

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

IN RE: THE NARRAGANSETT ELECTRIC :
COMPANY D/B/A NATIONAL GRID : **SB-2021-04**
PETITION FOR WAIVER EXTENSION:

**ORDER GRANTING CONDITIONAL WAIVER
AND STAYING LICENSING PROCEEDINGS**

On May 19, 2021, The Narragansett Electric Company d/b/a National Grid (Narragansett Electric or Company) made two filings with the Energy Facility Siting Board (Board) under one cover letter, each relating to the seasonal deployment and operation of a portable liquified natural gas (LNG) vaporization facility on Old Mill Lane in Portsmouth (facility).¹ The first was a Petition for Waiver of Extension (Petition or Waiver), requesting a one-year extension to the Board’s January 8, 2020 waiver of the licensing requirement to temporarily operate the facility on Old Mill Lane without a license. The second was an Application seeking what might fairly be described as an “interim” license to continue deploying the same LNG vaporization facility on Old Mill Lane in Portsmouth each winter season for an unspecified period of years after the winter of 2021-2022. The Company proposes to deploy the facility each winter until a long-term solution to the Company’s claimed need for the facility is identified, permitted, and placed into service.² The Application assumes the Company will be filing another application with the Board, at an unspecified date, seeking a permanent license for the final proposed solution.

The purpose of the facility as described by the Company is to provide standby peak-shaving and backup supply to the Aquidneck Island natural gas distribution system. Because the proposed

¹ The documents filed are available at the PUC offices located at 89 Jefferson Boulevard, Warwick, Rhode Island or at <http://www.ripuc.org/efsb/index.html>, under Docket No. SB-2021-04.

² Application at 3 (May 19, 2021).

facility will gasify, treat and/or store LNG, it qualifies as a major energy facility as defined by R.I. Gen. Laws § 42-98-4 and requires licensing by the Board.³

For the reasons set forth in this order, the Board grants the request to extend the waiver of the licensing requirement to allow Narragansett Electric to operate the portable LNG vaporization facility on Old Mill Lane during the upcoming winter season of 2021-2022, subject to the numerous conditions set forth in this order below. With respect to the Application, the Board stays the proceedings until a supplemental application is filed no later than April 4, 2022, setting forth the Company's proposal for a long-term solution to the need for the facility, as such need has been claimed by the Company. Upon receipt of the supplemental application, the Application for the interim license and the supplemental application for a permanent license will be consolidated by the Board in this docket for further proceedings.

I. FACTS AND TRAVEL

A. History Prior to Filing of Petition and Application

While the filing of the Petition and Application was made only recently, the matter relating to the facility for which the Waiver and license is sought has a long history which is important to reiterate here.

(1) January 21, 2019 – The Outage and Seasonal Usage of Facilities Begins

The apparent need for the seasonal deployment of the facility arose out of events on January 21, 2019, when Narragansett Electric experienced a service interruption caused by low-pressure transmission supply from one of its natural gas suppliers. A large number of customers on Aquidneck Island were left without natural gas service for heating during extremely cold temperature conditions. To respond to this emergency situation, Narragansett Electric mobilized

³ See Docket No. SB-2020-02 Order No. 147 (Jan. 29, 2021).

the LNG vaporization equipment (equipment) for the remainder of the 2019-2020 winter and began working on a long-term solution and looking for alternative sites to operate the equipment.⁴ The Company then made a determination that ongoing transmission supply constraints to Aquidneck Island created system reliability risks which necessitated retaining seasonal use of the equipment at the location on Old Mill Lane during the winter season for at least several years.

(2) October 24, 2019 – First Petition for Waiver

On October 24, 2019, ten months after the January outage – and immediately before the start of the winter heating season –⁵ Narragansett Electric filed a Petition for Waiver of licensing requirements of the Energy Facility Siting Act (Act), R.I. Gen. Laws § 42-98-1 *et seq.*⁶ The petition sought an order that would permit the Company to operate a temporary portable LNG vaporization facility on Old Mill Lane in Portsmouth, Rhode Island without applying for a license. The matter was docketed as No. SB-2019-04. The petition argued that although the Company did not believe the operation of the facility was within the jurisdiction of the Board, it requested a four-year waiver from the Act’s licensing requirements. It asserted that the facility was not a major energy facility.

(3) November 6, 2019 – First Order of the Board, Granting 2-Year Waiver

On November 6, 2019, the Board held an open meeting and granted Narragansett Electric a waiver of the licensing requirements of the Act, emphasizing that there had been widespread

⁴ See Petition for Declaratory Order at 8-11 (Sept. 16, 2020). In conducting an analysis of alternative sites, Narragansett Electric 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 been 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.

⁵ The winter heating season for natural gas heating is defined as November 1 through March 30.

⁶ R.I. Gen. Laws § 42-98-4 requires a license to “site, construct, or alter a major energy facility with the state” issued by the Rhode Island Energy Facility Siting Board.

concerns regarding the reliability of the natural gas supply on Aquidneck Island and that lives could be at risk if gas is not available when needed during cold weather.⁷ The Board also ordered Narragansett Electric 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. The written order reflecting the open meeting decision was issued on January 8, 2020.⁸

(4) September 2020 – Long-Range Gas Capacity Study and Petition for Declaratory Order

Nine months later, in September 2020, Narragansett Electric posted a study entitled “Aquidneck Island Long-Term Gas Capacity Study” on its website. The study identified seven options that the Company was evaluating to address the gas constraint issues on Aquidneck Island. Around the same time as the publication of the study, on September 16, 2020, the Company filed a Petition for Declaratory Order as had been previously ordered by the Board.

(5) December 2020 – Second Order of the Board, Denying Petition for Declaratory Order

On December 10, 2020, the Board held oral argument on the Petition⁹ and on December 18, 2020, the Board held an open meeting and denied the Petition for a Declaratory Order, ordering Narragansett Electric to file an application to operate the facility on Old Mill Lane in Portsmouth with the Board by June 1, 2021. The written order was issued on January 29, 2021.¹⁰

(6) December 18, 2020 – Narragansett Electric Filing at the PUC

On the same day as the Board’s open meeting, Narragansett Electric made an unrelated filing with the Public Utilities Commission (PUC) pertaining to the Company’s proposed capital spending plan for its entire gas distribution business for fiscal year 2022. The filing, referred to as

⁷ SB-2019-04 Order No. 142 (Jan. 8, 2020).

⁸ *Id.*

⁹ The Town of Portsmouth filed a notice of intervention and the Town of Middletown filed an unopposed motion to intervene which was granted.

¹⁰ SB-2020-02 Order No. 147 (Jan. 29, 2021).

the “2022 Gas Infrastructure Safety and Reliability Plan,” among other requests, sought to recover in rates \$4.9 million for the forecasted cost of performing work on the Aquidneck Island solution.¹¹ In the filing, the Company included testimony that it had determined, after extensive stakeholder engagement, that a so-called “hybrid solution” involving both infrastructure and non-infrastructure investments was the right solution for the capacity issues on Aquidneck Island.¹² In these same proceedings, the Company represented to the PUC that access was gained to the Navy property in November of 2020 for the Company to begin evaluating the property belonging to the Navy as potential sites for the long-term solution.¹³ In March of 2021, the Commission denied the request for rate recovery on technical ratemaking grounds, but emphasized that the Company could proceed with its work and seek recovery in an appropriate proceeding in the future.¹⁴

(7) May 18, 2021 – PUC Technical Session Regarding Aquidneck Island

The PUC conducted a technical session on May 18, 2021 to gain further insight into the Company’s intentions and the hybrid solution which the Company had previously identified as its preferred solution. During those hearings, representatives of the Company stated that the Company had decided to pursue its hybrid proposal and work was underway on the proposal.¹⁵

B. Procedural History in this Docket

On May 19, 2021, only one day after the PUC technical session referenced above, Narragansett Electric filed the instant Petition and Application in this Docket.

