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December 8, 2016

VIA COURIER & ELECTRONIC MAIL

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

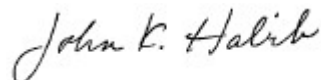
**RE: Docket 4627 – The Narragansett Electric Company d/b/a National Grid
Review of Precedent Agreement with Algonquin Gas Transmission LLC for
Capacity on the Access Northeast Project Pursuant to R.I.G.L. § 39-31 et seq.
National Grid’s Opposition to Conservation Law Foundation’s Motion to Dismiss
and Close Docket and Memorandum of Law in Support of Objection**

Dear Ms. Massaro:

On behalf of National Grid¹, I enclose the original and three (3) copies of the Company’s Opposition to the Motion of Conservation Law Foundation to Reopen Docket 4627 and for Reconsideration of CLF’s Motion to Dismiss the Company’s filing. Also enclosed are the original and three (3) copies of the National Grid’s Memorandum of Law in support of its Objection.

Thank you for your attention to this transmittal. If you have any questions concerning this filing, please contact me at (617) 951-1400.

Very truly yours,



John K. Habib (RI Bar #7431)

Enclosures

cc: Docket 4627 Service List

¹ The Narragansett Electric Company d/b/a National Grid (National Grid or the Company).

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND PUBLIC UTILITIES COMMISSION**

**In Re: Review of The Narragansett Electric Company
d/b/a National Grid’s 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

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID’S
OPPOSITION TO CONSERVATION LAW FOUNDATION’S MOTION TO DISMISS
AND CLOSE THE DOCKET**

Pursuant to Rule 1.15(d) of the Rhode Island Public Utilities Commission’s Rules of Practice and Procedure (PUC Rules), National Grid¹ opposes the Motion to Reopen the Docket and reconsider the Motion to Dismiss and to Close the Docket (Motion) filed by Conservation Law Foundation (CLF). For the reasons set forth in the accompanying memorandum of law, the Motion to Reopen should be denied because (1) the Rhode Island Public Utilities Commission (PUC) has already determined that a stay of this proceeding is appropriate; (2) the PUC has established a deadline of January 13, 2017 for the Company to submit a status report on the Access Northeast Pipeline (ANE) Project for which the Company is currently compiling all necessary information; and (3) CLF fails to articulate any basis for reopening this docket a mere five weeks prior to the such deadline.

Further, the Company opposes the reconsideration of the Motion to Dismiss on the grounds that: (1) CLF continues to raise questions of material fact and therefore fails to meet the standard for summary disposition under Rhode Island PUC Rule 1.15(e); (2) CLF has failed to cite to legal authority to reconsider the Motion to Dismiss. For the reasons set forth herein, CLF’s Motion should be denied.

¹ The Narragansett Electric Company d/b/a National Grid (National Grid or the Company).

National Grid, therefore, respectfully requests that the Rhode Island Public Utilities Commission deny the Motion to Reopen the Docket and reconsider the Motion to Dismiss and Close the Docket filed by CLF pursuant to PUC Rule 1.15(a).

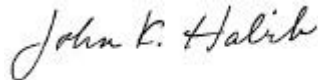
Respectfully submitted,

**THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID**

By its attorneys,



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Dated: December 8, 2016

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND PUBLIC UTILITIES COMMISSION**

**In Re: Review of The Narragansett Electric Company
d/b/a National Grid’s 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**

**MEMORANDUM OF LAW IN SUPPORT OF THE NARRAGANSETT ELECTRIC
COMPANY d/b/a NATIONAL GRID’S OPPOSITION TO THE CONSERVATION LAW
FOUNDATION’S MOTION TO REOPEN THE DOCKET AND RECONSIDER
CONSERVATION LAW FOUNDATION’S PREVIOUSLY FILED MOTION TO
DISMISS AND CLOSE THE DOCKET**

National Grid¹ submits this memorandum of law in support of its opposition to the Motion to Reopen the Docket and reconsider the Motion to Dismiss and Close the Docket filed by Conservation Law Foundation (CLF) (the Motion). The Company opposes CLF’s Motion to Reopen the Docket on the grounds that: (1) the Rhode Island Public Utilities Commission (RIPUC) has already determined that a stay of this proceeding is appropriate; (2) the PUC has established a deadline of January 13, 2017 for the Company to submit a status report on the Access Northeast Pipeline (ANE) Project for which the Company is currently compiling all necessary information; and (3) CLF fails to articulate any basis for reopening this docket a mere five weeks prior to the such deadline. Further, the Company opposes the reconsideration of the Motion to Dismiss on the grounds that: (1) CLF continues to raise questions of material fact and therefore fails to meet the standard for summary disposition under RIPUC Rule 1.15(e); (2) CLF has failed to cite to legal authority to reconsider the Motion to Dismiss. For the reasons set forth herein, CLF’s Motion should be denied.

