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Via Federal Express and Electronic Mail

August 11, 2016

Luly E. Massaro, Commission Clerk
Public Utilities Commission (PUC)
89 Jefferson Boulevard
Warwick, Rhode Island 02888

**Re: 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. General Laws § 39-
31-1 to 9
Docket No. 4627**

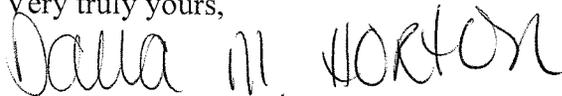
Dear Ms. Massaro:

Enclosed please find an original and five copies of the following for filing and docketing:

- Algonquin Gas Transmission, LLC's Objection to the NextEra Energy Resources, LLC's Motion to Compel National Grid to Produce Unredacted Filings Pursuant to a Non-Disclosure Agreement.

Thank you.

Very truly yours,



Dana M. Horton

jlj

Enclosures

cc: All parties on service list via email

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**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 : DOCKET NO. 4627
AND COST RECOVERY PURSUANT TO :
R.I. GEN. LAWS § 39-31-1 TO 9 :

**ALGONQUIN GAS TRANSMISSION, LLC’S OBJECTION TO NEXTERA ENERGY
RESOURCES, LLC’S MOTION TO COMPEL NATIONAL GRID TO PRODUCE
UNREDACTED FILINGS PURSUANT TO A NON-DISCLOSURE AGREEMENT**

Pursuant to Rule 19(g) of the Rules of Practice and Procedure (“PUC Rules”) for the Rhode Island Public Utilities Commission (“Commission”), Algonquin Gas Transmission, LLC (“Algonquin”) hereby objects to NextEra Energy Resources, LLC’s Motion to Compel National Grid to Produce Unredacted Filings Pursuant to a Non-Disclosure Agreement (the “Motion to Compel”). As explained more fully below, the Motion to Compel should be denied because NextEra Energy Resources, LLC (“NEER”) is not entitled to access to Algonquin’s confidential, competitively sensitive, and proprietary information contained in the Request for the Approval of a Gas Capacity Contract and Cost Recovery (“Request”) filed by The Narragansett Electric Company d/b/a National Grid (“National Grid”) on June 30, 2016, in the above-referenced docket. In support of this objection, Algonquin states as follows:

I. BACKGROUND

1. National Grid filed the Request on June 30, 2016. The Request seeks approval of a Precedent Agreement for firm gas transportation and storage services between National Grid and Algonquin relative to the proposed Access Northeast project (“ANE Project”).

2. The Request included confidential information that was redacted from the public filing, along with a Motion for Protective Treatment of Confidential Information (the “National Grid Motion”).

3. On June 30, 2016, the Commission established the above-referenced docket to review the Request. On July 5, 2016 the Commission issued a notice, which was published on July 8, 2016, setting a July 29, 2016 deadline for intervention in these proceedings. Algonquin timely filed a motion to intervene that was unopposed.

4. The National Grid Motion sought confidential treatment of, inter alia, confidential information that pertains to Algonquin, including without limitation, confidential pricing and Precedent Agreement terms, as well as information on the evaluation and analysis of that information.

5. Specifically, National Grid sought protective treatment for portions of each of the following documents submitted in support of its Request:

- Joint, Initial Testimony of Timothy J. Brennan and John E. Allocca together with supporting Schedule TJB/JEA-1 containing confidential contractual terms and pricing information;
- Initial Testimony of Ann E. Leary together with supporting Schedules AEL-2 through AEL-4 containing confidential pricing information;
- Initial Testimony of Michael J. Vilbert containing confidential pricing information;
- Initial Testimony of Gary J. Wilmes from Black & Veatch together with supporting Schedules GJW-1, GJW-2, and GJW-3 containing confidential and proprietary analysis of the ANE Project;

- Initial Testimony of Richard W. Porter from Black & Veatch together with supporting Schedule RWP-3 containing confidential bid terms and pricing information regarding the Request for Proposals issued by the Company; and
- Initial Testimony of Andrew C. Byers from Black & Veatch together with supporting Schedule ACB-2 containing confidential and proprietary analysis of the ANE Project.

