STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: THE NARRAGANSETT ELECTRIC	:	
COMPANY D/B/A NATIONAL GRID REQUEST	:	
FOR APPROVAL OF A GAS CAPACITY CONTRACT	:	DOCKET NO. 4627
AND COST RECOVERY PURSUANT TO	:	
R.I. GEN. LAWS § 39-31-1 TO 9	:	

RESPONSE OF THE RHODE ISLAND OFFICE OF ENERGY RESOURCES TO CONSERVATION LAW FOUNDATION'S MOTION TO DISMISS

The Rhode Island Office of Energy Resources ("OER") objects in part and concurs in part with the Motion to Dismiss filed by the Conservation Law Foundation ("CLF") on August 22, 2016 in the above referenced docket (this "Docket"). OER respectfully requests that the Public Utilities Commission ("PUC") grant CLF's Motion to Dismiss provided that the dismissal is made without prejudice and further provided that the PUC rejects CLF's assertion that Rhode Island's Restructuring Act requires dismissal.

I. BACKGROUND

On June 30, 2016, the Narragansett Electric Company d/b/a National Grid ("National Grid") sought approval from the PUC of a proposed 20-year contract with the Algonquin Gas Transmission Company LLC ("Algonquin") for natural gas transportation capacity and storage services on Algonquin's Access Northeast Project ("ANE Project") (the "Proposed Agreement" or "Petition"). National Grid's Petition led to the opening of this Docket. The ANE project has been designed as a regional-based initiative to provide delivery-point flexibility to serve generators in four separate sub-regions of the market including Connecticut, southeastern Massachusetts and Rhode Island, central and eastern Massachusetts, and northern New England. Given the regional breadth of the ANE Project, electric distribution companies, including National Grid, have filed similar requests for approval of a long-term contract with Algonquin in other New England states.

In Massachusetts, affiliates of National Grid filed a petition akin to this Docket with the Massachusetts Department of Public Utilities ("MA DPU"). On August 17, 2016, the Massachusetts Supreme Judicial Court found that the MA DPU "erred in interpreting [Massachusetts] G.L. c. 164, § 94A, as amended by the 1997 restructuring act, as authorizing [the MA DPU] to review and approve ratepayer-backed, long term contracts by electric distribution companies for natural gas capacity." See *ENGIE Gas & LNG LLC v. Dep't of Pub. Utilities*, 475 Mass. 191, 211 (2016) ("*Engie*"). As a result of *Engie*, electric distribution companies in Massachusetts, including National Grid affiliates, filed motions to withdraw their respective petitions seeking approval by the MA DPU of long-term contracts with Algonquin.

On August 22, 2016, CLF filed its *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* ("CLF's Motion to Dismiss") in this Docket. CLF's Motion to Dismiss is based on *Engie*. Specifically, CLF claims that, "*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." See *CLF's Motion to Dismiss*, § III, p4.

II. DISCUSSION

OER objects to CLF's assertion that, based on *Engie's* rationale, the Rhode Island Restructuring Act requires dismissal of this Docket. In its motion, CLF ignores the fact that the Rhode Island General Assembly enacted the Affordable Clean Energy Security Act ("ACES"), R.I. Gen. Laws § 39-31-1, et seq., which expressly enables the electric distribution utility "to enter into long-term contracts for natural-gas pipeline infrastructure and capacity that are commercially

reasonable…at levels beyond those commitments necessary to serve local gas-distribution customers." See R.I. Gen. Laws § 39-31-6(1)(v). Therefore, Rhode Island's statutory authority in this regard is fundamentally different than existing authority in Massachusetts. Still, despite this difference in statutory interpretation, OER concurs that *Engie* has obstructed the proposed pathway toward achieving the regional consensus and contribution that is vital to the project under consideration in this Docket. Accordingly, *Engie* warrants dismissal of this Docket without prejudice.

A. The PUC's authority to approve National Grid's Petition in this Docket stems from ACES and not the Rhode Island Restructuring Act.

CLF asserts that this Docket must be dismissed because "[a]s a matter of law, *Engie* affirms that ratepayer-backed natural gas capacity contracts are antithetical to the principles of electricity restructuring." See *CLF Motion to Dismiss*, § III, p 4. This argument should be rejected for two reasons. First, *Engie* examined Massachusetts law and its holdings are not binding precedent for this Docket. Second, and more importantly, the Rhode Island General Assembly has expressly authorized the PUC to review and approve ratepayer-backed natural gas capacity contracts, and has done so with full knowledge of the Rhode Island Restructuring Act.

In *Engie*, the Massachusetts Supreme Judicial Court construed Commonwealth statutes particularly the Massachusetts restructuring act which is similar to the Rhode Island Restructuring Act. However, the interpretations of statutes in other jurisdictions, even for statutes that may be similar to ones in Rhode Island, are not controlling in Rhode Island. See *Hoffman v. Louis D. Miller & Co.*, 83 R.I. 284, 288 (1955). Even CLF recognizes that *Engie* is not *stare decisis* and is not controlling in Rhode Island. See *CLF Motion to Dismiss*, § III B, p 8. Accordingly, when issuing a decision in this Docket, the PUC is not bound by the findings or holdings of *Engie*.

Recognizing that *Engie* is not technically controlling, CLF suggests that *Engie's* analysis

applies with equal force to National Grid's Petition in this Docket. In support, CLF cites the similarities between the two jurisdictions and provides that, "[t]his 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." See *CLF Motion to Dismiss,* § III B, p 8. However, CLF fails to acknowledge a key difference between Rhode Island and Massachusetts – the enactment of ACES.