¹ The Narragansett Electric Company d/b/a National Grid (National Grid or the Company).

I. BACKGROUND

The ACES Statute is a statutory scheme enacted by the legislature in 2014 to remedy “significant short- and long-term energy system challenges that may undermine the reliable operation of the bulk electric system and spur unsustainable price volatility” in Rhode Island and New England. R.I. Gen. Laws § 39-31-1(1). To remedy these challenges, the legislature expressly authorized National Grid in Section 39-31-6 of the ACES Statute to file a proposal with the RIPUC to enter into long-term contracts for natural gas pipeline capacity. Specifically, Section 39-31-6(v) states that electric distribution utilities as defined in § 39-1-2(12), as well as natural gas utilities as defined in § 39-1-2(20), are authorized to voluntarily file proposals:

to enter into long-term contracts for natural-gas pipeline infrastructure and capacity that are commercially reasonable and advance the purposes of this chapter at levels beyond those commitments necessary to serve local gas-distribution customers, and may do so either directly, or in coordination with, other New England states and instrumentalities; utilities; generators; or other appropriate contracting parties.

R.I. Gen. Laws § 39-31-6(v); see also R.I. Gen. Laws § 39-31-5(2) (authorizing the Company to procure incremental, natural gas infrastructure and capacity into New England to help strengthen energy system reliability and facilitate the economic interests of the state and its ratepayers). Consistent with Section 39-31-6, on June 30, 2016, National Grid filed its proposal for approval of a precedent agreement with Algonquin Gas Transmission LLC that would allow National Grid to purchase gas capacity on the Access Northeast Project (ANE Project) (Precedent Agreement) as part of a regional energy solution.

Within two days of the Massachusetts Supreme Judicial Court’s (SJC) finding that the Massachusetts Department of Public Utilities (MDPU) does not have authority under M.G.L. c. 164, §94A to review and approve precedent agreements entered into by the Massachusetts

electric utilities for gas capacity on the ANE Project,² CLF announced its intention to file a motion to dismiss this proceeding. On August 22, 2016, CLF filed its Motion to Dismiss and Close the Docket. National Grid filed its Opposition to CLF's Motion to Dismiss and Close the Docket on September 6, 2016 asserting that CLF's Motion to Dismiss and Close the Docket should be denied for the following reasons: (1) CLF's motion failed to meet the standard for summary disposition (i.e., questions of material fact exist); (2) the Company's proposal is consistent with the ACES Statute; and (3) the ACES Statute supersedes the 1996 Rhode Island Utility Restructuring Act.³ Algonquin Gas Transmission, LLC filed opposition to the CLF Motion to Dismiss and Close the Docket relying on arguments similar to those set forth by the Company. The following parties to this proceeding also filed responses to the CLF Motion to Dismiss and Close the Docket: Rhode Island Office of Energy Resources, Rhode Island Division of Public Utilities, Lt. Governor McKee, and NextEra Energy Resources, LLC.⁴

Oral arguments on CLF's Motion to Dismiss and Close the Docket were held on September 16, 2016. On September 29, 2016, the Commission denied the Motion to Dismiss finding there were facts in dispute material to the decision precluding the PUC from granting CLF's Motion (September 29, 2016 Open Meeting Minutes). However, the Commission also noted that recent developments in other New England States (namely, Massachusetts)

² Engie Gas & LNG, LLC v. Dep't of Pub. Utilities, No. SJC-12-51 and Conservation Law Foundation v. Dep't of Pub. Utilities, No. SJC-12-52 (August 17, 2016) (collectively, Engie).

³ CLF does not reassert its arguments regarding the Rhode Island Restructuring Act in the Motion. Therefore, the Company does not address this issue here but instead relies on its previously filed opposition to CLF's Motion to Dismiss and Close the Docket.

