STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID REQUEST FOR APPROVAL OF A GAS CAPACITY CONTRACT AND COST RECOVERY PURSUANT TO R.I. GEN. LAWS § 39-31-1 TO 9	:	DOCKET NO. 4627

ALGONQUIN GAS TRANSMISSION, LLC'S
OBJECTION TO CONSERVATION LAW FOUNDATION'S
MOTION TO DISMISS AND CLOSE DOCKET

Algonquin Gas Transmission, LLC ("Algonquin") hereby objects to the Conservation Law Foundation's Motion to Dismiss the Narragansett Electric Company d/b/a National Grid's Request for Approval of a Gas Capacity Contract and Cost Recovery and Close the Docket (the "Motion"). Because of a decision of a Massachusetts court, the Conservation Law Foundation ("CLF") asks the Rhode Island Public Utilities Commission ("Commission") to abdicate its authority and responsibility to consider, under Rhode Island law, whether National Grid's pending request is in the interests of Rhode Island's ratepayers. Since the Motion has no basis in Rhode Island law, it must be denied.

I. BACKGROUND

On June 30, 2016, consistent with the purposes of Rhode Island's Affordable Clean Energy Security Act (R.I. Gen. Laws §§ 39-31-1, *et seq.*) ("ACES Act"), the Narragansett Electric Company d/b/a National Grid ("National Grid") filed a Request for the Approval of a Gas Capacity Contract and Cost Recovery ("Request") for approval of a precedent agreement ("Proposed Agreement") for firm gas transportation and storage services between National Grid and Algonquin relative to the proposed Access Northeast project ("ANE Project"). In accordance with the ACES Act, the Commission docketed the Request and has, in this proceeding,

commenced the review contemplated by ACES § 6 to determine whether the ANE Project satisfies the standards set forth in the act.

While this proceeding progressed, Massachusetts' Supreme Judicial Court (the "SJC") issued an opinion in the matter of *ENGIE Gas & LNG LLC v. Department of Public Utilities and Conservation Law Foundation v. Department of Public Utilities*, 475 Mass. 191 (2016) (the "Massachusetts Decision") which held that, under Massachusetts law (M.G.L. c. 164, § 94A), the Massachusetts Department of Public Utilities ("DPU") does not have authority "to review and approve ratepayer-backed, long-term contracts for gas capacity entered into by electric distribution companies." *See* 475 Mass. at 198. Since the Massachusetts Decision was issued, CLF has sought to use Massachusetts law to prevent jurisdictions throughout New England from independently evaluating the ANE Project on its merits pursuant to the laws of each individual state. Here, CLF has asked the Commission to summarily dismiss the Request and close this docket before the Commission has had the opportunity to determine whether it achieves the goals set forth in the ACES Act.

Intervenor Lt. Gov. Daniel McKee has filed a response to the Motion expressing his support for the development of additional gas pipeline capacity for New England and the potential for a resultant decrease in energy price volatility.[1] However, the Lieutenant Governor argues that the Request must be withdrawn or amended in light of the Massachusetts Decision and a subsequent decision of the Federal Energy Regulatory Commission in Docket No. RP16-618-000, 156 FERC ¶ 61,151 (the "FERC Decision"). As explained more fully below, the FERC Decision provides a piece of the foundation for the ANE Project. More importantly with respect to the disposition of the Motion, the concerns expressed in the Lt. Gov.'s Response are all

[1] Response of Lieutenant Governor McKee to Conservation Law Foundation's Motion to Dismiss and to Close the Docket (the "Lt. Gov.'s Response"), p.2

matters that can be addressed in discovery and in the context of the evidentiary hearing required under the ACES Act.

II. STANDARD OF CONSIDERATION

Neither the ACES Act nor the Commission Rules provide any mechanism for summary disposition of filings under the ACES Act.[2] In fact, R.I. Gen. Laws §§ 39-31-3 and 6(b) explicitly require the conduct of evidentiary hearings to determine whether a proposed contract is "commercially reasonable" and whether the requirements of R.I. Gen. Laws § 39-31-6(1)(vii) are satisfied.[3] In the event of a rejection of a proposed contract, the ACES Act authorizes the Commission to "advise the parties of the reason for the contract being rejected and provide an option for the parties to attempt to address the reasons for rejection in a revised contract within a specified period not to exceed ninety (90) days." R.I. Gen. Laws § 31-39-6(b).

The ACES Act does not authorize the Commission to engage in a summary dismissal. Moreover, even if the Commission had the inherent authority to summarily dispose of this matter, CLF would bear the burden of establishing the absence of factual issues material to a decision in this matter,[4] which it has failed to do.

III. ARGUMENT

CLF's Motion is founded upon two flawed premises: 1) that the Massachusetts Decision will cause National Grid and Algonquin to abandon the ANE Project;[5] and 2) that the

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[2] PUC Rule 1.15(e)'s authorization for summary dispositions is limited to rate tariff filings.

