

David Kaiser
Senior Policy Analyst
Office for Coastal Management
NOAA
Coastal Response Research Center, UNH
246 Gregg Hall
Durham, NH 03824-3534

Kimberly D. Bose, Secretary
FERC
888 First Street NE, Room 1A
Washington, DC 20426

September 12, 2018

42 Weybosset Street
Providence
Rhode Island 02903
401 626.4839
401 753.6306 FAX

Re: 2016-10-99, National Grid Fields Points Liquefaction Facility, CRMC File 2016-10-099

Dear Mr. Kaiser & Ms. Bose,

On my appeal of the RI Coastal Resources Management Council's denial of my Access to Public Records Request (APRA) and its subsequent appeal to the agency, the RI Office of Attorney General found a violation of APRA and directed CRMC to provide the records I had requested (attached as **Exh A**). The request was for "all records related related to any conversation or communication between the [CRMC] and the National Oceanic and Atmospheric Administration (NOAA) or the Federal Energy Regulatory Commission (FERC) regarding or related to federal preemption of any CRMC regulatory standards that would otherwise apply to the consistency request at issue in this matter" (attached as **Exh B**). Under the RI Attorney General's order, CRMC produced those documents to me on September 4, 2018. The communications produced indicate that David Kaiser of NOAA had informed CRMC that FERC had exclusive authority over the siting of the proposed LNG facility, but not with regard to any analysis of coastal effects, concluding that "[i]t looks like most of what you are addressing relates to coastal effects and not attempts to address siting issues. . ." (attached as **Exh. C**).

As noted in my APRA request, during hearings on this matter CRMC staff concluded that many of the standards that applied in a consistency review, including many that National Grid had addressed in its application, could not be considered due to federal preemption. My letter of December 3, 2017, stated in part:

It is my understanding that CRMC staff described an interaction with NOAA indicating that federal rules preempted some standards that CRMC otherwise would apply to this consistency request, including whether there is a need for this facility under Sections 300.1 and 300.8(D)(1)(f) of Rhode Island's Coastal Resources Management Plan (CRMP). I question how opportunity has been afforded to all parties to respond and present evidence and argument on all issues involved under Rhode Island's

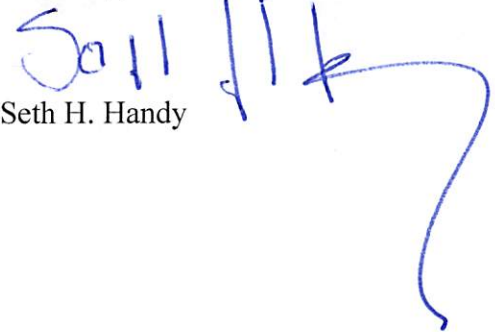
Administrative Procedures Act, if the Council relies on staff conversations or interactions with federal agencies regarding legal standards typically applied to consistency requests without providing the substance of those conversations to the parties and the public. R.I. Gen. Laws §42-35-9(c).

As indicated in the public comment I filed on November 7, 2017 (attached as **Exh D**), many of the standards erroneously claimed to be preempted were clearly at issue in this proceeding regarding the consistency determination. The claim of preemption effectively interfered with the public's rights under Rhode Island's Administrative Procedures Act. The consistency determination should be reversed for that reason.

I appreciate your consideration of this concern.

c.c. Grover Fugate

Sincerely,

A handwritten signature in blue ink, appearing to read "Seth H. Handy", with a long, sweeping flourish extending to the right.

Seth H. Handy

Exhibit A
RI Attorney General APRA Ruling



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

August 17, 2018
PR 18-25

Seth H. Handy, Esquire
42 Weybosset Street
Providence, Rhode Island 02903

RE: Handy Law v. Coastal Resources Management Council

Dear Attorney Handy:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Coastal Resources Management Council ("CRMC") is complete.

Your Complaint alleges, in pertinent part:

"I write to file a complaint regarding the denial of my public records request dated December 3, 2017, in the letter from Anthony Desisto Law Associates, LLC, dated December 7, 2017, and again in a letter from Executive Director Grover Fugate on December 26, 2017. The initial denial letter states that my request 'is essentially asking [for] notes or memoranda on conversations or communications between CRMC and NOAA regarding the federal preemption issue.' However, the request was actually for 'all records related to any conversation or communication between the [CRMC] and the National Oceanic and Atmospheric Administration (NOAA) or the Federal Energy Regulation Commission (FERC) regarding or related to federal preemption of any CRMC regulatory standards that would otherwise apply to the consistency request at issue in this matter.'

CRMC still has not indicated whether all of the requested records are exempt records."¹

In response to the Complaint, this Department received a substantive response from CRMC counsel Peter Skwurz, Esquire. The response stated, in relevant part:

¹ To the extent that your Complaint alleges any additional violations not relating to the APRA, this Department lacks jurisdiction to address them. See R.I. Gen. Laws § 38-2-8(b).

