

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In re The Narragansett Electric Company :
d/b/a National Grid and Clear River Energy LLC : **Docket No.**
(Burrillville Interconnection Project) :

PRELIMINARY DECISION AND ORDER

I. INTRODUCTION

On February 22, 2017, The Narragansett Electric Company d/b/a National Grid, a Rhode Island chartered public utility (“TNEC” or the “Company”) and Clear River Energy LLC, a project company of Invenergy Thermal Development LLC (“Invenergy”)(TNEC and Invenergy are hereinafter collectively referred to as the “Applicant”), filed with the Energy Facility Siting Board (“EFSB” or the “Board”) a joint application to construct and alter major energy facilities. The Applicant proposes to connect Invenergy’s proposed Clear River Energy Center (“CREC”) to the electric transmission system by constructing a new 6.8 mile 345 kilovolt (kV) transmission line. The Applicant filed an environmental report (“ER”) in support of its application. (See Applicant Exhibit ____). The Applicant also filed a motion for an expedited hearing pursuant to EFSB Rules of Practice and Procedure (“EFSB Rules”) Section 1.9(h). For the reasons noted in Section III below, we hereby grant Applicant’s motion for an expedited hearing.

II. THE FACILITY

The Applicant proposes to construct a new 345 kV transmission line and alter existing 345 kV transmission lines, which, under § 42-98-3(d) of the Energy Facility Siting Act, constitute major energy facilities. The proposed transmission system improvements are

described in Section 4 of the ER. These improvements are also shown in Figure 2-2 of the ER.¹

The Project components and lengths are summarized below.

A. Construct a New 345 kV Transmission Line from the proposed Clear River Energy Center to the Sherman Road Switching Station.

The Applicant proposes to construct a new 345 kV transmission line (the “3052 Line”) in Burrillville between the CREC and the Sherman Road Switching Station, a total distance of approximately 6.8 miles. The first 0.8 miles of the 3052 Line will be constructed within a new 250 foot wide right-of-way (“ROW”) controlled by Invenergy located between CREC and the existing TNEC ROW (“Segment 1”). The remaining 6.0 miles of the Project will be located within the existing TNEC ROW that runs in a northeasterly direction to the Sherman Road Switching Station. See ER, Figure 2-2. The 1.6 mile portion of the TNEC ROW from the intersection of the Invenergy ROW to approximately 0.19 miles south of the Clear River (“Segment 2”) is 300 feet wide. The remaining 4.4 miles of the TNEC ROW is 500 feet wide (“Segment 3”). Segments 2 and 3 are occupied by the existing 341 345 kV transmission line (the “341 Line”) and the 347 345 kV transmission line (the “347 Line”).

B. Reconstruct and Reconductor 1.6 Miles of the Existing 341 and 347 Lines from the Intersection of the Invenergy ROW and TNEC ROW to near the Clear River.

The Applicant proposes to rebuild and realign the existing 341 Line and 347 Line in Segment 2 to make room for the new 3052 Line. The 341 Line will be shifted north to new structures and wires installed parallel to the existing 341 Line. The 347 Line will be shifted north to the existing structures and wires of the 341 Line. The existing 347 Line structures and wires will be removed and replaced with new structures and wires for the 3052 Line. A schematic representation of the new alignment is found in ER Figure 2-1. A cross-section drawing showing

¹ The figures referenced herein are contained in Volume 2 of the ER.

the existing and rebuilt configuration of the transmission lines is presented in Applicant Exhibit - _____, ER, Figure 4-1.

C. Relocate Existing 328 345 kV Transmission Line in the Vicinity of the Sherman Road Switching Station.

The TNEC proposes to realign approximately 260 feet of its existing 328 345 kV transmission line at the Sherman Road Switching Station. See ER Figure 2-2, Sheet 13.

III. MOTION FOR AN EXPEDITED HEARING

The Applicant has filed a motion for an expedited hearing on this Project pursuant to Section 1.9(h) of the EFSB Rules which permits an expedited review when an application “covers only electric transmission lines.”² As summarized in the motion, the majority of the Project area, Segments 2 and 3, was reviewed in detail by the EFSB in connection with the recently licensed Interstate Reliability Project. In addition, this Project is unique as it is a new transmission line for the sole purpose of connecting CREC to the electric transmission system, so the construction and operation costs for the new line are not paid by the ratepayers. The Applicant proposes the following three steps for expediting the hearing:

1. reduce the deadline for advisory opinions from each designated agency to no more than three (3) months from each agency’s designation under § 42-98-9;
2. schedule the public comment hearing in Burrillville to occur before the deadline for advisory opinions pursuant to § 42-98-10; and

² This limitation does not exclude ancillary components to the electric transmission lines provided such ancillary components are not considered “Major Energy Facilities.”

