

One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
kbaldwin@rc.com
Direct (860) 275-8345

Also admitted in Massachusetts
and New York

January 29, 2025

Via Electronic Mail

Melanie A. Bachman, Esq.
Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 527 – Application of Windham Energy Center, LLC For A Certificate Of Environmental Compatibility And Public Need For The Construction, Maintenance And Operation Of A Battery Storage Facility at 189 Lake Road, Killingly, Connecticut

Docket No. 470B –NTE Connecticut, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of an Electric Power Generating Facility at 180 and 189 Lake Road, Killingly, Connecticut – *Motion of Windham Energy Center, LLC to Reopen and Modify the Decision in Docket No. 470B Due to Changed Conditions*

Dear Attorney Bachman:

This letter is in further response to the Siting Council's November 7, 2024 determination that the application filed by Windham Energy Center, LLC ("WEC") in Docket No. 527 was incomplete, and provides an update on WEC's efforts to contact representatives from NTE Connecticut, LLC ("NTE").

On November 7, 2024 the Council determined that the application in the above-referenced docket was incomplete because the WEC project would make use of the same property that NTE intended to use, and for which NTE was granted a Certificate in Docket No. 470B. WEC submits that NTE no longer exists and is unable to make use of its Certificate, and on November 21, 2024 filed with the Council a Motion to Reopen and Modify the Decision in Docket No. 470B due to Changed Conditions (the "Motion"). WEC has made the following attempts to contact representatives of NTE to confirm NTE's present status and make it aware of the matters pending before the Council:

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Melanie Bachman

January 29, 2025

Page 2

- On November 19, 2024 counsel for WEC sent to Ms. Stephanie Clarkson (signatory of NTE's Certificate of Dissolution and last known point of contact for NTE) by Certified Mail, Return Receipt Requested to NTE's last known address, a letter providing notice of WEC's filing of the application in the above-referenced docket, as noted in our November 21, 2024 letter to the Council. On January 10, 2025 this letter was returned marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward". See Attachment A.
- On November 21, 2024 counsel for WEC sent to NTE, by Certified Mail, Return Receipt Requested to NTE's last known address, a copy of the Motion. This mailing was returned marked "Return to Sender, Unable to Forward" on December 20, 2024. See Attachment B.
- On November 25, 2024 counsel for WEC sent to NTE (care of Ms. Stephanie Clarkson at her present business address) by Certified Mail, Return Receipt Requested, a letter providing notice of the Docket No. 527 application (in substance the same letter that had been sent to NTE's address on November 19). The Certified Mail receipt bearing a delivery date of December 5, 2024 was returned to counsel for WEC on December 12, 2024. On December 19, 2024, however, the letter returned to counsel for WEC marked "Return to Sender, Refused, Unable to Forward". See Attachment C. Therefore, it is not clear which, if any, of the mailings sent to NTE was actually received.
- On November 26, 2024, counsel for WEC sent to NTE by Certified Mail, Return Receipt Requested, a copy of the Motion. The United States Postal Service tracking website indicates that this mailing was determined to be unclaimed and was returned to sender on January 24, 2025 (though it has not yet arrived). See Attachment D.
- On January 10, 2025, counsel for WEC sent to NTE, (care of Ms. Stephanie Clarkson at her present business address) by Certified Mail, Return Receipt Requested, a letter detailing attempts to contact NTE in late 2024 and providing as attachments a copy of the November 25, 2024 notice letter and a copy of the Motion. The United States Postal Service tracking website indicates that the mailing was ready for pickup as of January 14, 2025 but that it has not yet been picked up. See Attachment E.

As detailed above, WEC has made five separate attempts to contact NTE and make it aware of the WEC application pending in Docket No. 527 and the Motion pending in Docket No. 470B. NTE has had ample opportunity to respond to WEC's filings and communications in both the above-captioned docket and in Docket No. 470B. NTE's failure to respond to any filing or

Melanie Bachman
January 29, 2025
Page 3

correspondence is further evidence that NTE has ceased to exist and will not make use of the Certificate that was issued to it in Docket No. 470B. Therefore, WEC respectfully requests that the Siting Council recognize that NTE no longer exists; that NTE cannot and will not make use of the Certificate granted in Docket No. 470 B; and that NTE's Certificate should not bar or delay WEC's productive use of the property that would have been used by NTE.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth C. Baldwin", written in a cursive style.

Kenneth C. Baldwin

Attachments

Attachment A

7018 1130 0002 2544 4820

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	\$ 4.85		Postmark Here
Extra Services & Fees (check box, add fee as appropriate)			
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 4.60		
<input type="checkbox"/> Return Receipt (electronic)	\$		
<input type="checkbox"/> Certified Mail Restricted Delivery	\$		
<input type="checkbox"/> Adult Signature Required	\$		
<input type="checkbox"/> Adult Signature Restricted Delivery	\$		
Postage	\$.69		
Total Postage and Fees	\$ 9.64		

Sent To	Stephanie Clarkson, NTE CT LLC
Street and Apt. No., or PO Box No.	24 Cathedral Place
City, State, ZIP+4®	St. Augustine, FL 32084

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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11/19/2024 ZIP 06103
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US POSTAGE

Stephanie Clarkson, Managing Partner
NTE Connecticut, LLC

24 Cathedral
St. August

222 CE 1 7212/291
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

SC: 661033310101 *6244-66551-15

UNABLE TO
FORWARD

One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
kbaldwin@rc.com
Direct (860) 275-8345

Also admitted in Massachusetts
and New York

Via Certified Mail Return Receipt Requested

November 19, 2024

Stephanie Clarkson, Managing Partner
NTE Connecticut, LLC
24 Cathedral Place
St. Augustine, FL 32084

Re: Notice of Filing of an Application for a Certificate of Environmental Compatibility and Public Need by Windham Energy Center, LLC for a Battery Energy Storage Facility at 189 Lake Road, Killingly, Connecticut

Dear Ms. Clarkson:

We are writing to you as the last known contact person for NTE Connecticut, LLC (“NTE”) and signatory to the Certificate of Cancellation of Limited Liability Company for NTE, filed with the State of Delaware’s Secretary of State on December 27, 2023 and a Statement of Withdrawal Registration for NTE, filed with the Connecticut Secretary of State on March 3, 2023. As you know, in 2019 the Connecticut Siting Council issued to NTE a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut (the “Property”).

Windham Energy Center, LLC (“WEC”) has filed an application for a Certificate of Environmental Compatibility and Public Need to construct, maintain and operate a 325MW battery energy storage facility (“WEC Project”) at 189 Lake Road in Killingly, Connecticut. The application and related materials can be accessed through Docket No. 527 maintained on the Connecticut Siting Council website.¹ Since the WEC Project would be constructed on some of the same Property that would have hosted the NTE Project, we are providing notice of this

¹ Available at: https://portal.ct.gov/csc/1_applications-and-other-pending-matters/applications/4_docketnos500s/docket-no-527.

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Stephanie Clarkson
November 19, 2024
Page 2

application so that you, NTE, and/or NTE's successors in interest can advise as to whether the Certificate issued to NTE should be an impediment to the WEC Project.

It is our understanding that NTE is unable to make use of the Certificate, and will not construct the NTE Project, for at least three reasons:

1. *NTE no longer exists.* NTE filed a Statement of Withdrawal Registration of a foreign limited liability company filed with the Secretary of the State of Connecticut on March 3, 2023, by which NTE certified that it was not transacting business in Connecticut and surrenders its registration to do so. Furthermore, NTE filed in the State of Delaware a Certificate of Cancellation of Limited Liability Company documenting that NTE Connecticut, LLC was created as a Delaware limited liability company on December 30, 2015 and was voluntarily cancelled on December 27, 2023.
2. *NTE no longer has control of the Property.* The agreement by which NTE secured access to the Property is no longer in effect, and NTE no longer has any legal right to own or occupy the Property. WEC now holds an option to purchase the Property.
3. *The NTE Projects Capacity Supply Obligation and Interconnection Agreement are no longer valid.* ISO-NE submitted a termination of NTE's Capacity Supply Obligation to the Federal Energy Regulatory Commission in November 2021, which was effective in March 2022. On July 11, 2023, ISO-NE and Eversource jointly submitted a Notice of Termination notifying FERC that the Interconnection Agreement had been terminated due to NTE's breach of certain obligations under the Interconnection Agreement. FERC accepted the notice of termination on August 31, 2023.

As it is not possible for NTE to construct the NTE Project, NTE's Certificate should not be an impediment to WEC's application for the WEC Project.

If you have any questions please contact me.

Sincerely,



Kenneth C. Baldwin

Copy to: Zvi Nixon, E. Landau Law Offices

Attachment B

7017 1450 0001 8948 4803

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Certified Mail Fee	\$ 4.85
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ 4.70
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ 3.15
Total Postage and Fees	\$ 12.10



Sent To	Stephanie Clarkson, Managing Partner
Street and Apt. No., or PO Box No.	NTE Connecticut, LLC
	24 Cathedral Place
City, State, ZIP+4®	St. Augustine, FL 32084

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

CERTIFIED MAIL®



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UT7

Stephanie Clarkson, Managing Partner
NTE Connecticut, LLC
24 Cathedral Place
St. Augustine, FL 32084

One State Street, Hartford, CT 06103

-R-T-S-

320841321-1N

12/20/24

RETURN TO SENDER
UNABLE TO FORWARD
UNABLE TO FORWARD
RETURN TO SENDER



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
	:	
APPLICATION OF NTE CONNECTICUT, LLC	:	DOCKET NO. 470B
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	:	NOVEMBER 21, 2024

**MOTION OF WINDHAM ENERGY CENTER, LLC TO REOPEN AND MODIFY
THE DECISION IN DOCKET NO. 470B DUE TO CHANGED CONDITIONS**

I. Introduction

Pursuant to Conn. Gen. Stat. § 4-181a(b), Windham Energy Center, LLC (“WEC”) hereby moves the Connecticut Siting Council (“Council”) to reopen Docket No. 470B for the limited purpose of evaluating the changed conditions as set forth below and modifying, based on such changed conditions, its June 6, 2019 Decision and Order, (the “Decision”) in Docket No. 470B. The Decision issued to NTE Connecticut, LLC (“NTE”), a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut (“Property”). As discussed in this Motion, NTE is no longer able to make use of the Certificate and construct the NTE Project due to a number of changed conditions. Based on these changed conditions, WEC respectfully requests that the Council reopen the Docket No. 470B evidentiary proceeding for the limited purpose of evaluating NTE’s ability to make use of the Certificate, modify the Decision and revoke the Certificate for the NTE Project.

II. Procedural Background

On August 17, 2016, NTE filed with the Council an application for a Certificate pursuant to Conn. Gen. Stat. Section 16-50g et seq. for the construction, maintenance and operation of the NTE Project. The Council conducted public hearings in 2016 and 2017. In early February 2017, NTE participated in the ISO New England (“ISO-NE”) Forward Capacity Auction No. 11 (“FCA 11”), but NTE elected to withdraw from FCA 11 prior to bidding in the final round of the auction due to a number of cost and schedule uncertainties associated with the NTE Project.

On May 11, 2017, the Council issued its decision in Docket No. 470, denying, without prejudice, the NTE Application. In its denial, the Council found that, following the results of FCA 11, ISO-NE had determined the NTE Project was not needed for resource adequacy, at least through the capacity commitment period of 2020 through 2021. During its deliberations on the Decision, the Council recognized and discussed NTE’s ability to request that the Docket No. 470 proceeding be reopened on a showing of changed conditions if it were successful in a future FCA auction.

Over the course of 2017 and 2018 NTE took a number of steps to resolve its cost and schedule uncertainties. In light of these changed conditions, NTE filed a Motion to Reopen and Modify The Decision In Docket No. 470 Due To Changed Conditions on January 18, 2019, which the Council granted. Following additional hearings in 2019, the Council issued its Decision on June 19, 2019, in which it issued the Certificate to NTE. The Certificate provides that, unless otherwise approved by the Council, it shall be void if all construction is not completed within five years after the effective date of the Decision, or five years after all appeals of the Decision have been resolved. Decision, § 1(p).

The Decision was appealed by Not Another Power Plant, a party in the Council’s Docket Nos. 470 and 470B, which appeal was ultimately resolved by a decision of the Connecticut

Supreme Court on September 28, 2021. *Not Another Power Plant v. Conn. Siting Council*, 265 A.3d 900 (Conn. 2021). Consequently, the Certificate will be void if all construction is not completed by September 28, 2026. Since the time of the Decision, however, conditions have changed making it impossible for NTE to complete construction of the NTE Project by September 2026, or indeed to ever construct the NTE Project.