“On December 3, 2017, Attorney Handy sent a letter to Grover Fugate, the Executive Director of the CRMC. *** In his letter, Attorney Handy stated he was making a request pursuant to G.L. §§ 38-2-1, *et seq.*, and 42-35-9(e)(7). ***

On December 7, 2017, the undersigned counsel sent a reply to Attorney Handy, *** indicating that the records referenced in his letter were exempt from the APRA under G.L. 1956 § 38-2-2(4)(K). *** On December 26, 2017, Executive Director Fugate responded to Attorney Handy in a letter *** stating that ‘[a] review of all potentially responsive documents to your original request affirms that your request was properly denied pursuant to RIGL [§] 38-2-2(4)(K).’

First, as an initial matter, Attorney Handy lacks standing to bring his complaint, as he has failed to make a proper APRA request pursuant to the promulgated CRMC rules, because he failed to address the request to the appropriate person specified in those rules. ***

If your office decides to reach the merits of this case, despite Attorney Handy’s lack of standing, an *in camera* review will reveal that these documents are exempt from the APRA under G.L. 1956 § 38-2-2(4)(K), as the documents consist of ‘preliminary drafts, notes, impressions, memoranda, working papers, and work product’ and these documents were never submitted at a public meeting.” (Emphasis in original).

The CRMC’s substantive response included the withheld documents for our in camera review.

You did not provide a rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written these laws and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the CRMC violated the APRA. See R.I. Gen. Laws § 38-2-8.

The APRA provides that “[e]ach public body shall establish written procedures regarding access to public records.” R.I. Gen. Laws § 38-2-3(d). As amended in September 2012, the APRA provides that:

“[t]hese procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body’s website if such a website is maintained and be made otherwise readily available to the public.” Id.

We have previously found that failure to adhere to a public body’s APRA policy may render an APRA request invalid pursuant to the APRA. See Shapiro v. Town of Warren, PR 15-39 (finding no APRA request where Town APRA policy required APRA requests to be addressed to the Town

Clerk and requestor made request to Town Manager). We recently found no violation where a requestor made a request inconsistent with the public body's APRA policy even when the public body responded to the request. See DeWolf v. Town of Coventry, PR 17-29; see also Riggs v. Coastal Resources Management Council, PR 17-43. The CRMC relies on this precedent to argue that because your request was not made pursuant to the CRMC's written procedures regarding access to public records, we should find no violation.

The CRMC's written procedures regarding access to public records require all requests for public records to be made to the CRMC's Public Records Officer, Mr. Jeffery Willis.² It is undisputed that your December 3, 2017 letter was sent to Executive Director Fugate and responded to by the CRMC's legal counsel Anthony DeSisto, Esquire. In Mr. DeSisto's response, the CRMC did not raise the issue it relies upon herein, namely, that your APRA request was not sent to the proper person in accordance with the CRMC's APRA procedures.

We decline to adopt so rigid a rule as to bar your APRA request on the specific facts presented here. We note that our precedent differs in important respects from the case at hand. For instance, Riggs "contain[ed] a mixture of questions and requests for documents and fail[ed] to mention the APRA, features incongruous with a valid APRA request." Riggs, PR 17-43. Additionally, the second request in Riggs "was not intended to be an APRA request." Id. DeWolf is similarly inapposite in that the complainant there alleged timeliness violations, seeking "to hold the Town responsible for the time it took for the Zoning Clerk to forward [an] APRA request to the Town Clerk," not for improper withholding of the documents themselves. DeWolf, PR 17-29.

By contrast, your request expressly mentioned the APRA and requested specific documents. When legal counsel for the CRMC responded, you properly appealed to Executive Director Fugate. Whatever your request's initial misdirection, as best as we can tell, your request ultimately ended up in the correct location and was handled according to the CRMC's procedures. Cf. Access/Rhode Island v. New Shoreham Police Department, PR 15-26 (finding no violation where APRA request was never received by proper party). In this case, we find it appropriate to hold CRMC responsible for the instant APRA request. Although not originally made to Mr. Willis, your APRA request was responded to by the CRMC legal counsel and there is no evidence or argument that the legal counsel is not the proper party to respond to the request. It is also noteworthy that in the CRMC's response legal counsel failed to raise the APRA procedure issue. See R.I. Gen. Laws § 38-2-7(a). While there certainly are instances where failure to adhere to a public body's APRA procedures will effectively invalidate a request for documents, the facts here counsel reaching the merits of your Complaint.

We turn, then, to the gravamen of your Complaint – that the withheld documents were not permissibly withheld pursuant to R.I. Gen. Laws § 38-2-2(4)(K), which exempts from disclosure "[p]reliminary drafts, notes, impressions, memoranda, working papers, and work products, including those involving research at state institutions of higher education on commercial, scientific, artistic, technical or scholarly issues, whether in electronic or other format; provided, however, any documents submitted at a public meeting of a public body shall be deemed public."

² Available at http://www.crmc.ri.gov/regulations/CRMC_Management_Procedures.pdf.

Other than broadly asserting that § 38-2-2(4)(K) is implicated, the CRMC never explains in their initial response to you, their response to your appeal, or in their substantive response to this Department which particular subset of this APRA exemption is applicable. Their failure to do so is fatal. The APRA states that “the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection[.]” R.I. Gen. Laws § 38-2-10. We are not persuaded that the CRMC has done so here. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.”). Indeed, because the withheld documents are emails between CRMC and a third party, they do not constitute “working papers” or “work products[.]” See Sheehan v. Economic Development Corporation, PR 01-03 (discussing exemption (K)). Whether the withheld documents are “drafts, notes, impressions, [or] memoranda” is unclear and we decline to undertake CRMC’s burden to appropriately detail the applicable exemption. See R.I. Gen. Laws § 38-2-10. We therefore conclude that the CRMC’s failure to release the requested documents violated the APRA.