6. Neither NextEra nor any other party objected to National Grid's Motion.

7. On July 14, 2016, the PUC held an open meeting wherein it entertained the National Grid Motion and the included request to establish a two-tier confidentiality regime as was done in parallel proceedings in Massachusetts. The Commission declined to adopt the two tier confidentiality regime, and instead ruled that materials designated as confidential will be maintained as such by PUC regardless of their designation as CONFIDENTIAL or HIGHLY CONFIDENTIAL, and in the event that any confidential information is requested from PUC, PUC will withhold the confidential material and inform the party claiming the confidentiality of the request. Disputes regarding confidentiality would be handled by the Commission as they arise. The Commission indicated the parties should enter into separate confidentiality agreements to govern the exchange of information and that they are free to adopt the two-tier confidentiality system used in Massachusetts in those agreements.

8. National Grid's affiliates, Massachusetts Electric Company and Nantucket Electric Company, have filed similar Requests for Approval of precedent agreements with Algonquin with the Massachusetts Department of Public Utilities ("DPU"). In the context of those proceedings, the DPU developed a two tier confidential document designation to provide

an added layer of protective treatment, which was deemed necessary because certain intervenors who were ultimately granted full party status are competitors of Algonquin.

9. In accordance with the Commission’s ruling, National Grid and NEER reportedly entered into two non-disclosure agreements on August 4, 2016 governing the exchange of Confidential Information and Highly Sensitive Confidential Information. The Motion to Compel indicates that NEER entered into these agreements “under a reservation of rights.”¹

10. In the Motion to Compel, NEER requests that four in-house attorneys and its Director of Regulatory Affairs be granted access to materials designated by National Grid as Highly Sensitive Confidential Information (“HSCI”). NEER argues that these personnel need access to HSCI in order to participate in these proceedings.

11. Algonquin files this objection to the Motion to Compel in order to protect its own independent interest in the continued confidentiality of the HSCI.

12. Various New England states are engaged in solicitations and related proceedings to review potential natural gas solutions.² In some of these jurisdictions, electric distribution companies have sought regulatory approval of the ANE Project. However, the ANE Project is only one of a number of proposals under consideration by Connecticut’s Department of Energy and Environmental Protection (“DEEP”) which also solicited proposals for small and large scale renewables as part of a comprehensive procurement process under Public Act 15-107 (“PA 15-

¹ Motion to Compel, at 4.

² See, e.g., Massachusetts D.P.U. Docket No. 16-05, *Petition of Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, for Approval of Firm Gas Transportation and Storage Agreements with Algonquin Gas Transmission Company, LLC Pursuant to G.L. c. 164, § 94A*; New Hampshire PUC Docket No. DE 16-241, *Petition for Approval of Gas Infrastructure Contract with Algonquin Gas Transmission, LLC*; Maine PUC Docket No. 2014-00071, *Public Utilities Commission Investigation of Parameters for Exercising Authority Pursuant to the Maine Energy Cost Reduction Act, 35-A.M.R.S. §1901*; Connecticut Request for Proposals (RFP) for Natural Gas Capacity, Liquefied Natural Gas (LNG), and Natural Gas Storage (Jun. 2, 2016).

107”). Specifically, in Connecticut, PA 15-107 authorizes DEEP to conduct three separate solicitations for:

- passive demand response measures...and Class I renewable energy sources and Class III sources...provided any such project proposal is for a facility that has a nameplate capacity rating of more than two megawatts and less than twenty megawatts (collectively, “Small Renewables”);
- Class I renewable energy sources...having a nameplate capacity rating of twenty megawatts or more, and any associated transmission, and verifiable large-scale hydropower...and any associated transmission (collectively, “Large Renewables”); and
- interstate natural gas transportation capacity, liquefied natural gas, liquefied natural gas storage, and natural gas storage, or a combination of any such resources, provided such proposals provide incremental capacity, gas, or storage that has a firm delivery capability to transport natural gas to natural gas-fired generating facilities located in the control area of the regional independent system operator.³

In reviewing proposals received in response to each solicitation, DEEP is required to “compare the costs and benefits of such proposals relative to the expected or actual costs and benefits of other resources eligible to respond to the other procurements authorized pursuant to [PA 15-107].”⁴ DEEP’s request for proposals for natural gas resources specifically states that “[c]onsistent with the Act [PA 15-107], the [DEEP] will...compare the costs and benefits of *all proposals across all the procurements* outlined in the Act...”⁵ Thus, in Connecticut, the costs and benefits of any natural gas projects will be compared directly to the costs and benefits of Small Renewable and Large Renewable projects. As a result, Large Renewable projects and Small Renewable projects will directly compete with natural gas projects, like the ANE Project, in Connecticut. Winning bids have not yet been announced in connection with either the Large Renewables or Small Renewables solicitations.

