

kV, (ii) building a new Jepson Substation, (iii) reconfiguring the existing Dexter Substation #37, (iv) realigning the 63 Transmission Line to connect to the new Jepson Substation, (v) temporarily relocating the 63 Transmission Line to allow for the construction of the new Jepson Substation, and (vi) relocating the M13 and/or L14 115 kV Transmission Line(s) as part of the improvements to Dexter Substation. The application was docketed by the EFSB on January 28, 2016. On May 2, 2016, the EFSB issued its Preliminary Decision and Order (Order No. 91, May 2, 2016), which designates certain local and state agencies to submit advisory opinions to the EFSB.

In addition to the license from the EFSB, National Grid also needs approval of its pending Freshwater Wetlands Permit Application that was filed with RIDEM on December 23, 2016. As part of this application, RIDEM will review and make a determination on the water quality certification, the proposed storm water discharge associated with construction activities pursuant to Rule 31 of the Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Regulations, the freshwater wetlands permit application, and the Army Corps of Engineers Programmatic General Permit. RIDEM’s review will also include a determination of the Project’s conformance with the Rhode Island Stormwater Design and Installations Standards Manual (“RISDISM”).

Testimony That Should be Stricken

National Grid objects to the aforementioned portion of Mr. Cabral’s prefiled testimony as it is not relevant to the EFSB’s proceedings on this Project. The EFSB issued a Preliminary Decision and Order on May 2, 2016 (Order No. 91) finding the “following [RIDEM] permits and licenses to be exempted from its jurisdiction pursuant to R.I. Gen. Laws § 42-98-7(3):
Freshwater wetland alteration permits issued pursuant to the Freshwater Wetlands Act, R.I. Gen.

Laws § 2-1-21; Water quality certificate pursuant to authority delegated to DEM by the Environmental Protection Agency (“EPA”) pursuant to the Clean Water Act, 33 U.S.C. Sec. §§ 1251 to 1387, R.I. Gen. Law §§46-12-1 to 46-12-41; and, Rhode Island Pollution Discharge Elimination system permit for point source discharge, issued pursuant to authority delegated to DEM by EPA pursuant to the Clean Water Act, 33 U.S.C. Sec. §§ 1251 to 1387.”² The objectionable testimony provided by Mr. Cabral is his analysis of “the project’s conformance with the ‘Standards’ created within the [RISDISM]”³ located on page 5 line 143 through page 7 line 233.

Argument

Proceedings before the EFSB are subject to the EFSB’s Rules. With respect to objections to evidence, Rule 1.23(c) states, in relevant part “[w]hen objections are made to the admission or exclusion of evidence before the Commission, the grounds relied upon shall be stated briefly.” Rule 1.29(a), concerning the admissibility of evidence and the applicability of the Rules of Evidence in the Board’s proceedings, provides in pertinent part as follows:

In all proceedings wherein evidence is taken, irrelevant, immaterial or unduly repetitious evidence shall be excluded. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent practicable, the Board shall not be bound by technical evidentiary rules, and, when necessary to ascertain facts not reasonable susceptible of proof under the rules, evidence not otherwise admissible may be submitted, unless precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

Rhode Island Rule of Evidence 402 states, in relevant part, “[e]vidence which is not relevant is not admissible.” Rhode Island Rule of Evidence 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the

² Rhode Island Energy Facility Siting Board Order No. 91, page 11 (May 2, 2016).

³ Prefiled Testimony of Steven M Cabral, Page 5 line 144 through 155.

determination of the action more probable or less probable than it would be without the evidence.” The objectionable testimony proffered by Mr. Cabral relates to his disagreement with the proposed substation design and engineering that is currently under review by RIDEM. In fact, the objectionable testimony begins with the statement “[i]n contrast to Mr. Endrit Fiku’s reliance on RIDEM reviews, I offer the following comments related to the proposed project’s conformance with ‘Standards’ created within the [RISDISM]...”⁴ which could be read as challenging RIDEM’s ability to properly determine the Project’s conformance with the RISDISM. Such arguments are clearly not relevant to these proceedings as RIDEM’s determination on National Grid’s pending Freshwater Wetlands Permit Application is exempt from the EFSB’s jurisdiction. Thus, Mr. Cabral’s testimony should be stricken as it is of no consequence to the EFSB proceedings.

The objectionable testimony proffered by Mr. Cabral concerns the application before RIDEM and is therefore outside of the jurisdiction of these proceedings.

Conclusion

The testimony of Mr. Cabral is irrelevant as it is of no consequence to the Board’s proceedings as it concerns permits and approvals that are not within the Board’s jurisdiction. Thus, pursuant to the EFSB Rules Sections 1.23(c) and 1.29(a) and the Rule of Evidence Sections 401 and 402, the testimony is inadmissible. For these reasons and any other reasons that may be stated at any hearing on this motion, National Grid requests the Board to strike Mr. Cabral’s prefiled testimony from page 5 line 143 through page 7 line 233.

[THE FOLLOWING PAGE IS THE SIGNATURE PAGE]

⁴ Id. page 5, Lines 143 through 177.

Dated: March 24, 2017

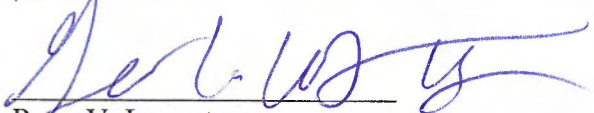
Respectfully submitted,

The Narragansett Electric Company
d/b/a National Grid

By its Attorneys,

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Peter V. Lacouture (for)



Peter V. Lacouture

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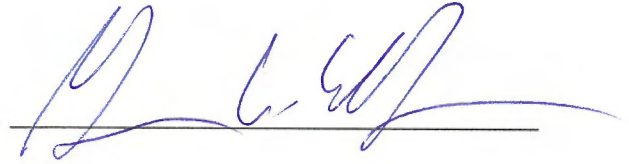
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CERTIFICATE OF SERVICE

I hereby certify that a copy of National Grid's Motion to Strike was delivered to the Service List associated with the Docket via electronic mail this March 24, 2017.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'D. L. G.' followed by a long horizontal stroke.