Upon a finding of an APRA violation, the Attorney General may file a complaint in Superior Court on behalf of the Complainant, requesting “injunctive or declaratory relief.” See R.I. Gen. Laws § 38-2-8(b). A court “shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body . . . found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter[.]” See R.I. Gen. Laws § 38-2-9(d).

Although a close question, based upon the specific facts of this case we find no evidence of a willful and knowing, or reckless, violation. We are guided, in part, by the fact that the CRMC has no prior similar violations. Although injunctive relief may be appropriate in this case, we will allow the CRMC ten (10) business days within receipt of this letter to respond to you with the requested documents in a manner consistent with the APRA and our findings, supra. We do not eliminate the possibility that the documents provided could contain additional limited redactions consistent with our analysis and finding. If you do not receive a response within this time frame, you should contact this Department so that we may further review the CRMC’s response.

Although the Attorney General will not file suit in this matter at this time, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). The CRMC is advised that its actions violated the APRA and may be used as evidence of a willful and knowing, or reckless, violation in a similar future situation. Please be advised that we are closing this file as of the date of this letter, although we reserve the right to reopen this matter should the circumstances warrant.

Handy Law v. Coastal Resources Management Council

PR 18-25

Page 5

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Lyness". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sean Lyness
Special Assistant Attorney General

SL/kr

Cc: Peter Skwirz, Esq.

Exhibit B
APRA Request to CRMC

December 1, 2017

Grover Fugate, Executive Director
RI Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

Re: 2016-10-99, National Grid Fields Points Liquefaction Facility

Dear Mr. Fugate,

I write as a resident of Providence, RI and the owner of a legal practice based in Providence, RI, to make a public records request and provide supplemental public comment in this matter.

Pursuant to R.I. Gen. Laws §§38-2-1 et seq., 42-35-9(e)(7), I request any and all records related to any conversation or communication between the Coastal Resources Management Council (CRMC) and the National Oceanic and Atmospheric Administration (NOAA) or the Federal Energy Regulatory Commission (FERC) regarding or related to federal preemption of any CRMC regulatory standards that would otherwise apply to the consistency request at issue in this matter.

It is my understanding that CRMC staff described an interaction with NOAA indicating that federal rules preempted some standards that CRMC otherwise would apply to this consistency request, like whether there is a need for this facility under Sections 300.1 and 300.8(D)(1)(f) of Rhode Island's Coastal Resources Management Plan (CRMP). I question how opportunity has been afforded to all parties to respond and present evidence and argument on all issues involved under Rhode Island's Administrative Procedures Act, if the Council relies on staff conversations or interactions with federal agencies regarding legal standards typically applied to consistency requests without providing the substance of those conversations to the parties and the public. R.I. Gen. Laws §42-35-9(c).

In my reading of the rules, there is nothing that preempts Rhode Island's application of all legal standards typically applied to such applications. The rule on consistency certifications reads:

§ 930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

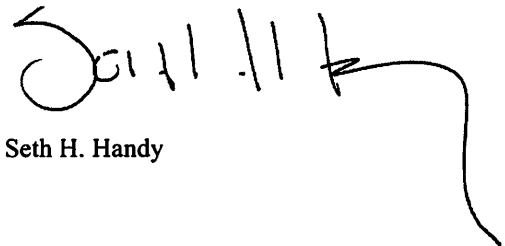
15 CFR §930.57 (emphasis added). The section on necessary data and information requires the applicant to produce, "Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification." *Id.* at §930.58(a)(2). The section on state agency objection to a consistency certification states, "State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how

the proposed activity is inconsistent with specific enforceable policies of the management program.” Id. at §930.63(b). Nothing in NOAA’s Rules indicates the kind of preemption imposed by Council staff.

FERC’s rules promulgated under Section 3 of the Natural Gas Act require “A statement, including signed opinion of counsel, showing that the construction, operation, or modification of facilities for the export or the import of natural gas is within the authorized powers of applicant, that applicant has complied with laws and regulations of the state or states in which applicant operates.” 18 CFR 153.8(a)(3). I see no other rule that restricts the State from applying any of its standards in the context of this consistency review. If I have missed one, please enlighten me.


Otherwise, as shown in my November 7 comments, there is no demonstrated need for this project pursuant to §§300.1 and 300.8 of the CRMP and the proposal is inconsistent with state policy under §300.8(D)(1)(g). National Grid has provided woefully inadequate evidence to support consistency with these elements of the Plan and, therefore, I ask the State to please object to the consistency certification under should not iss

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth H. Handy', with a long, sweeping horizontal line extending to the right.