¹¹ Docket No. 5099 Smith/Kocon Reformatted Test. at 17-19 (Dec. 23, 2020).

¹² *Id.*

¹³ See data response PUC 2-1 in Docket No. 5099, of which the Board takes administrative notice.

¹⁴ Docket No. 5099 Order No. 24042 at 23-24, 27 (May 6, 2021).

¹⁵ Hr’g Tr. at 110-111 (May 18, 2021).

(1) Motions to Intervene

Subsequent to the filing and the issuance of public notice, a Notice of Intervention was filed by the Town of Portsmouth, and motions to intervene were filed by 1) the Town of Middletown (Middletown), 2) the Rhode Island Attorney General (Attorney General), 3) the Conservation Law Foundation (CLF), 4) the Acadia Center (Acadia), and 5) the Division of Public Utilities and Carriers (Division).¹⁶ The motions of Middletown and the Division were unopposed. Narragansett Electric, however, filed an Opposition to the interventions of the Attorney General, CLF, and Acadia.

After public notice, a preliminary hearing was convened on August 12, 2021.¹⁷ At the preliminary hearing, the Board recognized the Notice of Intervention filed by the Town of Portsmouth.¹⁸ In Narragansett Electric's Opposition to Acadia's, CLF's, and the Attorney General's Motions to Intervene, the Company argued that the motions seek to expand the scope of the proceedings to issues that were not relevant and not before the Board with the current application, specifically the long-term solution to the gas constraint/vulnerabilities on Aquidneck Island. Moreover, it stated that the motions failed to establish interests that will be affected by the current proceeding. Narragansett Electric noted that it is currently evaluating long-term solutions which it expects to be presented in the fall. It stated that the issues raised in the motions are more appropriate to the proceeding that will consider the long-term solution and not the current

¹⁶ Rule 1.10(B)(2) allows intervention to a person with "an interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding." Rule 1.10(B)(3) allows intervention to a person that can establish "any other interest of such nature that petitioner's participation may be in the public interest."

¹⁷ R.I. Gen. Laws § 42-98-9(a). Notice of the preliminary hearing was published in the *Providence Journal* and *The Newport Daily News*; sent directly to the service list; posted on the Public Utilities Commission and Secretary of State websites; and posted in the Public Utilities Commission and the Department of Environmental Management office buildings.

¹⁸ Rule 1.10(A)(1) provides that "[p]articipation in a proceeding as an intervenor may be initiated as follows: 1. By the filing of a notice of intervention by CRMC, DEM, *the city or town in which the proposed facility is to be located* or designated agencies." (emphasis added).

proceeding which seeks to maintain reliability until the long-term solution is implemented. Until the Company determines a long-term solution, the Company argued that consideration of those issues in the instant proceeding would be premature, confusing, distracting, and potentially disruptive. The Company asserted that the Attorney General, CLF, and Acadia have failed to establish how a decision in the instant matter will adversely affect them when the license sought is only for a temporary period until the Company chooses a permanent solution which will have to be approved and licensed by the Board. Lastly, the Company asked that if the movants are permitted to intervene, that their participation be limited to the issues currently before the Board and not the long-term concerns and policy issues raised in the motions.

With respect to the unopposed motion of Middletown, the Board found that because Middletown borders Portsmouth and the town boundary abuts the facility on Old Mill Lane,¹⁹ it may be affected by operation of the facility and its interests are not adequately represented by existing parties. Therefore, its intervention was appropriate. Further, the Board granted the motion to intervene of the Division, based on the role of the Division as the ratepayer advocate and its other regulatory responsibilities addressing the issues implicated in this proceeding, specifically the reliable provision of natural gas on Aquidneck Island.

The Attorney General argued that he had a statutory right to intervene, citing Rhode Island General Laws §10-20-3(d), which places a duty on the Department of the Attorney General to: “take all possible action, including but not limited to programs of public education, legislative advocacy, and formal legal action, to secure and ensure compliance with the provisions of [chapter 10 of Rhode Island General Laws] and any promulgated environmental quality standards.” Narragansett Electric failed to provide any basis to challenge the Attorney General’s claim of a

¹⁹ See Application, Base Map Figure 5-1.

statutory right to participate in the proceedings and the Board granted the intervention on those grounds.²⁰

Regarding CLF and Acadia, Narragansett Electric cited the Supreme Court case of *In Re Review of Proposed Town of New Shoreham Project*, 19 A.3d 1226 (R.I. 2011). In that case, the Supreme Court found that CLF lacked standing to pursue an appeal of a decision relating to the approval of a long-term contract by the PUC. The Court stated:

“[I]t is clear to us that CLF’s interest in this matter is to ameliorate the adverse effect of climate change by creating ‘the foundation necessary to build a strong renewable energy sector in Rhode Island. Such concerns implicate questions of policy more appropriately addressed in the political arena.’”²¹

While CLF and Acadia may be pursuing a similar interest in this case, and the Board could deny the interventions in reliance upon such reasoning, the Board declined to do so in this case. The Supreme Court’s *New Shoreham* decision involved a question of standing to pursue an appeal. These interventions, however, are not pursuing an appeal. It may be that neither CLF nor Acadia would have standing to appeal a decision by the Board in this case (and the Board offers no opinion one way or the other on that hypothetical). However, there is a difference between participating as an intervenor in the agency case and a showing of injury in fact which constitutes being an “aggrieved” party for purposes of an action in court.

In that context, the Board’s rules reserve to the Board – in Rule 1.10(b)(3) – the right to exercise its discretion to allow a party to intervene in cases where the Board determines that the party has an interest of such nature that the participation of the party seeking intervention “may be in the public interest.” On that basis, the Board allowed the interventions, because the issues in

²⁰ The Board also could have granted intervention on the grounds that participation was in the public interest, pursuant to Rule 1.10(b)(3).

²¹ *In Re Review of Proposed Town of New Shoreham Project*, 19 A.3d 1226, 1229 (R.I. 2011).

this case are of such a nature that the participation of these two environmental advocacy organizations may assist the Board. Regardless of whether they have an “interest that is directly affected” in a way that is distinguishable from the general population, these two organizations have significant regulatory experience addressing environmental and other public policy matters within the State of Rhode Island and may have perspectives that the Board concludes would be valuable to consider in the context of this particular case.

Regarding Narragansett Electric’s concerns that CLF’s, Acadia’s, and the Attorney General’s interests in intervening were beyond the scope of the proceedings, the Board notes that it always has the ability to confine the litigation within the scope of the proceedings as the Board defines it.

