

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

In re The Narragansett Electric :
Company (Southern Rhode Island : Docket No. SB-2005-01
Transmission Project) :

DECISION AND ORDER (NORTH KINGSTOWN FEES)

I. INTRODUCTION

On November 18, 2005, The Narragansett Electric Company d/b/a National Grid, a Rhode Island corporation and franchised public utility (“Narragansett” or the “Company”), filed with the Energy Facility Siting Board (“EFSB” or the “Board”) an application to construct and alter major energy facilities. Narragansett proposes to construct a new 115 kilovolt (kV) transmission line and 115 kV tap lines, reconductor existing 115 kV transmission lines, construct a new 115–12.47 kV substation and expand and modify an existing substation (collectively the “Project.”) The application was docketed on December 14, 2005 and, after public notice, a preliminary hearing was held on February 2, 2006.

On May 24, 2006, counsel for the Town of North Kingstown (“Town”) filed a motion pursuant to EFSB Rules of Practice and Procedure (“Rules”) 1.21 for prepayment of the Town’s expenses, including \$25,000 in legal fees, \$5,000 for geohydrological fees and \$5,000 for professional engineering fees. Narragansett objected to the prepayment of any fees or expenses to the Town and objected to the payment of the Town’s legal fees. It did, however, state that it was willing to “reimburse the Town for the reasonable cost of geohydrological and professional engineering services up to \$5,000 each.”

II. ANALYSIS

A. Legal Fees of Designated Agencies.

Payment of the fees and expenses of the EFSB and “Designated Agencies”¹ are addressed in § 42-98-17 of the Energy Facility Siting Act (“Act”). Subsection (a) of this section authorizes the Board to spend money on “materials and to employ on a contract or other basis legal counsel, official stenographers, engineers, accountants, and expert witnesses and for other necessary expenses of the Board . . .” Sections 42-98-17(b) and (c) provide for the recovery of these expenses from the applicant for a permit.

Section 42-98-17(e) of the Act authorizes the EFSB to distribute funds to designated agencies to employ “staff or consultants” and generally to implement the provisions of the Act. Narragansett notes in its objection that this section does not mention the payment of legal fees for counsel to designated agencies, unlike the provision in § 42-98-17(a), which authorizes the Board to hire legal counsel at the expense of the applicant.

The EFSB Rule 1.21(b) should be interpreted so as not to conflict with the Board’s enabling statutes. Accordingly, the Board finds that Narragansett is not required to reimburse the legal fees of the Town or any other designated agency.

B. Prepayment of Fees and Expenses.

Rule 1.21 requires an applicant to pay the expenses “reasonably incurred” by the Board and designated agencies related to the application. Rules 1.21(b) and (c) allow the Board in its discretion to require prepayment of expenses in the form of a deposit into an interest-bearing account under the Board’s control for payment of “expenses actually incurred.”

Narragansett suggests that this rule was adopted to provide for recovery of expenses in a situation where an applicant may not be financially sound. In fact, the Board has dismissed one

¹ The Town and several of its agencies have been designated in our preliminary order in this proceeding to review the application and provide an advisory opinion to the Board. As such, they are “designated agencies.”

case for the failure of an applicant to pay the Board's expenses. In Re Application of Aquidneck Power Limited Partnership to Construct a Major Energy Facility, Docket No. SB-91-1, Order Dismissing Application With Prejudice for Failure to Pay Expenses (Order No. 19, July 20, 1992.) Thus, the Board will not require Narragansett to prepay expenses to a designated agency.

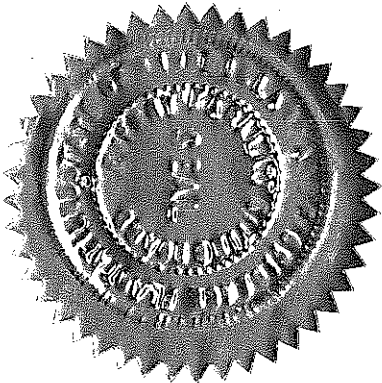
Accordingly, it is hereby

Order number (58) ORDERED:

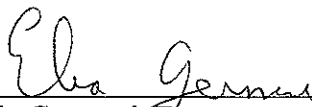
1. The motion dated May 24, 2006 by the Town of North Kingstown for payment of its legal fees and the prepayment of other expenses is hereby denied.

PURSUANT TO AN OPEN MEETING HELD ON JUNE 15TH 2006,

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND THIS 3rd DAY OF
AUGUST, 2006.



ENERGY FACILITY SITING BOARD



Elia Germani, Esq.
Chairman



Kevin M. Flynn



W. Michael Sullivan