

NO LNG in PVD

February 10, 2017

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Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908

ATTN: Terry Gray, Associate Director, Bureau of Environmental Protection

Office of Water Resources: Water Quality Certifications

ATTN: Neal Personeus

CC: Alisa Richardson, Supervisor

Jenna McIntyre, Senior Environmental Scientist, Permit Application Center

Brian Moore, Chief

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Office of Waste Management

ATTN: Joe Martella, Senior Engineer

CC: Kelly Owens, Supervising Engineer, Site Remediation

Matthew DeStefano, Associate Supervising Engineer

Leo Hellested, PE, Chief

RE: NATIONAL GRID LNG – FIELDS POINT LIQUEFACTION PROJECT

We, the No LNG in PVD Coalition, are writing you to follow up on the Open Letter sent to you on November 1, 2016 (attached for reference) and to discuss the recent letter sent to RIDEM from the Federal Energy Regulatory Commission on January 17, 2017.¹ We have not yet received any written reply to our open letter, or any notice as to the standing of your review of National Grid LNG's proposed Fields Point Liquefaction Project. The recent communication from FERC validates our belief that RIDEM has greater authority and leeway than has been previously acknowledged. We respectfully repeat our request that RIDEM use its authority to the fullest extent possible to protect the environmental justice communities impacted by the proposed project. This includes 1) Implementing the Public Involvement Plan (PIP) on the full property; 2) Requiring a STRAP permit; 3) Telling FERC to conduct a full Environmental Impact Statement; and 4) Applying RIDEM's Environmental Justice policy.

Environmental Justice concerns about the contamination at the site is the reason we petitioned RIDEM for a PIP, which was initiated on September 6, 2016. The lengths to

¹ Letter to Rhode Island Department of Environmental Management re the 10/21/16 filing to National Grid LNG LLC concerning the position that federal law preempts certain statutes, regulations, and processes etc under CP16-121 <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14467380>

which National Grid has gone to avoid public involvement and to instigate confusion over which agency has regulatory authority is in itself a cause for concern. For the sake of clarity, the following is a summary of what has occurred since initiating the PIP:

- **September 6, 2016:** RIDEM initiates Public Involvement Plan in response to petition.²
- **September 15, 2016:** National Grid contractor GZA submits timeline to have draft PIP prepared before the end of September.³
- **September 26, 2016:** National Grid responds with legal memo from Hinckley Allen, stating that RIDEM lacks jurisdiction to impose PIP or other RI remediation regulations because FERC jurisdiction pre-empts state law.⁴
- **September 27, 2016:** No LNG in PVD registers complaint about observed excavation activity occurring at the site, with dust visibly blowing off uncovered piles of soil.⁵
- **September 30, 2016:** National Grid contractor GZA updates timeline, delays delivery of draft PIP to October 14th.⁶
- **October 14, 2016:** No LNG in PVD registers additional complaint about ongoing construction, shows photograph of a sign posted at the site for deliveries for Fields Point Liquefaction Facility.⁷
- **October 21, 2016:** RIDEM responds to Hinckley Allen memo, agreeing that FERC jurisdiction pre-empts PIP requirement for liquefaction facility, but requesting to apply RI site remediation regulations and obtain a STRAP for the related bund wall project.⁸
- **October 28, 2016:** National Grid contractor GZA submits draft PIP, two weeks after postponed deadline; liquefaction facility and ongoing excavation excluded from PIP.⁹
- **November 1, 2016:** No LNG in PVD sends Open Letter to RIDEM.
- **November 16, 2016:** National Grid notifies FERC of plans to no longer obtain a STRAP permit from RIDEM as originally proposed, propose using 2012 Soil Management Plan under FERC oversight instead.¹⁰
- **November 17, 2016:** FERC sends National Grid a data request for all documentation on the site contamination, all communications with RIDEM, and potential for releases.¹¹
- **December 7, 2016:** National Grid replies to FERC, shares some information but says the full set of documentation is too voluminous and not all available digitally.¹²
- **December 13, 2016:** Mashapaug Nahaganset Tribe meets with RIDEM to express opposition to LNG Facility.¹³
- **January 17, 2017:** FERC sends letter to RIDEM¹⁴ (attached and discussed below).