(2) Hearing on August 12, 2021

After the Board ruled on the interventions, the Chairman noted that he had three concerns regarding the status of the Company’s proposals and the impact on this docket. The first related to the Company’s delay in identifying a long-term solution to the gas constraint issues and filing a full application with the Board. The second was the potential for duplicate litigation once an application for the long-term solution was filed, and the third was the implications of the pending PPL transaction.²²

Turning to the Petition for Waiver Extension, the Chairman asked the parties whether they had any objection to the Petition. While Acadia did not object to granting the Petition, counsel suggested that there may be some way to mitigate the impact on the community and future operation of the system, like staging the equipment at another nearby location until needed. The Attorney General, CLF, Portsmouth, and the Division did not object to the Petition. Middletown

²² This matter is before the Division in Docket No. D-21-09, Petition for Authority to Transfer Ownership of the Narragansett Electric Company to PPL Rhode Island Holdings, LLC.

questioned whether it would be important to include a condition to the waiver that precluded Narragansett Electric from seeking a waiver in the future. The Chairman explained that while he would not discourage parties from suggesting conditions, if they were to propose such conditions, they should be prepared to have the condition supported by witness testimony. The Chairman gave the parties until August 18, 2021 to file any objections with the Board with respect to the Petition.²³

Narragansett Electric then presented witnesses to answer questions about when an application for a permanent solution would be filed and to make a presentation to outline the contents of the application to operate the portable LNG Vaporization facility on Old Mill Lane. A company witness, Brian Schuster, director of customer and community management, explained how Narragansett Electric disclosed to the public, in January 2020, its plans for a hybrid solution to the capacity issues on Aquidneck Island. He represented that in May of 2021, the Company determined it needed further assessment and analysis of this solution. He stated that it is the Company's intent to make a final decision on the long-term solution in October 2021. Faye Brown, Narragansett Electric's consulting engineer with the gas asset design engineering group, testified that an application for the chosen long-term solution would be filed with the Board during the final quarter of 2022. She identified two to three months needed for a requisition for the engineering work and six months for engineering work. Mr. Schuster added that because the potential site is Navy property, there would be federal oversight and approvals needed from Norfolk, Virginia which are beyond the control of the Company. Counsel for Narragansett Electric was unable to answer when the Company planned to end operations on Old Mill Lane.

²³ Recognizing the limited period of time available before the winter season arrives and the facilities are mobilized, the Board ruled that the decision by any party not to object to the request for a temporary waiver shall not be used against any party as evidence in the licensing proceeding (or any future licensing proceeding) to establish or argue that the failure to object constitutes admissions of fact relevant to the licensing of any temporary or permanent facilities in these or any future proceedings.

Both CLF and Acadia expressed concern that operation on Old Mill Lane would continue indefinitely while the Company continues to connect new gas customers and questioned whether the Company has initiated any efforts to stop new connections to which Mr. Schuster indicated it had not. After Ms. Brown and Daniel Lamriben, director of LNG operations for Rhode Island, made the presentation regarding operation on Old Mill Lane, the hearing was adjourned for the day. The Board then scheduled the matter to continue on August 26, 2021, indicating that the Board expected to hold an open meeting on that day.

(3) Filings on August 18, 2021

On August 18, 2021, Acadia and CLF filed proposed conditions to Narragansett Electric's Petition. The filing indicated that the parties had no objection to the extension of the Waiver Petition; however, they were requesting that the Board impose a temporary moratorium on new gas connections on Aquidneck Island as a condition to the extension. The Town of Middletown filed an objection to the Petition requesting that the Board schedule a hearing to allow the Town an opportunity to propose conditions to the waiver.

After receipt of the filings on August 18, 2021, counsel for the Board notified the parties that there would be a hearing on August 26, 2021 and requested that CLF and Acadia come prepared to the hearing to explain and elaborate upon the legal basis for their position that the Board has the authority to impose a moratorium. The Board asked Middletown and Portsmouth to come prepared to state their position on the moratorium request. In addition, the Board asked Middletown to come prepared to specify the conditions it believed are necessary to be placed on the Waiver. Finally, the communication invited any party wishing to provide a written response to the filings of Acadia, CLF, and Middletown to do so by August 24, 2021.

(4) Filings on August 24, 2021

On August 24, 2021, the Attorney General filed comments asking the Board to consider all conditions it may find appropriate, including those suggested by the other parties. The Division filed comments indicating that it did not object to the waiver and stated that the application of any conditions should be considered during the full application process. The Division also argued that there was no legal basis for the Board to impose a moratorium.

Narragansett Electric responded to the comments and argued that: 1) none of the parties had challenged the need for the extension of the waiver, 2) the arguments addressed the long-term issues and are unrelated to the short-term waiver request, and 3) since a moratorium would be an act of regulating the utility, the Board did not have the authority to impose one because only the PUC has authority to regulate Narragansett Electric.

(5) Hearing on August 26, 2021

On August 26, 2021, the Board reconvened the hearing to consider the issues that had been raised in the filings of August 18, 2021 and August 24, 2021. After closing the hearing, the Board held an open meeting and made its decisions, which are discussed below.

II. DECISIONS

A. The Request for a Moratorium

In its joint filing made on August 18, 2021, CLF and Acadia stated that they had no objection to the extension of the emergency waiver for the winter of 2021-2022.²⁴ However, they requested that the Board impose a moratorium on new gas connections on Aquidneck Island as a condition to the extension of the waiver.²⁵ They argued that it would be important to prevent the

²⁴Proposed Conditions to Extension of Emergency Waiver at 1 (Aug. 18, 2021).

²⁵ *Id.*

existing gas constraint on the island from getting worse by stopping the growth of gas usage that would exacerbate the problem while the licensing proceedings are pending.²⁶ Recognizing the complex impacts of an island-wide moratorium, they also suggested the Board consider exempting some customers from the moratorium in certain circumstances.²⁷

In response, Narragansett Electric and the Division each argued that the Board does not have the statutory authority to impose a moratorium, maintaining that the PUC has exclusive authority to regulate the utility. They asserted that the imposition of an island-wide moratorium would be inappropriately regulating the services of the utility, as opposed to the facility for which the license and waiver is being sought.²⁸

The Town of Portsmouth maintained neutrality on whether a moratorium would be appropriate as a part of a long-term solution in the licensing proceeding, but took the position that it would not be appropriate to impose a moratorium at this stage of the proceeding in the context of the waiver.²⁹ The Town of Middletown, on the other hand, strongly objected to the imposition of a moratorium, raising concerns about the impact that such an order would have on businesses that are contemplating new gas connections.³⁰

The issue of whether to impose a moratorium raises significant legal, evidentiary, and potentially sweeping policy issues. There are at least four categories of issues implicated by the request: (1) the authority of the Board to impose a moratorium, (2) whether there is substantial evidence supporting the moratorium as it relates to the waiver, (3) conflicting policy considerations, and (4) due process concerns.

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 5.

²⁸ Response to Acadia's, CLF's and Town of Middletown's Objections to The Narragansett Electric Company d/b/a National Grid's Petition for Waiver Extension at 6-7 (Aug. 24, 2021); Division of Public Utilities and Carriers Memo in Response to the Motions Regarding Waiver Conditions at 2; Hr'g Tr. at 16, 45 (Aug. 26, 2021).

²⁹ Hr'g Tr. at 91 (Aug. 26, 2021).

³⁰ *Id.* at 93.

(1) Legal Issue of Authority

Regarding the legal issues, there is a threshold question whether the scope of the Board's authority under R.I. Gen. Laws § 42-98-1 *et seq.* encompasses the power to mandate a moratorium. Further complicating this question is the broad scope of the moratorium. It would impact the services offered to a wide body of gas distribution customers residing across Aquidneck Island who do not live within the vicinity of the facility or have any direct connection to the facility. In effect, a moratorium would prohibit service offerings made by the gas distribution company to the public at large, services which had previously been approved by the PUC.³¹ The request for the moratorium raises the question of whether there is a conflict between the "exclusive authority" of the PUC to "regulate" and the authority of the Board to place conditions on licenses which reach significantly beyond the conditions of operating or constructing the facility being licensed. In sum, it presents a significant legal question of first impression with substantial implications.

(2) Legal Issue of Substantial Evidentiary Support

Even if the Board were to determine that it has the requisite authority to impose a moratorium, there is a second legal issue that arises which relates to the evidentiary showing needed to support the Board's exercise of its authority. It is well-settled law that an administrative agency must rest its decision on substantial evidence in the record.³² Otherwise, the exercise of its authority would be arbitrary and capricious and, as a result, unlawful. With that general standard as a backdrop, at a minimum there must be a logical connection or reasonable relationship between the objective of the moratorium as it relates to the waiver or license being sought, and its material effect as it relates to the operations or duration of operations for the facility being licensed. The fact that a moratorium alone would create desirable environmental benefits would not be sufficient,

³¹ The suggestion that the Board should consider exemptions highlights the nature of the legal difficulty.

