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CLF Rhode Island 55 Dorrance Street
Providence, RI 02903
P: 401.351.1102
F: 401.351.1130
www.clf.org

September 16, 2016

Via electronic mail and hand-delivery

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Rhode Island PUC Docket No. 4627 – 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
Conservation Law Foundation's Reply in Support of Its Motion to Dismiss

Dear Ms. Massaro:

Enclosed for filing in the above-referenced docket, please find an original and nine (9) copies of Conservation Law Foundation's Reply in Support of Its Motion to Dismiss and Close the Docket.

Please note that an electronic copy of this filing has been provided to the service list.

Thank you for your attention to this matter.

Sincerely,

Megan Herzog
Staff Attorney

Encls.

cc: PUC Docket No. 4627 Service List (*via electronic mail*)

**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 REPLY IN SUPPORT OF ITS MOTION TO
DISMISS AND CLOSE THE DOCKET**

The Responses of Algonquin Gas Transmission, LLC (“Algonquin”) and Narragansett Electric Company d/b/a National Grid (“National Grid”) to the Motion to Dismiss and Close the Docket filed by Conservation Law Foundation (“CLF”) argue that there are outstanding fact issues in this proceeding that preclude dismissal. *See, e.g.*, National Grid Mem. Supp. Opp’n to Mot. to Dismiss 9; Algonquin Objection to Mot. to Dismiss 5. CLF does not dispute that there are outstanding fact issues associated with this proceeding. Dismissal, however, is appropriate when some set of undisputed facts indicates that National Grid’s Request for Approval of a Gas Capacity Contract and Cost Recovery (“Petition”) cannot succeed as a matter of law. Public Utilities Commission Rule 1.15. That is the case here: undisputed facts indicate that the Public Utilities Commission (“PUC”) cannot legally approve the Petition.

I. The Facts Relied on by CLF in its Motion to Dismiss Are Undisputed.

Algonquin and National Grid claim that CLF’s Motion to Dismiss fails to meet the standard for summary disposition under PUC Rule 1.15 because the parties dispute “numerous” material issues of fact “that can only be resolved through discovery, testimony, evidentiary hearings, . . . and briefing.” National Grid Mem. 3, 4. *See also* Algonquin Objection 3, 6-9. In fact, CLF’s Motion to Dismiss relies on undisputed facts that compel the PUC to dismiss

National Grid’s Petition. Namely, it is uncontested that, following the Massachusetts Supreme Judicial Court’s ruling in *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*”), the Massachusetts Department of Public Utilities (“DPU”) cannot legally approve the Access Northeast pipeline project (“ANE Project”) precedent agreement. Further, it is uncontested that the ANE Project is designed as a regional project, with a scale and configuration specifically corresponding to the electricity generation portfolios of the six New England states. *See* CLF Mot. to Dismiss 4-8. This factual conclusion is supported by testimony submitted by National Grid and uncontested by CLF.¹ *See id.* 4-8. It is also indisputable that the ANE Project scheme is so substantially altered by changes in real-world circumstances that the Petition, as filed, no longer accurately represents the project. This factual conclusion, too, is supported by National Grid’s statements and testimony. *See id.* 7-8; *infra* pt. III-B. Regardless of how many other fact issues remain, this nucleus of uncontested facts establishes that the PUC cannot legally approve the Petition and requires that the Petition be dismissed.

II. New and Undisputed Material Facts Lend Further Support to CLF’s Motion to Dismiss.

Subsequent to CLF filing its Motion to Dismiss, the ANE Project was dealt yet another blow that further erodes the credibility and legal sufficiency of National Grid’s Petition. On August 31, 2016, the Federal Energy Regulatory Commission (“FERC”) issued an order in Docket No. RP16-618-000 (“FERC Denial Order”), in which Algonquin sought an exemption from FERC’s capacity release bidding requirements. *See* 18 C.F.R. §284.8. The exemption

¹ For example, in response to the question “[w]ill the ANE Project require approval in New England states other than Rhode Island,” Brennan and Allocca answered “[y]es.” Brennan & Allocca Joint Test. 33.

would have allowed natural gas-fired electric generators in New England to access the ANE Project’s pipeline and storage assets prior to competing on the open market, thus delivering the purported project benefits of reduced wholesale electricity prices to New England consumers. The FERC Denial Order “rejects Algonquin’s proposal to establish a blanket exemption from bidding for capacity releases to natural gas-fired electric generators serving ISO-NE by [electric distribution companies (“EDCs”)] contracting for capacity under a state-regulated electric reliability program (or their agents or asset managers).” *Algonquin Gas Transmission, LLC*, 156 FERC ¶ 61,151 at P 23 (Aug. 31, 2016). In a separate but related order issued the same day, FERC describes the effect of its denial combined with *Engie*:

Notably, the Massachusetts [Supreme Judicial Court] decision essentially prohibits Massachusetts DPU from approving cost recovery for the precedent agreements absent a legislative remedy, which is unlikely to occur this year. . . . Therefore, at this time the EDCs can neither recover costs from ratepayers nor release capacity on the Access Northeast Project under the proposed capacity release exemption.

