leadership team that has experience in this industry not just in the Northeast, but around the country.

This Board does not have jurisdiction over railroad transportation itself. That realm regulation is reserved to the federal authorities. However, the Intervenors, particularly the Office of Attorney General, seek to muddy the waters as it pertains to this Petition by creating uncertainty as to the adequacy of federal regulations or the Petitioner's compliance therewith. Whatever the Attorney General's opinion may be of the federal government's regulation of railroads, the Petitioner has stated in its papers that it will comply with all appropriate rules, regulations and specifications which govern the shipment of LPG via rail. The Petitioner itself does not operate the rail cars. The Petitioner does not load the rail cars. The Petitioner merely seeks to utilize the existing railroad infrastructure in ProvPort to bring in a more reliable and cost-efficient domestic source of product to stabilize pricing and supply for the consumers in the region. Otherwise, the Petitioner will have no alternative but to continue to increase its vessel cargo shipments to meet the rising demand.

Increasing reliance solely on marine vessel as a supply line is an inferior alternative to incorporation of the rail service for several reasons. First, rail service allows the Petitioner to purchase domestic LPG. The ability to bringing domestic product will enable the Petitioner to

advance and execute on its long-term plans for conversion to renewable propane. Second, as discussed in the Petition and Site Report, the foreign product brought in via vessel is purchased in a volatile market. Price and availability can fluctuate greatly, particularly in peak heating seasons and especially when there is a disruption of grid power or natural gas which places a great demand on the LPG supply. Third, being able to bring in product via rail will allow for a diversification of supply acquisition which will allow the vessels to fill the 19,000,000-gallon tank to ensure for stable supply during peak seasons or shortages and outages of other fuel sources while allowing the rail service and the six proposed additional storage bullets to service day to day truck rack demand.

B. Land Use

The existing Property and the adjacent parcel which shall be merged into the Property if the rail incorporation project moves forward are in the marine industrial complex known as ProvPort. The Intervenors each raised concerns about the location of the Project and the fact that the Washington Park area of Providence has been identified as an Environmental Justice Zone. The Petitioner appreciates the concerns for the health and safety of the community in the City of Providence, especially its neighbors in the Washington Park neighborhood. That is why the Petitioner employs every available best practice, whether it be in fire safety and disaster prevention or emissions management and control, to ensure that the terminal is operated safely and securely. The Site Report contains a detailed explanation of the lack of both short term and long-term environmental impacts. (See Sections 6 through 8 of the Site Report). However, it is important to be cognizant of the reality of the City's land use regulations for the area in which the Property is located.

The Property is in the W3 zone off Allens Avenue in Providence in the marine industrial port complex known as ProvPort. ProvPort features a plethora of marine industrial uses, including scrap metal management facilities, chemical facilities, a cement terminal and other heavy industrial/marine dependent uses. Many of these tenants, if not all of them, have a far greater impact on the concerns expressed by the Intervenors than the Petitioner's facility. However, all have been concentrated into this area as part of a land use plan permitted, furthered and promoted by the Zoning Ordinance of the City of Providence (the "Ordinance") as approved and revised by the City Council and Mayor of the City of Providence. The elected leaders of Providence have decided to promote the concentration of industrial uses along Allens Avenue, especially the marine uses in the W3. The Project is currently classified as a tank farm. It is a permitted use by right, subject to Development Plan Review, in a W3 zone. The Project requires no special exemptions or approvals from the Zoning Board of Review of the City of Providence. The Project does not require a zone change or a comprehensive plan amendment from the City Council. It is permitted as an allowed use pursuant to Article 12 of the Ordinance.

The current zoning status and permitted status of the terminal will not change as a result of the proposed ancillary enhancements associated with the Project. The Petitioner will need to submit an application for Development Plan Review to the City of Providence Planning Department. This is an administrative approval process involving review of the proposed site plan by the Departments of Planning and Development, Public Works and other city departments. Additionally, the adjacent parcel that is being merged into the existing Property will require approval of an administrative lot merger also by the Department of Planning and Development. In light of the legislative designation of the area where the terminal has operated since 1975 as an area reserved solely for marine dependent industrial uses, it seems a stretch for

the City of Providence to seek full review of this Project due to its unsubstantiated assertions that the Project may lead to the expansion of “potentially harmful facilities in these communities” as an “issue of both environmental protection and civil rights” since the City’s elected leaders are the ones who have passed an Ordinance which reserves this area for said uses. Further, neither the City nor the other Intervenors, have introduced any evidence, data or information specific to the Project to support the contention that the Petitioner is currently or will in the future pose a substantial threat to the environment or public health, safety and welfare. The Intervenors make repeated conclusory statements maligning the Project without evidentiary support or factual amplification.