³² *Environmental Scientific Corp. v. Durfee*, 612 A.2d 200, 209-10 (R.I. 1993).

absent such a logical connection or relationship to the facility over which the Board has jurisdiction. Otherwise, evidence of any environmental benefit that is merely tangential to the facility being licensed could expand the Board's jurisdictional reach beyond that of a licensing authority.

(3) Policy Implications

There is an assortment of sweeping policy implications that arise from an island-wide moratorium that would be important to consider. One relates to the practical and economic impacts that a moratorium would have on the citizens in the three municipalities on the island. A directive which prohibits businesses, residents, non-profits, and even governmental entities from obtaining natural gas service for heating or other typical uses would deprive those customers of an energy choice which is available to similarly situated customers across the rest of the state where gas service is available. This has societal economic implications, as well as implications for the financial effect on individual customers who would be denied access to what might be the most affordable heating option for their financial circumstances.

At odds with these practical and economic impacts, however, are other policy implications which arise out of the recently enacted Act on Climate, R.I. Gen. Laws § 42-6.2-1 *et seq.* The new law raises the question of whether a moratorium should be a preferred choice among alternatives, if it will materially assist the state in achieving its greenhouse gas emissions reduction targets while at the same time directly addressing the issue of need for the facility currently before the Board. Yet, there is an unresolved question relating to the degree to which a moratorium would assist in achieving those goals when one considers the probabilities of customers simply choosing another fossil fuel instead – an issue that can only be resolved through evidentiary hearings.³³

³³ Hr'g Tr. at 45 (Aug. 26, 2021).

(4) Due Process Concerns

Finally, there is the issue of due process which was raised by Narragansett Electric.³⁴ As indicated in the discussion of the policy implications, it is indisputable that the imposition of a moratorium would have a direct impact on a wide body of citizens in the three municipalities on Aquidneck Island who may wish to connect to the natural gas distribution system for heating or other purposes. It would not have been apparent to any reasonable person reading the notices, the Petition, or the initial Application filed in this Docket that the Board could consider and/or order an island-wide moratorium on new natural gas connections. Even assuming the Board has the authority to issue such an order and the evidence to support such a decision, the Board would be exercising unprecedented authority without notice to members of the public on Aquidneck Island who would be affected. Thus, there are members of the public who would not have had the opportunity to make public comment or file motions to intervene on the subject which would allow participation in the debate.³⁵

B. Decision Regarding the Moratorium Request

The Board finds that it is not necessary at this stage of the proceedings to rule on the issue of whether the Board has authority to impose an island-wide moratorium on new gas connections. The Board finds that there is no connection between the objective of the moratorium and the effect it would have on either the operation of the facility, the need for the facility, the duration of operations, or the environmental impact caused by the facility, considering the Waiver applies only for the single winter period of 2021-2022. The justification for making the moratorium request is that it will change the trajectory of gas demand on Aquidneck Island over the long term. As a

³⁴ Response to CLF's, Acadia's, and Middletown's Objections to the Narragansett Electric Company d/b/a National Grid's Petition for Waiver Extension at 6 (Aug. 24, 2021).

³⁵ The due process concern could be addressed by further properly noticed hearings. However, the Board recognizes the limited amount of time between now and the beginning of the winter to address such a weighty policy issue.

result, it will limit gas growth which – in turn – could affect the need for LNG on the island over the long term. Limiting gas growth may be a desirable objective, but that is an argument that should be made in the licensing proceeding for the long-term solution, based upon an evidentiary record in support of the request and not here as a condition for a waiver that will apply only to one winter.

It may be that a moratorium would advance public policy to reduce greenhouse gas emissions, but there is no evidence or basis to conclude that operation of the facilities for *one winter* will have any impact on the state being able to meet its greenhouse gas emissions targets mandated by the Act on Climate. While a long-term moratorium could have a positive impact on the state reaching its targets over the long term, it is not relevant to the Waiver Petition which relates to mobilizing the equipment for only one winter.³⁶ The moratorium in this context is not an alternative to the facilities or an alternative that limits the duration of its operations for this winter. Rather, it would be a long-term greenhouse gas emissions reduction strategy that tempers the need for gas supply in the long run.

The Board notes that it is important to draw a clear distinction between the existence of authority, and whether there is an evidentiary basis to exercise that authority. A conclusion that the authority exists is not a conclusion that it should be undertaken. Similarly, a conclusion that there is substantial evidence that illustrates a significant benefit from a moratorium does not create the authority to impose it. Finally, if there is no substantial evidence to support the moratorium, there is no legal basis to grant the request, even if authority exists. It is on this latter ground upon which the Board rests its decision.³⁷

³⁶ The Board also notes that the probability that the facilities would even be required to vaporize LNG this winter is very low. For the winters of 2019-2020 and 2020-2021, National Grid had mobilized the facilities at Old Mill Lane but did not need to vaporize LNG even once across those two winters. Tr. Aug. 12 at 99 & 105.

³⁷ There may be other reasons at this stage of the proceedings to deny the request based on policy or due process grounds, but the Board is not ruling on those issues.

C. The Petition for a Waiver and the Pending Application

As set forth above, the filing now pending before the Board came from the Company in two parts. One is the request to extend the emergency waiver allowing Narragansett Electric to operate the LNG Vaporization facility without a license during the upcoming winter season, and the other is the Application for the interim operation of the LNG Vaporization facility until a final solution to the claimed capacity constraint issue is implemented. While the two components of the filing were requesting separate relief, the Board finds it impractical and inappropriate to treat them separately. Further, there is a missing component to this matter that is not yet before the Board – the Company’s proposal for a final long-term solution to the capacity constraint issue. The Board finds that these three components – the waiver, the interim Application, and the final proposed long-term solution – are all inextricably linked and, therefore, pertinent to the decision at this stage of the proceedings.

With respect to approval of the Waiver which allows the Company to mobilize and operate the portable LNG Vaporization equipment this winter, there is no dispute to resolve. No party has objected to the Waiver being granted for the winter of 2021-2022, as limited to that one winter.³⁸ There are, however, issues that arise regarding the extent to which conditions should be included in the order granting the waiver.

During the course of the hearings, the Board and some of the parties expressed concern about the length of time it has taken Narragansett Electric to get to this point in the proceedings and the length of time that appears to remain before a final decision on the long-term solution would be made. In that regard, the long history is relevant with respect to the decision of the Board

³⁸ As indicated *supra*, the Board ruled that the decision by any party not to object to the request for a temporary waiver shall not be used against any party as evidence of an admission of fact relevant to the licensing of any temporary or permanent facilities in these or any future proceedings.

in placing conditions upon the waiver and establishing a schedule for the proceedings relating to the Application.

The Board has considered the history of the case and evaluated the Company's explanation relating to the timing of the filing of the next application which will contain the Company's proposal for a final solution. Based on that information, the Board finds that the filing of the application with the final solution must be expedited, and proceedings on the Application for the interim operation on Old Mill Lane stayed until the full application is filed by a deadline established by the Board in this order. The justification for this ruling is supported by the history of this matter and what the Board finds are unreasonable delays by the Company in arriving at a final decision for the long-term solution to the capacity constraints on Aquidneck Island.

The history, in many respects, is well-known to the parties, but bears repeating to explain the basis for the Board's decision.

First, there was the outage that occurred on January 21, 2019. The Board has taken administrative notice of the report on the "Investigation into the Aquidneck Island Gas Service Interruption of January 19, 2019" issued by the Division on October 30, 2019. All the details of the January 2019 service interruption are set forth in the report and shall not be repeated here. But it is important to note that January 19, 2019 is the day that the use of LNG vaporization facilities at Old Mill Lane became an annual occurrence.