⁴ Each of these parties recommended granting CLF's Motion to Dismiss and Close the Docket based on the decision of the Massachusetts SJC. However, the OER, Division, and Lt. Gov. McKee recommended that such dismissal be without prejudice to allow the Company to re-file a revised request to account for any changes to the filing based on the SJC decision. OER, the Division, and Lt. Gov. McKee recognized, and the Company does not dispute, that National Grid's analysis of the ANE Project precedent agreement benefits will require revisions if Massachusetts local distribution companies are ultimately unable to participate in this regional solution.

necessitated changes to the Company's filing (id.). In order to allow the Company time to evaluate the project in light of these developments, the PUC determined that a stay of the proceeding was warranted (id.). The PUC determined that the appropriate next step is for the Company to file a status report regarding the ANE Project; this status report is due on January 13, 2017 (id.). Contrary to CLF's assertions in its Motion, there have been no developments that warrant abandoning this approach.

The Company continues to be engaged in discussions with its Massachusetts affiliates and other New England electric and gas distribution companies regarding the ANE Project and the potential for the ANE Project to serve as a regional solution to ongoing capacity constraints resulting in electric price volatility. A status report of these discussions will be provided to the PUC and all parties in this proceeding on January 13, 2017 (a date that is a mere five weeks following submission of this memorandum).

On November 28, 2016 CLF filed this Motion asserting that the Company's Petition should be dismissed based almost entirely on CLF's assertion that the PUC is precluded from approving the Company's Petition due to the lack of a "regional path forward" with respect to the ANE Project (CLF Motion at 2). Specifically, CLF asserts that New Hampshire and Connecticut have definitely decided not to move forward with the ANE Project and that these decisions "effectively kill the project" (CLF Motion at 7). CLF reaches this conclusion without regard for the additional judicial process that remains available in New Hampshire and without regard to the clear language of the Connecticut Department of Energy and Environmental Protection's (CT DEEP) Notice of Cancellation regarding the Request for Proposals to solicit a project like the ANE Project. However, CLF's analysis of the actions by these agencies should not be accepted as definitive.

Instead, these recent developments further support the PUC's determination that a stay of this proceeding is warranted. As discussed in greater detail below, the Maine Public Utilities Commission has recently issued a decision confirming a similar approach (i.e., a stay with regular status updates). As the Company has demonstrated throughout this proceeding, a regional solution is necessary for New England. If all of the New England states overtly dismiss further exploration of the ANE Project and its potential benefits for ratepayers no regional solution will be possible. It is therefore in the best interest of ratepayers to continue discussions regarding a path forward for the ANE Project while keeping the relevant public utility commissions apprised of the status of these discussions. The PUC agreed to this approach in September and no material changes have since occurred that warrant changing course at the time. Similarly, it will only be after these issues of regional participation are resolved that the PUC is able to conduct a complete review of the Company's proposal in order to make a determination of whether the filing complies with the ACES Statute. Therefore, to dismiss the Company's filing at this time based on CLF's naked assertion that regional participation is impossible would be premature and not in the best interests of the Company's customers.

II. LEGAL STANDARD

The legal standard that applies to CLF's Motion is twofold. RIPUC Rule 1.26(a)(1) provides that any party may move "for good cause shown" to reopen a proceeding.

RIPUC Rule 1.15(e) provides that any party "may file a motion for summary disposition of all or part of the rate tariff filing and if the RIPUC determines that there is no genuine issue of fact material to the decision, it may summarily dispose of all or part of the rate tariff filing."

III. ARGUMENT

A. Motion to Reopen the Docket

With respect to CLF's request to reopen the proceeding prior to the filing of the Company's status report, the Company objects because the CLF has failed to provide good cause to warrant reopening of the record at this time. Specifically, the Company objects to CLF's Motion with respect to reopening the docket for two reasons. First, the Company was given until January 13, 2017 to file a status report on the Access Northeast Pipeline project and CLF has failed to provide any basis for closing the docket prior to this date. Second, the Company continues to use this time to work on a solution that would allow the project to go forward with participation by other New England states. The Company remains committed to increasing capacity and reliability in the region through the gas pipeline expansion and encourages the PUC to allow the Company to have the approximately five (5) remaining weeks⁵ to finish discussions and negotiations with other New England companies regarding a regional solution. The request to submit a status report on January 13, 2016 is not unreasonable, especially in light of the likely timeline for a determination on CLF's Motion. Assuming a timeline for disposition of CLF's Motion that is similar to the disposition of CLF's motion to dismiss and close the docket⁶ would result in a PUC decision during the last week of December, i.e., the Motion would be decided just two weeks prior to the deadline for the Company's status report. It is difficult to discern