Seth H. Handy

Exhibit C
Requested Federal Communications

From: **Peter Skwirz** pfs@adiawllc.net 
Subject: **Responsive documents**
Date: **September 4, 2018 at 1:38 PM**
To: **seth@handylawllc.com**
Cc: **Anthony DeSisto** tony@adiawllc.net, **Lisa Turner** lturner@crmc.ri.gov

Dear Attorney Handy,

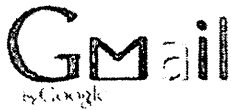
Attached please find responsive documents to your APRA request, provided pursuant to the Attorney General's opinion regarding the same, which is dated 8/17/18 and received by this office on 8/20/18. If you have any further questions or concerns, please do not hesitate to contact me.

--

Peter Skwirz, Esq.
Anthony DeSisto Law Associates, LLC
450 Veterans Memorial Parkway, Ste. 103
East Providence, RI 02914
Phone: (401) 421-0170
Fax: (401) 270-4878

A handwritten signature, likely of Peter Skwirz, written in dark ink.

Exhibit G.pdf



Peter Skwirz <pfs@adlawllc.net>

Fwd: Proposed National Grid LNG liquefaction facility project

1 message

Anthony DeSisto <adlawllc@gmail.com>
To: Peter Skwirz <pfs@adlawllc.net>

Mon, Dec 4, 2017 at 4:07 PM

What say you on this correspondence?
Anthony DeSisto Law Associates, LLC
450 Veterans Memorial Parkway, Suite #103
East Providence, Rhode Island 02914
(401) 421-0170

----- Forwarded message -----

From: **Grover Fugate** <gfugate@crmc.ri.gov>
Date: Mon, Dec 4, 2017 at 9:09 AM
Subject: Fwd: Proposed National Grid LNG liquefaction facility project
To: Anthony DeSisto <adlawllc@gmail.com>, Jeff Willis <jwillis@crmc.ri.gov>

Grover
Sent from my iPhone

Begin forwarded message:

From: David Kaiser - NOAA Federal <david.kaiser@noaa.gov>
Date: October 31, 2017 at 11:25:12 AM EDT
To: Grover Fugate <gfugate@crmc.ri.gov>
Cc: James Boyd <jboyd@crmc.ri.gov>, Allison Castellan - NOAA Federal <allison.castellan@noaa.gov>, Jeff Willis <jwillis@crmc.ri.gov>, Kerry Kehoe <kerry.kehoe@noaa.gov>
Subject: Re: Proposed National Grid LNG liquefaction facility project

Let's discuss.

On Tue, Oct 31, 2017 at 10:48 AM, Grover Fugate <gfugate@crmc.ri.gov> wrote:

Thanks David. The second observation you made would be very helpful to bring this out at the hearing. We are being pressed as to why this location. Is that OK? Or would you prefer a separate email on that.

Grover J. Fugate
Executive Director
Coastal Resources Management Council
State of Rhode Island
4808 Tower Hill Road
Wakefield, Rhode Island 02879
Phone-401-783-3370

Email- gfugate@crmc.ri.gov

Web address- <http://www.crmc.ri.gov>

From: David Kaiser - NOAA Federal [mailto:david.kaiser@noaa.gov]
Sent: Tuesday, October 31, 2017 9:27 AM
To: James Boyd
Cc: Allison Castellan - NOAA Federal; Grover Fugate; Jeff Willis; Kerry Kehoe
Subject: Re: Proposed National Grid LNG liquefaction facility project

Jim,

A couple of quick observations. In the document, it states that CRMC and the applicant have mutually agreed to "waive" the CZMA six-month review period. I do not know what that means. A state and applicant can only agree to "stay" the review period and that stay needs to be very clear in writing regarding dates: date CZMA review period started; date the stay started; date the stay ends; the number of days left in the six-month review period after stay ends; and date the state's decision is due. Without this understanding, any other agreement may not be valid. Let's discuss if this is not clear. Please see page 14 of the Federal Consistency Overview. <https://www.coast.noaa.gov/czm/consistency/media/federal-consistency-overview.pdf>

A second observation is that, because of federal preemption, any CRMC condition of concurrence (or objection) should not stray into FERC's exclusive authority for the siting of the facility. It looks like most of what you are addressing relates to coastal effects and not attempts to address siting issues, but the variance could be an issue.

Please let me know if you would like to discuss.

Thanks,

David

On Mon, Oct 30, 2017 at 2:02 PM, James Boyd <jboyd@crmc.ri.gov> wrote:

Hi David and Allison,

Grover requested that I email you both a copy of the CRMC staff report for the proposed National Grid LNG liquefaction facility project to be constructed at Field's Point in Providence along the Providence River. Although the project is within our 1st tier of jurisdiction (within 200 feet of a coastal feature) the CRMC is not issuing a permit in this matter; rather it is being reviewed under our federal consistency authority pursuant to the CZMA and 15 CFR Part 930 Subpart C, as the applicant has filed an application with FERC pursuant to the Natural Gas Act.