Seven months later, Narragansett Electric filed a petition with the Siting Board on October 24, 2019, seeking a **four-year** waiver from the Board's licensing requirements as set forth in R.I. Gen. Laws § 42-98-4 to use the LNG vaporization facilities at Old Mill Lane. According to the Company, the filing requested four years because, at that point, it believed that the long-term

solution would be the construction of an enhanced mainline transmission extension into the Portsmouth take station at Old Mill Lane from the Algonquin interstate transmission system.³⁹

Initially, the Company was only seeking a waiver, but it argued in later filings that the operation of the facility was not jurisdictional to the Board. The Board dealt with the matter quite expeditiously at an open meeting on November 6, 2019, granting a **two-year** waiver because the winter was upon them and there was an apparent need to address the widespread concerns about reliability of natural gas supply to Aquidneck Island. However, in its order granting the two-year waiver extension, the Board required that the Company file a second petition to address the legal question that had been raised, specifically, whether the Board had jurisdiction over the facilities.

After the winter was over, the vaporization system was demobilized, and Narragansett Electric commenced a study to examine potential alternative solutions to address what the Company has referred to as the capacity constraint and vulnerability needs faced by the island. At this point, there was no impediment to the Company filing the petition for a declaratory ruling addressing only the legal question of whether the Board had jurisdiction over the facility. However, the Company chose to wait.

Finally in September 2020, a study, entitled “Aquidneck Island Long-Term Gas Capacity Study,” was published and posted on the Company’s website.⁴⁰ That same month, on September 16, 2020, and ten months after being ordered to do so, the Company filed the petition for declaratory order seeking a ruling that the Board did not have jurisdiction over the LNG Vaporization facility.⁴¹ After receiving filings from the parties setting forth their legal positions,

³⁹ Hr’g at 43-45 (Aug. 26, 2021).

⁴⁰ Aquidneck Island Long-Term Gas Capacity Study (Sept. 2020).

⁴¹ Docket No. SB-2020-02. While the written order containing this directive was issued on January 8, 2020, it took the Company ten months from the open meeting decision and nine months from the written order to file the petition ordered by the Board addressing the legal question of jurisdiction.

the Board held oral argument on the petition on December 10, 2020. At the outset of that hearing, the Chairman expressed concern with the fact that the Company had waited so long to file the petition.⁴² Narragansett Electric’s counsel offered that the Company was vetting its alternatives, which took a long time, as an explanation to the Chairman’s concern.⁴³ Board member Janet Coit opined that since the petition was merely one about jurisdiction, the idea that the Company had to vet the alternatives before making the filing did not add up.⁴⁴

Shortly after the hearing, the Board held an open meeting on December 18, 2020 and denied Narragansett Electric’s request for a declaratory ruling and issued a second written order related to this matter on January 29, 2021.⁴⁵ In the order, the Board included a directive for the Company to file an application for a license by June 1, 2021.⁴⁶ While not stated in the written order, the Board also recognized, during discussions at the open meeting, that it would not be possible to complete the licensing proceedings before the following winter and indicated the likely need for the Company to seek another waiver while the licensing process was pending.

On the same day as the Board’s open meeting, the Company made a filing (on December 18, 2020) in PUC Docket No. 5099.⁴⁷ The filing included sworn testimony which contained the following statement:

“As detailed in the September 2020 Aquidneck Island Long-Term Gas Capacity Study prepared and distributed by [Narragansett Electric], the Company has identified the need to address gas capacity constraint and vulnerability needs facing Aquidneck Island. In light of the study’s findings and feedback received via extensive stakeholder engagement, the

⁴² Docket No. SB-2020-02, Hr’g Tr. at 12-14 (Dec. 10, 2020).

⁴³ *Id.* at 13.

⁴⁴ *Id.* at 14. Since that time, Ms. Coit has taken a new position in Washington D.C. and has been replaced on the Board by Terrence Gray, Interim Director of the Department of Environmental Management.

⁴⁵ Docket No. SB-2020-02, Order No. 147 (Jan.29, 2021). The matter was originally opened as Docket No. SB-2019-04 with the original waiver petition. When the Petition for Declaratory Judgment was filed, it was assigned Docket No. SB-2020-02.

⁴⁶ *Id.* at 13.

⁴⁷ The filing, Narragansett Electric’s 2022 Infrastructure Safety and Reliability Plan, related to the Company’s proposal for its capital investment plan for Fiscal Year 2022, most of which did not relate to Old Mill Lane or the Aquidneck Island matter.

Company **has determined** that the right solution for Aquidneck Island is a ‘hybrid’ solution that relies on both new infrastructure and non-infrastructure options.”⁴⁸ (emphasis added).

In the filing, the Company asked the PUC to allow it to include \$4.9 million in rates to have ratepayers cover the costs of performing site assessment work, feasibility studies, engineering, environmental assessments, and survey work on the Aquidneck Island project going forward, much of which related to Navy property which was viewed as a likely component of the so-called “hybrid” solution.⁴⁹ The cost incurrence was estimated for fiscal year 2022, which is the 12-month period beginning April 1, 2021 and ending as of March 31, 2022. The PUC declined to provide the rate relief in that docket for technical ratemaking reasons, without making any rulings on the project itself,⁵⁰ but the Company indicated it was moving forward with the project whether or not the rate relief requested was granted.⁵¹

Later, on May 18, 2021, the PUC held a technical session to understand the Company’s proposal for Aquidneck Island. That session was transcribed.⁵² During that session, the Company’s witnesses discussed the so-called hybrid solution, indicating that the preferred choice would have the Company move the LNG vaporization facilities to a different location on Navy property.⁵³ One of the witnesses testified that Narragansett Electric was already “recommending and working on implementing” the hybrid solution.⁵⁴

On May 19, 2021, one day after the technical session at the PUC, the Company filed its Petition and Application in this case. Despite the references in the technical session to the hybrid

⁴⁸ Docket No. 5099 Smith/Kocon Reformatted Test.at 17 (Dec. 23, 2020).

⁴⁹ See Docket No. 5099 Narragansett Electric’s Response to PUC 4-1 (Feb. 1, 2021) and PUC 2-1 (Jan. 25, 2021).

⁵⁰ Docket No. 5099, Order No. 24042 at 23-24 (May 6, 2021).

⁵¹ Docket No. 5099 Response to PUC 5-5 (Feb. 9, 2021).

⁵² The Board has taken administrative notice of the transcript of that session.

⁵³ PUC Informational Session, Hr’g Tr. at 114 (May 18, 2021).

⁵⁴ *Id.* at 111.

solution being recommended and pursued, the Company's filing in this proceeding made no reference to the hybrid solution. To the contrary, there were representations suggesting that the preferred choice had not yet been identified.⁵⁵ Whatever the reason for not identifying the preferred solution in the filing, there have been conflicting public signals given by Narragansett Electric – one that the Company has chosen a solution, while the other that a final solution has not been chosen yet.

At the hearing on August 12, 2021, the Board again expressed concern about the length of time it was taking for the Company to file an application for its final proposed solution.⁵⁶ Three concerns were expressed at the hearing and form a basis for the Board placing conditions on the granting of the waiver through this order. The first concern related to the adverse impact resulting from delays in identifying the long-term resolution and filing an application for approval of the resolution. The second related to duplicative litigation that could take place. And the third related to the implications of the pending PPL transaction. These concerns remain and have not abated.

With respect to the issue of delays, the Board remains concerned that the Company lacks any incentive to file the full application any time soon.⁵⁷ The longer it takes, the more winters the Company may have to utilize the vaporization facilities at Old Mill Lane, assuming the safety and reliability need is validated. There appears to be a corporate tendency for project inertia to creep in, with no impetus to move this along. When this lack of incentive is considered in the context of the length of time it typically takes to complete a single Siting Board proceeding, the concern is heightened.⁵⁸

⁵⁵ Application at 3 (May 19, 2021).

