The Honorable Peter F. Kilmartin  
Attorney General  
150 South Main Street  
Providence, RI 02903

Dear Attorney General Kilmartin:

We recognize that your office has oversight for assuring that public meetings required by law meet standards for their notice and conduct.

We are writing to register a complaint about the validity of the public hearing held by the RI Department of Environmental Management on January 31, 2018, to hear testimony on Water Quality Certification Application File Number 16-171, the application of National Grid LNG, LLC requesting a State of Rhode Island Water Quality Certification.

We contend that this hearing was invalidly noticed and conducted and thus does not meet the requirements of law for a public hearing under the Administrative Procedures Act, based on the following points:

(1) Event security—both venue security and Providence Police officers—prevented attendees from entering with laptops. Electronic storage of research materials, notes, etc. is now commonly done on laptop computers and electronic pads rather than paper. Younger people especially rely on electronic storage of information.

(2) Other public places where public hearings under the Administrative Procedures Act are held do not preclude entry of persons with laptops and electronic pads, examples include:
   (a) the Statehouse,
   (b) Offices of the Department of Environmental Management room 300,
(c) Department of Administration conference room A,
(d) Department of Health Auditorium

(3) The restriction imposed for security purposes was unusually restrictive, a higher level than at airports, Congressional offices, Courthouses, the Statehouse, and thus was not reasonably predictable in advance.

(4) Bringing in paper copies of books and notes and other materials were admitted. Thus, the security measures were effectively discriminatory against people who use electronic means to have access to their materials: attendees whose testimony was stored on their laptops were unable to access it and thus unable to give it as planned.

(5) The restrictions were not included in the notice of the hearing. There was no reasonable way for the public to know that at a legal hearing, held at a large entertainment venue, that they would be denied admittance if they had their notes and materials in electronic form. The notice did stipulate that translations services and services for the hearing impaired would be provided. Since an unusual and discriminatory restriction on admission to the hearing was being imposed that should have included in the legal notice of the hearing.

(6) It was not visually clear whether the restrictions on the public applied to the hearing officers and public officials conducting the hearing. Did anyone from DEM bring in materials on or have access to use of a laptop computer at the hearing?

(7) Testimony was given at the hearing that witnesses were significantly disadvantaged by not being able to refer to notes on their laptops and electronic pads. There were repeated expressions of outrage at the security measures. These restrictions constituted a discriminatory and unreasonable barrier to participation in a public process, making the hearing invalid.
Further, the hearing was held in a location outside the neighborhood for which the facility was proposed, making it difficult for people most directly affected by the proposed facility to attend, despite repeated requests to DEM that hearings for this project be held in the neighborhood in question. And the increased level of security—again, restrictive at a higher level than is common to public hearings—was also intimidating to people, including those who were able to be there from the neighborhood, who are members of populations with a history of being treated unfairly by police.

We believe that a valid hearing is required for the proposed action and are requesting that another hearing be held, minus these barriers to participation, and close to the neighborhood where the facility in question is proposed, with timely, reasonable notification for residents.

That security measures can be invoked without notice and without prior rule making governing their application troubles us deeply. It can result in arbitrary and discriminatory conduct of public meetings and public hearings.

Personally, I was prohibited from entering with my laptop and forced to leave it in my vehicle, others were not. I also witnessed people being forced to dispose of food and beverage even though the hearing was scheduled for three hours and venue concessions were not available, and if they were would have been cost prohibitive. I was informed that it was standard security for the venue, but there was no expectation based on DEM's notification or prior attendance at similar DEM hearings in other venues that such security measures would be in place. Additionally, it was clearly witnessed that members of the press, DEM employees and National Grid employees were not subject to the same security measures. Many attendees are willing to provide additional personal testimony if required.

Respectfully,

Aaron Jaehnig
Chapter Chair

RI Sierra Club