

**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

**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**

Intervenor Conservation Law Foundation ("CLF") respectfully requests that the Public Utilities Commission ("PUC") dismiss the Request for Approval of a Gas Capacity Contract and Cost Recovery filed by the Narragansett Electric Company d/b/a National Grid ("National Grid") on July 30, 2016 and close the above-referenced Docket.<sup>1</sup>

**I. BACKGROUND**

On June 30, 2016, National Grid filed with the PUC a Request for Approval of a Gas Capacity Contract and Cost Recovery ("Petition"). Specifically, National Grid seeks approval for a contract between itself and Algonquin Gas Transmission Company, LLC ("Algonquin") for natural gas transportation capacity and storage services on Algonquin's Access Northeast pipeline project ("ANE Project"). The ANE Project is regional, with a scale designed to correspond particularly to the electricity generation portfolios of the six New England states. In

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<sup>1</sup> Pursuant to PUC Rule of Practice and Procedure 1.15(b), CLF contacted the service list for this Docket to determine whether any of these entities has an objection to CLF's proposed Motion to Dismiss and Close this Docket. Counsel for National Grid and Algonquin Gas Transmission, LLC indicated opposition to this Motion; counsel for Lt. Governor Daniel J. McKee, the Division of Public Utilities and Carriers, and the Office of Energy Resources indicated that they have not determined whether to support or oppose this Motion.

response, the PUC opened this Docket No. 4627. On July 7, 2016, CLF filed its unopposed Motion to Intervene. CLF became a full party to the docket eleven days later by operation of PUC Rule of Practice and Procedure 1.13(e).

Parallel to this Docket, National Grid and its affiliates are seeking approval of ANE-Project-related natural gas capacity and storage contracts in other New England states, including Massachusetts and New Hampshire.

A. Parallel ANE Project Proceedings in Massachusetts

In 2015, the Massachusetts Department of Energy Resources petitioned the Massachusetts Department of Public Utilities (“DPU”) to consider a question of first impression: whether the DPU has authority, consistent with Massachusetts’ electricity restructuring act, to review and approve ratepayer-backed, long-term contracts entered into by *electric* distribution companies (“EDCs”) for *natural gas* pipeline capacity. Following an investigation, the DPU issued an order concluding that it has such authority. Mass. D.P.U. 15-37 (Oct. 2, 2015). In October and November 2015, Engie Gas and LNG LLC and CLF filed separate petitions asking the Massachusetts Supreme Judicial Court to hold unlawful and set aside the DPU’s order.

Pending the Supreme Judicial Court’s decision, the Massachusetts electric affiliates of National Grid and Eversource Energy filed petitions seeking the DPU’s approval of ratepayer-backed, long-term contracts for gas capacity and storage on the ANE Project. The DPU initiated two proceedings: D.P.U. 16-05, commenced by Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid on January 15, 2016, and D.P.U. 15-181, commenced by NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy on December 18, 2015.

On August 17, 2016, the Massachusetts Supreme Judicial Court decided *Engie Gas & LNG LLC vs. Department of Public Utilities*, No. SJC-12051, and *Conservation Law Foundation v. Department of Public Utilities*, No. SJC-12052 (collectively, “*Engie*”).<sup>2</sup> *Engie* held that “the department erred in determining that [Massachusetts state law] authorizes the department to review and approve ratepayer-backed, long-term contracts for gas capacity entered into by electric distribution companies.” *Engie*, slip op. at 13. The Court determined that “the [DPU]’s approval of . . . contracts by electric distribution companies for gas capacity contradicts the fundamental policy embodied in [Massachusetts’] restructuring act, namely the Legislature’s decision to remove electric distribution companies from the business of electric generation.” *Id.* at 27.

In response to *Engie*, the DPU immediately suspended all evidentiary hearings in D.P.U. 16-05 and 15-181. On August 18, 2016, the Massachusetts Office of the Attorney General filed a Motion to Dismiss the Petitions of Eversource Energy and National Grid and close the dockets. On August 22, 2016, Eversource Energy and National Grid each filed a Motion to Withdraw its Petition.

