

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
APPLICATION OF NTE CONNECTICUT, LLC : DOCKET NO. 470
FOR A CERTIFICATE OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED FOR :
THE CONSTRUCTION, MAINTENANCE AND :
OPERATION OF AN ELECTRIC POWER :
GENERATING FACILITY OFF LAKE ROAD, :
KILLINGLY, CONNECTICUT : FEBRUARY 11, 2019

**REPLY TO INTERVENORS' RESPONSE TO NTE CONNECTICUT, LLC'S MOTION
TO REOPEN DOCKET NO. 470**

NTE Connecticut, LLC ("NTE") hereby submits this reply to the Response to Motion of NTE Connecticut, LLC to Reopen and Modify the Decision in Docket No. 470 Due to Changed Conditions jointly filed on February 7, 2019 by Connecticut Fund for the Environment, Not Another Power Plant, Sierra Club and Wyndham Land Trust ("Intervenors' Response"). As set forth in more detail below, NTE has demonstrated changed conditions sufficient to warrant the reopening of this proceeding. The issues raised in the Intervenors' Response are not relevant to the Council's deliberation on the pending motion, and would unnecessarily delay the proceeding to NTE's substantial detriment.

I. Introduction

On January 18, 2019, NTE moved pursuant to Conn. Gen. Stat. § 4-181a(B) to reopen Docket No. 470 and modify the Council's May 11, 2017 decision ("Decision") due to changed conditions surrounding NTE's proposed dual fuel combined cycle electric generating facility in Killingly, Connecticut (the "KEC Facility").¹ NTE's Motion set forth numerous changed conditions that warrant reopening the docket and modifying the Decision, including, most

¹ See Motion of NTE Connecticut, LLC to Reopen and Modify the Decision in Docket No. 470 Due to Changed Conditions dated January 18, 2019 ("NTE's Motion").

importantly, an expectation that NTE would receive a Capacity Supply Obligation (“CSO”) in ISO-New England’s February 4, 2019 Forward Capacity Auction 13 (“FCA 13”). Other changed conditions include resolution of permits and agreements, changes in technology, and revised facility design and layout. On February 4, 2019, as confirmed in the Affidavit of Timothy Eves, and filed with the Council on February 7, 2019, NTE successfully participated in FCA 13 and received a CSO.²

On February 7, 2019, Intervenors filed their Response, asking the Council to defer ruling on NTE’s Motion until certain issues associated with FCA 13 wholly unrelated to NTE are resolved. The Intervenors’ Response alleges issues that are not before this Council and that instead are before the Federal Energy Regulatory Commission (“FERC”). The Council should decline this invitation to delay this proceeding. If the Council has questions about the FERC proceedings, or if any other issues raised by Intervenors are relevant to the Council’s deliberations, they can be appropriately considered and addressed, if necessary, by the Council in the reopened proceeding. As discussed in more detail below, by requesting this delay, the Intervenors in effect seek to cause the KEC Facility irreparable harm, not on the merits of the proposed project, but simply through the passage of time.

II. Changed Conditions Exist for KEC Facility

In its Motion, NTE has set forth the legal precedent and factual basis demonstrating that the Council should reopen Docket No. 470 to review the changed conditions and consider whether a modification of the Decision is warranted.³ The Intervenors suggest delay is

² See ISO-New England press release dated February 6, 2019, attached hereto as Exhibit 1 and Mr. Eves’ Affidavit. Intervenors’ Response also acknowledges this achievement by NTE.

³ See, generally, NTE’s Motion, sections III and IV.

warranted because Vineyard Wind, LLC (“Vineyard Wind”) had, thus far unsuccessfully, asked FERC to require ISO-New England either to immediately stay, or in the alternative, to re-conduct FCA 13. Notwithstanding these requests, FERC did not enjoin ISO-New England from conducting FCA 13 and has not overturned the results of FCA 13.⁴ Regardless of the merits of Vineyard Wind’s attempts (challenges to previous ISO-NE FCA results have not been successful), Intervenors’ Response does not, and cannot, refute the fact that there are changed conditions that support reopening the proceeding, as permitted by Conn. Gen. Stat. § 4-181a(B). Putting aside all of the other changed conditions associated with the KEC Facility identified in NTE’s Motion, the fact of the matter is that NTE secured a CSO in FCA 13, meaning the KEC Facility now has an obligation to supply electricity beginning in June 2022. This change alone justifies reopening the proceeding, especially since the lack of a CSO was the paramount issue that the Council focused on in the Decision. In the unlikely event that the results FCA 13 change in a manner affecting the KEC Facility⁵, NTE (and no doubt the Intervenors) will promptly advise the Council, and the Council can consider the impact, if any, of such changes at that time.⁶

⁴ It should be noted that Vineyard Wind has already secured 20 year contracts to sell 800 MW of wind power to Massachusetts utility companies, pursuant to a competitive procurement conducted by the Commonwealth of Massachusetts and outside of the ISO-NE FCA process.