³ PA 15-107, §1(b)-(d).

⁴ PA 15-107, §1(e).

⁵ DEEP Request for Proposals (RFP) for Natural Gas Capacity, Liquefied Natural Gas (LNG), and Natural Gas Storage (Jun. 2, 2016) (“CT RFP”), at 18 (emphasis added).

13. Furthermore, once DEEP identifies the final projects and the Connecticut electric distribution companies (“EDCs”) enter into contracts with respect to those projects, the Public Utilities Regulatory Authority will review those contracts to determine if they are “cost effective and in the best interest of electric ratepayers.”⁶ If the ANE Project is selected in Connecticut, competitors who have access to the HSCI in this proceeding could use this information to alter their positions and/or representation in the Connecticut proceeding (where they would not have access to such information)⁷ to their competitive advantage. Since Algonquin will not have access to competitively sensitive information about the projects proposed by those competitors, Algonquin will be placed at a competitive disadvantage in defending its position in any such proceeding. Thus, proponents of competing projects, including non-natural gas projects that are eligible for participation in the Connecticut solicitation should be denied access to the HSCI.

14. NEER is a direct competitor of Algonquin’s insofar as NEER and/or its affiliates have submitted proposals in connection with Connecticut’s solicitation for both small and large scale renewables under PA 15-107.⁸ Furthermore, NEER negotiates purchases and markets capacity on Algonquin’s pipelines as an energy marketer and owns and operates a generation

⁶ PA 15-107, § 1(h).

⁷ CT RFP, at 13 (“**All information for winning Bidders, including confidential information, will be released and become public 180 days after contracts have been executed and approved by all relevant regulatory authorities, unless such confidential information is granted further protective treatment as ordered by the Connecticut PURA.**”) (emphasis in original). By contrast, “[i]nformation deemed confidential will remain confidential for losing Bidders.” *Id.*

⁸ *See, e.g.*, NextEra Energy Resources Acquisitions, LLC, Depot Hill Battery Energy Storage proposal submitted in response to PA 15-107 Small Renewables solicitation (May 3, 2016) (available at: <http://www.dpuc.state.ct.us/DEEP/energy.nsf/c6c6d525f7cdd1168525797d0047c5bf/8525797c00471adb85257fa8006bb146?OpenDocument>); NextEra Energy Resources Acquisitions, LLC *et al.*, New England Clean Energy RFP Request for Proposal Application Form submitted in response to Large Renewables solicitation (Jan. 28, 2016) (available at: <https://cleanenergyrfdotcom.files.wordpress.com/2016/02/nextera-bidding-affiliates-ne-clean-energy-rfp.zip0>).

facility that draws gas from the Algonquin pipeline.⁹ Finally, NEER is an opponent of the ANE Project in each jurisdiction where it is under consideration.

15. NEER seeks to disseminate to its employees information that Algonquin provided to National Grid in connection with National Grid's October 23, 2015 Request for Proposals ("RFP") under the well-founded understanding that confidential commercial information would remain protected from public dissemination.¹⁰ Algonquin's interest in preventing NEER's employees from reviewing its confidential pricing and similar information hardly bears explanation. It would be difficult to overstate the number of ways in which NEER could use HSCI to Algonquin's competitive disadvantage.

II. STANDARD OF REVIEW

16. While the Motion to Compel does not seek access to HSCI through an Access to Public Records Act request to the Commission, NEER nonetheless suggests that its alleged right to access to the HSCI arises under Access to Public Records Act (R.I. Gen. Laws § 38-2-1, *et seq.*, hereinafter "APRA").¹¹ Assuming, without conceding, that the APRA provides the appropriate guideposts for evaluating NEER's request to review HSCI, Algonquin submits that

⁹ NextEra Energy Resources, LLC's Unopposed Motion to Intervene, ¶¶ 7 and 8.

¹⁰ Given its regional footprint, the ANE Project is undergoing multi-jurisdictional regulatory review. While jurisdictions differ in the manner in which they afford protection to sensitive commercial information in the course of this review, jurisdictions in which the ANE Project is under review employ mechanisms to protect sensitive information from dissemination to in house employees, including in house counsel, of competitors. See e.g., Connecticut DEEP Request for Proposals, at 13 (available at: [http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/32723b39b1c8b69885257fc6006cf337/\\$FILE/DEEP_Final%20Gas%20RFP_6.2.16.pdf](http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/32723b39b1c8b69885257fc6006cf337/$FILE/DEEP_Final%20Gas%20RFP_6.2.16.pdf)) (stating "**All information for winning Bidders, including confidential information, will be released and become public 180 days after contracts have been executed and approved by all relevant regulatory authorities, unless such confidential information is granted further protective treatment as ordered by the Connecticut PURA.**") (emphasis in original); Massachusetts Docket D.P.U. 16-05, Interlocutory Order on (1) National Grid's Motion for Confidential Treatment; and (2) Algonquin Gas Transmission, LLC's Motion for Protective Order and Confidential Treatment (available at: http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=16-05%2f1605_Interlocutory_Order_5216.pdf).