⁵⁶ Hr'g Tr. at 18-26 (Aug. 12, 2021).

⁵⁷ These concerns were iterated on August 12, 2021 when the Company had the opportunity to respond. *Id.*

⁵⁸ Siting Board licensing proceedings arising out of full applications have typically taken at least 12 to 18 months and in some cases even longer when contentious.

If the Company waits until next October to make the second filing – as it indicated at the hearing on August 12, 2021 – the application for the long-term solution would not be filed with the Board until another year has passed. Then it could take at least another year before the proceeding to consider the long-term solution is concluded. Assuming this schedule, a final order by the Board would not issue until the summer of 2023 – two years from now, which also would happen to be four and a half years since the outage incident in January 2019.

If Narragansett Electric chooses an option other than continuation of LNG Vaporization on Old Mill Lane, or chooses a complex program of energy efficiency and demand response, it is conceivable that operations on Old Mill Lane would continue for the winter of 2023-24 and the winter of 2024-25, while gas usage continues to grow on the island. It is possible that any schedule for new construction could push the continued “interim” use of Old Mill Lane into the winter of 2025-26 and potentially longer. The Board finds such an extended timeline to reach a conclusion unreasonable and unacceptable – a concern which also was raised at the hearing on August 12, 2021.⁵⁹ This matter needs to be addressed sooner rather than later, as the citizens in the community await a final outcome. The final long-term resolution – whatever that may be – needs to be definitively identified, the full licensing process completed, and implementation of the solution commenced, much sooner than the proposed timeline by Narragansett Electric.

The Board also is concerned about the consequence of having to conduct duplicative proceedings when many issues that arise in the context of the first application will arise again in the second application. This will not only have an adverse effect on the Board, but also on the other agencies and authorities that will be providing advisory opinions.

⁵⁹ Hr’g Tr. at 23 (Aug. 12, 2021).

Finally, the Board is concerned that if the second application is not well-developed or filed until after PPL acquires Narragansett Electric, there is a very real risk that much of the institutional knowledge of the system and the history of the issues on Aquidneck Island would leave the state with National Grid USA, Inc., the current owner of the Company.⁶⁰

When the Board probed the Company about its concerns regarding the delays at the hearing on August 12, 2021 and inquired about when the Company would file the application for the long-term solution, the answers given by the Company witnesses were unconvincing and, in some instances, lacked credibility.⁶¹ It appeared to the Board that the engineering witness had not considered the questions before being asked at the hearing. The witnesses appeared surprised and unprepared to answer the question. In fact, the engineering witness at one point stated, “I don’t know how to explain it.”⁶² The responses heightened the Board’s concern that the Company has lacked an incentive to move the project along.

The initial answer given by the witness was that the Company expected to be filing its second application in the last quarter of 2022.⁶³ Counting the months from September 2021, that is over a year, or 13 to 15 months. When the Board inquired as to why it would take so long, the witness stated that the Company would need two to three months to requisition engineers and six months to do engineering.⁶⁴ At the same time, counsel for the Company indicated that they would be working on the application in parallel.⁶⁵

⁶⁰ The PPL transaction requires the approval of the Division of Public Utilities and Carriers and is pending before the Division in Docket No. D-21-09.

⁶¹ Hr’g Tr. at 42-53 (Aug. 12, 2021). The Board is not suggesting that any of the witnesses deliberately gave false testimony. Rather, it appeared that the witnesses’ speculation in defending the Company’s schedule lacked any reasonable factual basis.

⁶² Hr’g Tr. at 42.

⁶³ *Id.* at 41.

⁶⁴ *Id.* at 43-44 & 48-49.

⁶⁵ *Id.* at 49.

While the witness projected the last quarter of 2022, the simple math of 2 months plus 6 months, calculates to only 8 months – many months shorter than the 13 to 15-month estimate. Thus, the initial timeline did not align with the explanation. The Board questioned why the Company would need two to three months to requisition engineers before engineering could commence, but the response to that inquiry was far less than satisfactory, confirming the Board’s concern that there is no corporate incentive to make a decision, prepare the application, and file it.⁶⁶ Therefore, the Board has concluded that unless there is some urgency placed upon this, unnecessary delays are likely to continue.

It is noteworthy that during the questioning of the Company’s witnesses regarding the schedule, the Board offered an opportunity for the Company to supplement the record if there was additional information the Board should be considering regarding the schedule. In one instance, the Chairman stated:

“And if the management said you can’t take six months, put the team on it and get it done, put the RFP out there and I want it done in three months, not six, I think you’d get it done. And you’re welcome to actually answer a record request on why I’m being naïve or being unfair.”⁶⁷

The offer to supplement the record prior to the Company’s open meeting decision was made four times at the hearing, but the Company never took up the offer to supplement the record.⁶⁸

More than one year and eight months have passed since the Board’s order granting the two-year waiver and nearly one year from the publication of the Aquidneck Island Long-Term Gas Capacity Study which first identified the Navy site as an alternative to continued operations on

⁶⁶ *Id.* at 42-46.

⁶⁷ *Id.* at 51. During the evidentiary hearings, it is common practice for a witness or party to respond to a “record request,” which is a form of “data request” in the administrative process through which the presiding officer at the agency hearing may exercise the discretion to allow the witness or party to supplement the record in writing regarding an issue raised at an evidentiary hearing.

⁶⁸ Hr’g Tr. at 47, 50, 51, 52.

Old Mill Lane. Given the significant length of time that has passed since these events and the fact that the interim application and the application for a final long-term solution are inextricably linked, the Board finds it necessary to hold the utility accountable to an expedited schedule for completing the analysis of its final option, completing the engineering, and filing a supplemental application with its final proposed solution by a firm deadline.

Reviewing the testimony of August 12, 2021, the Board finds that there is no justification for further delay. There is no apparent reason why requisition of the engineering should not be complete by some time in October. Further, the Company's witness testified the engineering phase would take six months, a length of time which the Board believes can be condensed to five months or less, especially where the infrastructure for its preferred "hybrid" solution is largely confined to Navy property. The Board finds that the Company should be able to complete the engineering by March 1 and work on the application in parallel with the engineering. Thus, the Board finds that the Company should be able to file an application for its long-term solution by the beginning of April.

If the so-called hybrid solution involving the 4-mile extension on Navy property was just discovered in August of 2021, the Board might view this differently. However, the Company identified the alternatives in September of 2020 and has been publicly discussing the hybrid solution since January 2021. Months have passed without a final decision or conclusion. If expediting the schedule presents hardship, the Company should place blame on itself and its own corporate inertia.

Narragansett Electric has known since the publication of the Aquidneck Island Long-Term Gas Capacity Study in September 2020 that it was highly likely that it would need to use the alternative Navy property if it did not want to continue using Old Mill Lane. The Company

identified seven alternatives in the Study. Of the seven, three specifically listed the need for building the 4-mile extension on the Navy property.⁶⁹ Then, in December, as quoted earlier and set forth above, the Company represented to the PUC that it had determined that the hybrid solution was the one it was choosing.

In a filing at the PUC on February 1, 2021, the Company stated that it had narrowed its “hybrid” option to three configurations, two of which included infrastructure built on Navy property.⁷⁰ At the hearing on August 12, 2021, the witness told the Board that the Company had already completed surveying on the Navy property.⁷¹

Based on the record, the Board has no evidence that the engineering of the long-term solution could not commence quickly. Also, one of the reasons given on August 12, 2021 for why it will take so long to finalize the final solution and file an application with the Board was that getting the needed decisions from the Navy in Norfolk, Virginia could take a long time.⁷² The Board is aware that Rhode Island has a very effective federal delegation in Washington D.C. The Company should seek their assistance in navigating and expediting any administrative hurdles the Company may encounter with the Navy. If the Company has any doubts about the Navy’s willingness to lease the property, the Company needs to get the assurances required while the engineering process takes place. If the Navy is likely to say “no”, then Narragansett Electric should find that out now. It is unreasonable to force the public and the Board to endure further delay. Moreover, the Company has indicated in other PUC proceedings that the Navy had already

⁶⁹ Aquidneck Island Long-Term Gas Capacity Study at 11.