3. schedule the final hearing within thirty (30) days after the deadline for submission of advisory opinions pursuant to § 42-98-10.³

Upon review of the motion, the Board hereby grants the Applicant's motion for an expedited hearing and adopts the deadlines summarized above.

IV. THE ENERGY FACILITY SITING ACT

The Energy Facility Siting Act ("Siting Act"), R.I. Gen. Laws §§ 42-98-1 to 42-98-20, consolidates in the Board, with two exceptions,⁴ all state and local governmental regulatory authority for the siting, construction, operation, and alteration of major energy facilities, including transmission lines of 69 kV or greater. Thus, the Board is the "licensing and permitting authority for all licenses, permits, assents or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state." R.I. Gen. Laws § 42-98-7(a)(1). A Board decision in favor of an application to site a major energy facility in Rhode Island "shall constitute a granting of all permits, licenses, variances or assents which under any law, rule, regulation, or ordinance of the state or of a political subdivision thereof which would, absent this chapter, be required for the proposed facility." R.I. Gen. Laws §47-98-11(c).

Although the Board does consider and act upon each of such permits, licenses, variances and assents, the Board does so in a comprehensive manner that is distinct in nature from the review that would be performed by the several agencies absent the Siting Act. Whereas each

³ The Applicant suggests including the details for the final hearing with the notice of the public comment hearing in Burrillville which is mailed to abutters.

⁴ Certain licenses and permits issued by the Department of Environmental Management and the Coastal Resources Management Council are exempt from Board authority. R.I. Gen. Laws §42-98-7(a)(3).

such agency would review its respective permitting, licensing, variance, or assent issues according to its own particular mandates and concerns, the Board will evaluate all such issues in a single and comprehensive decision based upon “the overall impact of the facilities upon the public health and safety, the environment and the economy of the state.” R.I. Gen. Laws § 42-98-1(a). Thus, the role of the Board is substantially distinct from, and more expansive than, a mere aggregation of the various agency processes that would occur absent the Siting Act.

While the Siting Act makes the Board the final licensing authority, an applicant for a Board license must still apply to all state and local governmental bodies for permits and licenses that would, absent the Siting Act, be required. Instead of issuing a permit or license, however, the state or local agency must act at the direction of the Board and issue an advisory opinion to the Board regarding such permit or license. The Board has authority to designate “those agencies of state government and political subdivisions of the state which shall act at the direction of the board for the purpose of rendering advisory opinions.” R.I. Gen. Laws § 42-98-9(a).

Each agency must follow its statutory procedures for determining “the license, assent, or variance [and] shall forward its findings from the proceeding, together with the record supporting the findings and a recommendation for final action, to the siting board.” R.I. Gen. Laws § 42-98-7(a)(2). Such advisory opinions will be considered by the Board before it renders its final decision.

A state or local governmental body which renders an advisory opinion to the Board as a designated agency may also intervene as a matter of right and participate in Board hearings. EFSB Rules 1.10(a)(1). In addition to those advisory opinions specifically authorized under R.I. Gen. Laws § 42-98-9 from agencies that, in the absence of the Siting Act, would have permitting authority, the Board may require further advice from state and local agencies in order to assist it

in assessing the overall impact of a facility. In particular, §§ 42-98-9(d) and (e) provide for advisory opinions from the Public Utilities Commission (“PUC”) and the statewide planning program.⁵ Due to the comprehensive nature of the ultimate issue facing the Board, the Board will often require expertise beyond the scope of those issues raised in the particular permit and license reviews at the agency level. The Siting Act envisions that the Board shall have the benefit of the full range of technical expertise available within other existing agencies in making its decisions. Accordingly, the Board may request the opinion of various agencies on matters in addition to those issues covered by the specific permits, licenses, assents or variances that would be required in the absence of the Siting Act.

The primary discussion of issues to be considered in the review of an application to construct a major energy facility, and the designation of agencies to act at the Board’s direction, occur as the result of the Board’s preliminary hearing. Following such preliminary hearing, the Board issues a Preliminary Order establishing the agenda of issues for the Board’s final hearings and designating agencies to act at the Board’s direction.

A maximum of six months is provided in § 42-98-10 (a) for filing advisory opinions. In addition, Final Board hearings must begin no later than forty-five (45) days after the date for submission of advisory opinions, whether or not such opinions are submitted. However, the Board has granted Applicant’s motion for an expedited hearing and has adopted the revised schedule summarized in Section III above. As such, advisory opinions will be due in three months and the Final Board hearings must begin not later than thirty (30) days after the date for submission of advisory opinions, whether or not such opinions are submitted. Thus, advisory

⁵ R.I. Gen. Laws §§42-98-9(d) refers to the division of planning and the governor’s office of energy assistance which are now the statewide planning program and the state energy office, respectively. The latter names will be used in this Order.

opinions shall be filed by _____, 2017. Final hearings regarding the instant application have not yet been scheduled, but should begin no later than _____, 2017.