3/12/2018

Mail - Fwd: Proposed National Grid LNG liquefaction facility project

The liquefaction project is generating lots of opposition here in the state and Grover wanted to give you a heads up on the staff report should anyone contact you regarding the project. The Council has scheduled public hearings in this matter for November 14 and 28. Additional information on the project is available on the CRMC home web page here: <http://www.crmc.ri.gov/>

Regards – Jim

James Boyd
Coastal Policy Analyst

RI Coastal Resources Management Council

Oliver Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

jboyd@crmc.ri.gov | 401.783.3370

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David Kaiser, Senior Policy Analyst

National Interest Team | Stewardship Division

Office for Coastal Management

National Oceanic and Atmospheric Administration

Coastal Response Research Center, University of New Hampshire

246 Gregg Hall, 35 Colovos Road

Durham, NH 03824-3534

Office: 603-862-2719 | Mobile: 240-328-5083

david.kaiser@noaa.gov

<http://www.coast.noaa.gov/czm/consistency/>



Virus-free. www.avast.com

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David Kaiser, Senior Policy Analyst

National Interest Team | Stewardship Division

Office for Coastal Management

National Oceanic and Atmospheric Administration

Coastal Response Research Center, University of New Hampshire

246 Gregg Hall, 35 Colovos Road

3/12/2018

Mail - Fwd: Proposed National Grid LNG liquefaction facility project

Durham, NH 03824-3534

Office: 603-862-2719 | Mobile: 240-328-5083

david.kaiser@noaa.gov

<http://www.coast.noaa.gov/czm/consistency/>

Exhibit D
Public Comments filed November 7, 2017

November 7, 2017

Grover Fugate, Executive Director
RI Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

Re: 2016-10-99, National Grid Fields Points Liquefaction Facility

Dear Mr. Fugate,

I write as a resident of Providence, RI and the owner of a legal practice based in Providence, RI, to provide public comment in this matter. There is no demonstrated need for this project pursuant to §§300.1 and 300.8 of the Coastal Resources Management Plan (the CRMP) and the proposal is inconsistent with state policy under §300.8(D)(1)(g). National Grid has provided woefully inadequate evidence to support consistency with these elements of the Plan. I do not intend to reproduce other comments in the record but reference them to supplement some of these comments.

1) The Proposed Facility is Inconsistent with State Energy Policy pursuant to CRMP §300.8

Section 300.8(D)(1)(g) of the CRMP requires a showing that the proposal is consistent with state and national energy policies. National Grid's original filing on October 27, 2016, addressed section 300.8 as follows:

3.9 SECTION 300.8 ENERGY RELATED ACTIVITIES AND STRUCTURES

The proposed Project is required to adhere to federal building codes and fire codes. The entire Site is zoned by the City of Providence as W-3 Port/Maritime Industrial Waterfront District. The proposed liquefaction facility is consistent with the designated local zoning for the Site. Flood hazards in the area will be mitigated by elevating the liquefaction facility as described above and impacts of wave action will be mitigated by the proposed slope armoring. Incorporating anticipated sea level rise, the 100-year still water level flood elevation for the Site is 13.5-feet (NAVD88), and the anticipated wave height for the 100-year storm event is 2.9 feet.

That is National Grid's only filing that purportedly responds to the requirements of section 300.8. The CRMC staff report concludes that National Grid's filings meet all of the section 300.8 criteria, and that the Federal Energy Regulatory Commission will determine whether the project is consistent with national energy policy. However, National Grid and CRMC staff have completely ignored the requirement to show consistency with state energy policy. Grid certainly could not meet its burden on that element of section 300.8.

I have been deeply involved in Rhode Island's energy policy for many years as a lawyer with a practice in Rhode Island. I was one of many stakeholders working with the Office of Energy Resources and their hired consultant and National Grid in the development of a "data driven" State Energy Plan adopted on October 8, 2015 (the SEP). The plan evaluated three energy sectors – electricity, thermal energy (heating and cooling) and transportation – according to three criteria – security, cost and environmental

quality. The plan decisively concludes that continued investment in “business as usual” will only leave Rhode Island less energy secure, with increased energy costs and failed goals for environmental quality.

Perhaps most importantly for the purposes of this proposal, our SEP concludes that Rhode Island’s path to greater energy security will only come from investments in diversifying our sources of energy away from natural gas. We are already far too reliant on this limited, constrained and vulnerable fuel. The SEP notes that 98% of our electric supply comes from natural gas together with 57% of our thermal energy supply (p. 2). “Energy 2035 defines fuel diversity as a risk management strategy that seeks to mitigate the potentially harmful effects of disproportionate reliance on certain fuels by expanding the portfolio of demand and supply sources used to provide energy services.” So, to achieve greater energy security, our SEP establishes that:

As detailed in Figure 25, viable demand- and supply-side options exist for Rhode Island to increase in-state fuel diversity and increase energy security by shifting away from dependence on fuels like natural gas and gasoline. By far, Rhode Island’s greatest available resource is energy efficiency. By maximizing demand reduction in all energy sectors, the state could cut economy-wide energy use by more than one third. Supply-side resources with the most significant potential future contributions are offshore wind, combined heat and power, distributed photovoltaic solar power, and natural gas.³¹ No single in-state resource, however, can meet Rhode Island’s energy needs alone. This observation reinforces the importance of diversifying the state energy portfolio.

National Grid participated in the process of developing the SEP together with many other stakeholders and experts. They understood and supported its conclusions. Yet, their proposal fails to acknowledge the plan or its conclusions. Please be sure to refer to the SEP before making your conclusion regarding consistency with state energy policy – it can be found here, <http://www.energy.ri.gov/policies-programs/ri-energy-laws/state-energy-plan.php>. In addition to section CRMP §300.8 requirement of compliance with state energy policy, R.I. Gen. Laws §42-11-10 requires state agencies to conform their decisions to the elements of the state guide plan.