#### B. The Rhode Island PUC’s Response to *Engie*

On August 17, 2016, the PUC’s Deputy Chief of Legal Services scheduled a prehearing conference in this Docket to “discuss[] the status of the Massachusetts proceeding and whether it will affect the RI proceeding,” as well as “the status of the other states” considering similar petitions for approval of a long-term gas capacity contract, including Maine, New Hampshire,

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<sup>2</sup> Available at <http://www.mass.gov/courts/docs/sjc/reporter-of-decisions/new-opinions/12051.pdf>.

and Connecticut. Electronic mail from Cynthia Wilson-Frias to Docket No. 4627 service list (Aug. 17, 2016).

## **II. THE STANDARD GOVERNING THIS MOTION**

This Motion is governed by the provisions of PUC Rule of Practice and Procedure 1.15. Dismissal of this Docket is warranted as a pure matter of law; there is no material fact in dispute.

## **III. DISCUSSION**

*Engie* deals two separate blows to National Grid's Petition. As a matter of fact, *Engie* upends the structure of the ANE Project, rendering the Petition obsolete. As a matter of law, *Engie* affirms that ratepayer-backed natural gas capacity contracts are antithetical to the principles of electricity restructuring. Either blow alone is fatal to National Grid's Petition.

### **A. Engie Fundamentally Alters the Petition and Necessitates its Dismissal**

Testimony submitted by National Grid in this Docket reflects that the inherently regional ANE Project cannot and will not proceed without Massachusetts' approval of the relevant precedent agreements. Even in the unlikely event that National Grid and Algonquin decide, at great financial risk, to proceed with the ANE Project without guaranteed cost-recovery from Massachusetts ratepayers, the resulting project is so altered by Massachusetts' non-participation as to render the Petition factually inaccurate. Because the Petition as filed is no longer accurate, the PUC must, respectfully, dismiss the Petition and close this Docket.

In the wake of *Engie*, there are three courses of action now available to National Grid and Algonquin—any of which would necessitate the dismissal of this Docket. The Petition states directly that “[i]f other approvals do not follow in one or more New England states, Algonquin will need to”: 1) “make a determination whether to proceed with fewer precedent agreements”; 2) “reconfigure their respective project and renegotiate the existing precedent agreements”; or 3)

“terminate the project.” Brennan & Allocca Joint Test. 35-36. In the third case, termination of the ANE Project would necessarily require closure of this Docket. In the second case, “reconfigur[ation]” of the ANE Project would require National Grid to withdraw the Petition at issue and re-file a new Request for Approval of a subsequently renegotiated contract. Such withdrawal of the Petition would likewise close this Docket. And as regards the first possible case, National Grid has already made clear in its Petition that it does not intend to proceed with the ANE Project without approval in Massachusetts. *Id.* 34-35. Because the Petition under consideration in this Docket either is moot or does not adequately reflect changed circumstances in the wake of *Engie*, the Petition must be dismissed.

*1. The ANE Project Crumbles without Contract Approval in Massachusetts, Rendering the Petition Moot.*

National Grid’s Petition states unequivocally that, even with the PUC’s approval, the fate of the ANE Project is dependent on approvals of full cost-recovery in other New England states—especially Massachusetts, which National Grid assumed would provide a substantial portion of the financing for the proposed project. *See* Brennan & Allocca Joint Test. 34-35; Exh. NG-TJB/JEA-2 at 47, Mass. D.P.U. 16-05 (Jan. 15, 2016). The Petition further states that “[a]bsent sufficient indication of capacity demand through a willingness to sign long term contracts, it is highly unlikely that the pipeline would be constructed because of the risk of not achieving full cost recovery.” *Vilbert Test.* 13. *See also id.* 11-12 (“If there is any possibility of less than full cost recovery over the entire term of the contracts, the Proposed Agreement has a negative expected value for the Company’s investors . . .”). Now that National Grid and the other project proponents cannot conscript Massachusetts ratepayers into underwriting the

significant risks inherent in gas infrastructure expansion, the ANE Project is an unattractive investment for Algonquin and National Grid.