NextEra Energy Res., L.L.C. and PSEG Companies v. ISO New England Inc., 156 FERC ¶ 61,150 at P 15 (Aug. 31, 2016).

National Grid, Algonquin, NextEra Energy Resources, LLC, and Lieutenant Governor McKee discussed the FERC Denial Order in their Responses to CLF’s Motion to Dismiss. *See* National Grid Mem. 8-9; Algonquin Objection 6-8; NextEra Energy Resources, LLC Resp. to Mot. to Dismiss 8-9; McKee Resp. to Mot. to Dismiss 1-2, 3. CLF does not contest the fact of the FERC Denial Order. Indeed, the FERC Denial Order is yet another undisputed change in material circumstances that lends further credence to CLF’s Motion to Dismiss.

III. Undisputed Facts Compel Dismissal of this Proceeding as a Matter of Law.

As a consequence of the undisputed, indisputable, and material facts summarized above, National Grid's Petition must fail as a matter of law. Though National Grid and Algonquin claim that "the ANE Project . . . is consistent with the purpose of the [Affordable Clean Energy Security Act ("ACES Act")]," nothing could be further from the truth. *See* National Grid Mem. 11. *See also* Algonquin Objection 6. The ACES Act allows the PUC to approve *only* regional natural gas infrastructure projects that include a "coordinated, multi-state approach." R.I. Gen. Laws § 39-31-1(5). *See also id.* § 39-31-7(a). Any proposal for a long-term contract for natural gas pipeline capacity filed by a public utility under the statute must "achieve the purposes of [the ACES Act]." *Id.* § 39-31-6(a). Furthermore, the ACES Act compels the PUC to render a determination on this filing, "based on the preponderance of the evidence, that the total . . . benefits [of the ANE Project] to the state of Rhode Island and its ratepayers exceed the costs" *Id.* § 39-31-3. The PUC cannot legally approve National Grid's Petition because both the Petition and the ANE Project itself fail to satisfy the legal standards set forth in the ACES Act.

A. The ANE Project Fails to Advance the Purposes of the ACES Act.

As summarized in CLF's Motion to Dismiss, National Grid's testimony outlines two possible pathways by which the ANE Project could proceed in the wake of *Engie*: "Algonquin will need to": 1) "make a determination whether to proceed with fewer precedent agreements"; or 2) "reconfigure their respective project and renegotiate the existing precedent agreements." CLF Mot. to Dismiss 4-5 (quoting Brennan & Allocca Joint Test. 35-36). Regardless of how Algonquin and National Grid proceed, the PUC cannot legally approve the ANE Project. A piecemeal infrastructure project that either addresses only part of New England's electricity

demand or shelters the most populous state in New England from bearing a proportional share of project costs simply cannot meet the standards established by the ACES Act.

The Rhode Island Legislature declared in the ACES Act that addressing challenges in New England’s “integrated, regional energy system . . . requires a coordinated, multi-state approach built upon collaboration” R.I. Gen. Laws § 39-31-1(5). The Act sets forth three purposes: 1) to “[s]ecure the future of the Rhode Island and New England economies, and their shared environment, by making **coordinated**, cost-effective, strategic investments in energy resources and infrastructure”; 2) to “[u]tilize **coordinated** competitive processes, **in collaboration with other New England states . . . and ensure that the benefits and costs of such energy infrastructure investments are shared appropriately among the New England states**”; and 3) to “[e]ncourage a **multi-state or regional approach to energy policy.**” *Id.* § 39-21-2(1)-(3) (emphasis added). The PUC can only approve the Petition if it “advance[s] the purposes of [the ACES Act].” R.I. Gen. Laws § 39-31-7(a). *See also id.* § 39-31-7(c)(5) (providing that the PUC “shall certify that the proposed project(s) are in the public interest” *only if* such projects “[a]re consistent with the findings and purposes of [the ACES Act]”). The purposes of the ACES Act demand coordinated, regional-scale solutions with costs and risk shared among the New England states. Where, as here, a project ceases to reflect a regional, coordinated effort, the PUC cannot approve it consistent with the ACES Act.