⁵ This Opposition is being submitted to the PUC on Thursday, December 8, 2016 which is approximately five weeks prior to the deadline for submission of the Company's status report on Friday, January 13, 2016. Therefore, assuming oral arguments on CLF's Motion and the time necessary for the PUC to reach a decision, it seems unlikely that CLF's Motion will be resolved. If the PUC schedules oral arguments regarding CLF's Motion during the month of December it is unlikely that any decision will be issued that is well in advance of filing the

⁶ The PUC reached its decision on CLF's motion to dismiss and close the docket on September 29, 2016 which was approximately five weeks after such motion was filed on August 22, 2016.

why dismissal of this proceeding would be warranted just two weeks prior to receipt of information relevant to such a decision.

The need for a regional solution is undisputed, as is the need for the PUC to make a decision regarding this proceeding based on knowledge from all relevant jurisdictions. However, the Company does dispute that rushing such a determination in advance of the already established deadline for a status report is warranted or in the best interest of ratepayers. As the Company represented on September 16, 2016 in support of its opposition to CLF's first motion, the Company and its affiliates are working on a proposal that would allow Massachusetts to participate in the ANE Project in a way that is not prohibited by the SJC *Engie* decision. Assuming this approach is achieved for Massachusetts, such a reconfiguration of the ANE Project would allow participation by Maine, would support a reissuance of the Connecticut DEEP RFP, and would allow reconsideration of the project in New Hampshire.

The Company therefore requests the Commission deny CLF's Motion and allow the Company to continue to work on this regional solution including submission of a status report on January 13, 2017. Any motion to reopen this proceeding prior to filing of such status report is simply premature.

B. Motion for Summary Disposition

The Company objects to the reconsideration of the Motion for Summary Disposition for two reasons. First, CLF has failed to cite legal authority that would support the reconsideration of the Motion for Summary Disposition. Under the RIPUC rules there is no provision that allows for reconsideration of a Motion for Summary Disposition and CLF's Motions should be dismissed on this basis alone.

Second, even if the PUC were to treat CLF's Motion as a new motion for summary disposition, such motion should be denied because issues of material fact remain regarding regional participation. Specifically, CLF's Motion rests on the assertion that it cannot be disputed that regional participation is impossible. However, as detailed below, regional participation remains a question of fact that can only be resolved through continued discussions with other New England states and continued monitoring of developments in such states. Due to these issues of material fact, CLF's secondary argument that the Company's proposal cannot comply with the ACES Statute must also fail as premature. Without a determination regarding regional participation, the PUC cannot complete its analysis required under the ACES Statute. Accordingly, the RIPUC should deny CLF's Motion for Summary Disposition.

1. The Motion Fails to Meet the Standard for Summary Disposition

To obtain summary disposition, the moving party has the burden to show that there is no genuine issue of material facts in the record that could support approval of the non-moving party's proposed filing or portion thereof. In Re: Block Island Power Company General Rate Filing, Docket No. 3655. To decide whether Summary Disposition in this proceeding is appropriate, the RIPUC must determine whether there are no material issues of fact regarding whether the Precedent Agreement is: (a) commercially reasonable; (b) satisfies the solicitation requirements of the ACES Statute; (c) is consistent with the region's greenhouse gas reduction targets; and (d) is consistent with the purpose of the ACES Statute. R.I. Gen. Laws § 39-31-6(III)(C)(vii).

CLF's Motion asserts that dismissal is warranted based on the assertion that the PUC cannot find the Project "is regional in scope, nor that the benefits of the project to ratepayers exceed the project's costs, as required by the ACES Act" (CLF Motion at 8). However, this

requires the PUC to take CLF's assertion that the project cannot move forward in any New England state as an undisputed fact which it is not. Moving forward with ANE Project precedent agreements in Maine, New Hampshire, and Connecticut has not been eliminated. In fact, the current status of participation in the ANE Project in Maine and Connecticut are most similar to the Rhode Island, i.e., these states have "paused" consideration of the ANE Project at this time pending a determination on the path forward in the other New England states. Although the New Hampshire Public Utilities Commission has decided it cannot move forward with a contract for ANE Project capacity at this time, such decision is not without additional judicial review options, and therefore each state remains a viable option for participation.

