The Attorney General’s comments are being submitted in response to the above-referenced Petition of National Grid for a Jurisdictional Determination (“Petition”) and the Rhode Island Energy Facility Siting Board’s (“EFSB”) Notice of Hearing. The question before the EFSB is whether the National Grid’s self-characterized “temporary” installation and operation (over multiple years) of a “portable” liquefied natural gas (“LNG”) vaporization system (“LNG Vaporization Facility” or “Facility”) at its Old Mill Lane site in Portsmouth, Rhode Island is subject to the jurisdiction of the EFSB. It is the Attorney General’s position that the reliance on the LNG Vaporization Facility over multiple years to address threats to reliability to natural gas distribution on Aquidneck Island constitutes both an installation of a “major energy facility” and an “alteration” to a major energy facility as defined by the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(d) and (b), and Rules 1.3(16) and (4) of the EFSB’s Rules of Practice and Procedure. Furthermore, the exercise of jurisdiction by the EFSB, and its oversight of the storage of large amounts of LNG, its conversion into a gas form, and its transfers into the transmission system is both required and necessary. If National Grid pursues the requisite licensing from the EFSB in a timely manner, the necessary oversight process will not result in unnecessary delay or the otherwise preventable disruption in gas supply to the residents of Aquidneck Island.

In October of 2019, National Grid informed the EFSB of certain transmission system constraints that may occur over the course of the next four winters. National Grid suggested that these constraints could impact its ability to provide reliable service to its Aquidneck Island customers, and acknowledging the jurisdiction of the EFSB, requested a temporary waiver from the EFSB...
licensing requirements for the LNG Vaporization Facility. Despite the EFSB’s January 8, 2019 temporary waiver of the licensing requirement for National Grid, National Grid still shut down its gas delivery system on January 21, 2019 (the “2019 Outage”). The Division of Public Utilities and Carriers determined that the cause of the interruption was the result of a low-pressure condition of the “G” system branch of the Alonquin pipeline. The 2019 Outage caused the loss of heat for homes for over a week during very cold temperatures and resulted in the closure of many businesses.

Clearly, identifying and implementing a permanent solution to this ongoing problem is of the utmost importance. But, the exercise of EFSB jurisdiction over National Grid’s long-term use of a so-called temporary solution will not be the cause of delay in implementing a more permanent fix on Aquidneck Island, just as the exercise of jurisdiction will not create risk of further disruptions in service. The responsibility for preventing future interruption in service belongs to National Grid, just as the responsibility for providing oversight of major energy facilities, such as this LNG Vaporization Facility, belongs to the EFSB.

The LNG Vaporization Facility is a “Major Energy Facility”
The Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(d) and Rule 1.3(16) of the EFSB’s Rules of Practice and Procedure states in part that a “"Major energy facility" means facilities . . . . for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases . . . .” (emphasis added). National Grid’s portable LNG Vaporization Facility at Old Mill Lane in Portsmouth unambiguously meets this definition. As stated in National Grid’s Petition, “the Equipment installation at Old Mill Lane is designed to supply natural gas to the Aquidneck Island distribution system in the event of any interruption of the transmission line supply. The equipment required to do this includes portable vaporizers, portable booster pumps, portable storage tanks, portable generation, a portable odorizer system, and a mobile office.” Petition at 4 (footnote omitted). Clearly, this system stores large amounts of LNG, converts it into a gas form, and transfers it into the transmission system when needed.

National Grid’s assertion that the system is “temporary” (because they only operate it during the peak winter months) and “portable,” and as such, does not meet the definition of a “Major Energy Facility,” is without merit. The definition of Major Energy Facility in the statute does not differentiate between temporary or permanent facilities, nor whether they are portable or permanent. Moreover, National Grid’s use of the term “temporary” for this Facility is based on its own subjective branding, not on any objective statutory criteria. A facility that stores LNG, converts it to gas, and transfers that gas into the distribution system for multiple consecutive winters, and possibly permanently is a Major Energy Facility regardless of whether it can also be described as seasonal or temporary.
**The LNG Vaporization Facility is an “Alteration” of a “Major Energy Facility”**

The Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(b) and Rule 1.3(4) of the EFSB’s Rules of Practice and Procedure (“EFSB Rules”) states in part that an “‘Alteration” means a significant modification to a major energy facility which, as determined by the Board, will result in a significant impact on the environment or the public health, safety and welfare. . . .”

National Grid states in its Petition: “There is nothing significantly impactful about the Project. The Project is not expected to have any environmental impacts or social impacts beyond the setup and removal of the Equipment, the traffic increase from people working on the site, and the delivery of LNG to the site. For the same reasons there are no anticipated impacts to the public health, safety, and welfare.” Petition at 20. This statement is directly rebutted by undisputed facts. The Portsmouth Fire Department, with National Grid, prepared an Emergency Evacuation Notification Plan for the Facility. The plan identifies an evacuation zone of over a mile should one or more of the LNG tanks rupture or explode. The Facility is also located near many residential homes. In addition to potential impacts to public health and safety from the storage of LNG, there is also the need for the continued exercise of jurisdiction here to ensure that a timely plan for a long-term solution to the system constraint issue is identified and implemented. The LNG Vaporization Facility is a piece to a larger puzzle that requires EFSB oversight. For these reasons, the EFSB could easily determine that the continued use of the LNG Vaporization Facility “will result in a significant impact on the environment or the public health, safety and welfare.”

**The Continued Exercise of Jurisdiction Provides Necessary Oversight of the Facility and Guards Against Absurd Results**

EFSB oversight of the LNG Vaporization Facility allows the State to obtain and evaluate information about the facility, its function, its impacts on the environment and society, the management of the facility, security and operational plans, decommissioning, and possible alternatives. See Rule 1.13 of the EFSB Rules. EFSB oversight also allows for significant municipal involvement and public participation. (See e.g., Rules 1.8, 1.10, and 1.12 of the EFSB Rules. Without EFSB oversight there will be very limited, if any, oversight of this Facility or facilities like it. The result would be to create an unintended workaround in a statute designed to provide a comprehensive and coordinated approach to energy generation and distribution facilities in Rhode Island.

National Grid cautions the EFSB against reading the Energy Facility Siting Act in such a way as to produce an absurd result, yet the failure to exercise jurisdiction here could lead also to the development of similar facilities in other areas of the State where so-called temporary and portable energy solutions become permanent fixtures on the Rhode Island energy landscape with very limited oversight. That would be an absurd result and is exactly the kind of uncoordinated energy development impacts that the statute is designed to prevent.
For the reasons stated herein, the Attorney General believes that the EFSB must continue to exercise its jurisdiction over National Grid’s LNG Vaporization Facility at Old Mill Lane in Portsmouth, Rhode Island.

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