Algonquin argues that the PUC should ignore *Engie* and Massachusetts’ non-participation in sharing the costs of the ANE Project, as “[e]ach state’s effort has always been and should continue to be independent of the evaluations of other New England states.”

Algonquin Objection 4. This is in direct contradiction with the requirements of the ACES Act. As explained by the Rhode Island Office of Energy Resources (“OER”):

One purpose of ACES is to ensure that the benefits and costs of energy infrastructure investments are shared appropriately among the New England states. . . . In light of *Engie*, National Grid’s Petition as currently filed fails to demonstrate how the benefits and costs of the proposed project will be shared appropriately among the New England states. . . . **Absent a clear statutory or regulatory pathway forward in Massachusetts, the proposed infrastructure project, as currently filed, fails to advance the regional approach set forth by ACES.** . . . These circumstances do not advance the purposes of ACES, thereby warranting dismissal of National Grid’s Petition as currently filed.

OER Resp. to Mot. to Dismiss 6-7 (emphasis added). Put simply, as a result of *Engie*, the ANE Project on its face fails to meet with legal standards set forth in the ACES Act and therefore cannot be approved.

B. National Grid’s Petition Fails to Satisfy the ACES Act.

Undisputed changed circumstances also render National Grid’s Petition legally inadequate. The ACES Act requires the PUC to determine, based on the evidence set forth in the Petition, “that the total . . . benefits [of the ANE Project] to the state of Rhode Island and its ratepayers exceed the costs” *Id.* § 39-31-3. As a result of *Engie* and the FERC Denial Order, the Petition as currently filed does not reflect the project that National Grid is asking the PUC to approve. The circumstances that have changed since National Grid filed the Petition are not the mere “contract adjustments” noted by Algonquin—rather, they eviscerate the project as conceived. *See* Algonquin Objection 4. Because the ANE Project has fundamentally changed, the Petition is inadequate to support the ANE Project and for the PUC to render its legal obligations under ACES. Therefore, the Petition must be dismissed.

National Grid asserts that, in spite of the impacts of *Engie* and the FERC Denial Order, “[t]he Company has filed testimony and supporting schedules that would allow the [PUC] to make a determination as to the commercial reasonableness of the Precedent Agreement” National Grid Mem. 10. National Grid further claims that it “has submitted extensive support for

its assertion that the ANE Project Precedent Agreement will provide net benefits to Rhode Island ratepayers.” *Id.* 9. In fact, National Grid’s Petition relies entirely on a cost/benefit analysis performed by Black & Veatch Management Consulting, LLC. *See* Schedule GJW-3. That cost/benefit analysis is now wholly inaccurate and inadequate to evaluate the ANE Project because it was designed and based on assumptions about the ANE Project that are no longer true and, indeed, are now impossible in the wake of *Engie* and the FERC Denial Order. *Accord* McKee Resp. 2 (“All calculations and projections provided in Grid’s current Petition before the [PUC] include Massachusetts as an ANE Project participant.”).

Algonquin incorrectly asserts, without support, that “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.” Algonquin Objection 5. The Petition does not, and cannot, support Algonquin’s claim. By National Grid’s own admission, *Engie* and the FERC Denial Order have upended National Grid’s analysis of the ANE Project’s benefits. National Grid has confirmed on the record that its cost/benefit analysis and all projections of net benefits supporting the Petition are now rendered obsolete by changed material circumstances that no party disputes:

- “Black & Veatch’s cost/benefit analysis is contingent upon the completion of the ANE project as proposed” National Grid Resp. to OER Data Req. 2-9.
- National Grid asserts that a regionally sized solution is “necessary to achieve the benefits of lower electricity rate and increased reliability across the New England region.” National Grid Resp. to NextEra Info. Req. 2-36, Mass. D.P.U. 16-05 (June 16, 2016).
- “If only a portion of the gas-fired generation in New England has firm access to lower-priced natural gas higher electric prices for all of New England will persist.” Exh. NG-TJB/JEA-1 at 47, Mass. D.P.U. 16-05 (Jan. 15, 2016).

- National Grid calculated net benefits for Rhode Island by multiplying Rhode Island’s share of ISO-NE’s monthly peak electric load by the “total net benefits projected for all electric loads across all ISO-New England zones . . . ,” as “electricity customers in [Rhode Island] would be expected to realize that share of that total region-wide electricity market benefits.” *Cf.* National Grid Resp. to DPU Info. Req. Comm-1-2, Mass. D.P.U. 16-05 (Apr. 22, 2016).