The Petitioner will continue to operate its business at the Property whether this Declaratory Petition is granted. It has invested tens of millions of dollars in improving and modernizing the previously existing facilities and equipment to make the terminal safe and compliant with current applicable environment and safety regulations. The demand for propane is projected to continue to increase both in the State of Rhode Island, and the larger region as a whole, as detailed in the Site Report. The Petitioner has an obligation to meet this demand, with or without the rail service and additional associated equipment, in an efficient, safe and compliant manner. Denial of this Petition, or denial of the proposed changes to the facility after a full application process is conducted, will not change the fact that the terminal exists and has customers in need of its product. The Intervenors style their memoranda as if the denial of the Petitioner would somehow prevent “new activity” or eliminate the presence of a LPG terminal from ProvPort. That is not the case. This terminal has previously seen activity in the vicinity of 100,000,000 gallons of propane imported via vessel and transported to distributors via truck under previous operators. The Petitioner is not seeking to expand this facility to reach capabilities that the existing facility

is incapable of achieving or to an unprecedented level which would have a material impact on the quality of life in the surrounding area. Rather, the Project proposes to enhance and improve its operations through use of newer equipment for storage of the product for shipment in a more predictable, cost effective and sustainable manner.

C. Air Quality

As repeatedly referenced in the Petition, Site Report and even the Intervenors' Memoranda, the proposed ancillary changes to the existing operation of the terminal will not require modifications or changes to the existing air quality permit or the Petitioner's status as a non-contributor in terms of stormwater management. The Petitioner has an existing air quality permit for the two flares operated on the site. These flares have been approved by DEM and are compliant with DEM regulations for new and modified sources of air pollution. The DEM Regulations require facilities like the Petitioner's to perform a Best Available Control Technology (BACT) analysis for each air pollutant emitted using the EPA's top-down method to ensure compliance with DEM Regulation 9.7.3(A)(1).¹ BACT for control of LPG emissions from storage and handling facilities is a flare. When properly operated, flares achieve a destruction efficiency of volatile organic chemicals and other pollutants of 98 percent or greater.² Flaring is appropriate for continuous, batch and variable flow vent stream applications. Flares are ideal for terminal applications where flow can be variable. In addition, flares serve as a safety device to control a large volume of LPG in the unlikely event of an emergency release. Flares are not subject to the safety concerns associated with incinerators since flaring is an open combustion environment as opposed to an enclosed combustion chamber.

¹ "Top-Down" Best Available Control Technology Guidance Document, March 15, 1990.

² Air Pollution Control Technology Fact Sheet EPA-452/F-03-019 and EPA AP-42, Chapter 13.5 (February 2018).

Design plans for the incorporation of the adjacent parcel and rail service will not expand the need for the current flares. In fact, the design plans could potentially allow for the elimination of one of the flares. Currently, the existing truck loading hose connections are vented to the truck loading rack area. The Petitioner is proposing to vent the hose connections to the compressor suction and vent the vapor back to the tank which would eliminate emissions from breaking the hose connection and eliminate the need for the truck loading flare. The tank flare only functions as a safety device and is not required to flare during normal operating conditions.

Aside from no changes related to the flares already permitted by DEM, the Petitioner is not seeking any modifications to its air quality permits associated with the permitted number of truck shipments allowed per hour from the site. Under its existing permit from DEM which was submitted as an exhibit to the Site Report, the Petitioner is allowed 18 truck shipments from the Property per hour. The Petition does not seek an expansion of the number of shipments it can perform per day. In fact, even once the full extent of the Proposed modifications are completed, the Petitioner will not even make use of the fully extent of its already existing permits. The Property, even after the expansion of the truck rack, cannot support or sustain 18 shipments per hour. The maximum capacity of the facility, even after the additional truck racks are completed, is 10 trucks per hour.

The proposed inclusion of the rail service, reconfiguration and addition of the proposed truck rack spaces and six proposed horizontal storage bullets will not have a significant impact on the number of trucks which take propane away from the Property, now or in the future. The Petitioner will make operational modifications according to increased or decrease demand for its product, with or without the completion of the Project. The number of trucks permitted to receive and transport propane will remain the same. Without the additional truck rack spaces

proposed, the Petitioner would have to modify its hours that its receives shipments and increase queuing in the adjacent travel areas in ProvPort. This is clearly an inferior alternative as the additional spaces would allow for demand to be met without queuing of idling trucks waiting for truck rack availability. It would also prevent the potential elimination of the second flare as the changes to the transfer process would not be able to take place.