Moreover, National Grid’s own Energy Efficiency and System Reliability Procurement Plan for 2018-2020 dated August 30, 2017 (see <http://ricermc.wpengine.com/wp-content/uploads/2017/08/2018-2020-3-year-plan-puc-8-30-17.pdf>) acknowledges that this proposed facility is inconsistent with the direction of Rhode Island energy policy. It states:

[t]he Rhode Island Greenhouse Gas Emissions Reduction Plan (GHG Plan) identifies electrification of heating as a key strategy for meeting the GHG emissions reduction target of 80% below 1990 levels by the year 2050, as set forth in the Resilient Rhode Island Act. The Plan notes that that 27% of the state’s GHG emissions are from fuel consumption for space and water heating in residential and commercial buildings. Furthermore, the GHG Plan suggests that 81% of residential and 67% of commercial main heating load will need to be converted to highly

³¹ Navigant’s modeling did not consider highly efficient cold-climate air-source heat pumps or biomass thermal heating systems (such as wood and wood pellets). These renewable heating technologies will likely provide important additional contributions for diversifying Rhode Island’s thermal supply portfolio.

efficient electric heat pumps in order to meet the state's GHG reduction goals. High efficiency electric heat pumps create GHG reductions by displacing emissions from fossil fuel heating systems such as propane and oil boilers and from their inherent higher efficiency. The GHG reduction benefit of electrification will increase over time as New England's electric supply continues to shift toward a more decarbonized resource mix. . . In order to help meet state policy goals and to provide additional energy and cost savings to delivered fuel customers, the Company proposes to include incentives for strategic electrification of heating in its Three-Year Plan. Although strategic electrification of heating is not a traditional energy efficiency measure because it increases the use of electricity, it does reduce overall energy consumption through improved efficiency and meets the spirit of state policy by both delivering savings to customers and reducing aggregate emissions. (pp. 57-58).

National Grid has acknowledged that state energy policy compels a shift to beneficial electrification of our thermal energy supply away from continued over-reliance on natural gas. Yet its proposal to construct this facility completely ignores those important state policies.

National Grid's filing does not address or meet its obligation of consistency with state energy policy. It could not meet that requirement because the proposal is clearly inconsistent with state policy. Therefore, the proposal should be declared inconsistent with section 300.8(D)(1)(g) of the CRMP.

2) National Grid Fails to Meet its Burden of Demonstrated Need for this Project

Sections 300.1 and 300.8(D)(1)(f) of the Plan both require a demonstration of need for the proposed activity or alteration. National Grid's original filing from October 27, 2016, responded to this requirement by stating:

3.5 SECTION 300.1 CATEGORY B REQUIREMENTS

Many Rhode Islanders rely on natural gas for heating and cooking purposes. Natural gas is much cleaner burning than oil or coal and produces no ash particles.

The proposed liquefaction facility capacity has been fully subscribed by customers and enhances the use of the LNG facility and promotes economic growth. The proposed Project will require review and approval by the FERC, and will adhere to all applicable federal building codes, safety codes, and fire codes. The proposed Project does not include any filling or dredging within tidal waters, and will not affect water circulation, flushing, erosion, or deposition processes along the shoreline. The entire project Site is currently developed, and the addition of the liquefaction facility will not impact plant and animal life in the area. The LNG facility is a secure facility, and there is no public access to the shoreline at the Site. The LNG facility is secured with primary and secondary fencing around the entire perimeter of the facility. Security guards perform regular perimeter inspections, and the facility is staffed and monitored 24-hours per day. Stormwater runoff emanating from the new impervious areas will be treated in accordance with the *Rhode Island Stormwater Design and Installation Standards Manual*. Required applicable federal permits and authorizations will be obtained prior to construction of the new stormwater treatment system. Details regarding the stormwater management system are included in the attached Stormwater Management Plan (SWMP).

3.9 SECTION 300.8 ENERGY RELATED ACTIVITIES AND STRUCTURES

The proposed Project is required to adhere to federal building codes and fire codes. The entire Site is zoned by the City of Providence as W-3 Port/Maritime Industrial Waterfront District. The proposed liquefaction facility is consistent with the designated local zoning for the Site. Flood hazards in the area will be mitigated by elevating the liquefaction facility as described above and impacts of wave action will be mitigated by the proposed slope armoring. Incorporating anticipated sea level rise, the 100-year still water level flood elevation for the Site is 13.5-feet (NAVD88), and the anticipated wave height for the 100-year storm event is 2.9 feet.

The CRMC staff memo states that the need for the facility was addressed in National Grid's March 15, 2017 filing. There, the Company responds to Public Comment 4 by stating:

The purpose and need for the Project is to add liquefaction capability to the existing NGLNG storage site to enable the customers to fill their contracted storage capacity with pipeline-sourced natural gas as an alternative to supplying gas for storage that is already in a liquid state. The current storage operation does not include any liquefaction equipment and receives LNG by truck to fill the 600,000 barrel (approximately 2.0 billion cubic feet) storage tank for the peak season needs. The local distribution company customers that have requested this additional service will use this capability to reduce their dependence on imported LNG supplies acquired from one of the LNG import terminals. The purpose is to reduce the customers' supply risks for obtaining the LNG that they store at the existing site, which enhances the reliability of the downstream gas service the customers provide.

