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September 6, 2016

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

**Re: *The Narragansett Electric Co. d/b/a  
National Grid - Docket 4627***

Dear Ms. Massaro:

Enclosed please find an original and nine (9) copies of the following document:

1. NextEra Energy Resources, LLC's Response to the Conservation Law Foundation's Motion to Dismiss the Narragansett Electric Company D/B/A National Grid's Request for Approval of a Gas Capacity Contract and Cost Recovery and Close the Docket.

Please note that an electronic copy of this document has been sent to the service list.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf  
Enclosure  
cc: Docket 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**

**NEXTERA ENERGY RESOURCES, LLC’S RESPONSE TO THE CONSERVATION LAW FOUNDATION’S MOTION TO DISMISS THE NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID’S REQUEST FOR APPROVAL OF A GAS CAPACITY CONTRACT AND COST RECOVERY AND CLOSE THE DOCKET**

**I. INTRODUCTION**

NextEra Energy Resources, LLC (“NEER”) hereby files its response to The Conservation Law Foundation’s Motion to Dismiss The Narragansett Electric Company D/B/A National Grid’s Request for Approval of a Gas Capacity Contract and Cost Recovery and Close the Docket. NEER joins the motion filed by the Conservation Law Foundation (“CLF”). As explained in CLF’s Motion to Dismiss and in this response, recent developments fundamentally change the facts surrounding the Access Northeast Project (“ANE Project”) and existing facts cannot support the approval National Grid seeks from the Rhode Island Public Utilities Commission (“PUC” or “Commission”).

NEER therefore respectfully requests that the Commission close this Docket and dismiss the requested approval sought by The Narragansett Electric Company D/B/A National Grid (“National Grid”) with prejudice.

**II. BACKGROUND**

NEER concurs with the factual background set forth in CLF’s Motion to Dismiss.

### III. LEGAL STANDARD

Commission Rule 1.15(e) allows for summary disposition if the “Commission determines that there is no genuine issue of fact material to the decision...” This rule is akin to a Motion to Dismiss or Motion for Summary Judgment found in Rules 12(b)(6) and 56 of the Rhode Island Superior Court Rules of Civil Procedure. Rule 12(b)(6) allows for the disposal of a proceeding at an early stage if the complaint fails to set forth provable facts under which relief can be granted. *Leone v. Mortgage Elec. Registration Systems*, 101 A.3d 869 (R.I. 2014) Rule 56 allows for the entry of judgment when no genuine issue of material fact exists to be resolved, and a moving party is entitled to judgment as a matter of law. *Ludwig v. Kowal*, 419 A.2d 297 (R.I.1980). Under either standard, National Grid’s request must be dismissed because the testimony and factual underpinnings of its filing do not support the relief it seeks. Further, no genuine issue of fact or law exists regarding the fatal blow dealt to National Grid’s pending request by the Massachusetts Supreme Judicial Court’s decision in *Engie Gas & LNG LLC vs. Department of Public Utilities*, No.SJC-12501 and *Conservation Law Foundation v. Department of Public Utilities*, No. SJC 12052 (collectively “Engie”).

### IV. ARGUMENT

#### **A. Without Massachusetts Participation, National Grid Will Either Proceed with Fewer Precedent Agreements, Reconfigure the ANE Project, or Terminate the ANE Project, All of Which Would Require a New Application.**

There is no dispute that National Grid’s proposed twenty year Precedent Agreement (“Algonquin Contract”) with Algonquin Gas Transmission Company, LLC

("Algonquin") requires approval of New England states other than Rhode Island.