The Intervenors also cite unspecified and unsupported references to increased traffic congestion resulting from the proposed rail incorporation project. As just discussed above, the proposed changes to the Property and terminal operation will not result in an increase in the total number of allowed trucks on site. In fact, even with the completion of the project, the number of trucks on site will not reach the maximum allowed under the air quality permit. The Petitioner's supported its argument by providing a traffic analysis from respected engineer John Shevlin from PARE Corporation. Mr. Shevlin's analysis was attached as Exhibit 8 to the Site Report and is discussed in Section 8.2 of the Site Report itself. Unlike the Intervenors' unsubstantiated speculation, the analysis from Mr. Shevlin is unequivocal that there will be no significant impact on traffic on Allens Avenue or the other surrounding streets resulting from the Project. The analysis indicates that there is no expected queuing of vehicles in connection with the loading of the trucks, but if they were to que there will be no impact to traffic conditions because the site is well within the ProvPort complex and behind a security check point. The Property itself would provide for over 600 feet of queuing space before any queuing would take place off Property within ProvPort. Further, these trucks will leave the site and get immediately on I-95 to reach their respective destinations. The Property is less than half a mile away from the Allen's Avenue on ramps to I-95 and will not necessitate extensive neighborhood travel. Mr. Shevlin's

unrebutted analysis makes it clear that there is no anticipated impact on traffic conditions affecting daily travel on Allens Avenue or I-95.³

The Intervenors also attempt to convince the Board to find that this Project constitutes an alteration of an existing major energy facility through reference to the recently passed Rhode Island 2021 Act on Climate which requires the state to reduce its statewide greenhouse gas emissions by 45 percent from 1990 levels by 2030, among other requirements. While it is true that the General Assembly approved this legislation earlier this legislative session while this Petition was being prepared, it is not conclusive evidence that this Project “will have a significant impact on the environment or the public health, safety and welfare” such that this Board should find that the Project constitutes an alteration pursuant to Section 1.3(A)(4) of the Regulations. No information has been produced by the Intervenors to refute the detailed Site Report and supporting documentation all of which has concluded that the Project will not yield a substantial impact on the environment or public health. Propane produces 43 percent less carbon emissions than competing sources of energy such as home heating oil and electricity generated from the grid. It is a nontoxic fuel that does not contaminate soil or groundwater. Everything proposed is being done pursuant to industry standards and best practice. If the Board agrees with the Petitioner that this Project is not an alteration, the Petitioner may proceed with its plans but still is subject to oversight and certain approvals from DEM, CRMC, the Fire Safety Board, the State Fire Marshall, the City of Providence, the U.S. Coast Guard and certain federal agencies. It is not as though the Project proceeds under the cover of darkness or without the various environmental and life safety watchdog agencies which govern other construction projects of a

³ The Intervenors offered no factual evidence to rebut Mr. Shevlin’s expert opinion as to the traffic conditions and how they will not be substantially impacted as a result of the completion of the Project. As our Supreme Court has held, the testimony of lay witnesses or argument of attorneys is not probative evidence and cannot be relied upon to rebut the testimony and analysis of a traffic engineer. *See Toohey v. Kilday*, 415 A.2d 732, 737 (R.I. 1980).

similar nature. To the contrary, an extensive permitting and accountability process awaits the Petitioner regardless of the outcome of this Petition, the only question is whether or not the Project falls under the jurisdiction of the aforementioned agencies or the comprehensive EFSB process before this Honorable Board.

Even if the Intervenors were successful in both convincing this Board that the Project is an alteration and then convincing the Board to deny approval of the changes to the facility, the terminal will continue to operate, and it will periodically increase its operations to meet the growing demand for propane. This Project does not change the existing stormwater status of the site. Propane does not contaminate stormwater. The Property already has non-contributing status and will continue to do so after the completion of the Project. The Project is not increasing the number of flares operated on the site, rather it may be able to eliminate one. The flares adequately address air pollution issues associated with the operation of the site. The Project will not increase the number of trucks allowed on site, therefore will not increase the emissions from said trucks as hypothesized by the Intervenors. Even if the Project does not move forward, the Petitioner will meet demand by increasing the number of vessels coming into Narragansett Bay to the terminal and change its practices related to queuing of trucks and hours of operations for shipments to meet demand. The Project is better than these alternatives. It is more efficient and most importantly will provide savings to consumers of propane. The Petition discussed the fact that many people who wish to convert from home heating oil are unable to do so because of the lack of confidence in electric heat or the lack of natural gas infrastructure in more rural areas of the state and region. Propane provides a cleaner alternative to home heating oil to those consumers who lack access to natural gas. While perhaps not the perfect solution in the eyes of the Intervenors, propane is a cleaner source of heat and power than coal or grid

power. For example, coal emits anywhere from 205.7 to 228.8 lbs of CO₂ per million BTUs of energy. Home heating oil emits 161.3lbs of CO₂ per million BTUs of energy. Propane, while not as low as natural gas, is a much cleaner alternative at 139.1.