[3] R.I. Gen. Laws § 39-31-6(1)(vii) directs the Commission to determine whether:

(A) The [Proposed Agreement] is commercially reasonable;

(B) The requirements for the solicitation have been met;

(C) The [Proposed Agreement] is consistent with the region's greenhouse gas reduction targets; and

(D) The contract is consistent with the purposes of [the ACES Act].

[4] *See* PUC Rule 1.15(e).

[5] Motion, pp. 5-6.

Massachusetts Decision has any relevance in Rhode Island where the General Assembly has granted explicit authority to the Commission to approve long-term contracts by electric distribution companies ("EDCs") for natural gas pipeline infrastructure and capacity.[6] Each erroneous argument is addressed in turn.

A. Algonquin Remains Committed to the ANE Project As Independent States Review Independent Processes Under Independent Authorities.

While Massachusetts may now lag behind the efforts underway in other New England states to move forward decisively in securing the region's energy future, Algonquin is committed to ensuring that the ANE Project remains on track. Rhode Island and each of the other New England states is progressing under its own authority, which is separate and distinct from the Massachusetts' statutory scheme, in considering the ANE Project. Each state's effort has always been and should continue to be independent of the evaluations of the other New England states. As such, status of project approvals in Massachusetts should not matter to the reviews ongoing in Connecticut, Rhode Island, Maine and New Hampshire.

In support of its position, CLF makes two unfounded assertions: 1) that "National Grid has already made clear in its Petition that it does not intend to proceed with the ANE Project without approval in Massachusetts"; and 2) that "'reconfigure[ation]' of the ANE Project would require National Grid to withdraw the Petition."[7] With respect to the first of these mistaken arguments, nowhere in the Request does it state that National Grid would withdraw the Request if it did not obtain regulatory approval in Massachusetts. With respect to CLF's second mistaken argument, CLF ignores the fact that the ACES Act wisely anticipated the potential need for contract adjustments without the need for dismissal of pending proceedings. *See* R.I. Gen. Laws

[6] Motion, pp 8-10.

[7] Motion, p. 5.

§ 39-31-6(b). Thus, CLF's assertion that project adjustments would require dismissal of these proceedings is simply wrong.

CLF (and the Lt. Governor) also incorrectly argue that the Massachusetts Decision requires dismissal (withdrawal and/or amendment) of the Request because the analysis of costs and benefits accompanying the Request has been altered. This reasoning is flawed for two reasons. First, Rhode Island's ratepayers will not be asked to pay more than their proportionate share of the costs of the ANE Project and, therefore, the costs and benefits to Rhode Island's ratepayers presently remain unaffected by the Massachusetts Decision. *See* R.I. Gen. Laws § 39-31-7(a)(6) (requiring that the Commission approve cost allocation proposal "in a manner proportional to the energy benefits ***accrued by Rhode Island's*** gas and electric customers from making such investments.") (emphasis added). Second, the unfounded assertion that, as a result of the Massachusetts Decision, the costs and benefits of the project are stated inaccurately in the testimony accompanying the Request is precisely the type of factual issue that precludes a summary disposition with respect to the Request. The Commission should independently evaluate whether the ANE Project offers benefits to Rhode Island ratepayers as contemplated by the ACES Act.

B. The Massachusetts Decision Has No Persuasive Value in Rhode Island.

CLF's argument that Rhode Island's Restructuring Act requires dismissal of these proceedings is wholly without merit. In 2014, the General Assembly recognized that "the lack of new interstate natural gas pipeline infrastructure and capacity into the region" may help to "undermine the reliable operation of the bulk electric system and spur unsustainable levels of price volatility, and that these challenges may have a substantial impact on energy affordability

for ratepayers and undermine the economic competitiveness of our state." *See* R.I. Gen. Laws § 39-31-1. While the Massachusetts Decision held that the Massachusetts DPU lacks statutory authority to "review and approve ratepayer-backed, long-term contracts for gas capacity entered into by electric distribution companies,"[8] the ACES Act specifically authorizes the Commission to do exactly that. The ACES Act provides explicit statutory authority for "the public utility company that provides electric distribution...to enter into long-term contracts for natural-gas pipeline infrastructure and capacity." R.I. Gen. Laws § 39-31-6(a)(1)(v). The ACES Act also authorizes the Commission to

> approve cost allocation proposals filed by the gas-distribution company and/or the electric-distribution company that appropriately allocate natural-gas infrastructure and capacity costs incurred under §39-31-6 between electric and gas-distribution customers of the electric- and gas-distribution company in a manner proportional to the energy benefits accrued by Rhode Island's gas and electric customers from making such investments.

R.I. Gen. Laws § 39-31-7(a)(6).

Rhode Island's General Assembly recognized that infrastructure investment was an essential step to reducing energy costs for Rhode Island's ratepayers and directed the Commission to evaluate, after an evidentiary hearing, the benefits of having EDCs enter into long-term gas capacity contracts. CLF's attempt to prevent the Commission's evaluation of the ANE Project is, at its base, an attempt to have a Rhode Island statute overturned by a Massachusetts court.

C. The Lieutenant Governor's Concerns are not a Legitimate Basis for a Summary Disposition and can be Addressed Under ACES Act Procedures.