⁵ Even if the results of FCA 13 are revisited, which seems unlikely given the potential impact to all parties that received a CSO, Intervenors can only speculate as to the impact of NTE. Intervenors have offered no showing that in such highly unlikely circumstances, NTE would lose its CSO.

⁶ FERC reviews the filed results of each ISO-NE FCA to ensure consistency with ISO-NE’s market rules, and evaluates any filed protest to the auction results as part of that review. Neither FERC nor the courts have sustained a protest or challenge to any prior results of the ISO-NE FCA. *See, e.g., ISO New England Inc.*, 133 FERC ¶ 61230 (2010); *ISO New England, Inc.*, 123 FERC ¶ 61290 (2008) (FCA 1); *ISO New England Inc.*, 127 FERC ¶ 61040 (2009) (FCA 2); *ISO New England Inc.; ISO New England Inc.*, 130 FERC ¶ 61145 (2010) (FCA 3); 133 FERC 61230 at P 30 (2010) (approving auction results for FCA 4 pending the submittal of required compliance filing); *ISO New England, Inc.*, 137 FERC ¶ 61056 (2011)(FCA 5); *ISO New England, Inc.*, 140 FERC ¶ 61143 (2012)(FCA 6); *ISO New England Inc.*, 151 FERC ¶ 61226 (2015) (FCA 9); *ISO New England Inc.* 155 FERC ¶ 61273 (2016) (FCA 10). The results of FCA 8 became effective by FERC-issued notice on September 16, 2014, and were the subject of a subsequent and unsuccessful appeal. *Public Citizen v. FERC*, 839 F.3d 1165 (D.C. Cir. 2016).

III. NTE Would Suffer Irreparable Harm if the Proceeding is Delayed

Intervenors are requesting that the Council “defer ruling on NTE’s motion to reopen until FERC grants final approval of the auction results.”⁷ FERC final approval of the auction results occurs after ISO-NE submits the results to FERC for approval, a process that can take weeks or months. A delay in this proceeding while FERC deliberates would cause irreparable harm to NTE. As stated above, the CSO imposes an obligation that the KEC Facility supply electricity to ISO-New England beginning on June 1, 2022. This imposes significant time constraints on NTE, given the number of sequential steps that must be completed to reach the point where the plant is operational. For example, NTE still needs to obtain a Certificate of Environmental Compatibility and Public Need (“Certificate”) from the Council, secure the necessary financing for project, enter into construction contracts, build the plant, and conduct pre-operation testing before the plant can supply electricity to the grid. NTE is already on a tight, compressed schedule, and any delay will have a significant impact on NTE’s ability to meet the conditions of its CSO. In turn, this can result in significant penalties on NTE if the project is delayed beyond June 1, 2022. Delay will also have an adverse impact on the reliability of the grid, as ISO-NE is counting on the KEC Facility’s capacity to be available as of June 1, 2022.

On the other hand, there are no risks to reopening the proceeding and considering whether modifications to the decision are warranted due to the changed conditions. The Council can request the information it needs, to the extent it has not already been provided, and take such action as is supported by the record. Intervenors can review NTE’s filing regarding the changed circumstances, and can conduct cross-examination of NTE’s witnesses with respect thereto. If, in the unlikely event the results of FCA 13 change for the KEC Facility, the Council can react

⁷ Intervenors’ Response, p. 1.


accordingly. As it stated in 2017, NTE remains willing to accept a Certificate with a condition that it has and maintains a CSO.⁸ This consideration should be sufficient to address any concerns regarding the validity of the results of FCA 13, allow the Council to consider the changes, and avoid the unnecessary delay sought by the Intervenors.

IV. Conclusion

NTE has demonstrated that there have been significant changed conditions since the Council's May 11, 2017 decision that warrant the reopening of Docket 470 and reconsideration of the decision. NTE respectfully requests that the Council decline the Intervenors' request for an unreasonable delay, reopen the proceeding, and modify its decision in light of the new information provided by NTE.

Respectfully submitted,

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⁸ See NTE's Post-Trial Brief, p. 14, citing to the Hearing Transcript, pp. 1179-1180.

CERTIFICATION OF SERVICE

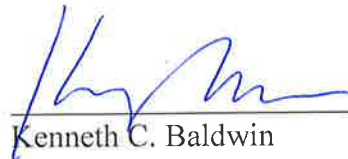
I hereby certify that on this 11th day of February 2019, a copy of the foregoing was sent via electronic mail and first class U.S. Mail, to the following:

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New England's Forward Capacity Auction Closes with Adequate Power System Resources for 2022-2023

Holyoke, MA—February 6, 2019—New England's annual capacity auction for power system resources concluded Monday with sufficient resources to meet peak demand in 2022-2023, and preliminary results indicate the clearing price was the lowest in six years. The auction is run by ISO New England Inc. to procure the resources that will be needed to meet consumer demand for electricity in three years.