¹¹ Motion to Compel, at 5.

the HSCI designated in this proceeding should not be made available to NEER's employees as requested.

17. Pursuant to PUC Rule 1.2(g), "[a]ny party submitting documents to the Commission may request a preliminary finding that some or all of the information is exempt from the mandatory public disclosure requirements of [APRA]. A preliminary finding that some documents are privileged shall not preclude the Commission's release of those documents pursuant to a public request in accordance with [APRA]."

18. PUC Rule 1.2(g) further provides that "[c]laims of privilege are made by filing a written request with the Commission. One copy of the original document, boldly indicating on the front page, 'Contains Privileged Information - Do Not Release', shall be filed with specific indication of the information for which the privilege is sought, as well as a description of the grounds upon which the party claims privilege."

19. PUC Rule 1.2(g) states that "[t]he Clerk shall place documents for which privilege is sought in a secure, non-public file until the Commission determines whether to grant the request for privileged treatment" and that "[a]ny person, whether or not a party, may apply to the Commission for release of the information, pursuant to the Access to Public Records Act."

20. APRA establishes the public's right to access to public records. However, APRA contains exceptions to the definition of "public record" to balance the public's interest in access to information against the right of private parties to maintain confidentiality of certain types of commercial information.

21. Confidential commercial information is excluded from APRA's definition of "public record."¹² Confidential commercial information excluded from APRA's definition of

¹² See R.I. Gen. Laws § 38-2-2(4)(B); see also The Providence Journal Co. v. Convention Center Auth., 774 A.2d 40, 47-48 (R.I. 2001).

public record consists of material that is likely to cause substantial harm to the competitive position of the party from who the information was obtained.¹³

22. The Rhode Island Supreme Court has held that this confidential information exclusion also applies where disclosure of information would be likely to impair the Government's ability to obtain necessary information in the future.¹⁴ This test is satisfied when information is voluntarily provided to the governmental agency and that information is of a kind that would customarily not be released to the public by the person from whom it was obtained.¹⁵

III. ARGUMENT

23. Algonquin's confidential commercial information was provided to National Grid in response to an RFP with the understanding that such information would be maintained as confidential. This understanding was based, in part, upon APRA's promise of protection with respect to similar types of information.¹⁶

24. The HSCI includes competitively sensitive pricing data, delivery information and contract terms, the disclosure of which could adversely affect Algonquin's business position. For instance, should the HSCI be made available to NEER, it would reveal information about Algonquin's pricing and contracting strategies to a purchaser of natural gas pipeline capacity from Algonquin. Based on this information, NEER could adjust negotiating strategies and contracting terms to the competitive disadvantage of Algonquin.

25. In addition to Algonquin's obvious interest in maintaining confidentiality to protect its negotiating position in the sale of pipeline capacity, Algonquin recently responded to a

¹³ Providence Journal, 774 A.2d at 47.

¹⁴ See Providence Journal Company, 774 A.2d at 47-48.

¹⁵ Providence Journal, 774 A.2d at 47.

¹⁶ See R.I. Gen. Laws § 38-2-2(4)(B).

solicitation for natural gas resources by the Connecticut DEEP and has also entered into precedent agreements with electric distribution companies (“EDCs”) in other New England states. Such precedent agreements are subject to review by relevant regulatory bodies, and confidential treatment has been sought and granted for confidential commercial information in regulatory proceedings in those other states.¹⁷

26. NEER and Algonquin have both submitted responses to DEEP’s RFPs and therefore NEER is in direct competition with Algonquin with respect to Connecticut’s ongoing procurement process. DEEP is in the process of reviewing proposals received and with access to Algonquin’s HSCI NEER could provide responses to clarifying questions propounded by DEEP with an informational advantage that is not similarly available to Algonquin.