The issue in *Engie* was whether the MA DPU possessed the authority to approve ratepayer-backed, long-term contracts entered into by electric distribution companies for additional natural gas capacity. See *ENGIE Gas & LNG LLC v. Dep't of Pub. Utilities*, 475 Mass. 191 (2016). The Massachusetts Supreme Judicial Court's analysis began with an examination as to "whether the Legislature has spoken with certainty on the topic in question". See *ENGIE Gas & LNG LLC v. Dep't of Pub. Utilities*, 475 Mass. 191, 197 (2016) quoting *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 632-633, 830 N.E.2d 207 (2005). The Court determined that the legislature had not spoken with certainty and, as a result, extended its examination in order to determine the legislature's intent. See *ENGIE Gas & LNG LLC v. Dep't of Pub. Utilities*, 475 Mass. 191, 199 (2016). However, the legislature in Rhode Island *has* spoken with clarity on the topic in question, therefore eliminating the need for an extended examination of legislative intent.

Through R.I. Gen. Laws § 39-31-1, et seq., the Rhode Island General Assembly has expressly authorized the PUC to approve ratepayer-backed, long-term contracts entered into by electric distribution companies for additional natural gas capacity. In Rhode Island, "[w]hen the language of a statute is unambiguous and expresses a clear and sensible meaning, there is no room

for statutory construction or extension." See *In re Review of Proposed New Shoreham Project*, 25 A.3d 482, 505 (R.I. 2011). Pertinent to this Docket, the PUC "may approve any proposals made by the electric-and gas-distribution company" including proposals for long term contracts for gas capacity and rate recovery mechanisms. See R.I. Gen. Laws § 39-31-7. Accordingly, in Rhode Island, the legislative intent is clear and there is no room for statutory construction like the consideration of the electricity restructuring principles that took place in *Engie*.

Furthermore, if the PUC were to dismiss this Docket based on *Engie's* analysis regarding the electricity restructuring principles, it would essentially be playing the role of policy maker. The PUC's role in this Docket is to implement legislative policy not to amend it. See R.I. Gen. Laws § 39-31-3. When the General Assembly enacted ACES in 2014, it was well aware of the 1996 Rhode Island Restructuring Act. Nevertheless, when considering the energy system challenges facing Rhode Island and the region, as well as the state's economic and environmental priorities, the General Assembly determined that it was in the best interest of its constituents and Rhode Islander ratepayers to enable the energy infrastructure procurement and contracting authority inherent in ACES. Moreover, a plain reading of ACES and, in particular, R.I. Gen. Laws § 39-31-2, confirms that the General Assembly enabled this activity while considering factors beyond restructuring.

B. At this time, *Engie* has obstructed the pathway toward achieving the regional consensus and contribution fundamental to National Grid's Petition and the purposes of ACES.

A motion to dismiss should be granted based on the fact that *Engie* precludes Massachusetts' electric ratepayers from investing in and sharing the costs of the proposed infrastructure project, and therefore fundamentally alters the filing currently before the PUC in this Docket. However, the PUC should grant the motion to dismiss without prejudice to enable consideration of a revised or new filing by the electric distribution utility, if and when facts warrant

such action.

In order to approve a ratepayer-backed, long-term contract entered into by electric distribution company for additional natural gas capacity, the contract must advance the purposes of ACES. National Grid is "authorized to voluntarily file proposals with the public utilities commission for approval to implement these policies **and achieve the purposes of [ACES]**." Emphasis added. See R.I. Gen. Laws § 39-31-6(a). In order to approve the contract, the PUC must determine that "[t]he **contract is consistent with the purposes of [ACES]**." Emphasis added. See R.I. Gen. Laws § 39-31-6(a)(1)(vii)(D).

One purpose of ACES is to ensure that the benefits and costs of energy infrastructure investments are shared appropriately among the New England states. "The purpose of [ACES] is to… [u]tilize coordinated competitive processes, in collaboration with other New England states and their instrumentalities, to advance strategic investment in energy infrastructure and energy resources, provided that the total energy security, reliability, environmental, and economic benefits to the state of Rhode Island and its ratepayers exceed the costs of such projects, **and ensure that the benefits and costs of such energy infrastructure investments are shared appropriately among the New England States**…" Emphasis added. See R.I. Gen. Laws § 39-31-2(2). 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.

As indicated in CLF's Motion Dismiss, "Massachusetts was to receive the lion's share - more than 43 percent – of the ANE Project's gas capacity." See *CLF Motion to Dismiss*, § III A 1, p 6 citing Exh. NG-TJB/JEA-2 at 47, Mass. D.P.U. 16-05 (Jan. 15, 2016). 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. As CLF provides, "National Grid

is now asking Rhode Island ratepayers to subsidize a project that it alleges will benefit all 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 experiment and uncertain scheme." See *CLF Motion to Dismiss*, § III A 2, p 7. These circumstances do not advance the purposes of ACES, thereby warranting dismissal of National Grid's Petition as currently filed.

C. This Docket should be dismissed without prejudice and National Grid should be permitted to refile its Petition should regional circumstances change.

Should a pathway be cleared for Massachusetts' ratepayers to participate in the costs and benefits of the project or should a new proposal be submitted where it can be demonstrated that ratepayers in Massachusetts, Rhode Island and other participating New England states share an equitable level of risks and benefits of the project, the regionally-based objectives of ACES may be achieved. In those instances, the electric distribution utility should not be precluded from re-filing its petition, supported by updated testimony and analysis.

III. CONCLUSION

For the reasons set forth above, OER requests that this Docket be dismissed without prejudice.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that I filed the original and 10 hard copies of this Response to CLF's Motion to Dismiss with the PUC via mail. In addition, I electronically served a copy of this Response to the service list. I certify that all of the foregoing was done on September 6, 2016.