The auction was the first run under the Competitive Auctions with Sponsored Policy Resources (CASPR) rules, which include a secondary substitution auction where resources interested in retiring can trade their capacity supply obligation to new state-sponsored resources that didn't clear in the primary auction.

The 13th Forward Capacity Market (FCM) primary auction (FCA #13) closed at a preliminary clearing price of \$3.80 per kilowatt-month (kW-month) across New England, compared to \$4.63/kW-month in last year's auction. The substitution auction closed with Vineyard Wind, an offshore wind project in development off the coast of Massachusetts, assuming an obligation of 54 megawatts from an existing resource that will retire in 2022-2023.

Resources totaling 43,641 megawatts (MW), including 34,925 MW of existing capacity and 238 new resources totaling 8,716 MW, qualified to participate in the FCM, while the regional capacity target for 2022-2023 is 33,750 MW.

The primary auction concluded with commitments from 34,839 MW to be available in 2022-2023, with 1,089 MW of surplus supply over the capacity requirement. The auction rules allow the region to acquire more or less than the capacity target, providing flexibility to acquire additional capacity and enhanced reliability at a cost-effective price. More than 2,600 MW of new resources secured obligations during the primary and substitution auctions, including the Killingly Energy Center, a 650 MW natural gas plant under development in Connecticut, new energy efficiency and demand response resources, and imports.

Approximately 145 MW of resources received obligations under the renewable technology resource (RTR) designation. The RTR designation allows a limited amount of renewable resources to participate in the auction without being subject to the minimum offer-price rule. Resources receiving an obligation under the exemption included solar photovoltaic (PV) systems and solar PV systems paired with batteries.

Under the rules of ISO New England's tariff, only renewable resources built within New England were eligible for the RTR exemption in FCA #13. Offshore wind projects proposed for federal waters will be eligible for the exemption in FCA #14, scheduled for February 2020. More than 300 MW remain in the RTR exemption cap and will be carried over to next year's auction.

Following procedures approved by the Federal Energy Regulatory Commission (FERC), ISO New England retained two units, Mystic 8 and 9, needed for fuel security in the 2022-2023 capacity year.

"This year's auctions procured the resources needed for a reliable power system at a competitive price, while implementing new procedures to accommodate state-sponsored renewable resources," said Robert Ethier, vice president of market operations at ISO New England. "It's our responsibility to run these auctions and our wholesale markets under the rules approved by FERC, and we fulfilled that responsibility again this year."

Preliminary results of FCA #13:

- The primary auction closed for most resources at \$3.80/kW-month after four rounds of competitive bidding. Resources within New England's three capacity zones, as well as imports over three of the external ties closed at that price. Imports over one other interconnection from New Brunswick continued into a fifth round, which closed at \$2.68/kW-month.
- Previous clearing prices (all per kilowatt-month): FCA #7 (2013), \$3.15 floor price, except \$14.99 for new resources in the former Northeast Massachusetts/Boston zone; FCA #8 (2014), \$15 for new and \$7.025 for existing resources; FCA #9 (2015), \$9.55 system-wide except SEMA/RI: \$17.73 new and \$11.08 existing; FCA #10 (2016), \$7.03; FCA #11 (2017), \$5.30; FCA #12 (2018), \$4.63.
- In all, 54 MW of demand bids and supply offers cleared in the substitution auction.
- At the primary auction clearing price of \$3.80/kW-month, the total value of the capacity market in 2022-2023 will be approximately \$1.6 billion (preliminary estimate).
- Capacity clearing the auction totaled 34,839 MW to meet the 33,750 MW net installed capacity target for 2022-2023
 - 29,611 MW of generation, including 783 MW of new in the primary auction and 54 MW of new in the substitution auction
 - 4,040 MW of energy-efficiency and demand-reduction measures, including 654 MW of new – the equivalent of a large power plant – in the primary auction
 - 1,188 MW of total imports in the primary auction from New York, Québec, Canada and New Brunswick, Canada
- In all, 2,009 MW of resources submitted retirement bids, while an additional 40 MW of resources submitted permanent de-list bids to leave the capacity market. Aside from the Mystic units retained for fuel security reasons, all of these bids were accepted before FCA #13.

Forward Capacity Market auction basics

The annual FCM auction is held three years before each capacity commitment period to provide time for new resources to be developed. Capacity resources can include traditional power plants, renewable generation, imports, and demand resources such as load management and energy-efficiency measures. Resources that clear in the auction will receive a monthly capacity payment in that future year in exchange for their commitment to provide power or curtail demand when called upon by the ISO. Resources that fail to meet their capacity commitment during a shortage event must refund part of their capacity payment; this refunded money goes to resources that over-performed during the shortage event. The capacity market is separate from the energy market, where resources with and without a capacity commitment compete on a daily basis to provide power and are paid for the electricity they produce.

Next Steps

Finalized auction results, with resource-specific information, will be filed with the Federal Energy Regulatory Commission by the end of this month.