² <http://www.dem.ri.gov/programs/benviron/waste/Prov-Co/160906lt.pdf>

³ <http://www.dem.ri.gov/programs/benviron/waste/Prov-Co/160915sc.pdf>

⁴ <http://www.dem.ri.gov/programs/benviron/waste/Prov-Co/160926ha.pdf>

⁵ “No LNG in PVD demands National Grid halt construction at Fields Point.” RI Future. <http://www.rifuture.org/nolnginpvd-halt-construction/>

⁶ <http://www.dem.ri.gov/programs/benviron/waste/Prov-Co/160930sc.pdf>

⁷ “Even National Grid’s contractor doesn’t seem to know what’s going on at Fields Point” RI Future. <http://www.rifuture.org/national-grid-contractor/>

⁸ <http://www.dem.ri.gov/programs/benviron/waste/Prov-Co/161021lr.pdf>

⁹ <http://www.dem.ri.gov/programs/benviron/waste/Prov-Co/161028pi.pdf>

¹⁰ <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14399676>

¹¹ <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14401005>

¹² <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14418592>

¹³ “Mashapaug Nahaganset Tribe formally opposes LNG projects in RI.” RI Future. <http://www.rifuture.org/mashapaug-nahaganset-lng/>

¹⁴ <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14467380>

The January 17, 2017 letter from FERC to RIDEM clarifies several important items. First, FERC disagrees with National Grid's position that "Rhode Island Industrial Property Remediation and Reuse Act (IPRRA)¹⁵, the Remediation Regulations promulgated under the IPRRA, and the Public Involvement Plan (PIP) process are preempted by the FERC regulatory scheme."

FERC acknowledges that state regulations could be preempted by the federal Natural Gas Act if they interfere with the construction and operation of *'facilities approved by the Commission'*¹⁶ (*emphasis added*). However - the liquefaction facility **has not been approved** by FERC, it is undergoing review and the draft environmental document has not yet been released for comment. Under National Environmental Policy Act (NEPA), facilities such as this need to be rigorously reviewed - especially in environmental justice communities with cumulative impacts. FERC notes that in these situations, applicants are encouraged to "cooperate with state and local agencies regarding the location of pipeline facilities, environmental mitigation measures, and construction procedures."¹⁷ FERC is asking RIDEM, as a cooperating agency, to take an active role in the development of remediation plans and protection of the public interest.

Echoing the argument made in the No LNG in PVD Open Letter to RIDEM on November 1st, FERC emphasized that "Rhode Island has authority delegated to it under federal statutes including the Clean Water Act, the Coastal Zone Management Act, and the Clean Air Act that may give the state both the ability and the obligation to deal with the environmental issues in this proceeding."¹⁸

Given all of the above, the No LNG in PVD Coalition demands the following items:

- 1) Implement a robust Public Involvement Plan, applied to the entire property, and especially including the areas for the proposed liquefaction facility and the bund wall project.**

The FERC letter clarifies that RIDEM has the authority to apply RI site remediation regulations, which includes the requirement which has been initiated for a Public Involvement Plan. RIDEM should utilize this to the fullest extent possible.

The draft Public Involvement Plan, submitted by GZA Environmental, Inc on behalf of National Grid on October 28, 2016 is woefully inadequate and must be thoroughly revised, with public comment, before accepted. The PIP must be applied to the full site and especially to the placement of the liquefaction facility, equipment, and all construction activity required for installation of the facility. The PIP should establish a process for meaningful public involvement which has been wholly lacking to date. In a reiteration of the request entailed in the initial petition to establish the PIP in the first place:

¹⁵ R.I. Gen. Laws § 23-19.14-1 *et seq.*

¹⁶ *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013).

¹⁷ See, e.g., *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 33 (2016).

¹⁸ Letter to Rhode Island Department of Environmental Management re the 10/21/16 filing to National Grid LNG LLC concerning the position that federal law preempts certain statutes, regulations, and processes etc under CP16-121 <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14467380>

Based on this regulation, the petitioners request that approval and implementation of any and all remediation work is halted at the Providence MGP Site until a PIP is approved and implemented. This specifically includes, but is not limited to, the Short Term Remedial Action Plan that NGLNG is proposing for activities on the site, as well as other RIDEM permits for activities related to the Fields Point Liquefaction Facility proposed by NGLNG.

The PIP should provide a framework for the public to shape what the public meetings will look like, what their format would be, and how information and monitoring samples are communicated to the public, as well as how additional members of the public can become involved in the PIP process. More so, the PIP should recognize members of the community as mechanisms of oversight. To this end, it should include a clear mandate and protocol for investigating reports that community members make about emissions (i.e., individual complaints about dust clouds, soil disturbances, strong chemical smells, etc).

2) Require National Grid LNG to obtain a Short Term Remedial Action Plan (STRAP) as originally intended for oversight of soil disturbance from construction, while holding the STRAP subject to the conditions of the Public Involvement Plan.