A brief discussion of the status for each state is as follows:

a. Maine

On September 14, 2016, the Maine Public Utilities Commission ("ME PUC") issued an order concluding that the ANE Project, with participation by other New England states, would provide ratepayer benefits in Maine. On October 4, 2016, several parties, including CLF, filed petitions for reconsideration and clarification regarding the ME PUC's September 14, 2016 order. In response to these petitions, the ME PUC issued an Order on November 21, 2016 with the following limited clarifications: (1) further activities in the proceeding are postponed until further notice; (2) Algonquin Gas Transmission is directed to file periodic status reports at six month intervals beginning on June 1, 2017; and (3) other parties to the proceeding may file regional market status reports or other comments every six months beginning on June 1, 2017. Maine Public Utilities Commission, Docket No. 2014-00071, Order at 6 (November 21, 2016). A copy of this order is provided as Appendix A. Thus, the most recent order by the ME PUC has affirmed that Maine's involvement in the ANE Project is not precluded but is simply postponed

pending resolution of participation in other New England jurisdictions. Further, the ME PUC order from November 21, 2016 implicitly recognized that development of the ANE Project will take time; based on this recognition, the first status report in the ME PUC proceeding is not due to be filed until mid-2017.

b. Connecticut

On June 2, 2016 Connecticut DEEP issued its RFP for natural gas capacity, liquefied natural gas, and natural gas storage. On October 25, 2016 DEEP issued its Notice of Cancellation canceling the RFP review process without prejudice. See CLF Motion, Exhibit B. CT DEEP noted that although it remains committed to using its authority to secure more reliable and affordable electric service for the benefit of Connecticut's ratepayers and for purposes of meeting energy and environmental goals and policies, recent developments in other New England states have reduced the ability to share the costs of a regional solution among a substantial portion of the region's ratepayers. Id. at 2. As a result, CT DEEP canceled the RFP review but will continue minor conditions of the ISO NE market and relevant proceedings in other New England states to determine whether the RFP should be reissued. Id. CT DEEP further noted that "[t]he process of reissuance of an RFP under Section 1(d) is straightforward, and could be initiated at any time." Id. Thus, like Maine, Connecticut has recognized the importance of continuing to monitor developments in other New England jurisdictions and remains ready to participate as soon as regional coordination is possible.

c. New Hampshire

On October 6, 2016 the New Hampshire PUC dismissed Eversource Energy's ANE Project petition. See CLF Motion, Exhibit A. However, this alone does not support a finding that New Hampshire's participation in a regional solution is impossible. Eversource Energy and

Algonquin Gas Transmission have each filed motions for reconsideration of the New Hampshire PUC's decision. The motions for reconsideration were denied on December 7, 2018, however, Eversource Energy and/or Algonquin could appeal the New Hampshire PUC's decision to the New Hampshire supreme court.

The status of the ANE Project precedent agreements in each of these three jurisdictions therefore cannot be accepted as terminated as CLF would have the PUC believe. This is precisely why summary disposition of the Precedent Agreement is not appropriate and must be denied. The RIPUC cannot simply accept the allegations in CLF's Motion on their face and dismiss the Precedent Agreement as a matter of law without providing National Grid and other New England states an opportunity to work together to find a regional solution. Accordingly, the arguments underlying the Motion are improper bases to support summary disposition under Rule 1.15(e) that should be rejected by the RIPUC. Instead, the RIPUC should continue to require status updates at regular intervals as the Maine Commission has directed in its related docket.

2. The Precedent Agreement is Consistent with the ACES Statute

To the extent that the Motion to Dismiss can be construed as a request to dismiss the Precedent Agreement because it is inconsistent with the statutory directives under which it is proposed, R.I. Gen. Laws § 39-31, such claim is directly contrary to the evidence in the record and misinterprets the legal standard under the ACES Statute.

The ACES Statute authorizes the Company, as an electric distribution company, to propose a long-term contract for natural gas pipeline infrastructure and capacity that is commercially reasonable and that advances the purposes of the ACES Statute. R.I. Gen. Laws § 39-31-6(1)(v). The Company is permitted to do so "either directly, or in coordination with, other New England states and instrumentalities; utilities; generators; or other contracting parties." Id.

The Precedent Agreement is the Company's proposal for a long-term contract for natural gas pipeline infrastructure and capacity. While CLF is correct that regional coordination remains in flux, there have been no new developments that suggest regional coordination is impossible. Accordingly, the Company's initial filing continues to demonstrate that the ANE Project Precedent Agreement is consistent with the purpose of the ACES Statute to provide a regional solution that advances strategic investment in energy infrastructure and energy resources. Any claim to the contrary is premature, unfounded and should be rejected. At the very least, the developments cited to by CLF demonstrate that there are matters of material fact to the RIPUC's decision in this docket as to whether the Precedent Agreement is consistent with the standard of review set forth in the ACES Statute and, as a result, the Company's filing cannot be summarily disposed of at this time.