III. The Council Has the Statutory Authority to Reopen and Modify its Decision

Pursuant to Conn. Gen. Stat. § 4-181a(b), the Council has the authority to reopen Docket No. 470B and modify its Decision due to changed conditions that have occurred since the Decision of June 6, 2019. Specifically, “on a showing of changed conditions the agency may reverse or modify the final Decision at any time at the request of any person or on the agency’s own motion”. Conn. Gen. Stat. § 4-181a(b). The Council has previously exercised its authority under Conn. Gen. Stat. § 4-181a(b) which “permits an agency to consider whether changed conditions exist and then consider whether such changed conditions if any justify reversing or modifying the Council’s original Decision...”. *See Council Docket No. 192 Reopening Pursuant to Conn. Gen. Stat. § 4-181a(b) Proceeding*, Opinion dated January 4, 2007 p. 1. The Council will find changed conditions when there is “new information or facts, identification of any unknown or unforeseen events or evidence... that were not available at the time of the final decision”. *See Docket No. 190B, Meriden Gas Turbine LLC reopening pursuant to Conn. Gen. Stat. § 4-181a(b), Conclusions of Law*.

Consistent with this legal standard, the Council has reopened a number of electric generating facilities dockets and revised final decisions under Conn. Gen. Stat. §4-181a(b) based on new facts or when circumstances not previously contemplated by the Council have arisen. *Docket No. 187, Milford Power, LLC, Reopening Pursuant to for Conn. Gen. Stat. §4-181a(b) Proceeding*, Opinion, April 7, 2009, page 2 (reopening the docket to allow the continued use of

potable water because "at the time of certification, the record did not speak to sources of cooling water for contingency events."); *Docket NT-2010, Reopening of Final Decisions*, Opinion, March 17, 2011 (finding that the adoption of new industry practices regarding gas pipe cleaning constituted changed conditions warranting prohibitions and limitations on fuel pipeline/system cleanings); *Docket No. 187A, Milford Power, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, Dec. 2, 2010 (finding that an increase in natural gas supply, improvements to the electrical transmission grid and construction of other generation facilities were changed conditions supporting removal of dual fuel requirements); *Docket No. 225B, Kleen Energy Systems, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, July 22, 2009 (finding that the State's imposition of an aquifer protection zone was a changed condition justifying relocation of oil pipeline route); *Docket No. 189A, Lake Road Generating Co., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, Jan. 19, 2012, ¶ 20-21 (finding that the increases in the natural gas supply, natural gas pipeline capacity, and the price of fuel oil created changed conditions supporting removal of dual fuel requirements); *Docket No. 265A, Dominion Nuclear Connecticut, Inc., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, May 2, 2013, 1129-33 (finding that the changes in federal policy regarding the management of spent nuclear fuel and changes in the facility's management of spent fuel constituted changed conditions allowing the change to spent fuel storage installation).

As the discussion of changed conditions below underscores, this Motion more than satisfies applicable standards with respect to reopening the docket for the limited purpose of evaluating the changed conditions that make it impossible for NTE to make use of the Certificate. WEC therefore respectfully submits that the Council should modify the Decision and revoke the Certificate.

IV. Changed Conditions for the NTE Project

A. NTE No Longer Exists

The Certificate for the NTE Project was issued to NTE. NTE is no longer registered to do business in Connecticut and no longer exists as a Delaware limited liability company (LLC). Attached as Exhibit A is a Statement of Withdrawal Registration of a foreign limited liability company filed with the Secretary of the State of Connecticut on March 3, 2023, by which NTE certified that it was not transacting business in Connecticut and surrenders its registration to do so. Attached as Exhibit B is a State of Delaware Certificate of Cancellation of Limited Liability Company documenting that NTE Connecticut, LLC was created as a Delaware limited liability company on December 30, 2015 and was voluntarily cancelled on December 27, 2023. NTE is no longer registered to do business in Connecticut, and indeed no longer exists as a legal entity, so it is unable to make use of the Certificate. As NTE no longer exists as a legal entity, it is also not able to formally relinquish its Certificate.¹ There is no evidence in the record indicating that NTE transferred the Certificate to any other entity before it ceased to exist. Since NTE no longer exists, and NTE can no longer make use of the Certificate, the Certificate should be revoked.

B. NTE Has No Legal Interest in The Property On Which It Planned To Construct The NTE Project

The Property is owned by Gerald T. Erwin, Sr. and Annarita D. Erwin (“Owners”) and NTE secured access to the Property by virtue of a March 4, 2016 Option Agreement (the “NTE Option”), a notice of which was recorded on the Killingly land records (Exhibit C). By the terms of the NTE Option as set forth in the Notice provided as Exhibit C, the NTE Option expired no later than March 3, 2022. An entity known as Connecticut Clean Energy Holdings entered into

¹ When a Delaware LLC has been cancelled, its legal existence ends, and it cannot even secure counsel to represent it opposing the appointment of a receiver. *In re Reinz Wisconsin Gasket, LLC*, C.A. No. 2022-0859-MTZ (Del. Ch. 8 May 2023).

an Option Agreement with the Owners on March 6, 2022, which option has now been assigned to WEC. WEC timely exercised its option to purchase the Property. A Notice of Option to Purchase confirming that WEC currently holds the option to purchase the Property was recorded on the Killingly land records on November 19, 2024 and is attached as Exhibit D.

The agreement by which NTE secured access to the Property is no longer in effect, and NTE no longer has access to the Property. WEC now holds an option to purchase the Property. Since the conditions have changed, and WEC, rather than NTE, now holds an option to purchase and develop the Property, NTE can no longer make use of the Certificate to construct the NTE Project on the Property. Therefore, the Certificate should be revoked.

C. The NTE Project's Capacity Supply Obligation ("CSO") and Interconnection Agreement are No Longer Valid

The CSO that NTE secured in FCA 13 in 2019, which covered the 2022-23 capacity commitment period, was revoked in 2022. Termination Order, 178 FERC ¶ 61,001 (2022) (Exhibit E); Order Addressing Arguments Raised on Rehearing, 178 FERC ¶ 61,130 (2022) (Exhibit F). By virtue of its CSO the NTE Project was required to begin commercial operations by June 1, 2022, though a series of delays pushed the projected operation date back to June 1, 2024. 178 FERC ¶ 61,001, pp. 3-4. Under ISO-NE's Transmission, Markets and Services Tariff, ISO-NE may terminate a resource's CSO if the date by which the resource will have achieved its critical path schedule milestones is more than two years after the capacity commitment period for which the resource first received a CSO. *Id.* at 2. ISO-NE submitted a termination of NTE's CSO to the Federal Energy Regulatory Commission ("FERC") in November 2021, which (following a stay and rehearing) was effective in March 2022. *In re NTE Connecticut, LLC*, No. 22-1011 (D.C. Cir., Mar. 2, 2022) (order lifting temporary stay of FERC

termination order) (Exhibit G). Since NTE no longer has a CSO for the NTE Project, it can no longer demonstrate that there is a public need for the NTE Project and the Certificate should be revoked. See *Docket No. 470, NTE Connecticut, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, May 11, 2017 (denying NTE's initial application for a Certificate because a public need for the NTE Project had not been demonstrated).

The NTE Project also lost its ability to supply its power to the ISO-NE electric grid. An interconnection agreement between the Connecticut Light & Power Company, d/b/a/ Eversource ("Eversource") and NTE, dated June 16, 2020 (the "Interconnection Agreement"), had authorized the NTE Project to feed its power into the electric grid, subject to certain terms and conditions. On July 11, 2023, ISO-NE and Eversource jointly submitted a Notice of Termination notifying FERC that the Interconnection Agreement had been terminated due to NTE's breach of certain obligations under the Interconnection Agreement. (Exhibit H). FERC accepted the notice of termination on August 31, 2023. (Exhibit I). Finally, since NTE did not commence construction within two years after the issuance of its wastewater discharge permit (on January 20, 2021)² or within 18 months after the reissuance of its air permit (November 24, 2020),³ the Connecticut Department of Energy and Environmental Protection (CTDEEP) may elect to revoke one or both of these permits.

² C.G.S. § 22a-430-4(k)(5) ("If any person has not completed construction of the [approved facility] within two years of the approval, the commissioner may revoke such approval and require that a new application be submitted.").

³ C.G.S. § 22a-174-3a(f)(2)(A) ("The commissioner shall review and may modify, revise or revoke any permit if the owner or operator...[h]as not commenced construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later."). The original air permit was issued in December 2018 and was recertified by CTDEEP (restarting the 18-month timeline) on November 24, 2020.

NTE no longer has a CSO, there is therefore, no public need for the NTE Project. Even if there was an active CSO for the NTE Project, it would be unable to feed its power to the grid because its interconnection agreement has been revoked. Finally, due to the time that has elapsed without any construction progress, the NTE Project could lose the environmental permits it secured from CTDEEP. Due to all of these changed conditions, the Certificate should be revoked.

V. Conclusion

For all of the reasons discussed above and in the attached, WEC respectfully requests that the Council grant its Motion to Reopen this proceeding for the limited purpose of evaluating NTE's ability to make use of the Certificate and modify the Docket No. 470B Decision to revoke the Certificate.

Respectfully submitted,
WINDHAM ENERGY CENTER, LLC

By: 

Kenneth C. Baldwin
ROBINSON & COLE LLP
One State Street
Hartford, CT 06103

Its Attorneys

CERTIFICATION OF SERVICE

I hereby certify that on this 21st day of November 2024, a copy of the foregoing was sent
Certified Mail Return Receipt Requested and/or by electronic mail to the following:

Stephanie Clarkson, Managing Partner
NTE Connecticut, LLC
24 Cathedral Place
St. Augustine, FL 32084

Mary Mintel Miller, Esq.
Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
mmiller@rrlawpc.com

Mary Calorio, Town Manager
Town of Killingly
172 Main Street
Killingly, CT 06239
mcalorio@killinglyct.org

Joshua Berman, Staff Attorney
Sierra Club
50 F Street NW., 8th Floor
Washington, DC 20001
josh.berman@sierraclub.org

John Looney, Esq.
Roger Reynolds, Esq.
Connecticut Fund for the Environment
900 Chapel Street
Upper Mezzanine
New Haven, CT 06510
jlooney@ctenvironment.org
rreynolds@ctenvironment.org



Kenneth C. Baldwin

EXHIBIT A



Secretary of the State of Connecticut Statement of Withdrawal Registration

Foreign Limited Liability Company

Filing Details

Filing Number: 0011721996
Filed On: 3/3/2023 8:41:08 AM

Number of Pages: 2
Effective Date & Time: 03/03/2023 8:45 AM

Primary Details

Name of the Limited Liability Company in its State or Country of Formation:
NTE CONNECTICUT, LLC

Business ALEI US-CT.BER:1203712
State/Country of Formation DEUnited States

Surrender of Certificate and Appointment of Agent

The undersigned asserts that the above-named limited liability company is not transacting business in Connecticut and surrenders its certificate of registration to do so. It further revokes the authority of its registered agent and consents that process in any action, suit or proceeding based upon any cause of action arising in Connecticut during the time the limited liability company was authorized to transact business in this state may be served upon the Secretary of the State.

Service of Process Address

Address to mail process served upon the Secretary of the State pursuant to the appointment made above:
378599 King Street, St. Augustine, FL, 32085, United States

Acknowledgement

I hereby certify and state under penalties of false statement that all the information set forth on this document is true.

I hereby electronically sign this document on behalf of:

Name of Authorizer: Stephanie Clarkson
Authorizer Title: Managing Partner

Filer Name: Shani Lee
Filer Signature: Shani Lee
Execution Date: March 3, 2023

Filing Number: 0011721996

Filed On: 3/3/2023 8:41 AM



Secretary of the State of Connecticut Statement of Withdrawal Registration

Foreign Limited Liability Company

This signature has been executed electronically

EXHIBIT B

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:53 PM 12/27/2023
FILED 01:53 PM 12/27/2023
SR 20234342196 - File Number 5922779

STATE OF DELAWARE
CERTIFICATE OF CANCELLATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to cancel the limited liability company pursuant to Section 18-203 of the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is _____
NTE Connecticut, LLC

2. The Certificate of Formation of the limited liability company was filed on
12/30/2015

By: Stephanie Clarkson
Authorized Person


Name: 
Print or Type

EXHIBIT C

Receipt # 58117 Inset # 2016-00574



VOL 1300 PG 7
03/15/2016 12:15:14 PM
8 Pages
NOTICE IN GENERAL
TOWN OF KILLINGLY
Elizabeth M. Wilson, Town Clerk

Record and return to:

Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Mimi M. Lines, Esq.