E. Renewable Propane

Propane is also utilized by alternative energy sources such as solar power and wind power when production from those sources are low. Propane is often utilized to support solar and wind power when under conditions that render those two alternative energy resources insufficient. Further, this Project is the first step in allowing the Petitioner to bring renewable propane to the terminal for use throughout the region. Renewable propane is produced by converting plant and vegetable oils, waster greases and other renewable sources into fuel. It delivers high-energy conversion, so BTUs are not wasted and is competitively priced. At the point of combustion, renewable propane is carbon neutral, meaning no new carbon is added to the atmosphere when renewable propane is burned. Due to the chemical structure and physical properties of renewable propane are the same as propane produced from fossil fuels, renewable propane can be used for all the same applications. It also has an extremely low carbon density, as low as 19. Because it cannot be acquired from the Petitioner's current suppliers via vessel, there are only two ways to bring renewable propane to the Property for use in the region. The best method is the proposed Project. It has the least impact on the surrounding community, it is the most efficient, it is the industry standard method of transportation of LPG and will have no significant impact on traffic conditions or emissions from the Property. The second, and less desirable alternative from both a business perspective and a community impact perspective, would be to have the LPG brought to the Property via truck shipments from the Sea 3 Newington Site or any other site in the area via rail access. This may be able to be done without increasing the number

of trucks permitted under the air quality permit, but it would result in a significant increase in truck traffic to the Property and through the surrounding area. This would be a less ideal alternative than the Project considering the concerns expressed by the Intervenors about diesel fueled vehicles traveling in the area or having an increase in congestion in and around the port area of Allens Avenue in the vicinity of I-95.

The Petitioner respects the efforts and the mission of each of the Intervenors. The Petition is cognizant of the concerns each raised which is why the Petitioner begin discussions with the City of Providence Public Safety Office, City Council, Mayor, Planning Department, Fire Department and State Fire Marshall well in advance of the filing of this Petitioner. It is also why the Petitioner did not object to the Intervenors efforts to having their voices and arguments heard in connection with this process. The Petitioner submitted a substantial amount of supporting detail, evidence, analysis and information in connection with this Petition for Declaratory Order. It did so to provide the Board with much of the same information it would receive in connection with aspects of a full application process. There is nothing that has been presented which demonstrates that this Project has a substantial or significant impact on the environment or the public health, safety and welfare. The Project is operating in a highly regulated industry and has to comply with a litany of safety and environmental regulations on a day to day basis. Nothing about that will change as a result of this Project. This Project is meant to make the Petitioner's terminal more efficient and its product more reliable in supply and affordable in cost so that it can be one of the many alternatives to home heating oil or grid power in the future as Rhode Island develops its strategy to fulfill the recent goals set by the General Assembly. The reasons cited by the Intervenors are insufficient to support a finding that the Project is an alternation requiring full Board review. The uncontradicted information in support

of the Petition clearly demonstrates that this Project should not be under the jurisdiction of the Board and the other state and local permitting and licensing agencies should maintain their jurisdiction and scrutiny over the details and progress of the Project.

II. The Intervenors reference to “potential impacts” as a justification for this Board finding jurisdiction over this project is a misstatement of the legal standard and would result in an impermissible expansion of this Board’s jurisdiction.

The argument put forth by the Intervenors that because the Project may have “potential impacts” on the environment and public health, safety and welfare and thus the Board should make a finding that the Project constitutes an alteration must fail as a matter of law. The regulations are clear and unambiguous and therefore must be applied in accordance with their plain meaning. *Caithness RICA Ltd. Partnership v. Malachowski*, 619 A.2d 833, 836 (R.I. 1993) *citing Gilbane v. Poulas* 576 A.2d 1195, 1196 (R.I. 1990). In the absence of an ambiguity in a statute, ordinance or regulation, the “wording must be applied literally.” *Id.* Further, the Supreme Court has stated clearly that “[w]e have consistently prevented state administrative agencies from expanding their jurisdiction through strain interpretations of ambiguous statutes.” *Id.* The Intervenors seek this Board to do precisely what the Court has prohibited, namely to extend its jurisdiction over the Petitioner’s Project despite their being no evidence that the Project would have a significant impact on the environment or public health, safety and welfare as required under the clear and unambiguous terms of the Regulations.