IV. CONCLUSION

For the reasons set forth above, the Company opposes the Motion to Reopen and reconsider the Motion for Summary Disposition filed by the Conservation Law Foundation and respectfully requests that the RIPUC deny such Motion.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID**

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Dated: December 8, 2016

APPENDIX A

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2014-00071

November 21, 2016

MAINE PUBLIC UTILITIES COMMISSION
Re: Investigation of Parameters for
Exercising Authority Pursuant to the
Maine Energy Cost Reduction Act,
35-A M.R.S. §1901

ORDER ON PETITIONS
FOR CLARIFICATION AND
RECONSIDERATION

VANNOY, Chairman; MCLEAN and WILLIAMSON, Commissioners

I. SUMMARY

Through this Order, the Commission provides limited clarification of its September 14, 2016 Order-Phase 2 regarding future activity in this proceeding. The Commission, hereby, postpones further activities regarding the development and review of a precedent agreement pending future developments in other New England states. The Commission otherwise denies the petitions for clarification and reconsideration submitted in this proceeding.

II. BACKGROUND

A. September 14, 2006 Order

On September 14, 2016, the Commission issued its Order-Phase 2 in this proceeding which concluded that both the Spectra Energy Partner LLC's Access Northeast (ANE) and Portland Natural Gas Transmission's Continent to Coast (C2C) Energy Cost Reduction Contract (ECRC) proposals satisfy the statutory requirements for acceptance and would benefit ratepayers. The Commission further concluded that the ANE project, in the context of participation by other states in New England, would provide greater ratepayer benefits than the C2C proposal.¹

Accordingly, the Commission, in the Order-Phase 2, decided to move forward with negotiation of a precedent agreement with ANE for Maine's 9% load share conditioned upon comparable precedent agreements with ANE and other New England states at a minimum of those states' respective load shares. The Commission noted that, in the event that the ANE does not proceed, or if the conditions set forth in this Order are not met, the Commission may move forward with precedent agreement negotiations for C2C, along with any necessary conditions.

¹ Commissioner McLean concurred in part and dissented in part to the Order-Phase 2 majority decision, concluding that the C2C project is preferable to the ANE project.

B. Petitions for Clarification and Reconsideration and Petition Responses

On October 4, 2016, the Commission received the following filings: Conservation Law Foundation Petition for Reconsideration/Clarification; PNGTS' Petition for Clarification and/or Modification of Phase 2 Order; and Repsol Energy North America Corporation Petition for Reconsideration of the Commission's Phase 2 Order. Responsive filings were submitted on October 21, 2016 by the Office of the Public Advocate (OPA), Maritimes & Northeast Pipeline, L.L.C. and Algonquin Gas Transmission, LLC (Maritimes/Algonquin), Portland Natural Gas Transmission System (PNGTS), Industrial Energy Consumer Group (IECG,) and Repsol Energy North America Corporation (RENA). On October 24, 2016, Conservation Law Foundation (CLF) filed reply to the Maritimes/Algonquin opposition to its petition.

1. Conservation Law Foundation

CLF states that the Commission expressly contemplated some further course of action to negotiate and finalize the terms of an ECRC prior to execution, but did not identify the additional process to be used to review and approve a final precedent agreement. CLF therefore petitions the Commission to clarify what further proceedings in this matter will entail, specifically whether there will opportunity for additional public participation and further adjudicatory proceedings. CLF asks that the Commission clarify that its Order-Phase 2 is not a "final decision" subject to appeal.

2. Portland Natural Gas Transmission System

PNGTS states that the Commission's Order-Phase 2 requires clarification or modification in light of the Massachusetts Supreme Court opinion in *Engie Gas & LNG LLC v. Department of Public Utilities*² (Massachusetts Decision). PNGTS argues that this decision precludes Massachusetts' electric utilities from participating in ANE thus preventing the project from meeting the conditions for an ECRC that there be proportionate participation by utilities in other New England states.

Because of this development, PNGTS states that the Commission should move forward with a PNGTS ECRC in accordance with the Order, noting that the Massachusetts Decision has no impact on the PNGTS' proposal. However, PNGTS states that the Order-Phase 2 does not explicitly outline a procedure for doing so. PNGTS therefore requests that the Commission clarify the Order to specify this procedure.