The Project is being undertaken by NGLNG at the request of two of its storage customers, The Narragansett Electric Company ("TNEC") and Boston Gas Company ("BGC"), to add liquefaction capability so that they can deliver gas for storage in vapor form as an alternative to delivering LNG to the site by tanker trucks. The Project will include one new 20 million standard cubic feet per day ("MMscfd") gas pretreatment and liquefaction system to convert domestic natural gas delivered by pipeline into LNG by cooling it to a liquid state for storage. Feed gas will be transported to the Project via an existing 12" pipeline owned by TNEC. Pre-treatment will consist of one train capable of providing treated gas to a liquefaction site for producing 20 MMscfd vapor equivalent of LNG for storage. The existing storage capacity will remain unchanged. There will be no change to the LNG storage tank and no relocation of the existing cryogenic piping or vaporization equipment is proposed.

Further discussion on TNEC and BGC needs related to LNG supply is included below in Section 300.1 Requirement 1 Response.

On pages 6-7 of that filing, National Grid adds:

Section 300.1 Requirement 1. Demonstrate the need for the proposed activity or alteration; NGLNG's customers, affiliate companies TNEC (primarily services Rhode Island residential, commercial and industrial customers) and BGC, currently store their LNG in the NGLNG tank for their use in the winter months when peak demand for natural gas (for heating use) exceeds available supply in the pipelines. Note that this happens every year during the winter season. The LNG stored by these customers has been historically sourced from one location in the northeast, the existing Everett, Massachusetts LNG import terminal. NGLNG's customers buy natural gas in bulk on behalf of their customers and pass the costs through, at no mark up, to the TNEC and BGC customers. In the wintertime when the interstate pipelines are constrained, the costs to TNEC customers (mainly Rhode Island customers) would be much higher than normal. Therefore, by using the lower cost LNG sourced during the summer months, TNEC is able to keep customer heating bills at the lowest possible cost. This

is a benefit that Rhode Island customers reap from NGLNG storing LNG and therefore justifies the existing plant. This fact has been proven in each of the plant's 43 years of operation evidenced by the usage of LNG to supplement supply every winter.

The liquefier adds a separate set of benefits on top of the LNG storage. In 2012, NGLNG's customers faced the potential of an overseas shipment not arriving due to force majeure events. If shipments from overseas fail to arrive in Everett for any reason, the supply chain of this peak natural gas supply becomes interrupted and unreliable. At the request of its customers, NGLNG is proposing this liquefier Project to fill the tank using domestic natural gas already flowing by the plant in an existing pipe. NGLNG's customers are simply changing the LNG supply source and lessening their dependence on imported LNG for increased security, reliability and cost effectiveness. The need of the Project is to add liquefaction capability to the existing NGLNG storage facility to enable the customers to fill their storage capacity with pipeline sourced natural gas instead of by truck. The pipeline already exists.

When called upon to supplement peak gas supply, NGLNG vaporizes LNG from the existing storage tank and injects the vaporized natural gas into the existing TNEC distribution pipeline infrastructure. As long as National Grid's retail customers require natural gas to heat their homes and fuel appliances, National Grid has an obligation to provide its customers with a safe and reliable natural gas supply.

The construction of the Project will not inhibit or restrict future development of renewable energy sources such as wind or solar. As mandated by law, Rhode Island will continue to develop renewable energy supplies such as the Block Island Wind Farm Project. Even as these renewable energy facilities are developed and constructed, Rhode Islanders will continue to rely on natural gas for efficient and clean energy and heating so that renewable energy that is used to generate electricity is not a substitute for natural gas at this time. National Grid understands that developing renewable energy sources is extremely important to combat global climate change. However, renewable energy sources such as wind and solar rely on variable weather conditions and require a secondary energy source in case weather conditions are not conducive to generating electricity. Even Germany, which is considered a global leader in wind energy generation, relies on coal fired power plants when wind speeds are inadequate for power generation. Complete reliance on renewable energy sources will require development of advanced energy storage technology. Energy storage is an emerging technological field and may require decades to develop the energy storage capacity to completely rely on renewable energy sources. Although developing renewable energy is important, providing a reliable and continuous energy source is also very important, and the proposed liquefaction plant will improve the reliability of the existing natural gas energy system.

Those are the only demonstrations of need included in National Grid's filings. The CRMC staff memo leaves the question of whether there is a demonstrated need for this project under section 300.1 to the Council. National Grid's discussion of demonstrated need is entirely inadequate for many, clear reasons.

First, they fail to address the context of existing and projected demand for gas as laid out extensively in the comments on demonstrated need filed by the Environmental Justice League on January 23, 2017, which National Grid has never addressed on the record. The claims that this added investment will enhance reliability are based on peak season shortages that are not demonstrated or projected. In fact, quite to the contrary, the SEP projects that:

Under business-as-usual conditions, Rhode Island's demand resource portfolio will expand dramatically, while the supply portfolio in 2035 will largely resemble today's energy mix. In other words, total energy demand is projected to drop in each sector; however, the forecast shows few major changes in the overall composition of fuels that serve demand (Figure 24)." (p. 38). . . In the thermal sector, business-as-usual energy reductions of 19 percent occur, due to effects from annual investments in natural gas energy efficiency through Rhode Island's Least-Cost Procurement mandate. (p. 39).