27. With respect to other New England states, competitors gaining access to the HSCI, which is essentially identical to the HSCI granted protective treatment in other states, could use it to alter their positions and/or arguments in proceedings where the relevant regulatory bodies have determined that competitors should not have access to such information. For example, NEER’s Motion to Compel candidly acknowledges that the employees to whom it seeks to disseminate the HSCI are involved in parallel proceedings before the Massachusetts’ DPU and have been denied access to the HSCI at issue in the context of those proceedings.¹⁸ NEER’s Motion to Compel, therefore, presupposes the impossible—NEER’s in-house counsel cannot “unsee” in the Massachusetts proceedings the HSCI that it seeks through the back door in these Rhode Island proceedings.

¹⁷ See e.g., Massachusetts Docket D.P.U. 16-05, Interlocutory Order on (1) National Grid’s Motion for Confidential Treatment; and (2) Algonquin Gas Transmission, LLC’s Motion for Protective Order and Confidential Treatment (available at: http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=16-05%2f1605_Interlocutory_Order_5216.pdf).

¹⁸ Motion to Compel, at 7-8.

28. New Hampshire's Public Utilities Commission ("NHPUC") has thus far maintained the confidentiality of Algonquin's confidential commercial information in its proceedings to consider approval of the Proposed Agreement.¹⁹ The NHPUC proceedings are in the early stages and NEER is actively advocating against approval of the Proposed Agreement there. Dissemination of HSCI to NEER employees would alter the course of conduct of the New Hampshire proceedings in much the same manner that it would alter the Massachusetts proceedings.

29. Disclosure of HSCI to NEER could impede the ability of other New England states to weigh the ANE Project in the manner that they have determined most appropriate. Therefore, NEER's attempt to obtain in Rhode Island what it could not obtain in other jurisdictions could adversely impact the broad public interest in the protection of New England's ratepayers by each state's respective regulatory bodies.

30. Moreover, there are other New England EDCs who have the authority to conduct solicitations for natural gas resources that have not yet done so. For instance, in Massachusetts, Fitchburg Gas and Electric Company d/b/a Unitil has not yet conducted a solicitation even though it has the authority to do so. The disclosure of the HSCI could impede Algonquin's ability to fairly compete in those solicitations.

31. Furthermore, in Rhode Island the disclosure of HSCI to competitors could have a chilling effect on future solicitations conducted by Rhode Island utilities generally because those who might have otherwise responded to such solicitations will not do so in order to avoid disclosing confidential commercial information; thereby, possibly increasing costs to ratepayers.

¹⁹ New Hampshire Public Utilities Commission, DE 16-241, *Petition for Approval of Gas Infrastructure Contract with Algonquin Gas Transmission, LLC*.

This alone is sufficient to sweep the HSCI into the commercial information exception to APRA's definition of "public records."²⁰

32. Algonquin is cognizant of the Commission's independent role and the fact that it cannot be constrained in the performance of its duties by the decisions of regulatory authorities in other jurisdictions. However, NEER's Motion to Compel does not suggest that it seeks access to the HSCI in order to assist the Commission in its consideration of the Request. NEER does not explain how its access to the HSCI will be beneficial to Rhode Island's ratepayers. NEER does not explain how its desire to review HSCI triggers some exception to APRA that would transform confidential commercial information into a public record. Rather, NEER's Motion to Compel is an obvious attempt to gain access to commercial information that it has so far been unable to obtain in other jurisdictions and to share that information with the very employees participating in NEER's efforts to derail the ANE Project in Massachusetts (and perhaps elsewhere).

IV. CONCLUSION

For all of the foregoing reasons, and for any reasons that may be stated on the record of the August 16 hearing on the Motion to Compel, Algonquin respectfully requests that the Commission deny NEER's Motion to Compel and determine that NEER and its outside counsel are obligated to abide by the terms of the Non-Disclosure Agreements entered into with National Grid.

[SIGNATURE ON NEXT PAGE]

²⁰ See Providence Journal Company, 774 A.2d at 47-48.

Dated: August 11, 2016

Respectfully submitted,

ALGONQUIN GAS TRANSMISSION, LLC

By its attorneys,



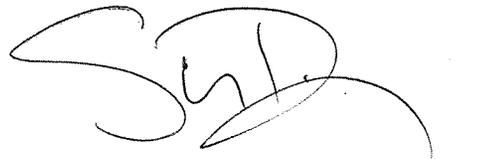
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CERTIFICATION

I hereby certify that on the 11th day of August, 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.

A handwritten signature in black ink, appearing to read 'SJB', written over a horizontal line.

Steven J. Boyajian

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

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