The Intervenors each fail to identify a specific instance or present specific evidence demonstrating a real and significant impact of this Project as required under the Regulations prior to this Board requiring a full EFSB application and review process. Rather, the Intervenors have each crafted their own “red herring” arguments in order to create enough concern about attenuated and hypothetical “potential” impacts of the Project without evidentiary support,

specific data or quantitative analysis as to how the use of additional equipment, much of it substantial similar if not the same as to what is already being used on the Property, on an immediately adjacent site through an alternative method of shipment will have a significant impact. These theories, however unlikely or improbable as they are, are all belied by the substantial volume of information produced in support of the Petition. There is no significant impact posed by this Project. Any “potential” impact exists during the construction phase of the Project but that is to be managed by a stormwater plan, soil management plan and overall construction mitigation plan which will require the approvals of CRMC and DEM prior to commencing the work to be done. The Intervenors failed to identify any inadequacies of the Site Report and how it would address these issues, instead laying the overall contamination issues surrounding the port squarely at its feet without any basis to do so.

The Intervenors utilize policy-based arguments and public health concerns unrelated to the conduct of the Petitioner’s terminal in crafting an emotionally charged argument in favor of the Board declaring the Project to be a material alteration of a major facility. However, the Intervenors consistently ignore the plain language of the Regulations state that the alleged impact must be “significant” and real, not hypothetical. The Intervenors’ references and theories as to what may “potentially” happen have no basis in fact and are mere unsupported conclusory statements upon which this Board cannot rely. The Regulations say that the Board may exercise its jurisdiction if a modification “will” result in significant impact. The conclusory arguments proffered by the Intervenors are all based on what might possibly happen without specificity as to the likeliness of such an impact or whether the impacts theorized are significant or negligible. For example, the Intervenors suggest that despite the Project not requiring any modifications to the existing air quality permit, that the increase of trucks coming to the Property will result in

increased diesel emissions and pose a public health hazard. This theory is not supported by legally sufficient evidence or fact. It ignores that the permit already exists. It ignores that the diesel trucks coming to the site must comply with all the latest emission standards promulgated by the federal government. Most importantly, it ignores that the Petitioner already operates a lawfully established facility on the Property and that the changes are mostly related to equipment and the merger of an existing vacant industrial property to utilize an existing rail track. The Intervenors casually toss out statements casting doubt on the safety of transporting LPG on existing rail tracks and an effort to cloud the Board's view. They have no basis to make such statements, they have no legal justification to imply that the Federal governments jurisdiction over rail safety is inadequate and somehow this Board could step in. The Intervenors statements ignore the fact that substances far more concerning than LPG are transported in Providence, through the State and throughout the region every day via the same or similar rail service line. Critically, the Intervenors ignore the fact that LPG travels through the very area that the Petitioner would propose the trains stop on its way to North Kingstown each day to a rail based LPG terminal in southern Rhode Island.

Additionally, the Intervenor's reliance on the recently passed Act on Climate is also not a sufficient basis for a denial. There is no concrete information to suggest that the LPG terminal in Providence's use of rail and a 4 percent increase in storage capacity will prevent the state from reducing its greenhouse gas emissions. As stated, propane produces 43 percent less greenhouse gas emissions than dirtier alternatives such as grid power or home heating oil. Additionally, as discussed at length, this Project is essential to conversion to renewable propane which has a net zero greenhouse admission. Both of these points are in furtherance of the plans passed by the General Assembly not in contravention. However, even if that were not the case, there is no

evidence to suggest that the Project itself would result in a significant impact. This terminal is already equipped and capable to meet a higher demand for LPG than it meets today. The Project is simply meant to be more efficient, more cost effective and open up a diverse and stable supply line as opposed to sole reliance on vessel cargoes from overseas.

The Intervenors have not offered a sufficient basis to declare this Project amounts to an alteration under the Regulations. If this Board were to render a finding consistent with the wishes of the Intervenors, the result would “divest other permitting authorities of their lawful jurisdiction” and inappropriately extend the jurisdiction of the Board over those processes. *Id.* at 837.

CONCLUSION

For the reasons stated herein, as well as the arguments stated in the Petition itself, the Petitioners respectfully request that this Board issue a declaratory order declaring that the proposed Project does not constitute an alternation warranting a full application and review process.

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CERTIFICATE OF SERVICE

I certify that the original was electronically filed with the Energy Facility Siting Board. In addition, this document was served electronically on the counsel for the intervenors at the following email addresses on June 28, 2021:

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