⁷⁰ The third involved using a barge to vaporize LNG, that would need the construction of a pipeline under water to connect to the distribution system, subject to the results of a feasibility study that was conducted last March, according to testimony in that case. Information Session, Tr. at 94-96 (May 18, 2021).

⁷¹ Hr’g Tr. at 44 (Aug. 12, 2021).

⁷² *Id.* at 52-53.

provided access to the properties in November of 2020.⁷³ Finally, if the Company needs to change its path and determines that Old Mill Lane is the final solution, very little needs to be done in supplementing the application, because no significant construction would be involved.

Accordingly, the Board will keep this docket open, but place a condition on the waiver that requires a supplemental application with the final proposal be filed with the Board by April 4, 2022. During the time between the issuance of this order and the supplemental filing on April 4, 2022, the proceedings relating to the Application are stayed.⁷⁴ Upon receipt of the supplemental filing, the Board will consolidate both the interim application for the operations at Old Mill Lane and the supplemental filing with the final proposed long-term solution into one application process with the objective of completing the licensing process by the winter season of 2022 to 2023.

The Board approves the Company request for a waiver to allow it to mobilize and operate the facility without a license for the winter season of 2021 to 2022 through the grant of the waiver, subject to all the conditions in this order. Failure to comply with the conditions in this order will result in Narragansett Electric being held accountable, with potential financial consequences.⁷⁵

D. Other Conditions Placed on the Waiver

In addition to the issue of delay which was cause for the firm deadline being established for the application relating to the final long-term solution, the Board also finds it necessary to include other conditions to assure that once the filing is received, the proceedings that follow can commence expeditiously. In addition, some concerns have been raised through public comments

⁷³ The Board takes administrative notice of another data request response that was provided to the PUC in Docket No. 5099, Response to PUC 2-1.

⁷⁴ While there are statutory timeframes for the Board to address the process for advisory opinions when an application is docketed (R.I. Gen. Laws §42-98-9), the fact that the application for the long-term solution and the application for the interim solution are substantively linked creates cause for this stay. Moreover, such statutory timeframes are not mandatory when incidental to the regulatory scheme. *See, e.g., Washington Highway Development, Inc. v. Bendick*, 576 A.2d 115, 116-117 (R.I. 1990).

⁷⁵ *See* R.I. Gen. Laws § 42-98-16.

about the impact the facility may be having on the residents living in close proximity to the facility. For these reasons, the Board is including other conditions on the grant of the waiver, as discussed below.

(1) Comparing Greenhouse Gas Emissions Impacts Among Alternatives

As required for all applications, the Company's supplemental filing on April 4, 2022 should describe the alternatives being considered, along with the final proposed long-term solution. Given the passage of the Act on Climate, the Board is directing the Company to include a comparison of the greenhouse gas emissions impacts of the final proposed solution against the greenhouse gas emissions impacts of all the alternatives considered.

(2) Monthly Reporting

Given the history of this matter, the Board finds it necessary to continue to monitor the Company's progress in completing necessary steps to file by the April deadline. For that reason, the Board orders the Company to file monthly reports describing the progress and status of the Company's initiative to complete and to file the supplemental application. The reports shall be filed by the 15th of each month until the supplemental application is filed. The first report is due on October 15, 2021.⁷⁶ The Board may ask follow-up data requests and reserves its authority to open hearings as needed and to the extent the Board deems appropriate.

(3) Non-Infrastructure (Energy Efficiency/Demand Response/Electrification) Alternative

While it appears that the Company already is considering what may be referred to as a "non-infrastructure alternative,"⁷⁷ the Board believes it important to assure that the Company is

⁷⁶ In January 2022, the 15th lands on the Saturday before the Martin Luther King, Jr. holiday. For that month, the filing is due on Tuesday, January 18th.

⁷⁷ The use of the label "non-infrastructure" alternative can leave the false impression to anyone not familiar with the details that it may mean that Old Mill Lane would be shut down soon if the alternative is implemented. It is important to make clear that "non-infrastructure" does not necessarily mean that no LNG vaporization facilities will be required

evaluating such alternative within certain parameters specified by the Board to be sure there is no misunderstanding of the Board's expectations. Therefore, in addition to the alternatives the Company is considering, the Board is requiring the Company, as a condition of the waiver, to file a comprehensive evaluation and analysis that determines what would be necessary to address the long-term capacity constraint issue with non-infrastructure initiatives, including energy efficiency, demand response, and electrification conversions. Such evaluation should identify the estimated costs, the timeline, how long Old Mill Lane would need to operate while it is being implemented, the obstacles and challenges to such an initiative, and the extent to which there are risks associated with not being able to execute the plan because it requires voluntarily cooperation by users of the natural gas system on Aquidneck Island to accomplish it. The analyses should include at least two scenarios: one that assumes there is no moratorium on new gas connections, and another which assumes a full moratorium on new gas connections on all of Aquidneck Island beginning in calendar year 2023.

(4) Forecasting Detail

While the Company is required to include a description of its gas demand forecasts used to evaluate the alternatives, the Board is directing the Company to include more detail about the forecasts than would necessarily be required when an application is initially filed in the ordinary course. Providing the detail with the supplemental filing will assist in expediting the advisory opinion process, including the assessment of need at the PUC. Accordingly, the Company shall include a full explanation of its forecasting methodology in its supplemental application filing, including a complete set of schedules showing all the assumptions and calculations associated with

at all. It only refers to avoiding the need to construct new permanent, gas distribution or transmission infrastructure. In such case, as indicated by the Company's Long-Term Gas Capacity Study, a non-infrastructure proposal may need Old Mill Lane in operation for many years to the extent the need is validated. *See* Long-Term Gas Capacity Study, at 13 (estimating LNG needed for 13 years).

its forecasts used in the application (with and without a moratorium) and evaluating the energy efficiency/demand response/electrification alternative.

(5) Impact on Property Values of Neighbors in Close Proximity

The Board is cognizant of the concerns that have been raised through public comments about the impact the facility may be having on the residents living in close proximity to the facilities. Whether Old Mill Lane is chosen as the final proposed long-term solution, or another alternative such as new infrastructure on Navy property is chosen, it is conceivable that the LNG Vaporization facilities might continue to be mobilized at Old Mill Lane for many years to come. The Board has reviewed comments and is concerned about the implications of the continued annual mobilization of the LNG facilities on Old Mill Lane on the property values and personal lives of the residents in close proximity to the Portsmouth gate station. It appears reasonable to assume that those residents, when they acquired their homes, may never have been able to reasonably foresee that there would be an annual mobilization of LNG facilities on Old Mill Lane.

Further, if the Company files its so-called “hybrid” solution as its alternative of choice, it will likely propose the construction of new gas infrastructure that could potentially cost natural gas ratepayers of the Company somewhere between \$60 million and \$100 million dollars, amortized over the expected useful life of the assets. Such infrastructure could be in place well beyond the period of time when the state fully transitions to non-fossil-fuel heating and energy uses. This gives rise to the question whether it would be less costly to leave Old Mill Lane in place, avoid a \$60 million to \$100 million infrastructure investment in gas infrastructure soon to become obsolete, and simply buy out properties of the neighbors in close proximity who are directly and uniquely impacted by what could become a perennial winter mobilization of the LNG facilities at the Portsmouth take station. For this reason, it is important for the Company to evaluate

the possibility of a program which addresses the impacts on the residences that are closely located to Old Mill Lane, including what a plan would look like if the Company were to offer to purchase the properties most directly affected. This, of course, would be a voluntary sale on the part of the owners receiving the offers.