National Grid emphasized this point multiple times in testimony:

**Q. Will the ANE Project require approval in New England states other than Rhode Island?**

A. Yes. The bulk power market in New England is a regional market, with generating facilities throughout the six New England states operating within the oversight of ISO NE. Within the region, the electric and gas delivery systems are increasingly interrelated with common infrastructure components serving all retail customers in New England so that the electric reliability and cost challenges facing Rhode Island customers are not unique to Rhode Island customers ... At this point, all New England states except Vermont have laws or regulations in place, or proposed for effect, that allow for the development of natural gas infrastructure to serve power generation. Consistent with the established regulatory structures, efforts are underway in each of the six states to consider participation and support for infrastructure contracts that will alleviate reliability and cost concerns for New England's retail electric customers. Consequently, this regional solution will require regulatory approvals by New England state jurisdictions in addition to Rhode Island as well as the participation by other EDCs. (Brennan/Allocca Direct, pp. 33-34)

National Grid also testified that this Commission's approval is effectively contingent on approvals by other states:

**Q. Will the PUC's approval of the ANE Precedent Agreement be contingent on participation by other EDCs and on approvals in other states?**

A. Yes, effectively. The solution proposed by the 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 of lower electricity rates and increased reliability across the New England region. Even with the PUC's approval of the ANE Agreements, Algonquin will not move forward unless and until there is sufficient subscription evidenced through the execution of long-term contracts by EDCs operating throughout New England. (Brennan/Allocca Direct, pp. 33-34)

In addition, National Grid claimed that approval by the other New England States is necessary for National Grid to obtain approval of the ANE Project from the Federal Energy Regulatory Commission ("FERC"):

A specific FERC concern is that the project must be supported by long-term contracts and not involve subsidies from other pipeline customers. Therefore, like other interstate pipeline projects, the ANE Project will require state-approved, long-term contracts as a prerequisite for its FERC approvals. For this reason, New England states other than Rhode Island must also approve the ANE Project. (National Grid Request For Approval Of A Gas Capacity Contract And Cost Recovery, Executive Summary, p. 3)

As a result of *Engie* we now know that Massachusetts does not have laws or regulations in place that allow electric distribution companies (“EDCs”) to enter into ratepayer-funded long-term gas capacity contracts. The fact that Massachusetts EDCs cannot use ratepayer funds to participate in the ANE Project at a minimum impacts Maine’s participation. In deliberations on July 19, 2016, the Maine Public Utilities Commission (“MPUC”) authorized moving forward with negotiating contracts for capacity on the ANE Project on behalf of one or more Maine EDCs, but only if Massachusetts, Connecticut, New Hampshire, and Rhode Island also participated in the project. Although the order resulting from those deliberations has not been issued, the MPUC’s statements have indicated that Maine EDCs will not participate in the ANE Project based on Massachusetts lack of participation.

As National Grid foretold, “If other approvals do not follow in one or more New England states, Algonquin will need to make a determination whether to proceed with fewer precedent agreements; reconfigure their respective project and renegotiate the existing precedent agreements; or terminate the project.” (Brennan/Allocca Direct, pp. 35-36). Thus, based on National Grid’s own admission, the ANE Project as described in National Grid’s June 30, 2016 filing cannot go forward as proposed. Because this fact is undisputed, and for the reasons discussed below, the Commission cannot grant the

relief sought by National Grid, the Commission should summarily dispose and dismiss National Grid's filing and close this Docket.

**1. Reconfiguration of the ANE Project and Renegotiation of Existing Agreements Would Fundamentally Change National Grid's Application.**

Based on National Grid's testimony, one of the options in light of Massachusetts EDCs not participating in the ANE Project is to reconfigure the project and renegotiate existing agreements. A reconfiguration and renegotiation approach would fundamentally change the ANE Project and require National Grid to submit a new application in this proceeding for two reasons. First, National Grid determined the contract quantities in the application "through a computation of New England load share and represent the Narragansett load share within the load served by investor owned EDCs in New England." (Brennan/Allocca Direct, p. 25). Naturally, this computation included EDCs in Massachusetts. Thus, reconfiguring the project to reflect Massachusetts EDCs not participating will require changing contract quantities and the filing of a significantly revised application justifying the need for the reconfigured project and the costs and benefits associated with the new project.