NOTICE OF OPTION TO PURCHASE

This Notice of Option to Purchase made as of this 4th day of March, 2016, between Geoffrey A. Sorrow, of 189 Lake Road, Killingly, Connecticut 06241, Gerald T. Erwin, Sr. and Annarita D. Erwin, both of 324 Beechwood Road, West Hartford, Connecticut 06107 (collectively, the "Seller") and NTE Connecticut, LLC, a Delaware limited liability company with an address of 24 Cathedral Place, Suite 300, St. Augustine, Florida 32084 (the "Buyer").

1. Buyer and Seller entered into an Option Agreement (the "Option") on March 4, 2016 pursuant to which the Seller has agreed to grant the Buyer an option to purchase Seller's property known as 180 and 189 Lake Road, Killingly, Connecticut more particularly described Exhibit A attached hereto and made a part hereof (the "Property").
2. The term of the Option is one year, commencing on March 4, 2016 and ending on March 3, 2017.
3. The Buyer has the right to extend the term of the Option for up to five (5) an additional terms of one (1) year each, beginning on March 4, 2017 and ending on March 3, 2022.
4. If the Buyer exercises the Option, the Seller will sell the Property to the Buyer in accordance with the terms set forth in the Option.
5. A copy of the Option is on file in the office of the Buyer.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Seller and Buyer have caused this Notice of Option to be duly executed as of March 4, 2016.

This Notice of Option may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE NEXT PAGE IS THE SIGNATURE PAGE

SELLER:

Jamie L Kimck
Witness Jamie L Kimck

Carla J Demers
Witness Carla J Demers

Witness

Witness

Witness

Witness

Geoffrey A. Sorrow
Geoffrey A. Sorrow

Gerald T. Erwin, Sr.

Annarita D. Erwin

BUYER:

NTE Connecticut, LLC
A Delaware limited liability company

Witness

Witness

By: _____
Name: Seth Shortlidge
Title: Authorized Representative

SELLER:

Witness

Geoffrey A. Sorrow

Witness

Toby Block
Witness Toby Block

[Signature]
Witness [Signature]

As to
GTE +
ADE

Gerald T. Erwin, Sr.
Gerald T. Erwin, Sr.

Annarita D. Erwin
Annarita D. Erwin

Witness

Witness

BUYER:

NTE Connecticut, LLC
A Delaware limited liability company

Witness

By: _____
Name: Seth Shortlidge
Title: Authorized Representative

Witness

SELLER:

Witness

Geoffrey A. Sorrow

Witness

Witness

Gerald T. Erwin, Sr.

Witness

Witness

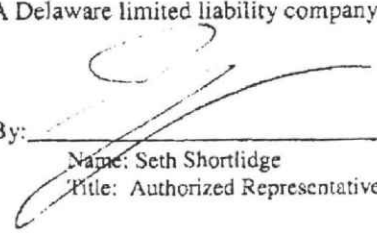
Annarita D. Erwin

Witness

BUYER:

NTE Connecticut, LLC
A Delaware limited liability company

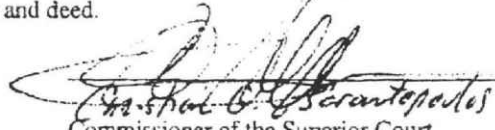

Witness Mark Mirabito

By: 
Name: Seth Shortlidge
Title: Authorized Representative


Witness David Groleau

State of Connecticut)
County of Windsor) SS: DANIELSON

The foregoing instrument was acknowledged before me this 4th day of MARCH, 2016 by Geoffrey A. Sorrow as his free act and deed and the free act and deed.


Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
County of) SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Gerald T. Erwin, Sr. as his free act and deed and the free act and deed.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
County of) SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Annarita D. Erwin, as her free act and deed and the free act and deed.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

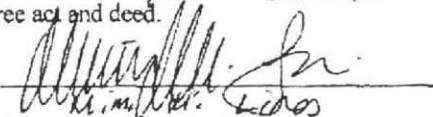
State of Connecticut)
)
County of) SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by
Geoffrey A. Sorrow as his free act and deed and the free act and deed.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
)
County of *Hartford*) SS: *W. Hartford*

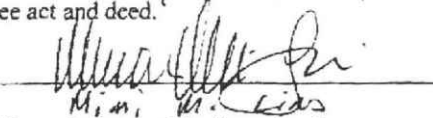
The foregoing instrument was acknowledged before me this 4th day of March, 2016 by
Gerald T. Erwin, Sr. as his free act and deed and the free act and deed.



Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
)
County of *Hartford*) SS: *W. Hartford*

The foregoing instrument was acknowledged before me this 4th day of March, 2016 by
Annarita D. Erwin, as her free act and deed and the free act and deed.



Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Florida)
) SS: St. Augustine
County of St. John)

The foregoing instrument was acknowledged before me this 4 day of March, 2016 by Seth Shortlidge, authorized representative of NTE Connecticut LLC, a Delaware limited liability company on behalf of the limited liability company. He is personally known to me or has produced _____ as identification.



Hannah Jacob
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

180 & 189 Lake Road
Killingly, Connecticut

A certain tract of land with all buildings thereon, situated in the Town of Killingly, County of Windham and State of Connecticut, and more particularly bounded and described as follows:

Bounded on the east by land of Sylvanus Wright, land of Edward Williams and land of one Phillips, and land of Evan Richmond and land of heirs of Simon Cotton; on the west by the Quinebaug River; on the South by land of Arnold Joslyn and on the north by land of Jedediah Sabin, and being the land described in a deed from James E. Chase and Elia F. Chase to Cromwell D. Chase which deed is dated October 26, 1900 and recorded in Killingly Land Records, in Book 61, Page 91, and conveyed by said Cromwell D. Chase to Thomas Dunn by deed dated December 28, 1900, and recorded in said Records, Book 60 at Page 259, to which deeds and all deed therein referred to reference is herein had and made and may be had for further description of said property.

Excepting from the above described property, all that strip of land sold by Thomas Dunn on Quinebaug River, to Frank R. Kingman by deed dated February 24, 1908, and recorded in Killingly Land Records, Book 64 at Page 546.

Also the right conveyed to The Shore Line Electric Railway Company to erect their wires and cables, towers and poles as set forth in an instrument dated June 26, 1918 and recorded in said Killingly Land Records, Book 71 at Page 548.


Also excepting from the above described property that tract of land sold by Eliza M. Dunn to J. Carlton Witter by Warranty Deed dated June 23, 1933, and recorded in Killingly Land Records, Vol. 86, Page 136.

Also excepting from the above described property a parcel of land conveyed by James J. Byrnes to Connecticut Light and Power Company by Warranty Deed dated June 11, 1969 recorded in Killingly Land Records, Volume 179, at Page 55. Reference is also made to a correcting Warranty Deed from James J. Byrnes to Connecticut Light and Power Company dated January 15, 1970, and recorded in Killingly Land Records, Volume 181 at Page 455.

Excepting from the above described property a parcel of land, consisting of approximately 2.064 acres of land, which was conveyed by Geoffrey A. Sorrow to John R. Dunn, Jr., by deed dated December 29, 1989.

Excepting therefrom the above described real property a parcel sold to Preston Bristow and Lillian Bristow by deed dated November 23, 1956 and recorded in Killingly Land Records, Volume 126, Page 299.

EXHIBIT D

Receipt # 111772 Instr # 2024-02433	VOL 1428 PG 62
	11/19/2024 05:09:52 PM
	6 Pages
	NOTICE OF OPTION
	TOWN OF KILLINGLY
	Elizabeth M. Wilson, Town Clerk

Record and return to:

Robinson & Cole LLP
1055 Washington Street
Stamford, Connecticut 06901
Attn: Anthony J. Vogel, Esq.

NOTICE OF OPTION TO PURCHASE

This Notice of Option to Purchase made as of this 19th day of November, 2024, between **Gerald T. Erwin, Sr.** and **Annarita D. Erwin**, both of 324 Beechwood Road, West Hartford, Connecticut 06107 (collectively, the "**Seller**") and **WINDHAM ENERGY CENTER LLC**, a Delaware limited liability company with an address of c/o Robinson & Cole LLP, 1055 Washington Street, Stamford, Connecticut 06901, Attention: Anthony J. Vogel, Esq. (the "**Buyer**").

1. Buyer's predecessor-in-interest and Seller's predecessor-in-interest entered into that certain Option Agreement, dated as of March 6, 2022 (the "**Original Option**"), which Original Option was amended by that certain First Amendment to Option Agreement, dated as of March 4, 2024 (the "**First Amendment**"), by that certain Second Amendment to Option Agreement, dated as of September 26, 2024 (the "**Second Amendment**"; the Original Option, as amended by the First Amendment and the Second Amendment, the "**Option**"), between Buyer and Seller, pursuant to which the Seller has agreed to grant the Buyer an option to purchase Seller's property known as 180 and 189 Lake Road, Killingly, Connecticut more particularly described **Exhibit A** attached hereto and made a part hereof (the "**Property**").

2. The term of the Option was to expire on June 6, 2024.

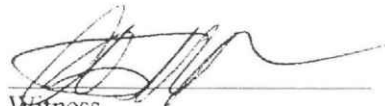
3. Buyer timely exercised the Option, and the Seller will sell the Property to the Buyer in accordance with the terms set forth in the Option.

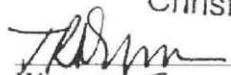
4. A copy of the Option is on file in the office of the Buyer.

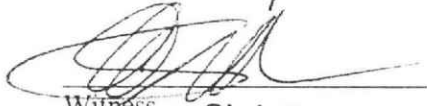
IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Seller and Buyer have caused this Notice of Option to be duly executed as of the above date.

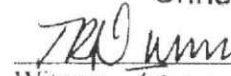
This Notice of Option may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE NEXT PAGE IS THE SIGNATURE PAGE


Witness Christian G. Sarantopoulos


Witness Tracy R. Dunn

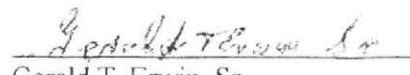

Witness Christian G. Sarantopoulos

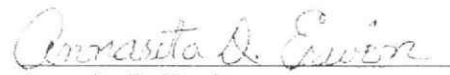

Witness Tracy R. Dunn

Witness _____

Witness _____

SELLER:


Gerald T. Erwin, Sr.


Annarita D. Erwin

BUYER:

WINDHAM ENERGY CENTER LLC,
a Delaware limited liability company

By: _____
Name:
Title:

SELLER:

Witness

Gerald T. Erwin, Sr.

Witness

Witness

Annarita D. Erwin


Witness

BUYER:

WINDHAM ENERGY CENTER LLC.
a Delaware limited liability company



Witness


By: _____
Randal B. Peterson
Authorized Signatory

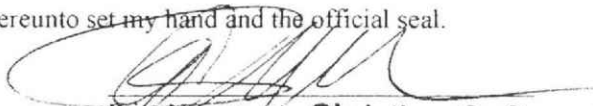


Witness

STATE OF CT)
COUNTY OF HARTFORD) ss: WEST HARTFORD

On the 8th day of October, in the year 2024, before me, the undersigned, personally appeared **Gerald T. Erwin, Sr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal.

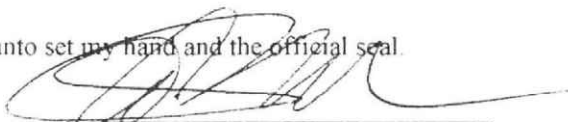


Print Name: Christian G. Sarantopoulos
Commissioner of the Superior Court/Notary Public
My commission expires: _____

STATE OF CT)
COUNTY OF HARTFORD) ss: WEST HARTFORD

On the 8th day of October, in the year 2024, before me, the undersigned, personally appeared **Annarita D. Erwin**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual named in and who executed the foregoing instrument and acknowledged that he executed the same as her voluntary act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal.



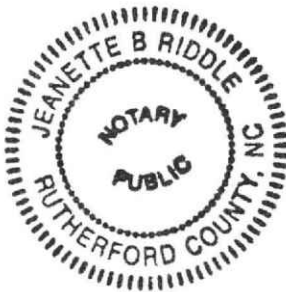
Print Name: Christian G. Sarantopoulos
Commissioner of the Superior Court/Notary Public
My commission expires: _____

STATE OF North Carolina

SS:
COUNTY OF Rutherford

On the 12th day of November in the year 2024, before me, the undersigned, personally appeared RANDALL A. PEARMAN, President/CEO of **WINDHAM ENERGY CENTER LLC**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual named in and who executed the foregoing instrument and acknowledged that he executed the same as his/her voluntary act and deed and the voluntary act and deed of said limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal



Jeanette B. Riddle
Print Name: Jeanette B. Riddle
Commissioner of the Superior Court/Notary Public
My commission expires: 6-2-2029

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

180 & 189 Lake Road
Killingly, Connecticut

A certain tract of land with all buildings thereon, situated in the Town of Killingly, County of Windham and State of Connecticut, and more particularly bounded and described as follows:

Bounded on the east by land of Sylvanus Wright, land of Edward Williams and land of one Phillips, and land of Evan Richmond and land of heirs of Simon Cotton; on the west by the Quinebaug River; on the South by land of Arnold Joslyn and on the north by land of Jedediah Sabin, and being the land described in a deed from James E. Chase and Ella F. Chase to Cromwell D. Chase which deed is dated October 26, 1900 and recorded in Killingly Land Records, in Book 61, Page 91, and conveyed by said Cromwell D. Chase to Thomas Dunn by deed dated December 28, 1900, and recorded in said Records, Book 60 at Page 259, to which deeds and all deed therein referred to reference is herein had and made and may be had for further description of said property.