In the alternative, PNGTS states that, if the Commission continues to proceed with ANE despite the Massachusetts Decision, PNGTS petitions the Commission to: modify the Order to direct concurrent negotiations for a separate PNGTS ECRC, to begin immediately; and clarify the Order to establish a timetable for the cessation of negotiations/termination of precedent agreements regarding ANE.

² *Engie Gas & LNG LLC v. Department of Public Utilities*, Case No. SJC-12051, and *Conservation Law Foundation v. Department of Public Utilities*, Case No. SJC-12052 (Aug 17, 2016).

3. Repsol Energy North America Corporation

RENA requests that the Commission reconsider its Order-Phase 2 and find that, where regional changes have placed into question the likelihood of both the ANE and C2C project serving as a regional solution to New England's natural gas and electric cost concerns, the (1) conditions set forth for approval of an ECRC have not been met, and, (2) approval of an ECRC with either AGT or PNGTS under current conditions would not result in net benefits to Maine ratepayers, nor would it be in the public interest.

In support of its position, RENA points to the Massachusetts Decision, holding that the Massachusetts Department of Public Utilities (DPU) was not statutorily authorized to review and approve ratepayer-backed, long-term contracts by electric utilities for natural gas capacity and the subsequent decision by the Massachusetts DPU to postpone its proceedings considering the EDC contracts with AGT. RENA also notes the Rhode Island Public Utilities Commission's suspension of its proceedings to evaluate a ratepayer-backed pipeline capacity proposal³ and the arguments made in New Hampshire that its Public Utilities Commission lacks the legal authority to approve a ratepayer-backed contract for capacity on ANE.⁴

Finally, RENA notes the Federal Energy Regulatory Commission ("FERC") ruling, in Docket No. RP16-618-00, on AGT's proposal seeking approval to allow EDCs that contract for firm transportation capacity on AGT as part of a state-regulated electric reliability program to make capacity releases without complying with the FERC's capacity release bidding requirements.

4. Office of the Public Advocate

In its response to the petitions of CLF, PNGTS and RENA, the OPA states that recent actions by courts and public utilities commissions in other New England states present a significant barrier to achievement of the coordinated regional procurement of gas pipeline capacity contemplated by the Commission's Phase 2 Order. The OPA further states that, at this time, it is highly unlikely that the ANE project will move forward based on procurements by electric distribution companies in Massachusetts, Rhode Island and New Hampshire. This presents an obstacle to both an ECRC for the ANE project and any other ECRC (including C2C) predicated on a regional effort. The OPA, noting that the Commission's approval was conditioned on the other New England states participating in the ANE project for a minimum quantity equal to their respective

³ *The Narragansett Electric Co. d/b/a National Grid – Request for Approval of a Gas Capacity Contract and Cost Recovery*, Docket No.4627.

⁴ *Pub. Serv. Co. of N.H. d/b/a Eversource Energy, Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC, Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery*, Docket No. DE 16-241, Order Dismissing Petition (N.H. P.U.C. Oct. 6, 2016).

load shares, recommends that the Commission postpones this proceeding pending a material change in the status of such efforts in other New England states.

5. Maritimes & Northeast Pipeline and Algonquin Gas Transmission

Maritimes/Algonquin oppose the three petitions for reconsideration, modification, or clarification filed on October 4, 2016. Maritimes/Algonquin state that the Petitions are primarily based on recent regulatory activities in the region that the Petitions characterize as permanently closing doors on the efforts to put ANE into service. While Maritimes/Algonquin acknowledge that these activities are setbacks, they argue that the Commission should continue on the path established in its Phase 2 Order. Maritimes/Algonquin state that it is simply too early for the Commission to declare the condition for regional action to have been unmet with regard to the ANE project and that it would be far more prudent to stay the course in continuing to lead a regional effort.

Maritimes/Algonquin argue that unless and until such time that regional action is permanently foreclosed, decisions in other states do not make it any more or less likely that the ANE project is net-beneficial to Maine, the key purpose of Phase 2 of this proceeding. Therefore, Maritimes/Algonquin argue that the fundamental issue before the Commission in this proceeding has not changed, that the path to regional participation is still ongoing, and that it is too early for the Commission to declare that the requirements for the ANE ECRC have not been met or are incapable of being met. Maritimes/Algonquin note that activities in the other New England states are not all on the same timetable or moving in a linear manner. However, Maritimes/Algonquin argue that before Maine decides to cut off its options, it should proceed with negotiations for an ECRC on ANE so that, when full regional participation is developed, Maine is poised to move forward expeditiously.

