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April 12, 2017

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St., N.E.
Washington, D.C. 20426

Re: OEP/DG2E/Gas 4
National Grid LNG LLC
Fields Point Liquefaction Project
Docket No. CP16-121-000
Environmental Data Request, issued April 7, 2017

Dear Secretary Bose:

On April 7, 2017, the Office of Energy Projects issued an Environmental Data Request (“April 7 Request”) to National Grid LNG LLC (“NGLNG”) in the above docket requesting a response within five days. This letter provides NGLNG’s response.

Overview

In the April 7 Request, the Commission Staff stated its position that the 2012 Soil Management Plan (“2012 SMP”) submitted by NGLNG for the proposed Fields Point Liquefaction Project (the “Project”) is insufficient and inappropriate for the Project. Further, the Commission Staff stated that it would be appropriate for NGLNG to proceed under the purview of the Rhode Island Department of Environmental Management (“RIDEM”) as NGLNG had originally proposed in Resource Report 7. The Commission Staff indicated that it “will look to RIDEM, as a cooperating agency, as the primary source of information regarding soil/groundwater disturbance and addressing or managing potential contamination at the site.”¹ NGLNG was specifically requested to “provide an update on [NGLNG’s] consultations with RIDEM regarding soil/groundwater disturbance and addressing or managing potential contamination at the site. Also, describe how [NGLNG] plans to comply with the requirements outlined in RIDEM’s Remediation Regulations, including the public involvement requirements set forth in Rule 7.07 (and specifically, Rule 7.07(E)).”²

¹ April 7 Request at 2.

² *Id.*

As discussed in greater detail below, NGLNG is in the process of preparing a Project-Specific Materials Management Plan (“MMP”) that it will present to RIDEM for review and input. The specific RIDEM Remediation Regulations cited in the April 7 Request are not applicable to the Project but NGLNG is currently in discussions with RIDEM about the process to be used to obtain its input and guidance on the MMP that NGLNG is preparing. NGLNG anticipates that once RIDEM’s guidance has been obtained, the MMP will be filed in this docket.

Project-Specific Materials Management Plan

NGLNG will develop a project-specific MMP for the Project that will be more comprehensive than the 2012 SMP. The MMP will include the following components: a background of the site and the Project, a summary of environmental data (soil and groundwater) in the project area, a project-specific air emission evaluation, project-specific material management guidelines (management of excess impacted soils, imported soil requirements, required environmental controls based on the air emissions evaluation and the environmental data, capping requirements, decontamination requirements, dewatering and groundwater management requirements, required sedimentation and erosion controls, limited demolition debris management requirements), health and safety requirements including air monitoring, and project-specific reporting to RIDEM and FERC.

NGLNG expects to have a draft of the project-specific MMP to provide to RIDEM’s Office of Waste Management for its review prior to the end of April 2017.

RIDEM’s Remediation Regulations are not applicable to the Project

A short term remedial action plan (“STRAP”) is not applicable to this Project because it is not a remediation project to clean up contaminated soil and groundwater initiated after a notice of a release of a hazardous substance has been made to RIDEM. STRAPs are regulated under the RIDEM remediation statute, which is the Rhode Island Industrial Property Remediation and Reuse Act, R.I. Gen. Laws §§ 23-19.14-1 *et. seq.*, (“IPRRA”), and the Remediation Regulations promulgated thereunder. A STRAP is only used for remediating a contaminated site through, among other steps, extensive sampling of soil and groundwater to identify the nature and extent of contamination, potential removal of that contaminated media, and extensive reporting requirements to RIDEM. The Remediation Regulations also provide for public involvement plans (“PIP”) for “any Contaminated Site for which [RIDEM] has received a Notification of Release which a minimum of twenty-five (25) . . . interested parties have requested . . . that a formal process be set up for their participation in the cleanup planning.” Here, there is no cleanup planning to which a PIP would attach. The Project is a construction job, not remediation work. As such, the Remediation Regulations are not applicable here and therefore a STRAP under such Regulations also is not applicable.