Second, National Grid reconfiguring the project to reflect fewer participants would necessarily result in a smaller project and undermine any claim of reasonableness of National Grid's competitive solicitation process that resulted in the selection of the ANE Project. National Grid testified that it based its decision to issue Request For Proposals ("RFP") for interstate capacity/gas supplies on the Massachusetts Department of Public Utilities' order in D.P.U. 15-37, which *Engie* overturned.

**Q. How did the DPU's decision in D.P.U. 15-37 and the ACES Act affect National**

**Grid's efforts to put forth a contractual commitment to interstate pipeline capacity for the benefit of electric customers?**

A. Based on the DPU's October 2, 2015 findings in D.P.U. 15-37, wherein the DPU concluded that it had authority to review long term contracts for gas capacity executed by the EDCs for the benefit of electric customers, National Grid decided that an RFP process would be useful in confirming the range of alternatives meeting the criteria for relief of electric reliability and retail price volatility concerns. Therefore, National Grid immediately commenced efforts to develop an RFP for resource alternatives to be jointly issued by Eversource and National Grid. (Brennan/Allocca Direct, p. 52)

Thereafter, on October 23, 2015, National Grid issued the RFP to solicit proposals "for pipeline expansion projects, LNG supply alternatives, and regional storage projects to further the goals of reduction of the cost of electricity and increasing the reliability of the New England electric system to benefit electric distribution customers."

(Brennan/Allocca Direct, p. 53). Bidders responding to the RFP "were required to have a regional scale, ranging from a minimum of 500,000 MMBtu/day to a maximum of 2,000,000 MMBtu/day." (Brennan/Allocca Direct, p. 54)

National Grid received nine bids on November 13, 2015 encompassing five interstate pipeline companies and four LNG suppliers. (National Grid Request For Approval of a Gas Capacity Contract And Cost Recovery, Executive Summary, p. 4) National Grid evaluated the bids with the assistance of Black & Veatch and eliminated seven bids for non-conformance, including bids that failed "to meet the minimum size to implement a regional solution." (Brennan/Allocca Direct, p. 57). Black & Veatch found that only two proposals – the ANE Project and the Tennessee Northeast Direct Project – "satisfied the key requirements of the RFP with respect to providing power fuel for electric generating facilities in multiple ISO load zones." (Richard Porter Direct, p. 4).

When Tennessee Gas withdrew its bid, Black & Veatch “only analyzed the Economic Benefits of the ANE project.” (Richard Porter Direct, p. 5).

Because Massachusetts EDCs comprised the majority of the participants in the ANE project and now cannot participate in the project, National Grid and Algonquin will have to “reconfigure” the project as predicted in the Brennan/Allocca testimony. Thus, some of the proposed projects that National Grid eliminated in the solicitation process for failing “to meet the minimum size to implement a regional solution” may now be viable for a reconfigured and downsized project. Since RIGL §39-31-5(4) requires that National Grid “utilize all appropriate competitive processes,” National Grid should develop a new RFP to solicit bids for a reconfigured project.

**2. Proceeding With Fewer Participants Would Fundamentally Change National Grid’s Application.**

If National Grid and Algonquin do not reconfigure the ANE Project but choose to move forward without Massachusetts and Maine EDCs, then the proportionate costs underwritten by Rhode Island electric customers must necessarily increase.

Furthermore, the economic benefits claimed by National Grid are now invalid due to the necessary exclusion of Massachusetts EDCs from the analysis. As National Grid described, Black & Veatch conducted a regional net-benefit analysis that included participation by New England EDCs, including those in Massachusetts:

**Q. Please provide a summary of the results of that net-benefits analysis.**

A. As further described and detailed in the testimony and supporting exhibits of Mr. Wilmes of Black & Veatch, the pipeline capacity constraint-relieving ANE Project would generate significant cost savings to electric customers in New England by reducing the price of natural gas available to the region’s power generators, and thus the wholesale and retail electric energy prices in the New England region. Region wide, the ANE Project is projected under normal weather



conditions to result in wholesale energy market cost savings for New England retail electric customers of approximately \$1.6 billion per year on a levelized basis from 2019 through 2038. Approximately \$141 million of those benefits would be expected to accrue to electric customers in Rhode Island. After accounting for the costs of the ANE project, the corresponding net-benefits to electric customers in 1 New England are projected to be over \$1.1 billion per year, and produce a total net present value of \$10.2 billion. For electric customers in Rhode Island, the levelized net-benefits are projected to be over \$108 million per year, and produce a total net present value of approximately \$1 billion.