In addition to the transformative, anticipated impact of efficiency (also addressed in the Environmental Justice League's January 23 comments on demonstrated need), the SEP and subsequent energy planning process call for a conversion of our thermal systems from natural gas to electricity, a policy recommendation called "beneficial electrification." The SEP observes that, "Low- and no-carbon resources, however, produce important energy security, cost-effectiveness, and sustainability benefits when displacing fossil fuels in the thermal and transportation sectors as well." (p. 64)

The Plan's scenario modeling suggests that renewable fuels could supply approximately 15 percent of Rhode Island's thermal energy needs by 2035. . . Therefore, the State should encourage the increased use of biofuel in these sectors by expanding Rhode Island's current 5 percent biodiesel blending mandate in the thermal sector to at least 20 percent in both the thermal and transportation sectors by 2035. (*Id.*)

National Grid participated in the development of the SEP but completely neglects to address its fundamental conclusions and resolutions in association with its analysis of demonstrated need for this project. Any accurate projection of future demand for natural gas must also account for the implementation of the SEP recommendations. National Grid's does not.

Once the State Energy Plan was finalized I participated with other stakeholders and expert consultants and National Grid in the Office of Energy Resources many planning sessions on a Renewable Thermal Market Development Strategy. The resulting report issued in January 2017 (see <http://www.energy.ri.gov/documents/Efficiency/Rhode%20Island%20Renewable%20Thermal%20Market%20Development%20Strategy%20January%202017.pdf>), found that

. . . because Rhode Island has no in-state natural gas or petroleum resources, a large portion of the approximately \$1.1 billion in annual expenditure on heating fuels flows directly out of the state. . . There is a significant opportunity for Rhode Island to diversify the thermal energy economy and scale RT to reduce GHG emissions and generate economic development benefits. In fact, scenario modeling results for this study indicate that if Rhode Island increases RT to 5%, the State can generate over \$193 million in lifetime net benefits. Such a program would have substantial benefits in terms of employment and environmental impact, with minimal impacts to the energy bills of Rhode Island homes and businesses. . .

The group's recommendations included development of statewide renewable thermal market development targets, incentives for renewable thermal technologies, State government leadership by example per Executive Order 15-17 ("Leading by Example"), expanded access to low-cost financing for renewable thermal, and community outreach, education and bulk procurement programs. Any accurate

projection of future demand for natural gas must account for the implementation of these renewable thermal market development strategies. National Grid's does not.

I also participated alongside National Grid in the Power Sector Transformation proceedings convened by the Public Utilities Commission, the Division of Public Utilities and Carriers and the Office of Energy Resources – see http://www.ripuc.org/utilityinfo/electric/PST_home.html. One of the three focal points of that proceeding was the beneficial electrification of our thermal energy sector. The last draft of the report on beneficial electrification, dated October 13, 2017 (see http://www.ripuc.org/utilityinfo/electric/PST_BE_draft.pdf), observes that

Electrification of heating is part of Rhode Island's power sector transformation strategy, but is progressing on a different schedule from EVs in the Power Sector Transformation project. This is in part because National Grid currently has existing and proposed programs as part of its Energy Efficiency and System Reliability Procurement Plans. (p. 3, fn. 3).

Indeed, National Grid's Energy Efficiency and System Reliability Procurement Plan for 2018-2020 dated August 30, 2017 (see <http://rieermc.wpengine.com/wp-content/uploads/2017/08/2018-2020-3-year-plan-puc-8-30-17.pdf>), includes "cumulative energy efficiency savings of 7.53% of Rhode Island's 2015 electric load and 2.90% of 2015 natural gas load over the period 2018-2020. . . generating more than \$1.6 billion in benefits over the life of the installed measures." (cover letter) The Plan notes that between 2009 and 2016 "the Company served 604,329 gas customers resulting in annual natural gas savings of 2,242,934 MMBtu, and lifetime savings of 30,500,890 MMBtu at an average cost of \$3.44 per lifetime MMBtu." (p. 21) It includes the following resolution:

In order to help meet state policy goals and to provide additional energy and cost savings to delivered fuel customers, the Company proposes to include incentives for strategic electrification of heating in its Three-Year Plan. Although strategic electrification of heating is not a traditional energy efficiency measure because it increases the use of electricity, it does reduce overall energy consumption through improved efficiency and meets the spirit of state policy by both delivering savings to customers and reducing aggregate emissions. (pp. 57-58).

Here again, National Grid neglects its own Energy Efficiency and System Reliability Procurement Plan for 2018-2020 when making its liquefaction facility proposal to CRMC. Any accurate projection of future demand for natural gas and demonstrated need for this project must accurately account for the Company's own plan to shift gas customers to electricity. National Grid's does not.

Conclusion

For these reasons (and many more), as a Providence resident and business owner I respectfully urge the CRMC to find National Grid's application to develop a Fields Points Liquefaction Facility inconsistent with Rhode Island's federally-approved Coastal Resources Management Plan under 15 CFR § 930 Subpart D.

Sincerely,

Seth H. Handy