A determination by Algonquin to proceed without approved precedent agreements in Massachusetts is, by National Grid's own admission, extraordinarily unlikely. The ANE Project is an inherently regional scheme, with a design contingent on approvals by each of the New England states. *See* Brennan & Allocca Joint Test. 33-34 ("The bulk power market in New England is a regional market. . . . Consequently, [the ANE Project] will require regulatory approvals by New England state jurisdictions in addition to Rhode Island . . ."). *See also id.* 23-25, 39 (explaining that the overall size of the ANE Project is scaled to the electric generation capacity of the region as a whole and that contract quantities for each state were determined "through a computation of New England load share").

With the DPU's approval of the contract now foreclosed by *Engie*, the PUC's approval is essentially moot; National Grid has testified that "[e]ven with the PUC's approval of the [ANE Project] Agreements, Algonquin will not move forward unless and until there is sufficient subscription . . . throughout New England." Brennan & Allocca Joint Test. 34-35. But "sufficient subscription" is unattainable without Massachusetts. Massachusetts was to receive the lion's share—more than 43 percent—of the ANE Project's gas capacity. *See* Exh. NG-TJB/JEA-2 at 47, Mass. D.P.U. 16-05 (Jan. 15, 2016). Without Massachusetts acting as the anchor tenant, other New England states are likely to opt out of the ANE Project, too. Specifically, the Maine Public Utilities Commission has hedged its support for the ANE Project on the proportional participation of other New England states. *See* Deliberations, Me. P.U.C. Docket No. 2014-00071 (July 19, 2016). In effect, Massachusetts' non-participation cripples the project. Since the ANE Project cannot proceed, the Petition must be dismissed.

2. *Even if the ANE Project Were to Proceed, the Petition Fails to Reflect the Project's Changed Costs and Benefits.*

Even if National Grid and Algonquin were to proceed with the ANE Project without approved contracts for all New England states, the project scheme is so substantially altered by *Engie* that the Petition, as filed, fails to represent fairly the costs and benefits of the ANE Project. Consequently, the PUC should conserve valuable public resources by dismissing the Petition, thereby allowing National Grid to reconsider its course of action in the wake of *Engie*.

A new filing is required in Rhode Island because *Engie* fundamentally alters the economics and character of the scheme before the PUC. *See Brennan & Allocca Test 34-35* (“[T]he ANE Project is sized as a regional solution and will require other New England states and other EDCs to take responsibility for a proportional share of the costs of the projects, which are necessary to achieve the benefits . . .”). The resulting proposition is an entirely new, and raw, deal for Rhode Island. In effect, National Grid is now asking Rhode Island ratepayers to subsidize a project that it alleges will benefit all of New England; yet a substantial share of New England ratepayers—including millions of ratepayers in Massachusetts—will be insulated from bearing a proportional share of the risks of this experimental and uncertain scheme. *Cf. R.I. Gen. Laws § 39-31-2(2)* (declaring as a state policy objective “that the benefits and costs of [regional] energy infrastructure investments are shared appropriately among the New England States”).

Any petition related to the ANE Project must accurately reflect the costs and benefits of the proposed project so that the PUC can fulfill its statutory duties. *See id.* §§ 39-31-3, 39-31-6(a)(1)(v) (requiring, as a condition of approval of the ANE Project, that the PUC must determine “that the total energy security, reliability, environmental and economic benefits to the state of Rhode Island and its ratepayers exceed the costs . . .”). In the wake of *Engie*, an

adequate petition must include a clear explanation of the relative costs and benefits to Rhode Island of indemnifying a risky infrastructure project that is largely designed to the benefit other states, *where neighboring states will not shoulder an equal share of the project's risks*. National Grid's currently pending Petition does not do so, and the PUC cannot and, respectfully should not, address such a flawed Petition. *See id.*

**B. Rhode Island's Restructuring Act Requires Dismissal of This Docket**

Dismissal of National Grid's Petition would further the policies and principles of Rhode Island's Utility Restructuring Act of 1996, 1996 R.I. Laws ch. 96-316 ("Restructuring Act"), which aims to protect ratepayers from the very risks that are presented by this Petition and heightened by the changed economics of the ANE Project.