Excepting from the above described property, all that strip of land sold by Thomas Dunn on Quinebaug River, to Frank R. Kingman by deed dated February 24, 1908, and recorded in Killingly Land Records, Book 64 at Page 546.

Also the right conveyed to The Shore Line Electric Railway Company to erect their wires and cables, towers and poles as set forth in an instrument dated June 26, 1918 and recorded in said Killingly Land Records, Book 71 at Page 548.

Also excepting from the above described property that tract of land sold by Eliza M. Dunn to J. Carlton Witter by Warranty Deed dated June 23, 1933, and recorded in Killingly Land Records, Vol. 86, Page 136.

Also excepting from the above described property a parcel of land conveyed by James J. Byrnes to Connecticut Light and Power Company by Warranty Deed dated June 11, 1969 recorded in Killingly Land Records, Volume 179, at Page 55. Reference is also made to a correcting Warranty Deed from James J. Byrnes to Connecticut Light and Power Company dated January 15, 1970, and recorded in Killingly Land Records, Volume 181 at Page 455.

Excepting from the above described property a parcel of land, consisting of approximately 2.064 acres of land, which was conveyed by Geoffrey A. Sorrow to John R. Dunn, Jr., by deed dated December 29, 1989.

Excepting therefrom the above described real property a parcel sold to Preston Bristow and Lillian Bristow by deed dated November 23, 1956 and recorded in Killingly Land Records, Volume 126, Page 299.

EXHIBIT E

178 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

ISO New England Inc.

Docket No. ER22-355-000

ORDER ACCEPTING RESOURCE TERMINATION FILING

(Issued January 3, 2022)

1. On November 4, 2021, pursuant to section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) submitted privileged and public (i.e., redacted) versions of a filing requesting to terminate the Capacity Supply Obligation (CSO) for Resource No. 38663/Project 12280, also known as Killingly Energy Center (Killingly). The Project Sponsor² is NTE Connecticut, LLC (NTE). As discussed further below, we accept ISO-NE's termination filing.

I. Background

2. Through its Forward Capacity Auction (FCA), ISO-NE procures the capacity resources that it needs to ensure resource adequacy within its footprint. ISO-NE holds FCAs annually, three years in advance of the relevant delivery year (Capacity Commitment Period). Resources compete in the auctions to obtain a commitment to supply capacity, the CSO, in exchange for a market-priced capacity payment.

3. A resource that is planned or under construction may qualify to offer capacity into an FCA if the Project Sponsor provides the requisite information to allow ISO-NE to evaluate the feasibility of the resource achieving commercial operation by the start of the

¹ 16 U.S.C. § 824d.

² Capitalized terms not defined herein are used consistent with the definitions in the Transmission, Markets and Services Tariff (Tariff or ISO-NE Tariff). *See* ISO-NE, Transmission, Markets and Services Tariff, § I.2 (Rules of Construction; Definitions) (139.0.0) (ISO-NE Tariff); *see also id.* (defining "Project Sponsor" as "an entity seeking to have a New Generating Capacity Resource, New Import Capacity Resource or New Demand Capacity Resource participate in the Forward Capacity Market").

associated Capacity Commitment Period. Among other things, the Project Sponsor must provide a critical path schedule that includes the dates by which a number of project development milestones are expected to occur.³

4. Under Tariff section III.13.3.4, if any development milestone date is revised such that the resource will not achieve commercial operation by the start of the Capacity Commitment Period for which it holds a CSO, the Project Sponsor must cover its entire CSO for the portion of the Capacity Commitment Period for which the resource will not be operational. A Project Sponsor may cover the CSO either by purchasing replacement capacity through a reconfiguration auction or by entering into one or more CSO bilateral transactions.⁴

5. Under Tariff section III.13.3.4A, ISO-NE may seek to terminate a resource's CSO if one or more of several conditions are satisfied. Relevant to the matter before the Commission in this proceeding, section III.13.3.4A states that ISO-NE is allowed to terminate a resource's CSO for any future Capacity Commitment Periods, as well as the resource's right to any payments associated with that CSO in the Capacity Commitment Period if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a CSO.⁵ The Tariff further states that, upon Commission ruling, the Project Sponsor forfeits any financial assurance provided to ISO-NE with respect to that CSO.

6. In a January 2021 order on ISO-NE's filing regarding the qualification of capacity resources to participate in FCA 15, the Commission determined that the record in that proceeding showed that, to date, Killingly had complied with the critical path schedule provisions. The Commission further held that if a triggering event were to occur in the future, ISO-NE would have the right, after consultation with the Project Sponsor, to submit a filing with the Commission to terminate Killingly's CSO.⁶

³ See ISO-NE Tariff, § III.13.1 (Forward Capacity Auction Qualification) (67.0.0), § III.13.1.1.2.2.2. The specified milestones involve major permits, project financing closing, major equipment orders, substantial site construction, major equipment delivery, major equipment testing, commissioning, and commercial operation.

⁴ See ISO-NE Tariff, § III.13.3 (Critical Path Schedule Monitoring) (17.0.0).

⁵ See ISO-NE, Tariff, § III.13.3.4A

⁶ *ISO New England Inc.*, 174 FERC ¶ 61,046, at PP 39-40 (2021).

II. Filing

7. ISO-NE cites Tariff section III.13.3.4A, which provides for termination when, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path milestones, including commercial operation, is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a CSO. ISO-NE states that this trigger for termination of Killingly's CSO has been met; therefore, through this filing and following consultation with NTE, ISO-NE is exercising its right to seek termination of Killingly's CSO for any future Capacity Commitment Periods.⁷ ISO-NE states that Killingly, a proposed combined cycle generator, acquired a 631.955 MW CSO in FCA 13,⁸ which is associated with the 2022-2023 Capacity Commitment Period and that, accordingly, Killingly would be required to achieve commercial operation on June 1, 2022. In support of the termination of Killingly's CSO, ISO-NE submitted confidential, non-public market participant information. This information contains updates provided by NTE to ISO-NE regarding Killingly's status and critical path schedule and an analysis regarding Killingly's ability to achieve its critical path schedule milestones.

8. ISO-NE states that the termination removes the resource's right to any payments associated with that CSO and the resource's qualified capacity for participation in the Forward Capacity Market.⁹ ISO-NE states that, if the Commission accepts the termination filing, then it will terminate Killingly's CSO, draw down the financial assurance that NTE provided for Killingly's CSO, and remove Killingly's qualified capacity.¹⁰ ISO-NE contends that these actions will make Killingly ineligible to participate in FCA 16, which will commence on February 7, 2022.

9. ISO-NE requests that the Commission accept its termination filing with an effective date of January 3, 2022. In addition, ISO-NE states that Commission action on this termination filing is important because ISO-NE and Market Participants need certainty on the status of Killingly prior to FCA 16, which is scheduled to commence on February 7, 2022.¹¹

⁷ Transmittal at 1-2.

⁸ *Id.* at 3. ISO-NE states that Killingly also acquired a CSO in FCA 14 and FCA 15. *Id.*

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 8.

III. Notice of Filing and Responsive Pleadings

10. Notice of ISO-NE's filing was published in the *Federal Register*, 86 Fed. Reg. 66,293 (Nov. 22, 2021), with interventions and protests due on or before November 26, 2021. Calpine Corporation; Connecticut Department of Energy and Environmental Protection; Connecticut Light and Power Company; Electric Power Supply Association; Emera Energy Services, Inc.; Gemma Power Systems, LLC (Gemma); National Grid; New England Power Generators Association, Inc.; New England States Committee on Electricity; Sierra Club; Public Citizen, Inc.; William Tong, Attorney General of the State of Connecticut; and Yankee Gas Services Company filed timely motions to intervene. North Atlantic States Regional Council of Carpenters and Mitsubishi Power Americas, Inc. (Mitsubishi) filed out-of-time motions to intervene.

11. On November 26, 2021, NTE filed a timely motion to intervene and request for extension of time to comment from November 26, 2021 to December 3, 2021, which was granted. NTE filed a protest on December 3, 2021. ISO-NE filed a motion for leave to file an answer and answer on December 20, 2021. NTE filed a motion for leave to answer and answer on December 28, 2021.

A. NTE's Protest

12. NTE submitted privileged and public (i.e., redacted) versions of a protest to ISO-NE's filing. NTE states that this proceeding is about whether ISO-NE has deprived NTE of its reasonable expectations under the Tariff by prematurely seeking to terminate Killingly's CSO. NTE does not dispute that, for ISO-NE to seek termination, one of the termination conditions in the Tariff must be met.¹² However, NTE asserts that ISO-NE's filing for termination is unripe, that there is no concrete evidence that one of the triggers in the Tariff has been satisfied, and that the Commission must not allow ISO-NE to terminate Killingly's CSO without such concrete evidence.¹³ NTE argues that ISO-NE's termination filing is premature and based on faulty assumptions and that ISO-NE has unjustly, unreasonably, and unlawfully sought to deprive NTE of its CSO for Killingly.¹⁴ NTE maintains that it will meet all of its critical path milestones by June 1, 2024.

13. NTE states that it experienced three significant delays in developing the Killingly project that were beyond its control—a challenge by incumbent generators in 2019 to ISO-NE's FCA 13 results, including Killingly's offer; an administrative challenge by environmental groups to the Connecticut Siting Council's decision to approve Killingly

¹² NTE Protest at 8 (citing ISO-NE Tariff, § III.13.3.4A).

¹³ NTE Protest at 12-13.

¹⁴ *Id.* at 2.

that resulted in a complaint in the Connecticut Superior Court that was not resolved until September 28, 2021; and the COVID-19 pandemic, which affected NTE's schedule due to the inability to access the site during legally imposed stay-at-home orders, key NTE employees becoming ill, disruption of supply chains, and access to construction labor, amongst others.¹⁵

14. NTE states that, as required under the terms of ISO-NE's Tariff and its Large Generator Interconnection Agreement, NTE provided ISO-NE with a critical path schedule and regular updates, and cooperated closely with ISO-NE throughout the process, including by agreeing to update ISO-NE monthly rather than quarterly.¹⁶ NTE states that, on September 17, 2021, ISO-NE requested that NTE respond to a number of questions regarding Killingly's status, which NTE answered two weeks later.¹⁷ NTE also notes that, on October 12, 2021, NTE requested a discussion with ISO-NE to ensure that ISO-NE understood NTE's submittals or to identify whether ISO-NE required additional information, but ISO-NE did not respond to NTE's request.¹⁸ NTE states that, on November 4, 2021, ISO-NE informed NTE of its intent to terminate Killingly's CSO. NTE states that Killingly will offer both immediate and long-term benefits to the New England region.¹⁹

B. ISO-NE Answer

15. In its answer, ISO-NE disputes NTE's claim that ISO-NE is prematurely seeking to terminate the CSO and that termination would deprive NTE of its reasonable expectations under the Tariff. ISO-NE contends that the only question before the Commission is whether Killingly will be able to achieve commercial operation prior to June 1, 2024, and arguments in NTE's protest unrelated to that inquiry are outside the scope of this proceeding.²⁰ ISO-NE explains that NTE has made no progress on the project and has revised the milestones to later dates; as such ISO-NE lost confidence that the project could be built in time to meet the June 1, 2024 deadline. ISO-NE states that

¹⁵ *Id.* at 4-6.

¹⁶ *Id.* at 7 (citing Termination at 4).

¹⁷ NTE Protest at attach. B, Declaration of Timothy Eves, ¶ 16.

¹⁸ *Id.*

¹⁹ *Id.* at 3 (citing attach. B, Declaration of Timothy Eves, ¶ 5).