National Grid LNG's application to FERC clearly stated the plan to receive a STRAP permit to manage the soil disturbances from construction activity, but after the PIP process was initiated they backed out of this commitment and stated their intention to have FERC oversee the soil management using the 2012 Soil Management Plan. RIDEM's October 21st 2016 letter to Robin Main (acting on behalf of National Grid) states that "A Soil Management Plan, such as the one that is on file for this Site, is designed to set a blueprint for minor soil disturbances on post-remediation areas" and argues that it is not sufficient to cover the bund wall project which requires a STRAP. In the same letter, however, RIDEM foregoes the STRAP requirement for the liquefaction facility, concurring with National Grid's claim that FERC jurisdiction means that RIDEM oversight is preempted.

Described above, the recent letter from FERC negates National Grid's argument and passes jurisdictional authority back to RIDEM, which does in fact have the legal authority to require a STRAP for the liquefaction facility. Because RIDEM also has the authority to implement a PIP, the STRAP permit should be conditional upon the results of public participation and decision making through the PIP process.

3) As a Cooperating Agency, tell FERC that a limited Environmental Assessment is not sufficient, a full Environmental Impact Statement is warranted.

The complexities of the proposed project, the environmental justice concerns related to the selected location, and the issues surrounding site contamination require due diligence, not a rushed expedited process. No LNG in PVD and coalition members such as the Environmental Justice League of Rhode Island have been requesting that FERC conduct a more comprehensive Environmental Impact Statement (EIS), not the limited Environmental Assessment (EA) currently planned. Mayor Jorge Elorza echoed this request in his letter to FERC on September 8th 2016

announcing opposition to the LNG facility.¹⁹ FERC's response to Mayor Elorza on October 26, 2016 reiterated that an EA is planned but that "if the staff's review of the project identifies a significant impact, an environmental impact statement will be prepared."²⁰ As a Cooperating Agency working with FERC in reviewing the proposed facility, RIDEM has a unique and important position to communicate directly with FERC and weigh in on the project's impacts. Given FERC's request for RIDEM to play an active role around the expertise of site remediation issues, RIDEM has the power to tell FERC that site's complexities and history of contamination is in fact a significant impact that would warrant an EIS.

4) Utilize the RIDEM Environment Justice Policy and follow its requirements for meaningful community involvement and public participation in decision making.

RIDEM's Environmental Justice Policy (SOP Number BEP-AWC-1, effective 6/26/09²¹) was created to lay out clear steps, processes, and protocols for how RIDEM should engage with environmental justice communities and better address environmental justice concerns. RIDEM's page on Environmental Justice²² includes the policy, a checklist for public notice requirements for site remediation in environmental justice areas,²³ and a link to the "Environmental Equity and Public Participation" statute under RI General Laws.²⁴

The EJ Policy is thorough and specific in how it sets forth what is required to create the conditions for meaningful community involvement and public participation, yet these policies and the steps entailed have not been implemented at this property. The introduction to the EJ Policy specifically identifies and highlights RI's early industrial history and environmental contamination due to oil and hazardous chemicals which occurred in the urban core areas inhabited by low-income communities of color. The EJ policy states, "These populations have been subject to many historical inequities. Addressing these inequities and providing a fair, effective process for future involvement in site remediation projects is a main premise of environmental justice."²⁵ The stated purpose of the EJ Policy²⁶ is:

- "For DEM staff, this policy will guide and direct the Department's decisions and public involvement process in such a way that encourages timely, effective community participation."

¹⁹ Providence, RI Mayor Jorge O. Elorza submits comments re the Fields Point Liquefaction Project under CP16-121 <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14359877>

²⁰ Response to Providence, RI Mayor Jorge O. Elorza's 9/8/16 letter regarding the National Grid LNG LLC's Fields Point Liquefaction Project under CP16-121 <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=14386095>

²¹ "Policy for Considering Environmental Justice in the Review of Investigation and Remediation of Contaminated Properties." (EJ Policy) RI Department of Environmental Management. <http://www.dem.ri.gov/envequity/pdf/ejfinal.pdf>

²² <http://www.dem.ri.gov/programs/wastemanagement/site-remediation/environmental-justice.php>

²³ "Public Notice Requirements for Site Remediation in Environmental Justice Areas." RI Department of Environmental Management. <http://www.dem.ri.gov/programs/benviron/waste/pdf/ejcheck.pdf>

²⁴ RIGL §23-19.14-5 Health and Safety: Industrial Property Remediation and Reuse Act. <http://webserver.rilin.state.ri.us/Statutes/TITLE23/23-19.14/23-19.14-5.HTM>

²⁵ EJ Policy, p1

²⁶ EJ Policy, p2

- “For residents living/working in environmental justice areas impacted by actual or suspected environmental contamination, implementation of this policy will provide clear, predictable opportunities to participate in environmental decision-making relative to the investigations and remediation of property regardless of race, income, national origin or English language proficiency.”