The concerns expressed in the Lt. Gov.'s Response all do not support a summary disposition of this matter. To the extent that the Lieutenant Governor has questions regarding the

[8] *ENGIE Gas*, 475 Mass. at 198.

pro rata distribution of costs across the region, the impact of the FERC Decision on the net benefits analysis of Mssrs. Brennan and Allocca, the risks to ratepayers under the Request and the financial incentives to National Grid, the Lieutenant Governor can seek answers to his questions through discovery. If the discovery responses do not assuage the Lieutenant Governor's concerns, then he has ample time to proffer testimony and surrebuttal testimony as appropriate under the procedural schedule as revised on August 25. After which, the Commission will conduct a hearing on the merits of the Request to determine whether intervenors concerns have merit. By simply identifying his concerns, most of which relate to unresolved factual issues, the Lieutenant Governor has offered no justification for a summary disposition of this matter. The Commission should proceed to evaluate the Request as required under the ACES Act. *See* R.I. Gen. Laws §§ 39-31-3 and 39-31-6(b).

The FERC Decision provides the foundation to support state-regulated electric reliability programs that will address the critical need for natural gas infrastructure in New England; thereby ensuring electric reliability and reducing price volatility.[9] In a ruling that is critical to the ANE Project, the FERC Decision grants a new exemption for releases by EDCs to asset managers.[10] Specifically, the FERC Decision held that "[p]roviding a waiver to enable EDCs to release their capacity to an asset manager pursuant to an AMA is therefore consistent with the goals of Order No. 712," which include significant benefits to a variety of participants in the natural gas and electric marketplaces and lower gas supply costs. The FERC Decision also indicates that the EDCs can accomplish their goals through prearranged releases and that the

[9] FERC Decision, 156 FERC ¶ 61,151.
[10] *Id.* at P 38.

EDCs and their asset managers can release to generators on a priority basis utilizing existing exemptions.[11]

The FERC Decision made several other pronouncements of importance to the ANE Project and development of state programs. Although FERC denied the blanket exemption from capacity bidding requirements, FERC (i) expressly acknowledged the need for gas in the New England region, (ii) reiterated its statement from Order No. 809 that "the Commission is open to considering requests for waiver of its capacity release regulations," and (iii) most significantly, remains open to "Algonquin developing other more targeted, justified proposals for consideration by the Commission."[12]

The FERC Decision thus advances the development of the ANE Project and provides a threshold determination regarding the EDCs' release of capacity as well as guidance to various state commissions as requested by Algonquin and the EDC shippers at the FERC Technical Conference. This approval and guidance should facilitate the Commission's review and determination of the specific requirements of a state-regulated electric reliability program in Rhode Island that presumably will reflect the bidding exemption for the EDCs to release capacity to an asset manager and may provide for the EDCs and their asset managers to release to generators on a priority basis utilizing existing exemptions as noted. Following the determination of the Commission regarding Rhode Island's state-regulated electric reliability program, however, Algonquin can seek targeted, justified waivers of the FERC's capacity release regulations, if necessary, to address additional requirements of the electric reliability program.

[11] *Id.* at P 28.
[12] *Id.* at P 24.

Not only does the ACES Act compel the conduct of an evidentiary hearing to judge the Request--logic dictates the same procedure. Based on arguments made in support of the various requests to intervene in this proceeding, the Lieutenant Governor is not likely to be the only intervenor that will express disagreement with certain aspects of the Request. To summarily terminate this proceeding by requiring National Grid to withdraw the Request, or require amendment of the Request, each time concerns were raised would cast this proceeding into an administrative morass that the General Assembly quite obviously attempted to avoid by directing the Commission to hold a speedy hearing and promptly render a decision with respect to requests under the ACES Act. *See* R.I. Gen. Laws § 39-31-6(b). The recently amended procedural schedule offers all intervenors sufficient opportunity to present their respective position to the Commission. Then, at an evidentiary hearing with a complete record, the Commission will be in a position to weigh all the parties' positions. At the conclusion of the hearings required under the ACES Act, the Commission has the statutory authority to advise the parties of any need for revisions to the Request. *See id.*

IV. CONCLUSION

For the foregoing reasons and any reasons that may be stated on the record of the hearing on the Motion, Algonquin requests that the Commission deny the Motion and proceed to evaluate the Request in accordance with the ACES Act.

[*signature page follows*]

Dated: September 6, 2016

Respectfully submitted,
ALGONQUIN GAS TRANSMISSION, LLC

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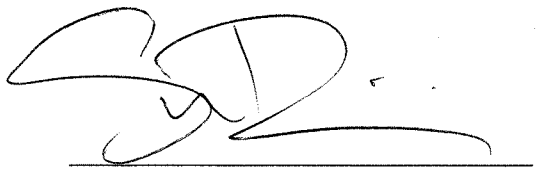
CERTIFICATION

I hereby certify that on the 6th day of September 2016, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail.



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Docket No. 4627 – National Grid - Gas Capacity Contract and Cost Recovery Service List updated 8/3/16

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