²⁰ *Id.* at 3.

the trigger in the Tariff for termination has been met and, accordingly, it is now filing with the Commission to seek termination of Killingly's CSO.²¹

16. ISO-NE avers that NTE's statement that it "cooperated closely with ISO-NE throughout the process, including by agreeing to update ISO-NE monthly rather than quarterly"²² intimates that it provided monthly reports because it was going above and beyond the Tariff requirements of its own volition, which is not the case. ISO-NE explains that monthly reports are a requirement that ISO-NE imposed for Killingly pursuant to the Tariff, as it does for all resources that miss critical path schedule milestone dates.²³ Additionally, ISO-NE notes that a resource's failure to provide monthly reports in a timely manner would also trigger ISO-NE's right to seek termination of a CSO pursuant to section III.13.3.4A of the Tariff.²⁴

17. ISO-NE argues that its treatment of Killingly is the same as its treatment of all other resources and disputes NTE's claim that ISO-NE chose not to wait to terminate the Killingly CSO because it would enable ISO-NE to reflect the termination in the inputs for FCA 16.²⁵ ISO-NE contends that by referencing the preparation for FCA 16, it is appropriately taking into account the timing of upcoming activities on the Forward Capacity Market calendar, and its interest in including the correct resources in the auction input file is consistent across the board and does not single out Killingly.²⁶

18. ISO-NE argues that NTE mischaracterizes ISO-NE's consultation process as cursory and rushed. ISO-NE states that consultation lasted for nearly two months and was sufficient to meet the consultation requirement in the Tariff. ISO-NE also refutes NTE's statement that it was unresponsive to NTE's October 12, 2021 request for consultation and states that ISO-NE responded on October 21, 2021 with a follow up question.²⁷ ISO-NE notes that NTE was unresponsive to specific delay questions and did

²¹ ISO-NE Answer at 5.

²² NTE Protest at 7.

²³ ISO-NE Answer at 5 (citing ISO-NE Tariff, § III.13.3.3).

²⁴ *Id.* at 5.

²⁵ NTE Protest at 12.

²⁶ ISO-NE Answer at 6.

²⁷ *Id.* at 8-9.

not provide requested evidence to the September 17, 2021 consultation questions.²⁸ ISO-NE further states that it considered all the arguments that NTE provided before making this termination filing, but it did not find any of NTE's arguments compelling based on ISO-NE's experience with many other projects with similar milestone timeframes and under similar circumstances.²⁹

C. NTE's Answer

19. In NTE's answer to ISO-NE's answer, NTE disputes that ISO-NE has met its burden under either the Tariff or section 205 of the FPA to show that Killingly will not enter service by June 1, 2024. Rather, NTE states that ISO-NE only speculates that Killingly will not meet the June 1, 2024 deadline, which is not the objective standard required by the Tariff.³⁰ NTE further states that in prior ISO-NE termination proceedings, project sponsors of projects for which CSO were to be terminated had admitted to having met the termination trigger in the Tariff.³¹ NTE further states that the evidence on the record confirms that it was on track to meet the June 1, 2024 deadline at the time that ISO-NE filed the termination filing and that ISO-NE has not sufficiently refuted this evidence.³²

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

21. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2021), we grant North Atlantic States Regional Council of Carpenters' and Mitsubishi's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

²⁸ *Id.* at 11, 14.

²⁹ *Id.* at 10.

³⁰ NTE Answer at 1-3.

³¹ *Id.* at 3-4.

³² *Id.* at 5.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's and NTE's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

23. We accept ISO-NE's termination filing, to become effective January 4, 2022, following the 60-day notice period required by FPA section 205.³³ As further discussed below, we accept ISO-NE's request to terminate the CSO for Resource No. 38663/Project 12280, also known as Killingly, beginning with the 2022-2023 Capacity Commitment Period.

24. Section III.13.3.4A of the Tariff states that ISO-NE shall have the right to seek termination of a CSO, after consultation with the Project Sponsor, if, as relevant here, as a result of milestone date revisions, the date by which the Project Sponsor will have achieved all its critical path schedule milestones will be more than two years after the beginning of the Capacity Commitment Period for which it first received a CSO.³⁴

25. Based on a review of the record, including the confidential information provided by ISO-NE and NTE, we find that the relevant condition for termination set forth in Tariff section III.13.3.4A has been met. Killingly first received its CSO in FCA 13, which is associated with the 2022-2023 Capacity Commitment Period. The first day of that Capacity Commitment Period is June 1, 2022. Accordingly, Killingly must be able to achieve all its critical path schedule milestones, including commercial operation, by June 1, 2024. If, as a result of milestone date revisions, Killingly is unable to achieve that date, then the Tariff's trigger for CSO termination is met.³⁵ Since receiving its first CSO, ISO-NE states that NTE has revised critical path milestones to later dates, while making "virtually no progress" on the Killingly project.³⁶

³³ Per section 205 of the FPA, absent waiver, the earliest a filing can become effective is after 60-days' notice, which in this case is January 4, 2022. *See* 16 U.S.C. § 824d; *Alabama Power Co.*, 177 FERC ¶ 61,178, at P 11 (2021).

³⁴ *See* ISO-NE Tariff, § III.13.3.

³⁵ ISO-NE Answer at 2.

³⁶ ISO-NE Answer at 4-5.

26. We do not agree with NTE that ISO-NE's requested termination is premature or based on faulty assumptions.³⁷ We are persuaded by the evidence provided by ISO-NE that, the milestone date revisions indicate that Killingly will not have achieved all of its critical path schedule milestones, including commercial operation, until after June 1, 2024, i.e., more than two years after June 1, 2022—the beginning of the 2022-2023 Capacity Commitment Period. While the Commission determined in January 2021 that none of the triggering events had yet occurred, the Commission cautioned that if such a triggering event were to occur in the future, ISO-NE would have the right, after consultation with the Project Sponsor, to submit a filing with the Commission to terminate Killingly's CSO.³⁸ The present record now reflects that such a triggering event has indeed occurred in the intervening 12 months and that Killingly will not achieve commercial operation by the time specified in the Tariff.³⁹

27. Additionally, ISO-NE fulfilled the requirement to consult with the Project Sponsor before termination, as demonstrated by several meetings in a two-month period in which NTE would receive written questions as part of the consultation process.⁴⁰ The consultation process concluded at the November 4, 2021 meeting with NTE at which ISO-NE informed NTE it planned to submit the termination filing later that day.⁴¹

The Commission orders:

ISO-NE's filing to terminate Killingly's CSO is hereby accepted, to become effective on January 4, 2022, as discussed in the body of this order.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁷ NTE Protest at 2.

³⁸ *ISO New England Inc.*, 174 FERC ¶ 61,046 at PP 39-40.

³⁹ Because much of the pertinent information has been filed on a non-public basis, this public order cannot go into detail regarding the specifics of the triggering event or the basis for ISO-NE's judgment that Killingly will not be able to achieve all of its milestones including commercial operations by June 1, 2024 as required by the tariff. Our review of these non-public materials, however, satisfies us that this is the case.

⁴⁰ NTE Protest at 7-8.

⁴¹ *Id.* at 9.

EXHIBIT F

178 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

ISO New England Inc.

Docket No. ER22-355-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued February 23, 2022)

1. On January 3, 2022, the Commission issued an order¹ accepting ISO New England Inc.'s (ISO-NE) request, pursuant to section 205 of the Federal Power Act (FPA),² to terminate the Capacity Supply Obligation (CSO) for Resource No. 38663/Project 12280, also known as Killingly Energy Center (Killingly). The Project Sponsor³ is NTE Connecticut, LLC (NTE). On January 11, 2022, NTE filed a request for rehearing of the Termination Order.⁴

¹ *ISO New England Inc.*, 178 FERC ¶ 61,001 (2022) (Termination Order).

² 16 U.S.C. § 824d.

³ Capitalized terms not defined herein are used consistent with the definitions in the Transmission, Markets and Services Tariff (Tariff or ISO-NE Tariff). *See* ISO-NE, Transmission, Markets and Services Tariff, § I.2 (Rules of Construction; Definitions) (139.0.0) (ISO-NE Tariff); *see also id.* (defining "Project Sponsor" as "an entity seeking to have a New Generating Capacity Resource, New Import Capacity Resource or New Demand Capacity Resource participate in the Forward Capacity Market").

⁴ In the same filing, NTE also moved for a stay of the Termination Order, which the Commission denied. *ISO New England Inc.*, 178 FERC ¶ 61,063 (2022). NTE also sought a stay of the Termination Order in the United States Court of Appeals for the District of Columbia Circuit. On February 4, 2022, the court granted the stay until 30 days after the Commission resolves the pending rehearing request. *NTE Connecticut, LLC*, No. 22-1011 (D.C. Cir. Feb. 4, 2022). Because NTE's request for a stay has been resolved, for the sake of simplicity we here refer to the motion to stay and request for rehearing as the "NTE Rehearing Request."

2. Pursuant to *Allegheny Defense Project v. FERC*,⁵ the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,⁶ we are modifying the discussion in the Termination Order and continue to reach the same result in this proceeding, as discussed below.⁷

I. Background

3. Briefly, under ISO-NE's Tariff, Killingly must achieve all of its critical path schedule milestones, including commercial operation, by June 1, 2024.⁸ If, as a result of milestone date revisions, Killingly is unable to achieve those milestones by that date, then the Tariff's trigger for CSO termination is met.⁹

4. Following NTE's August 2021 critical path schedule report for Killingly, which provided an October 31, 2021 financing milestone and an April 14, 2024 commercial operation milestone, ISO-NE sent NTE follow-up questions expressing concern about whether the project could meet the above-noted June 1, 2024 date and seeking further

⁵ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁶ 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁷ *Allegheny Defense Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Termination Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁸ The Termination Order provides additional relevant background information. See Termination Order, 178 FERC ¶ 61,001 at PP 2-6.

⁹ Termination Order, 178 FERC ¶ 61,001 at P 25; see also ISO-NE Answer at 2; ISO-NE Tariff, § III.13.3.4A (trigger for termination occurs "if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a Capacity Supply Obligation").

information and evidence demonstrating that this date remained feasible.¹⁰ NTE responded to those questions on September 29, 2021.¹¹

5. In its September 2021 critical path schedule report for Killingly, NTE again modified the financing and commercial operation dates. The milestone for equity financing was revised to January 14, 2022; the milestone for debt financing was revised to March 3, 2022; and the milestone for commercial operation was revised to May 31, 2024—the last day before the June 1, 2024 deadline.¹² The project schedule provided for the issuance of full notices to proceed and “commencement of on-site activities” on January 1, 2022, roughly two weeks prior to the January 14, 2022 date for the equity financing milestone.¹³

6. On October 22, 2021, NTE issued “Interim Limited Notice[s] to Proceed” (Interim Notices) to its Engineering, Procurement and Construction (EPC) contractor, Gemma Power Systems, LLC (Gemma), and its equipment manufacturer Mitsubishi Power Americas, Inc. (Mitsubishi).¹⁴ These Interim Notices did not issue until the day after ISO-NE inquired about their status and were backdated to October 1, 2021.¹⁵

7. NTE sent a letter to ISO-NE and the Connecticut Light and Power Company (CL&P) on October 28, 2021, updating—and pushing back—the milestones in its Large Generator Interconnection Agreement (LGIA).¹⁶ This letter also provided a May 31, 2024, commercial operation date, and provided that a notice to proceed would issue on November 30, 2021, again well before the milestones for securing financing.¹⁷

¹⁰ See Transmittal at 4; Transmittal attach. B at 2; Transmittal attach. C at 1.

¹¹ See Transmittal attach. C.

¹² Transmittal at 4-5; Transmittal attach. B at 2.

¹³ Transmittal at 5; Transmittal attach. C at 1, 7-8.

¹⁴ Transmittal attach. D.

¹⁵ See Transmittal attach. C at 8; Transmittal attach. D; ISO-NE Answer attach. B.

¹⁶ See Transmittal attach. E.

¹⁷ *Id.*

8. On November 4, 2021, ISO-NE sought to terminate Killingly's CSO under the Tariff.

9. NTE filed a protest in response to ISO-NE's request for termination; ISO-NE filed an answer; and NTE filed a further answer to ISO-NE's answer. Those filings are described in the Termination Order.¹⁸

10. In the Termination Order, the Commission accepted ISO-NE's request to terminate Killingly's CSO, beginning with the 2022-2023 Capacity Commitment Period, to become effective January 4, 2022. The Commission found, based on a review of the record, including information that had been designated as confidential by ISO-NE and NTE, that the relevant condition for termination set forth in Tariff section III.13.3.4A had been met.¹⁹ The Commission further noted that "[b]ecause much of the pertinent information has been filed on a non-public basis, this public order cannot go into detail regarding the specifics of the triggering event or the basis for ISO-NE's judgment that Killingly will not be able to achieve all of its milestones including commercial operations by June 1, 2024 as required by the tariff."²⁰

11. In its request for rehearing, NTE argues that the Termination Order was arbitrary and capricious because "it failed to provide any reasoning to support its determination that NTE could not complete the Killingly Project by June 1, 2024, and to justify its termination of the Project in any event."²¹ It further argues that the Commission's determination in the Termination Order is not supported by substantial evidence in the record and is contrary to law in light of the record evidence.²²

II. Discussion

A. Public Disclosure of Information Designated as Confidential

12. On February 11, 2022, Commission staff sent a letter to ISO-NE and NTE, pursuant to 18 C.F.R. § 388.112(d), notifying them that the Commission was considering the release of the material designated as confidential in the filings referenced above

¹⁸ Termination Order, 178 FERC ¶ 61,001 at PP 12-19.