The purpose of the final hearing is not to rehear evidence presented in hearings before designated agencies providing advisory opinions, but rather to provide the parties and the public the opportunity to address in a single forum, and from a consolidated, statewide perspective, the issues reviewed and the recommendations made by such agencies. R.I. Gen. Laws § 42-98-11(a). The Siting Act requires that the final hearing be concluded not more than sixty (60) days after its initiation, and that the Board issue its final decision within sixty (60) days after the conclusion of such final hearing. A final decision favoring the application shall constitute a granting of all required and jurisdictional permits, licenses, variances and assents, and such final decision may be issued on any condition the Board deems warranted by the record. R.I. Gen. Laws §§ 42-98-11(b) and (c).

V. **ISSUES TO BE CONSIDERED AT FINAL HEARING**

The statutory standards by which the application must be judged are specifically described in the Siting Act.⁶

ISSUE 1: Is the proposed Project necessary to meet the needs of the state and/or region for energy? R.I. Gen. Laws § 42-98-11(b)(1).

The PUC, with the participation of the Division of Public Utilities and Carriers, the State Energy Office and the Statewide Planning Program, has determined in the CREC proceedings that the power plant is needed. Thus, the scope of their review in this proceeding shall be limited to whether the Project is needed to connect the CREC to the electric transmission system.

⁶ R.I. Gen. Laws §§ 42-98-11(b), 9(e).

ISSUE 5: Is the construction and operation of the Project consistent with the State Guide Plan? R.I. Gen. Laws § 42-98-9(e).

The Board must specifically consider whether the construction and operation of the Facility proposed is consistent with the Statewide Planning Program's State Guide Plan, including the State Energy Plan. In support of this issue, the Statewide Planning Program must render an advisory opinion to the Board.

VI. EXEMPT LICENSES

The Board finds the following Rhode Island Department of Environmental Management (“RIDEM”) permits and licenses to be exempt from its jurisdiction. R.I. Gen. Laws § 42-98-7(a):

- Freshwater wetlands alteration permit issued pursuant to the Freshwater Wetlands Act. R.I. Gen. Laws § 2-1-21.
- Water quality certification authority delegated to RIDEM by the Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387, R.I. Gen. Laws §§ 46-12-1 to 46-12-41.
- Rhode Island Pollution Discharge Elimination System permit for point source discharge, issued pursuant to authority delegated to RIDEM by the Environmental Protection Agency pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387.

VII. ADVISORY OPINIONS

A. Jurisdictional Agencies

The following agencies and subdivisions of state and local governments which, absent the Siting Act, would have authority to act upon permits, licenses, assents or variances required for the Project (the “Designated Agencies”), shall act at the direction of the Board in issuing the advisory opinions designated below. A Designated Agency shall, to the extent possible, render its advisory opinion pursuant to procedures that would be followed absent the Siting Act and such

advisory opinion shall conform to the extent possible to the provisions of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws, Title 42, Chapter 35 (the “APA”), regarding decisions and orders. EFSB Rule 1.11(a). The Designated Agency shall, however, render an advisory opinion to the Board regarding the issuance of the license or permit, rather than a final decision. Unless otherwise provided, if the Designated Agency does not issue its advisory opinion within three (3) months after its designation by the Board (i.e., by _____, 2017), the right to render an opinion shall be forfeited. R.I. Gen. Laws § 42-98-10(a). While all of the Advisory Opinions are due at the same time, we urge local agencies to act promptly so that the Statewide Planning Program and State Planning Council may have the benefit of their input in formulating their Advisory Opinion.

The Designated Agencies and their respective Advisory Opinions are as follows:

i. Burrillville Zoning Board of Review

The Burrillville Zoning Board of Review shall render an advisory opinion as to whether the Project would meet the requirements of the Burrillville zoning ordinance, and whether the required dimensional variance should be granted (Issue 2B). The Burrillville Zoning Board of Review shall also render an advisory opinion as to the whether a special use permit should be granted to exempt the Project from construction hour restrictions (Issue 2C).

ii. Burrillville Building Inspector

The Burrillville Building Inspector shall render an advisory opinion as to (i) whether the proposed work in Burrillville is subject to Burrillville’s Erosion and Sediment Control Ordinance, (ii) if so, whether National Grid’s Erosion and Sediment Control Plan would conform to the Ordinance, and (iii) whether the Project would meet the requirements of other applicable Burrillville ordinances (Issue 2B).