National Grid, by its own admission, is also unable to provide any ready supplemental analysis that accounts for changed conditions resulting from *Engie* and the FERC Denial Order:

- “Black & Veatch’s analysis focused on the regional gas and electric price impacts . . . , and did not model separately each individual EDC contract on ANE. . . .” National Grid. Resp. to Attorney General Info. Req. 1-42, Mass. D.P.U. 16-05 (Apr. 25, 2016).
- “Black & Veatch did not analyze other capacity amounts for the ANE Project, and would not know the minimum amount of subscription needed to ensure that net benefits are greater than zero to New England ratepayers.” National Grid Resp. to DPU Info. Req. ANE-2-3, Mass. D.P.U. 16-05 (June 30, 2016).
- “The Company did not perform a separate analysis determining the impact if generators do not secure the firm transportation rights.” National Grid Resp. to NextEra Info. Req. 2-31, Mass. D.P.U. 16-05 (June 16, 2016).
- “In the absence of the FERC approval of the [Electric Reliability Service] rate schedule the Company cannot quantify the impact on the net benefits to electric customers.” National Grid Resp. to DPU Info. Req. ANE-2-39, Mass. D.P.U. 16-05 (June 30, 2016).

The fundamental inadequacies of National Grid’s Petition are plain and indisputable.

These inadequacies cannot reasonably be resolved by further procedure. *Accord* OER Resp. 5

(“A motion to dismiss should be granted based on the fact that *Engie* . . . fundamentally alters the filing currently before the PUC in this Docket.”). At worst, the project no longer results in net benefits for Rhode Island’s ratepayers and is therefore completely at odds with the purposes of ACES; at best, the cost/benefit analysis, which represents the core of National Grid’s Petition in support of the ANE Project, and the basis upon which the PUC is supposed to render a finding that the benefits outweigh the costs, is, by National Grid’s own admission, obsolete. In either

case, the PUC cannot fulfill its legal duty to render a determination on this filing, as required by the ACES Act, “based on the preponderance of the evidence, that the total . . . benefits to the state of Rhode Island and its ratepayers exceed the costs” R.I. Gen. Laws § 39-31-3.

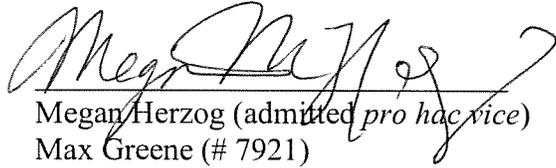
It is inappropriate for National Grid to ask the PUC to spend additional public resources evaluating testimony and a cost/benefit analysis that describe a hypothetical, now-illegal project scenario that would require speculative changes in Massachusetts law to effectuate.² And it is audacious for National Grid to insist that its crumbled Petition provides a suitable basis for the PUC to make a monumental, unprecedented, and risky commitment of electric ratepayer resources to natural gas infrastructure and capacity.

IV. CONCLUSION

For the reasons set forth above and in CLF’s Motion to Dismiss, the PUC should close this Docket and DISMISS National Grid’s Request for Approval of a Gas Capacity Contract and Cost Recovery.

² National Grid suggests that “[t]o dismiss the Company’s filing at this time would be premature and not in the best interests of the Company’s customers.” National Grid Mem. 4. To the contrary, Rhode Island ratepayers have a clear interest in conserving valuable public resources—not spending public resources on a Petition whose evidentiary base has eroded. Algonquin similarly protests that “[t]o summarily terminate this proceeding by requiring National Grid to withdraw the Request . . . each time concerns were raised would cast this proceeding into an administrative morass” Algonquin Objection 9. Notably, the issues raised by CLF are distinct from typical “concerns” about project details; CLF has highlighted changed circumstances that upend National Grid’s Petition and cut to the heart of the ANE Project configuration. In this context, the best way for the PUC to avoid an “administrative morass” would be to dismiss the Petition.

CONSERVATION LAW FOUNDATION,
by its Attorneys,



Megan Herzog (admitted *pro hac vice*)
Max Greene (# 7921)
CONSERVATION LAW FOUNDATION
55 Dorrance Street
Providence, RI 02903
Phone: 401-351-1102
Fax: 401-351-1130
Email: mherzog@clf.org

Dated: September 16, 2016

CERTIFICATE OF SERVICE

I certify that the original and nine photocopies of this Motion were hand delivered to 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 September 16, 2016.