¹⁹ Termination Order, 178 FERC ¶ 61,001 at PP 25-26.

²⁰ *Id.* P 26 note 39.

²¹ NTE Rehearing Request at 11; *see also id.* at 11-14.

²² *Id.* at 11; *see also id.* at 14 & n.37.

(388.112 Letter).²³ On February 15, 2022, ISO-NE and NTE confirmed that they do not object to the public release of the documents they designated as confidential in this matter.²⁴ As a result, we construe their requests for confidential treatment of this material as withdrawn, and we direct NTE and ISO-NE to submit in this docket public versions of the documents previously filed as confidential through an informational filing within 5 days of the date of this order.²⁵

B. Rehearing Request

13. We are not persuaded by the arguments in NTE's rehearing request that the Termination Order is not adequately supported by the record or that ISO-NE failed to carry its burden to show that the termination trigger was met. In this order, following the withdrawal of ISO-NE and NTE's requests for confidential treatment of documents in this matter, we more fully explain our reasoning in support of the Termination Order. Briefly, we conclude that, after NTE repeatedly delayed its milestones, ISO-NE has sufficiently demonstrated that NTE will not meet its May 31, 2024 critical path milestone for commercial operation of the Killingly project (or the next-day June 1, 2024 deadline), as required by the ISO-NE Tariff.

14. Addressing ISO-NE's termination request requires us to assess, based upon the record before us, whether ISO-NE appropriately terminated Killingly's CSO under Tariff section III.13.3.4A. In this proceeding, ISO-NE bears the burden of proof to show that the termination trigger was met.²⁶

²³ The 388.112 Letter sought comment on the public release of the following pleadings: (1) ISO New England Inc. Resource Termination Filing, filed November 4, 2021, under Accession No. 20211104-5203; (2) NTE Connecticut, LLC Protest, filed December 3, 2021, under Accession No. 20211203-5249; (3) ISO New England Inc. Motion for Leave to File Answer and Answer, filed December 20, 2021, under Accession No. 20211220-5169; (4) NTE Connecticut, LLC Motion for Leave to Answer and Answer, filed December 28, 2021, under Accession No. 20211228-5225; and (5) NTE Connecticut, LLC Emergency Motion for Stay, Request for Rehearing, and Request for Shortened Comment Period, filed January 11, 2022, under Accession No. 20220110-5027.

²⁴ NTE 388.112 Letter Response (Feb. 15, 2022); ISO-NE 388.112 Letter Response (Feb. 15, 2022).

²⁵ ISO-NE and NTE are directed to ensure that the pagination in the publicly filed versions of these submissions remains consistent with the pagination in the previously-filed, confidential versions of these submissions.

²⁶ We do not apply, and did not apply in the Termination Order, a subjective "lost

15. In support of the termination of Killingly's CSO, ISO-NE submitted, in its filing with the Commission, updates and answers to questions provided by NTE to ISO-NE regarding Killingly's status and critical path schedule. ISO-NE's filing with the Commission was supported in part by a "Review of Critical Path Schedule" for the Killingly project performed by Lummus Consultants International (Lummus).²⁷ Also included in ISO-NE's termination filing was a letter dated November 4, 2021, from Korea Western Power Company (Korea Western) relating to its investment approval process for the Killingly project.²⁸

16. We begin with the construction milestones that NTE provided to ISO-NE.²⁹ The May 31, 2024 commercial operation milestone occurs on the day before the June 1, 2024 deadline required by ISO-NE's Tariff. NTE's financing milestones were postponed 14 times, with the most recent postponement reflected in NTE's September 2021 critical path schedule update, where NTE reported the close of equity financing was set at January 14, 2022, and the close of debt financing was set at March 1, 2022.³⁰ The record reflects that no construction activities whatsoever had occurred at the project site, and—even assuming the project schedule NTE provided was feasible—would not occur before January 1, 2022.³¹

17. A thorough assessment of these construction milestones and surrounding facts reflects that NTE will not meet the June 1, 2024 date for commercial operation of the Killingly project. When ISO-NE asked NTE for examples of similar projects completed within approximately 30 months, NTE identified three projects completed in 30 to 31 months.³² This 30- to 31-month construction schedule is also the timetable NTE

confidence" standard, as NTE suggests. *See* Termination Order, 178 FERC ¶ 61,001 PP 15 (quoting ISO-NE); *id.* P 26 (concluding that "Killingly will not have achieved all of its critical path schedule milestones" by the relevant deadline).

²⁷ Transmittal attach. F (Lummus Report).

²⁸ Transmittal attach. G.

²⁹ *See also* ISO-NE, Tariff, § III.13.3.4A (termination trigger is met "if, as a result of milestone date revisions" all milestones will not be achieved in a timely fashion as provided by the Tariff).

³⁰ Transmittal at 4-5; Transmittal attach. B at 2.

³¹ Transmittal at 5; Transmittal attach. C at 16 (site photographs); *id.* at 1, 7-8.

³² Transmittal attach. C at 5-6.

repeatedly cited in its protest to ISO-NE's filing.³³ On this timetable, construction would need to begin no later than December 1, 2021, to meet the June 1, 2024, deadline. It is undisputed, however, that, even on NTE's proposed schedule, no on-site construction had occurred nor was planned to occur before January 1, 2022, at the earliest.³⁴

18. We recognize that the Lummus Report states that a 29-month construction schedule would be an "aggressive but achievable schedule for a project of this scope."³⁵ Taken alone, this "aggressive" 29-month schedule would seem to dovetail with a January 1, 2022 "start" date that NTE provided for issuance of full notices to proceed and commencement of on-site activities and, just barely, allow the Killingly project to achieve commercial operation by May 31, 2024. NTE relies heavily on this aspect of the Lummus Report.³⁶

19. The Lummus Report's conclusion that a 29-month construction schedule would be "aggressive but achievable," however, was premised on the issuance of full notices to proceed "without financing in place"³⁷ The record does not support accepting this premise. As Lummus explained, in order to achieve the aggressive 29-month schedule, "[s]ignificant sums of money, in the order of about 10% of the purchase price, are generally required at the time of issuing full [notices to proceed] for major equipment purchases; therefore, the Equity Financing Secured date would likely have to be earlier to provide the necessary funds."³⁸ NTE's January 1, 2022 date for issuance of full notices to proceed and the start of construction was thus undermined by its own, self-selected

³³ NTE Protest at 1, 9, 10; *see also* NTE Protest attach. B, Eves Decl. ¶ 7 (declaration of Timothy Eves, providing an initial estimate of a 32-month construction schedule); *id.* ¶ 13 (30/31-month expected construction timetable).

³⁴ NTE argues that this timeline should be measured by reference to its issuance of the Interim Notices, rather than the issuance of full notices to proceed or commencement of on-site construction. We address that argument below. *See infra* PP 24-27.

³⁵ Transmittal attach. F at 4; *see also id.* at 5 (explaining that, assuming full notices to proceed could be executed without financing in place and that all dates on the September 2021 critical path schedule were met, commercial operation "could occur on or about the proposed commercial operation date of May 31, 2024").

³⁶ *See* NTE Rehearing Request at 5, 12; NTE Protest at 2, 11.

³⁷ Transmittal attach. F at 5 (noting, similarly, that this assumes that "the necessary full NTPs . . . can be executed without financing in place, which we believe is unlikely").

³⁸ *Id.* at 3; *see also id.* at 5-6.

critical path milestone of January 14, 2022, to secure equity financing.³⁹ To the extent key activities—such as issuing a full notice to proceed to Gemma, the EPC contractor—must await debt financing, that critical path milestone’s being set at March 1, 2022, would only further delay the project.⁴⁰ Thus, notwithstanding that NTE selected a May 31, 2024 date for Killingly’s commercial operation milestone, its other critical path milestones did not support achievement of this milestone, or that commercial operation would occur before the next day, June 1, 2024.

20. The Lummus Report therefore concluded that a “realistic scenario that incorporates financing availability”—even on a 29-month construction schedule—would not result in achievement of a May 31, 2024 commercial operation milestone, and that this deadline would most likely be missed by several months.⁴¹ In many respects, moreover, even this conclusion was based on assumptions favorable to NTE.⁴²

³⁹ See *id.* at 4 (noting that even a two-week delay would likely result in a consequential delay to the project). Even NTE acknowledges that ISO-NE “need not wait until June 1, 2024, to make a termination filing” and that “ISO-NE may have been within the law to seek termination if NTE missed its January deadline for providing the Full Notices.” NTE Protest at 12; see also NTE Answer at 6 (acknowledging that, if “NTE and [Korea Western] would be unable to issue final notices by early January,” the Lummus Report would not support their ability to meet their critical path milestones).

⁴⁰ See *id.* at 4 (explaining that full notices to proceed to the EPC contractor would not likely issue until financing closed with the lending institutions); *id.* at 5-6. NTE asserts that the debt financing date was irrelevant because NTE and Korea Western were structuring the transaction as an “equity-first investment.” NTE Protest at 9 n. 47; Eves Decl. ¶ 15. This assertion does not persuade us that Lummus had not identified a significant prospect for further delay of the project or that the debt-financing date was irrelevant. NTE has provided no detail to support this claim or to establish that debt financing was irrelevant to the project schedule. See NTE Protest at 9 n. 47; Eves Decl. ¶ 15. Regardless, this argument, which relies on the structure of the NTE-Korea Western transaction, would necessarily be contingent on NTE closing financing with Korea Western, but—as explained below—no commitment had been made in that respect.

⁴¹ Transmittal attach. F at 5-6.

⁴² *Id.* at 2-3 (assuming that any activity start or finish dates prior to September 30, 2021, had been met); *id.* at 5 (assuming that pandemic-related supply chain issues have been rectified and noting that “significant delays” in equipment orders or availability could result in further delay); *id.* (assuming that the financing milestones would be met); *id.* at 6 (assuming that sufficient engineering had been completed to specify major

21. As evidence in the record also demonstrates, when offered the opportunity to demonstrate that it would meet its critical path milestones in response to ISO-NE's questions, NTE failed to give persuasive answers. ISO-NE asked about the reason for delays to NTE's financing milestone—which at that time was October 31, 2021, years later than initially projected—and an explanation for why the financing milestone would not again be similarly delayed.⁴³ NTE offered several reasons for these delays and explained that those particular reasons were no longer likely to cause further delays.⁴⁴ However, NTE did not affirmatively demonstrate that it was now on-track to secure financing, instead offering a generalized statement that it is “finalizing its schedules and related contracts, including financing and procurement activities” and referring to the proposed project schedule.⁴⁵ NTE similarly provided only unsupported assurances in response to ISO-NE's requests for evidence from NTE's EPC contractor that it expected to complete the project by the then-operative April 14, 2024 commercial operation date and for evidence that NTE's major equipment manufacturers expected to deliver equipment in time to meet that date.⁴⁶ In fact, in the September critical path schedule report, NTE again delayed the financing milestones to the January 14 and March 1, 2022 dates discussed above, and delayed the commercial operation date to May 31, 2024.

22. Accordingly, the analysis in the Lummus Report, NTE's responses to ISO-NE's questions, and NTE's milestone updates to ISO-NE support the conclusion that, even assuming an “aggressive” 29-month schedule, the Killingly project would not achieve commercial operation by May 31, 2024, and instead would be delayed by at least several weeks even if full notices to proceed were issued immediately after the January 14, 2022

equipment and negotiations were ongoing to allow full NTP after funds are available). These assumptions favor a finding that the termination trigger was met, because they reflect a prospect for further potential delays if they prove to be inaccurate.

⁴³ Transmittal attach. C at 2. NTE claims that its answers to these questions became “stale” by November 4, 2021. NTE Answer at 4. But NTE's assertion that “the Connecticut Supreme Court did not reject the challenge to Killingly's state siting certificate until *September 28, 2021*, well after Killingly answered the questionnaire,” *id.*, is wrong, *see* Transmittal attach. C at 1, 4 (dated September 29, 2021 and referencing this decision). NTE also points to the issuance of the Interim Notices and Korea Western letter as intervening events, but ISO-NE considered these and—as explained below—they are not persuasive evidence that the Killingly project would meet its milestones.

⁴⁴ *See* Transmittal attach. C at 2-4.

⁴⁵ *See id.* at 4.