Without the participation of EDCs and customers in Massachusetts, the net benefits to Rhode Island customers will change because their proportionate share of an un-reconfigured ANE Project will change.

Furthermore, if the ANE Project proceeds forward with fewer participants, the Commission cannot approve National Grid's "proposed Capacity Cost Recovery Provision tariff (Proposed Tariff) for the Company's electric business which will allow the Company to recover all incremental costs associated with the procurement of gas capacity." (Ann Leary Direct, p.2). According to Ann Leary, "the Proposed Tariff reflects the recovery allowed pursuant to § 39-31-7 which grants the PUC the authority to approve a rate recovery mechanism for costs associated with natural gas pipeline contracts." (Ann Leary Direct, p.4). The schedules attached to Ms. Leary's testimony calculate the Proposed Tariff by incorporating National Grid's share of the total project cost. (AEL-2). With fewer participants in the ANE project, Rhode Island's share of the total costs is no longer accurate.

**B. FERC Recently Rejected a Key Component of National Grid's Proposal.**

In addition to the *Engie* case, another recent development results in a material change to National Grid's proposal. One of the key assumptions included in National

Grid's ANE Project proposal was that Algonquin would obtain priority release of capacity to electric generators on the Algonquin pipeline. (Brennan/Allocca Direct, p. 70). On August 31, 2016, FERC rejected Algonquin's proposal to establish a blanket exemption from bidding for capacity releases by EDCs (or their agents) contacting under state programs to generators.<sup>1</sup> FERC found that "at this time the EDCs can neither recover costs from ratepayers nor release capacity on the [ANE] Project under the capacity release exemption." National Grid claims that the ANE Project provides benefits even if there is not priority release to generators, but "not likely to the same extent as with priority release to generators first." (Brennan/Allocca Direct at 72). FERC's rejection of a critical component of the ANE Project provides another reason that National Grid's application is no longer supported by existing facts.

**C. The Commission Should Entertain a Revised Application Only After National Grid Can Demonstrate that Massachusetts EDCs Will Participate in the ANE Project.**

There is no question that National Grid will not obtain approval for its Massachusetts EDC to participate in the ANE Project at any point in the near future, if ever. Based on the *Engie* decision National Grid has moved to withdraw its petition in Massachusetts.<sup>2</sup> NEER understands that legislative authority would be required to permit National Grid's EDC to participate in the ANE Project. Even assuming legislative authority were forthcoming at some point, between now and that date, National Grid's application would be so out of date as to be irrelevant. The Commission should

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<sup>1</sup> FERC did approve the limited blanket exemption for release from Algonquin to the EDCs' agent.

<sup>2</sup> Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, Docket DPU 16-05, Motion to Withdraw (Aug. 22, 2016).

therefore only entertain a revised application from National Grid if and when the proposed project is legal under Massachusetts law and Massachusetts EDCs will participate in the project.

#### **V. CONCLUSION**

For the reasons set forth herein, National Grid's application cannot be supported by existing facts. This Commission and parties should not be required to expend time and resources evaluating a mooted application based on National Grid's hope to obtain legislative relief in Massachusetts at an undetermined time. NextEra Energy Resources, LLC hereby requests that the Rhode Island Public Utilities Commission grant the relief sought herein and dismiss National Grid's pending Request for Approval of a Gas Capacity Contract and Cost Recovery with prejudice.

NEXTERA ENERGY RESOURCES, LLC  
By its attorney,



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## CERTIFICATION

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

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