6. Industrial Energy Consumer Group

The IECG responds that the Commission should deny the petitions of RENA and PNGTS and should find that Order–Phase 2 is not a final decision. The IECG states that the Commission has already made the factual determination that the need exists and that benefits to consumers would be derived from the development of the ANE project. The IECG notes that Spectra Energy has already announced that it will continue to pursue development of the ANE project and that the Commission should allow time for Massachusetts, and other states considering participation in ANE, to review their options in light of recent developments and to pursue alternative strategies for participating in the project.

According to the IECG, doing so will signal to those parties that Maine believes the need for ANE continues to exist, and that Maine continues to support a regional effort to address this need. The IECG opposes the PNGTS petition that the Commission proceed with negotiation for a precedent agreement regarding the C2C project, arguing that such negotiations are premature because the ANE has not been

cancelled and it is not possible to determine yet whether the condition regarding participation by other states has failed.

III. DECISION

Through this Order, the Commission provides limited clarification of its September 14, 2016 Order regarding future activity in this proceeding. The Commission postpones further activities in this proceeding regarding the development and review of a precedent agreement pending future developments in other New England states. The Commission will monitor such developments and will renew activity in this proceeding in the future if circumstance warrant. The Commission otherwise denies the petitions for clarification and reconsideration submitted in this proceeding.

In its Order-Phase 2, the Commission found that both the ANE and PNGTS ECRC proposals presented in this proceeding satisfy the statutory requirements for acceptance in that neither market developments and rule changes, nor private participation in securing additional pipeline capacity will address the energy price and infrastructure concerns identified by the Maine Legislature. Moreover, the Commission concluded that both ECRC proposals are commercially reasonable, in the public interest and reasonably likely to increase pipeline capacity into the region, be cost beneficial, and enhance system reliability.

However the Commission decided that the ANE project, in the context of participation by other states in New England, would provide greater ratepayer benefits than the C2C proposal and, therefore, directed that negotiations of a precedent agreement proceed with ANE for Maine's 9% load share conditioned upon comparable precedent agreements with ANE and other New England states (Massachusetts, Connecticut, Rhode Island and New Hampshire) at a minimum of those states' respective load shares. The Commission further concluded that, in the event that the ANE does not proceed, or if the conditions set forth in the Order are not met, the Commission may move forward with precedent agreement negotiations for C2C, along with any necessary conditions.

As stated, the Order-Phase 2 authorization of an ECRC was conditioned on other New England states acting to authorize similar agreements at a minimum of those states' load shares. Recent events in Massachusetts, New Hampshire and Rhode Island may cast doubt on a path forward for the region, but do not represent termination of the ANE project or regional efforts to enhance pipeline infrastructure in New England.

Accordingly, the Commission, hereby, clarifies the Order-Phase 2 to specify the next steps in this proceeding. Given the events in other New England states, it is not an efficient use of the Commission's resources to proceed with the negotiation and review of a precedent agreement with either ANE or C2C at this time. Therefore, further activity in this proceeding will be postponed pending either positive developments in the region regarding regional pipeline efforts or the termination of the Commission's statutory authority on December 31, 2018 to direct the execution of an ECRC.

However, the Commission emphasizes that recent events in the region have not altered the Commission's primary conclusion in its Order-Phase 2 regarding the statutory prerequisites and the economic analysis showing that both ANE and C2C are cost beneficial to ratepayers. Therefore, there is no basis to reconsider these findings in the Order-Phase 2.

To aid the Commission in monitoring regional developments, we direct ANE to file project status report every 6 months beginning June 1, 2017. Other parties to this proceeding may also file status reports or comments on regional pipeline developments on this same 6-month schedule.

Accordingly, it is

ORDERED

1. That the Order-Phase 2 issued in this proceeding on September 14, 2016 is, hereby, clarified to postpone further activities until further notice;
2. That petitions filed for clarification, modification or reconsideration of the Order-Phase 2 that are inconsistent with this Order are, hereby, denied;
3. That Algonquin Gas Transmission file periodic status reports on the ANE project every six months beginning June 1, 2017; and
4. That other parties to this proceeding may file regional market status reports or other comments every six months beginning June 1, 2017.

Dated at Hallowell, Maine, this 21st day of November, 2016.

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy
McLean
Williamson

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.