⁴⁶ *See id.* at 6-7.

date to secure equity financing, and likely by much longer. Thus, ISO-NE makes a strong showing that the trigger for termination of Killingly's CSO is met.

23. NTE offers two principal arguments in support of its proposed schedule.⁴⁷ First, NTE asserts that the 29- to 31-month construction "clock" started to run in October 2021, when it issued the Interim Notices. Second, NTE claims that it would have secured financing prior to January 1, 2022, notwithstanding the later milestone date, enabling it to issue full notices to proceed at that time. Neither argument is persuasive.

24. We are not persuaded by NTE's reliance on the Interim Notices. The Interim Notices did not identify any work to be performed, reference a purchase order, or include any compensation to be paid as a consequence of their issuance.⁴⁸ While they attached a project schedule, that schedule similarly has no indication of the work to be performed.⁴⁹ The Interim Notices also state that NTE anticipated issuing full notices to proceed by January 4, 2022, that NTE would "work to complete the current financing," and that NTE was doing so "during the month of October," which did not occur.⁵⁰ Failure to provide the materials referenced in the Interim Notices was grounds to suspend whatever (unspecified) work was to be performed under the Interim Notices—underscoring the importance of both securing financing and issuing the full notices to proceed.⁵¹

25. The Interim Notices thus provide no indication as to how construction activities for the Killingly project would make any significant progress toward meeting the critical path milestones starting in October 2021, such that the construction timeline should be measured from October 2021 rather than from the issuance of full notices to proceed. Indeed, NTE argues only that the Interim Notices allowed Gemma and Mitsubishi to "*continue with less-intensive planning activities.*"⁵² There is no explanation of the work that Gemma performed, or was expected to perform, under the Interim Notices.⁵³ As to

⁴⁷ See NTE Protest at 1-2, 9-11; NTE Answer at 4-5.

⁴⁸ Transmittal attach. D at 1, 3.

⁴⁹ See *id.* at 2, 4.

⁵⁰ *Id.* at 1, 3.

⁵¹ See *id.*

⁵² NTE Protest at 6 (emphasis added).

⁵³ See NTE Protest at 10 (no work identified for Gemma under the Interim Notices); *cf.* Transmittal at 5; Transmittal attach. C at 1, 7-8 (providing, even under NTE's timeline that on-site activities were not expected until January 1, 2022). The declaration

Mitsubishi, NTE states that “prior to November 4, 2021, Mitsubishi had selected a heat-recovery steam generator supplier, selected a steam generator supplier, and had reserved manufacturing slots for the combustion turbines.”⁵⁴ But NTE does not tie these activities to the issuance of Interim Notices, or explain how these activities reflect substantial progress on construction that would enable them to meet their milestones.⁵⁵ On the whole, NTE fails to explain or provide evidence of how the Interim Notices enabled NTE to meet its critical path milestones, including commercial operation.

26. In addition, this finding is consistent with the premise identified in the Lummus Report that material progress on construction would not occur prior to the issuance of full notices to proceed, which would require financing to be secured.⁵⁶ It is also consistent with ISO-NE’s representations that, in contrast to the Killingly project, when other projects are 30 to 31 months from completion, notices to proceed have issued that define the scope of work and demonstrate substantial compensation has been paid and significant work has occurred at the project site to prepare for construction.⁵⁷ The Interim Notices lack such components and do not appear to authorize such work, undermining any suggestion that they started the construction “clock” in October 2021.

provided from Gemma’s CEO similarly identifies no work to be performed under the Interim Notices and, in fact, confirms the necessity of receiving full notices to proceed, among other things. *See Collins Decl. ¶ 4 (“[A]ssuming Gemma received the Full Notice to proceed by January 4, 2022 and equipment manufacturers would meet required delivery dates, it would have been feasible to complete the Project by May 31, 2024.”* (emphasis added)). And, as already explained, our evaluation of the record reflects that full notices to proceed would not issue on the timeline that Gemma’s CEO assumes.

⁵⁴ NTE Protest at 10.

⁵⁵ Particularly in light of their limited content, the circumstances surrounding the issuance of the Interim Notices—particularly that they issued only after ISO-NE inquired about them, and with a backdate to October 1, 2021—also undercut a claim that they marked a meaningful development in terms of the project’s ability to meet its milestones.

⁵⁶ *See supra* P 19; *see also* Transmittal attach. F at 3-4 (issuance of Interim Notices did not change Lummus’s analysis).

⁵⁷ *See* ISO-NE Answer at 13, 15; *cf.* Transmittal Att. C at 16. NTE claims that such comparisons are “inapposite,” pointing to the Lummus Report. NTE Answer at 5-6. But the Lummus Report’s conclusion that, if full notices to proceed were issued by January 1, 2022, it was possible that the Killingly project might meet its milestones on an “aggressive” schedule does not render ISO-NE’s experience with comparable projects irrelevant. It also does not establish that the Interim Notices were meaningful.

27. We thus do not agree that the Interim Notices demonstrate that the 29- to 31-month construction “clock” started to run in October 2021.

28. We now turn to NTE’s second argument, that it would have secured financing prior to January 1, 2022, such that NTE and Korea Western could have issued full notices to proceed allowing the Killingly project to meet its critical path milestones under the aggressive, 29-month schedule Lummus posited. Here, too, we are unpersuaded.

29. NTE relies primarily on a letter from Korea Western dated November 4, 2021, that briefly states that Korea Western is “nearing completion” of a government review process, but still must obtain certain government approvals later that month, and then secure approval by Korea Western’s board of directors.⁵⁸ NTE supplements this letter with the Eves Declaration, which states that “[i]n conversations with NTE, [Korea Western] specified that it expected to obtain Board approval and to issue Final Notices in December.”⁵⁹

30. The Korea Western letter, however, makes no commitment to finance the Killingly project—indeed, it is clear that no final decision on this point had been made and that financing remained contingent on further processes and approvals—nor does it indicate the level of financing being considered. And, while it states that Korea Western is “trying to expedite financing,” it does not provide any timeline on which it might do so or by which the approval process might be completed.⁶⁰ While the Eves Declaration attempts to fill this gap, we find it significant that Korea Western itself did not make any representation to this effect.⁶¹ Moreover, the Eves Declaration is of only limited value. It provides no significant detail on the conversations that occurred with Korea Western, such as their level of formality, what assurances were given, or any level of certainty on this intended timeline. It states only that Korea Western “expected” to obtain approval and issue full notices to proceed in December, and it reflects no commitment to provide financing or to do so on this timetable.

31. We conclude that NTE has not provided persuasive evidence that it would have closed financing in December 2021, particularly when weighed against the milestones,

⁵⁸ Transmittal attach. G.

⁵⁹ NTE Protest attach. B, Eves Decl. ¶ 15.

⁶⁰ *See id.*

⁶¹ NTE requested, and was afforded, an extension of time to “provide a complete evidentiary record,” and particularly cited the need to coordinate with Korea Western and Mitsubishi. *See* Mot. to Intervene and Request for Extension of Time at 2 (Nov. 26, 2021). NTE then provided no further evidence from these entities.

which NTE itself selected,⁶² for securing financing and ISO-NE's representations regarding the agreements and documents typically submitted as evidence of financing.⁶³

32. We cannot rule out the possibility that equity financing might have closed prior to January 1, 2022.⁶⁴ Likewise, we cannot state with certainty that, even if financing did not close until after this date, it was impossible for NTE to meet its current May 31, 2024 commercial operation date. But we are not required to do so to reach the conclusion that ISO-NE carried its burden to show that the termination trigger was met.⁶⁵ Based on our considered judgment of the record, we find unpersuasive NTE's arguments that financing would have closed, enabling full notices to proceed to issue, prior to January 1, 2022, and that Killingly would have met the May 31, 2024 commercial operation date.

33. NTE also cursorily asserts that the Commission "failed to conduct any balancing of the interests affected by the extreme sanction of termination or consideration of lesser alternatives."⁶⁶ It offers no legal analysis or any supporting citation to explain the basis for this argument. Nor did NTE urge in its pleadings prior to the Termination Order that the Commission should have conducted this balancing and imposed some (unspecified) "lesser alternative" if the termination trigger was met. Indeed, its request for rehearing

⁶² We recognize that these milestones were deadlines for securing financing, and that it is conceivable that financing might have closed earlier. But these milestones still reflect NTE's own assessment of when NTE would be required to ensure financing closed, and—as discussed—the other evidence that NTE itself submitted does not reflect that it would have closed equity financing before these deadlines.

⁶³ ISO-NE Answer at 12; *see also Rural Cellular Ass'n v. F.C.C.*, 588 F.3d 1095, 1105 (D.C. Cir. 2009) (explaining that where agencies must make predictions as to uncertain future events, complete factual support in the record for the agency's prediction may not be possible); *accord Growth Energy v. Env't Prot. Agency*, 5 F.4th 1, 15 (D.C. Cir. 2021).

⁶⁴ We also again note, *see supra* P 19 & note 41, that NTE has not presented persuasive evidence or argument to establish the irrelevance of debt financing. In addition, we note that NTE submitted its answer on December 28, 2021, and the Termination Order did not issue until January 3, 2022, such that had NTE's financing closed prior to January 1, 2022, it had the opportunity to put further evidence before the Commission.

⁶⁵ *See, e.g., TC Ravenswood, LLC v. FERC*, 741 F.3d 112, 119 (D.C. Cir. 2013) (explaining that, when weighing competing evidence, the Commission must consider the record and make a "reasonable choice").

⁶⁶ NTE Rehearing Request at 13; *see also id.* at 11 (similar).

states that this was not a question before the Commission.⁶⁷ We decline to address this argument, raised for the first time on rehearing and which has not been adequately developed even now.⁶⁸

The Commission orders:

(A) In response to NTE's request for rehearing, the Termination Order is hereby modified and the result sustained, as discussed in the body of this order.

(B) ISO-NE and NTE are hereby directed to re-file public versions of the confidential submissions referenced in the 388.112 Letter within five days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁶⁷ See NTE Rehearing Request at 1 (the "sole question" before the Commission was whether "NTE could complete its Killingly Energy Center . . . prior to the June 1, 2024 deadline"); *id.* at 4.

⁶⁸ See, e.g., *Turlock Irrigation Dist. Modesto Irrigation Dist.*, 175 FERC ¶ 61,144, at P 14 (2021); *Vill. of Morrisville, Vermont*, 174 FERC ¶ 61,141, at P 18 (2021); *Vitol Inc. & Federico Corteggiano*, 169 FERC ¶ 61,070, at PP 30-31 (2019); *Barclays Bank PLC*, 144 FERC ¶ 61,041, at P 20 (2013).

EXHIBIT G

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1011**September Term, 2021****FERC-ER22-355-000****Filed On: March 2, 2022**

In re: NTE Connecticut, LLC,

Petitioner

ISO New England Inc. and New England
Power Generators Association, Inc.,
Intervenors

BEFORE: Tatel, Wilkins, and Rao, Circuit Judges

ORDER

Upon consideration of the emergency motion to lift stay, the responses thereto, and the reply, it is

ORDERED that the temporary stay entered by the court on February 4, 2022, be lifted. ISO New England has demonstrated that, due to changed circumstances, the stay is no longer equitable. Cf. Franklin Twp. Sewerage Auth. v. Middlesex Cnty. Utils. Auth., 787 F.2d 117, 121 (3d Cir. 1986). Since our stay order, the Federal Energy Regulatory Commission ("FERC") has issued an order on rehearing, addressing some of the deficiencies in its earlier termination order. See In re NTE Conn., LLC, No. 22-1011, 2022 WL 552060, at *4–6 (D.C. Cir. Feb. 24, 2022); ISO New England Inc., 178 FERC ¶ 61,130 (2022). Moreover, it is undisputed that NTE has defaulted on its financial assurance obligations under the ISO-NE Tariff, which default provides an independent ground for terminating the Killingly plant's capacity supply obligation. In light of these developments, our stay of FERC's termination order is no longer equitable.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Manuel J. Castro

Deputy Clerk

EXHIBIT H



July 11, 2023

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: ISO New England Inc. and The Connecticut Light and Power Company –
Notice of Termination of Original Service Agreement No. LGIA-ISONE/CLP-
20-02 under Schedule 22 of the ISO New England Inc.’s Open Access
Transmission Tariff; Docket No. ER23-____-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² ISO New England Inc.³ (“ISO-NE”) and The Connecticut Light and Power Company (“CL&P”) (together, the “Filing Parties”)⁴ hereby submit this notice of termination of an executed conforming Standard Large Generator Interconnection Agreement (the “Interconnection Agreement”) by and among ISO-NE as System Operator, CL&P as the Interconnecting Transmission Owner, and NTE Connecticut, LLC (“Interconnection Customer”) as the Interconnection Customer. The Interconnection Agreement, designated as Original Service Agreement No. LGIA-ISONE/CLP-20-02, became effective on June 16, 2020 and has been reported in the Electric Quarterly Report since Q2 2020. The Filing

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Part 35 (2014).