CLF recognizes that because the Massachusetts Supreme Judicial Court's decision in *Engie* was based on the Massachusetts statute that restructured the Commonwealth's electricity market in the late 1990s (1997 Mass. Acts, ch. 164), *Engie* technically is not *stare decisis* in Rhode Island. Notably, however, Rhode Island followed exactly the same course with its own Restructuring Act. *See generally* 1996 R.I. Laws ch. 96-316. Thus, although *Engie* is not technically controlling in Rhode Island, the reasoning underlying the Massachusetts Supreme Judicial Court's decision in *Engie* applies with equal force here. This Docket involves the very same novel effort at issue in *Engie*: an attempt to obtain cost recovery from *electricity* ratepayers for a *gas* contract. The PUC is asked to make a novel determination about whether an EDC can enter into a contract for natural gas transportation capacity and storage services—and receive cost recovery for that contract from *electricity* ratepayers. This has not occurred in the United States since the Federal Power Act was enacted in 1935, during President Roosevelt's first term in office.

What National Grid is asking the PUC to do in this Docket—the exact same action that the Massachusetts Supreme Judicial Court squarely rejected in *Engie*—is completely antithetical to the core principles of electricity market restructuring. As the court in *Engie* described, allowing EDCs to recover gas capacity contract costs from ratepayers

“would reexpose ratepayers to the very types of risks that the Legislature sought to protect them from when it enacted the restructuring act. . . . [G]as-fired generating businesses are unwilling to assume the risks associated with long-term gas pipeline capacity contracts because there ‘is no means by which they can’ assure recovery of those contract costs. Shifting that risk onto the electric ratepayers . . . , is entirely contrary to the risk-allocation design of the restructuring act.”

*Engie*, slip op. at 32.

In Rhode Island, as in Massachusetts, the PUC’s approval of National Grid’s Petition “would undermine the main objectives of the [restructuring] act and reexpose ratepayers to the types of financial risks from which the Legislature sought to protect them.” *Engie*, slip op. at 3. Indeed, “permitting electric distribution companies to shift the entire risk of the investment to the ratepayers is unreasonable, as it is precisely this type of shift that the Legislature sought to preclude through the restructuring act.” *Id.* at 34.

As in Massachusetts, Rhode Island’s Restructuring Act decidedly aims to “with limited exceptions, to regulate the gas and electric utilities differently.” *Engie*, slip op. at 17. Compare R.I. Gen. Laws § 39-1-2(7.1) with R.I. Gen. Laws § 39-1-2(7.3). Post-restructuring, the domain of EDCs is solely poles, wires, and other distribution infrastructure, while competitive generation companies are responsible for planning generation infrastructure investments and procuring fuel. *Cf. Engie*, slip op. at 28, 30. See also *id.* at 33 (“[F]uel procurement and planning is an integral component of the generation business . . .”). Introducing competition into the generation

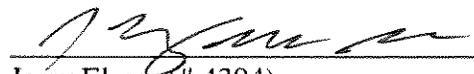
market, and removing EDCs from the generation business, was intended to benefit ratepayers by lowering the overall cost of electricity and “insulat[ing] [consumers] from construction, operational, and price risks . . . inherent in commodity rate regulation.” *Id.* at 30 (quoting Mass. D.P.U. 12-77, at 28 (Mar. 15, 2013)). *See also* R.I. Gen. Laws § 39-1-1.

In the words of the *Engie* court, “no matter how salutary [National Grid] may claim its policy aims to be,” the Petition “contravenes the fundamental policy embodied in the restructuring act and cannot stand.” *Engie*, slip op. at 36.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, CLF respectfully requests that the PUC close this Docket and DISMISS National Grid’s Request for Approval of a Gas Capacity Contract and Cost Recovery.

CONSERVATION LAW FOUNDATION,  
by its Attorneys,



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Dated: August 22, 2016

**CERTIFICATE OF SERVICE**

I certify that the original and nine photocopies of this Motion were filed by mail with the Clerk of the Public Utilities Commission, 99 Jefferson Blvd., Warwick, Rhode Island 02888. In addition, electronic copies of this Motion were served via e-mail on the service list for this Docket. I certify that all of the foregoing was done on August 22, 2016.

  
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