Even if IPRRA was applicable here, the federal statutes, federal regulations and decisions from federal courts establish that IPRRA and the Remediation Regulations are preempted by the federal regulatory scheme. RIDEM agrees with this as set forth in its October 21, 2016 letter on the Project. IPRRA is not part of or subject to any delegated

federal authority. The applicable federal statutes for the Project, together with the regulations promulgated pursuant to them, establish a comprehensive scheme of federal regulation that confers upon the Commission exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce. Simply put, a STRAP is inapplicable here, and IPARRA and the Remediation Regulations are preempted by the federal regulatory scheme implemented by the Commission.

Instead, the MMP that NGLNG is developing will include substantively the same elements covered in a STRAP. For example, it will include detailed procedures that will be followed during construction/maintenance activities at the site that require the management of soils excavated and groundwater removed from the subsurface. In other words, the MMP will be the “instruction manual” for the excavation, storage, and appropriate reuse or disposal of soils from the Project site and the handling and management of groundwater encountered during soil excavation.

Procedures To Be Followed

Under the National Environmental Policy Act (“NEPA”), a lead agency directs and supervises the preparation of the environmental document in conjunction with cooperating agencies,³ but the lead agency has the “ultimate responsibility for the content” of the environmental document.⁴ The lead agency is empowered to designate cooperating agencies, to use the analysis provided by cooperating agencies, and to define the scope of the analysis done by cooperating agencies.⁵ The purpose of requiring the single lead agency to consult with cooperating agencies is to obtain the value of their expertise and enhance the interdisciplinary capability in the lead agency decision making.⁶ While a lead agency is required to seek the advice and input of Federal and state agencies,⁷ only Federal agencies that have jurisdiction are required to be cooperating agencies.⁸ The participation of a state agency, or a Federal agency without jurisdiction by law, is voluntary.⁹

³ 40 C.F.R. § 1501.5(a).

⁴ 40 C.F.R. § 1501.6(a)(2); Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026-01.

⁵ See 40 C.F.R. § 1501.6.

⁶ 40 C.F.R. § 1501.6(b)(3).

⁷ 40 C.F.R. § 1501.7(a)(1).

⁸ 40 C.F.R. § 1501.6.

⁹ “A cooperating agency may in response to a lead agency’s request for assistance in [its environmental review] reply that other program commitments preclude any involvement or the degree of involvement requested.” 40 C.F.R. § 1501.6(c). See also, e.g., *N. Buckhead Civic Ass’n v. Skinner*, 903 F.2d 1533, 1545 (11th Cir. 1990) (Involvement by Urban Mass Transit Administration as cooperating agency in formulating environmental impact statement pertaining to proposed highway with median designed to accommodate heavy rail mass transit was not required by regulations given fact that agency did not have jurisdiction by law once rail line officials decided to use only local funds in construction of mass transit portion of project.)

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Commission staff has sought the input of RIDEM as a cooperating agency to provide its expertise on the management of the soil disturbance associated with the Project site. NGLNG welcomes the review and recommendations of RIDEM on the development of a materials management plan that is specific to this Project. However, as discussed above, the RIDEM Remediation Regulations are inapplicable to the circumstances of the Project.

Therefore, NGLNG is currently engaged in discussions with RIDEM about the appropriate consultation process to be used within the context of the Commission's procedures. NGLNG anticipates this will result in it providing a draft of its proposed MMP to RIDEM for its review and input prior to NGLNG filing the plan with the Commission in this docket. RIDEM will then be able to provide its input to the Commission by filing comments and recommendations on NGLNG's proposed plan or through informal consultations with the Commission staff during the preparation of the environmental document. As contemplated by the NEPA regulations, the final decisions to be reflected in the environmental document and, ultimately, the certificate conditions will be those of the Commission.

As noted above, NGLNG expects to provide a draft of the project-specific MMP to RIDEM for its review and input prior to the end of April 2017. NGLNG anticipates that it then will be able to file the proposed project-specific MMP with the Commission in May.

If you have any questions please do not hesitate to contact me.

Sincerely,

/s/ *Andrea Wolfman*

Andrea Wolfman

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