This directive should not be interpreted as an approval or order to carry out such a purchasing initiative, but the concept should be fully vetted and available as an alternative for consideration and public comment in the licensing proceedings. It is important to emphasize that it would be necessary to have full evidentiary proceedings with all the parameters, alternatives, factors, impacts, and implications fully vetted before any such program could be initiated, including the advisory opinion proceedings at the PUC. It is not the role of the Board to specify the solution in advance, and this directive to evaluate the concept is not to be construed as such.

(6) Hearings to Address Noise Concerns and Other Impacts for this Winter

The Board has received many public comments at the various stages of these proceedings. The Board received comments on August 23, 2021 from Stephen and Lori MacDonald, who own a home across the street from the Portsmouth take station where the LNG facilities are mobilized on Old Mill Lane. These comments raised not only general concerns, but also identified some very specific issues about the noise impacts caused by the facilities.⁷⁸ The Board is aware that not all citizens are in a position to hire legal counsel to address matters such as these, even when they have such a direct and unique impact on them as neighbors in such close proximity, as opposed to impacts that are shared widely by citizens of the community or area. For that reason, the Board believes it to be important to provide an opportunity for these residents who are uniquely impacted to have their concerns vetted before the Board.

⁷⁸ MacDonald Letter (Aug. 23, 2021).

Accordingly, the Company is ordered to respond to the MacDonalds' letter in the form of a filing to be made no later than October 1, 2021. This will allow the Board to schedule a hearing before the winter operations begin to determine whether there are any noise mitigation steps that can be taken, as well as additional mitigation efforts for other impacts to the neighbors for the upcoming winter. The Company's response shall be filed in the form of pre-filed testimony.

If such hearings are held, the Board may invite the MacDonalds to attend and participate, if they are willing to do so, to testify about their experiences and answer questions. This appearance of the MacDonalds would be strictly voluntary. They could decline if they wish. Should the Board determine additional mitigation measures are appropriate, the Board may require the Company to implement them as additional conditions of this Waiver.⁷⁹

(7) Leaving Waiver Proceedings Open

Finally, although the component of the proceedings relating to the Application for interim operation are stayed, the Board will leave the proceedings in this Docket relating to the temporary waiver open, such that it can make inquiries, issue orders, or hold hearings as needed to evaluate the Company's progress or any other issues needed to be addressed relating to the operations of the facilities and for the Company to comply with the filing deadline.

Therefore, it is hereby:

(150) ORDERED:

1. The Narragansett Electric Company d/b/a National Grid's Motion for Waiver

Extension is granted for the 2021-2022 winter season subject to the following:

⁷⁹ This condition is not to be construed as setting a precedent for licensing proceedings for an enhanced form of public participation. This case is highly unusual because the applicant is seeking a waiver to operate while its licensing process is on-going. Typically, in Siting Board proceedings, the applicant will not be constructing or deploying its facilities until after the entire licensing process, including public hearings and local advisory opinion proceedings, are completed and a license is granted.

- (a) That the Company is required to file by no later than April 4, 2022 a supplemental application in this Docket which sets forth the final proposed solution. The filing should include: (a) all the information required in the same form as if the supplemental application was a stand-alone application, (b) the estimated costs of each of the alternatives to the long-term solution that the Company rejected, (c) for each of those alternatives, the filing also should describe the Company's basis for rejection and how the Company evaluated each of the rejected solutions against its forecast(s) for design day demand, and (d) a comparison of the greenhouse gas emissions impact of each alternative;
- (b) That the Company provide monthly reports describing the progress and status of the Company's initiative to complete all that is needed to file the supplemental application. The first report is due on October 15, 2021;
- (c) That the Company is required to include with its supplemental application a comprehensive evaluation and analysis that determines what would be necessary to address the long-term capacity constraint issue with non-infrastructure initiatives, including energy efficiency, demand response, and electrification conversions (referred to as the Energy Efficiency/Demand Response/Electrification ("EE/DR/E") alternative). Such evaluation should identify the estimated costs, the timeline, how long Old Mill Lane would need to operate while it is being implemented, the obstacles and challenges to such an initiative, and the extent to which there are risks associated with not being able to execute the plan because it requires voluntarily cooperation by users of the natural gas system on Aquidneck Island to accomplish it. This analysis should provide two scenarios: One that

assumes there is no moratorium on new gas connections, and a second which assumes a full moratorium on new gas connections on all of Aquidneck Island beginning in calendar year 2023;

- (d) That the Company include with its supplemental application a full explanation of its forecasting methodology. The explanation should include: (a) a complete set of schedules showing all the assumptions and calculations associated with its forecasts used in the application to justify the proposed long-term solution (showing the results with and without a moratorium) and evaluating the EE/DR/E alternative, (b) a description of any sensitivity analysis the Company performed on its forecast for design day demand, (c) the input variables analyzed in the sensitivity of the forecast, and (d) identification of the information upon which the input variables were based;
- (e) That the Company include with its supplemental application an evaluation and potential implementation plan which describes a supplemental proposal which offers to purchase the premises of residents who have homes or businesses within the vicinity of the Old Mill Lane take station that are directly impacted by the presence and operations of the facilities that are being mobilized each winter at Old Mill Lane. This potential supplemental plan should recommend a reasonable radius or range of radii, depending upon the criteria used to establish the area in which the offers will be made, as proposed by the Company. The Company should assume that the offers would be based on the fair market value of the property, assuming there was no LNG use at Old Mill Lane, that the sale would be strictly voluntary

on the part of the owners receiving the offers, and provide a range of the total cost of such an initiative;

- (f) That the proceedings in this Docket SB-2021-04 relating to the temporary waiver remain open, such that the Board reserves its right to make inquiries, issue orders, or hold hearings as needed to evaluate the Company's progress or any other issues needed to be addressed relating to the operations of the facilities and for the Company to comply with the filing deadline; and
 - (g) That the Company file a response to the letter of August 24 submitted by Stephen and Lori MacDonald regarding the noise impacts alleged in the comment letter. The filing also should address the issue of leak detection and monitoring in operation of the facility. The filing is due October 1, 2021. The response should come in the form of pre-filed testimony and include an explanation of the Company's perspective and any mitigation measures, if any, the Company can offer to address the noise concerns for the winter for which the waiver is granted. The Board may hold hearings after receipt of the Company's filing and reserves its authority to impose additional conditions to mitigate impacts of noise, leaks, or any other impacts on the neighbors living within close proximity to the facilities which the Board finds appropriate and reasonable.
2. With respect to the Application, that the proceedings in this Docket SB-2021-04 relating to the application that was filed for a license to operate the Old Mill Lane facilities and the preliminary hearing associated with such application are stayed, pending the filing of the supplemental application ordered by the Board in its approval

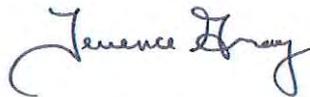
of Narragansett Electric's Petition for a Waiver. After the filing, the original application and the supplemental application shall be consolidated.

DATED AND EFFECTIVE at Warwick, Rhode Island, on August 26, 2021, pursuant to an Open Meeting decision of August 26, 2021. Written order issued September 17, 2021.

ENERGY FACILITY SITING BOARD



Ronald T. Gerwatowski, Chairman



Terrence Gray, Member



Meredith E. Brady, Member



NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I. GEN. LAWS SECTION 42-98-12, ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY, WITHIN TEN (10) DAYS OF THE ISSUANCE OF THIS ORDER PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THIS ORDER.