RIDEM has a clear mandate and authority for investigation and clean-up of contaminated sites, to be done in a manner that complies with all applicable rules and regulations. This includes prioritizing the consideration of health and safety impacts of contaminated sites on adjacent communities, and addressing issues of environmental equity for low income and racial minority populations, as set forth in RIGL §23-19.14-5. The public meeting requirements set forth by the statute and departmental policies have not been upheld despite repeated requests over many months. The statute clearly states that “No work (remediation or construction), shall be permitted at the property until the public meeting and comment period regarding the site's proposed reuse has closed.”²⁷

For many months, despite repeated complaints by numerous parties, RIDEM has deferred questions on these matters by reiterating National Grid's claim that FERC jurisdiction pre-empts RI state law and that these matters should be brought up with FERC instead. No LNG in PVD and our constituent member organizations and elected officials have indeed been bringing these concerns up with FERC and are intervenors on FERC docket CP16-121. However, as the recent communication from FERC has made clear, FERC jurisdiction does not remove RIDEM's authority over key aspects, especially as related to site contamination and the applicable rules and regulations around environmental justice. RIDEM also has clear authority over the federally delegated responsibilities under the Water Quality Certification and RIPDES Construction General Permit. No LNG in PVD is reiterating our demand that RIDEM uphold its responsibility by following through on the above four requests in a timely manner.

We, the No LNG in PVD Coalition, await your response.

No LNG in PVD is a coalition of residents organizations working to stop the proposed National Grid Fields Point Liquefaction Facility in Providence RI. No LNG in PVD has been endorsed by the Mashapaug Nahanganset Tribe, 1,370 individuals²⁸, and the following organizations and elected officials:

Local/Providence organizations:

The Environmental Justice League of RI, The FANG Collective, BASE: Burrillville Against Spectra Expansion, Bell Street Chapel, Governing Board, Community Music Works, emPOWER (Brown University), Farmacy Herbs, George Wiley Center, Occupy Providence, Providence Student Union, PRYSM: Providence Youth Student Movement, Quisqueya Liquors, Renaissance Church, The White Noise Collective

²⁷ RIGL § 23-19.14-5 (a)(4)(ii)

²⁸ <https://actionnetwork.org/petitions/no-lng-in-pvd>

Statewide organizations: Clean Water Action (RI), Fossil Free RI, Green Party of RI, Humanists of RI, PSA/NEARI Local 859 (Professional Staff Association, National Education Association - RI), Rhode Island Progressive Democrats, RI Sierra Club

Regional and national organizations: American Friends Service Committee - South East New England, Beyond Extreme Energy (National), Climate Action Now (MA), Climate Justice Alliance (National Coalition), Coalition for Responsible Siting of LNG Facilities (Fall River, MA), Food and Water Watch (National), Grassroots Global Justice (National Coalition), Hampshire College Climate Justice League (MA), No Sharon Gas Pipeline (MA), Popular Resistance (National), People, Not Pipelines (New England), Toxics Action Center (New England)

Elected Officials:

Mayor Jorge Elorza, City of Providence
State Representative Edith Ajello, District 1
State Representative Christopher Blazejewski, District 2
State Representative Moira Walsh, District 3
State Representative Aaron Regunberg, District 4
State Representative Marcia Ranglin-Vassell, District 5
State Representative John Lombardi, District 8
State Representative Anastasia Williams, District 9
State Representative Grace Diaz, District 11
State Representative Joseph Almeida, District 12
State Representative John Lombardi, District 13
State Representative Susan Donovan, District 69
State Senator Ana Quezada, District 2
State Senator Gayle Goldin, District 3
State Senator Paul Jabour, District 5
State Senator Harold Metts, District 6
State Senator Jeanine Calkin, District 30

ATTACHMENTS:

- 1) Federal Energy Regulatory Commission (FERC) - Letter to Rhode Island Department of Environmental Management re the 10/21/16 filing to National Grid LNG LLC concerning the position that federal law preempts certain statutes, regulations, and processes etc under CP16-121
- 2) No LNG in PVD Open Letter to RIDEM, dated November 1, 2016