iii. Rhode Island Historical Preservation & Heritage Commission

The Rhode Island Historical Preservation & Heritage Commission shall render an advisory opinion as to whether the Project would be subject to its jurisdiction and, if so, whether the Project would conform with requirements relevant thereto, and whether any required approval or exception should be granted (Issue 2B).

iv. Rhode Island Department of Transportation (“RIDOT”)

Pursuant to Issue 3, RIDOT shall render an advisory opinion as to whether a Utility Permit, R.I. Gen. Laws § 24-8-1 and § 24-10-1, Physical Alteration Permit, R.I. Gen. Laws § 24-8-1, or any other RIDOT permits are required and should be issued for the Project, including the construction of transmission lines across state roads or highways. Such advisory opinion should specifically consider the potential impacts upon traffic associated with the Project during construction (Issues 2B and 3).

B. Non-Jurisdictional Agencies

As discussed above, the Board has both the obligation and authority to request further advisory opinions from agencies other than those that, absent the Siting Act, would have some specific authority over the Project. In addition to the opinions required by the Siting Act, the Board in its discretion is also requesting informational advisory opinions from the agencies listed below for which there are no applicable license, permit, assent, or variance proceedings required for the Project.

In the absence of a proceeding conducted in accordance with the APA, the Board requests that each such agency be prepared to have a representative appear at the final hearing of the Board to sponsor the informational advisory opinion, as well as to sponsor and enter into evidence any information outside of the record of this docket that is relied upon in the advisory

opinion. At such time, Applicant, the Board, and other interested parties would have the opportunity to cross examine such sponsor on the advisory opinion.

For each such non-jurisdictional advisory opinion, the subject agency shall request, and Applicant shall provide, any information or evidence deemed necessary to prepare the advisory opinion. Applicant shall provide information in a timely manner, and shall remain responsible for seeing that the information provided to the Board and the various agencies remains up to date.

1. **The Rhode Island Public Utilities Commission** shall render an advisory opinion as to (i) the need for the proposed Project and (ii) whether it is cost justified. The Division of Planning, the Office of Energy Resources, and the Division of Public Utilities and Carriers shall participate in the PUC proceeding pursuant to R.I. Gen. Laws § 42-98-9(d).

2. **The Statewide Planning Program** within the Division of Planning shall render an advisory opinion as to (i) the socio-economic impact of the proposed Project, and its construction, and operation; (ii) the Project's consistency and compliance with the State Guide Plan; and (iii) in coordination with the Rhode Island Office of Energy Resources, a particular examination of the Project's consistency and compliance with the State Energy Plan. These agencies should also address any state and local tax benefits that would result from the Project.

3. **The Rhode Island Department of Health** shall render an informational advisory opinion on the potential public health concerns relating to the biological responses to power frequency electric and magnetic fields associated with the operation of the Project. In particular, the Department of Health should review and comment on Appendix B of the application.

4. **The Burrillville Planning Board** shall render an advisory opinion as to whether the Project would be a land use consistent with its respective comprehensive plan pursuant to the Comprehensive Planning and Land Use Act, R.I. Gen. Laws § 45-22.2-1,

Accordingly, it is hereby

(Order No. ____) ORDERED:

(1) The Motion of The Narragansett Electric Company d/b/a National Grid and Clear River Energy LLC for an Expedited Hearing on the Application for a License to Construct the Burrillville Interconnection Project is granted. The Energy Facility Siting Board shall follow the revised schedule outlined in the Motion.

(2) The following state and local agencies and political subdivisions of the state shall act at the direction of the Energy Facility Siting Board for the purpose of rendering advisory opinions on the issues determined by this Preliminary Decision and Order of the Energy Facility Siting Board:

- (i) Burrillville Zoning Board of Review;
- (ii) Burrillville Building Inspector;
- (iii) Rhode Island Historical Preservation & Heritage Commission;
- (iv) Rhode Island Department of Transportation;
- (v) Rhode Island Public Utilities Commission;
- (vi) The Statewide Planning Program and State Planning Council;
- (vii) Rhode Island Department of Health; and
- (viii) Burrillville Planning Board.

(3) The Coordinator of the Energy Facility Siting Board shall prepare and forward to all agencies designated in paragraph (1) above a certified copy of this Preliminary Decision and Order and a separate written notice of Designation.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND THIS ____ DAY OF _____, 2017.

ENERGY FACILITY SITING BOARD

Margaret Curran, Chairman
Energy Facility Siting Board

Parag Agrawal, Associate Director
Division of Statewide Planning

Janet L. Coit, Director
RI Department of Environmental
Management