³ Capitalized terms not defined herein have the meanings ascribed thereto in the ISO New England Inc. Transmission, Markets and Services Tariff (“Tariff”). Section II of the Tariff contains ISO-NE’s Open Access Transmission Tariff (“OATT”). Schedule 22 of the OATT contains the *pro forma* Large Generator Interconnection Procedures (“LGIP”) and Large Generator Interconnection Agreement (“LGIA”).

⁴ Section 11.3 of the LGIP provides that “the System Operator and Interconnecting Transmission Owner shall jointly file the executed LGIA, or amendments thereto, with the Commission under Section 205 of the Federal Power Act.” Consistent with Section 11.3 of the LGIP, the Filing Parties are jointly filing herein pursuant to Section 205 of the Federal Power Act.

Parties seek to terminate the Interconnection Agreement in accordance with Articles 2.3 and 17 of the agreement.

The Filing Parties respectfully request that the Commission accept this notice of termination, with an effective date of July 12, 2023, the day after its submission, to allow the Filing Parties to promptly complete any restudies of lower-queued projects that respected the Large Generating Facility proposed in the Interconnection Agreement in their respective Interconnection Studies and exclude the facility from the Base Cases of future Interconnection Studies to avoid the need for additional restudies.

I. DESCRIPTION OF THE FILING PARTIES; COMMUNICATIONS

ISO-NE is the private, non-profit entity that serves as the RTO for New England. ISO-NE plans and operates the New England bulk power system and administers New England's organized wholesale electricity markets pursuant to the Tariff and the Transmission Operating Agreement ("TOA") with the Participating Transmission Owners ("PTOs"). In its capacity as an RTO, ISO-NE has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

CL&P is a public utility subsidiary of Eversource Energy, a Massachusetts business trust and public utility holding company under the Public Utility Holding Company Act of 2005.⁵ CL&P owns and operates transmission facilities in Connecticut that are used to provide Regional Network Service under the OATT and Local Service under Schedule 21-ES of the OATT and that are subject to ISO-NE operating authority pursuant to the TOA. Eversource Energy Service Company, a service company subsidiary of Eversource Energy, provides various corporate services to Eversource Energy's subsidiaries, including CL&P.

All correspondence and communications in this proceeding should be addressed to the undersigned for the ISO-NE as follows:

Graham Jesmer, Esq.
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Tel: (413) 540-4557
Fax: (413) 535-4379
Email: gjesmer@iso-ne.com

⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1262, 119 Stat. 594, 972-73 (2005).

To CL&P as follows:

Thomas O. Lemon, Esq.
Eversource Energy Service Company
247 Station Drive, SE100
Westwood, MA 02090
Tel: (781) 441-8692
Fax: (781) 441-3400
Email: thomas.lemon@eversource.com

II. BACKGROUND AND DISCUSSION

The Interconnection Agreement governs the interconnection of Interconnection Customer's proposed Large Generating Facility to the Administered Transmission System at CL&P's new Cotton Bridge 345 kV Switching Station.⁶ The facility is a 714-megawatt combined cycle generating facility comprising one combustion turbine generator unit and one steam turbine generator unit and located in Killingly, Connecticut.⁷

Pursuant to Article 17 of the Interconnection Agreement, on October 3, 2022, CL&P notified the Interconnection Customer that it was in Breach of its obligations under Article 5.6.3 of the Interconnection Agreement to provide CL&P timely written authorization to proceed with construction by dates specified in the Milestones in Appendix B to the Interconnection Agreement. CL&P provided the Interconnection Customer with 30 days to cure the Breach, consistent with Article 17 of the Interconnection Agreement, but Interconnection Customer failed to cure the Breach within the specified time period. Additionally, Interconnection Customer ceased to comply with all other milestones in Appendix B to the Interconnection Agreement.

On March 1, 2023, CL&P sent a Notice of Termination of Interconnection Agreement ("Notice") to the Interconnection Customer via e-mail and physically to the notice addresses contained in the Interconnection Agreement as required by Article 15. CL&P did not receive a response or acknowledgement that the Notice had been received. The Filing Parties subsequently made numerous attempts to contact Interconnection Customer for delivery of the Notice and to confirm Interconnection Customer's agreement to voluntarily terminate the Interconnection Agreement. These attempts included contacting the Interconnection Customer by e-mail and regular mail using the contacts listed in Appendix E of the Interconnection Agreement. However, ISO-NE and CL&P received no response to any of those additional communications.

Articles 2.3 and 17 of the Interconnection Agreement provide that, in the event of a Breach by one of the Parties, the non-Breaching Party(ies) may terminate the Interconnection Agreement by written notice and the submission of a notice of termination to the Commission. Specifically, Article 17.1.2 states that "...the non-Breaching Party(ies) shall have the right to terminate this

⁶ See Interconnection Agreement at Appendix A.

⁷ See Interconnection Agreement at Appendix C.

LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder....” Article 2.3 requires the non-Breaching Parties to file a notice of termination of the Interconnection Agreement with the Commission, and the Commission must accept such notice in order for the termination to be effective.

Interconnection Customer is in breach of the Interconnection Agreement, has failed to cure the Breach within a reasonable time, and has effectively abandoned the Large Generating Facility. Accordingly, the Filing Parties are proceeding with termination of the Interconnection Agreement.

The Filing Parties submit that termination of the Interconnection Agreement is appropriate under its terms. It is also consistent with the Commission’s June 13, 2023 acceptance of the New England Power Pool’s (“NEPOOL”) April 21, 2023 termination of Interconnection Customer’s membership in NEPOOL and the Market Participant Service Agreement between ISO-NE and the Interconnection Customer.⁸ Accordingly, the Commission should accept this termination notice.

III. REQUESTED EFFECTIVE DATE AND REQUEST FOR WAIVER OF 60-DAY NOTICE REQUIREMENT

The Filing Parties respectfully request that the Commission accept this notice of termination with an effective date of July 12, 2023, which is one day after the filing hereof. In order to permit this effective date, the Filing Parties respectfully request that the Commission grant any waivers of its rules and regulations necessary for acceptance of this filing under the Federal Power Act, including, specifically, the Commission’s prior notice requirement set forth in 18 C.F.R. § 35.3.

The Commission has granted waivers when a filing has no rate impact (*e.g.*, changes in non-rate terms and conditions),⁹ when “all affected parties have had sufficient notice that [the] change will be incorporated into the [Tariff],”¹⁰ and where prompt termination of an agreement will provide commercial certainty to other parties and stakeholders and filing parties followed procedures in an agreement to terminate.¹¹

In this case, good cause exists to grant the proposed effective date because it will allow ISO-NE and CL&P to promptly complete any restudies of lower-queued projects that respected the Large Generating Facility proposed in the Interconnection Agreement in their respective

⁸ See *ISO New England*, Delegated Letter Order Accepting Termination of NTE Connecticut as a Market Participant, ER23-1689-000 (June 13, 2023).

⁹ See *Central Hudson Gas & Elec. Co., et al.*, 60 FERC ¶ 61,337, *reh’g denied*, 61 FERC ¶ 61,089 (1992) (stating, “the Commission believes that waiver of notice will generally be appropriate when the filing has no rate impact”).

¹⁰ *California Independent System Operator Corp.*, 111 FERC ¶ 61,073 at P26 (2005).

¹¹ See *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,175 (2023).

Interconnection Studies and exclude the facility from the Base Cases of future Interconnection Studies to avoid the need for additional restudies.

IV. CONTENTS OF THE FILING

This filing includes the following:

- this transmittal letter;
- a copy of the Notice issued by CL&P on March 1, 2023.¹²

V. CONCLUSION

For the foregoing reasons, the Filing Parties respectfully request that the Commission accept the notice of termination of the Interconnection Agreement, as submitted without modification or condition, with an effective date of July 12, 2023.

Respectfully submitted,

By: /s/ Graham Jesmer
Graham Jesmer, Esq.
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Tel: (413) 540-4557

Counsel for ISO New England Inc.

By: /s/ Thomas O. Lemon
Thomas O. Lemon, Esq.
Eversource Energy Service Company
247 Station Drive, SE100
Westwood, MA 02090
Tel: (781) 441-8692

Counsel for The Connecticut Light and Power
Company

Attachment

¹² In accordance with guidance given by the Commission staff during technical conferences on eTariff, the Filing Parties submit this notice of termination through a letter through the eFiling system. The Filing Parties had not previously placed this rate schedule (*i.e.*, the Interconnection Agreement) into its eTariff database; therefore, it is not necessary to use eTariff for the cancellation process or to include a cancellation tariff sheet with this filing.



Via Email

March 1, 2023

NOTICE OF TERMINATION OF INTERCONNECTION AGREEMENT

To Whom It May Concern:

On October 3, 2022, The Connecticut Light and Power Company (the "Company") provided NTE Connecticut, LLC ("Interconnection Customer") the enclosed Notice of Breach ("Notice of Breach") pursuant to Article 17 of the Large Generator Interconnection Agreement by and among ISO New England Inc. ("ISO-NE"), the Company and Interconnection Customer effective June 16, 2020 and designated as Original Service Agreement No. LGIA-ISONE/CLP-20-02 (the "Interconnection Agreement"). Specifically, the Notice of Breach asserted that the Interconnection Customer is in breach of its obligations under Article 5.6.3 of the Interconnection Agreement by failing to provide timely written authorization to proceed with construction to the Company by dates specified in the Milestones in the currently effective Appendix B to the Interconnection Agreement.

As a result of Interconnection Customer's failure to cure its breach of the Interconnection Agreement within the time frame specified in the Interconnection Agreement, and pursuant to Article 17.1.2 thereof, the Company hereby notifies Interconnection Customer that it is terminating the LGIA. The Company and ISO-NE will expeditiously be filing a Notice of Termination at the Federal Energy Regulatory Commission that, when accepted by the Commission, will render the termination effective pursuant to Article 2.3.2 of the Interconnection Agreement. The Company shall serve such Notice of Termination on the Interconnection Customer when it is filed with the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "V. D. Divatia".

Vandan D. Divatia
Eversource Energy Service Company
Vice President, Transmission Policy and Compliance

NTE Connecticut, LLC
March 1, 2023
Page 2

cc via email:

Monica Gonzalez – ISO-NE Legal Department
Cheryl Ruell – ISO-NE Transmission Strategy and Services
Johanna Truswell – ISO-NE Transmission Strategy and Services
Mary Grover – Eversource Energy Legal Department
Suprabha Prabhakaran – Eversource Energy Transmission Interconnection Services
Brian Romero – NTE Energy
Stephanie Clarkson – NTE Energy
Maribel Zambrana – NTE Energy

EXHIBIT I

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

ISO New England Inc.
The Connecticut Light and Power Company
Docket No. ER23-2378-000

Issued: August 31, 2023

On July 11, 2023, ISO New England Inc. (ISO-NE) and The Connecticut Light and Power Company (CL&P) submitted a notice of termination of an executed conforming Standard Large Generator Interconnection Agreement among ISO-NE as System Operator, CL&P as the Interconnecting Transmission Owner, and NTE Connecticut, LLC as the Interconnection Customer. Pursuant to authority delegated to the Director, Division of Electric Power Regulation – East, under 18 C.F.R. § 375.307, the submittal is accepted for filing, effective July 12, 2023, as requested.

The filing was publicly noticed. No protests or adverse comments were filed. Pursuant to Rule 214 of the Commission's regulations (18 C.F.R. § 385.214), notices of intervention, timely-filed motions to intervene, and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed document(s); nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

Document Content(s)

ER23-2378-000 DLO.docx.....1

Attachment C

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c/o Stephanie Clarkson, Vitis Energy

99 King St. #3785

St. Augustine, FL 32085

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Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
One State Street
Hartford, CT 06103



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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NTC Connecticut, LLC
c/o Stephanie Clarkson, Vitis Energy
99 King St. #378
St. Augustine, FL 32085



9590 9402 8136 3030 9528 80

2. Article Number (Transfer from service label)

7017 1450 0001 8948 4599

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

x *Nichelle Altman* ☐ Agent
☐ Addressee

B. Received by (Printed Name)**C. Date of Delivery**

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

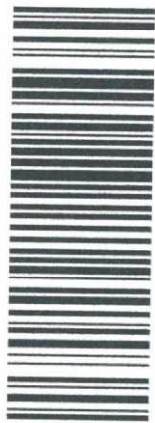
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| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
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c/o Stephanie Clarkson, Vitis Energy
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St. Augustine

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One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
kbaldwin@rc.com
Direct (860) 275-8345

Also admitted in Massachusetts
and New York

Via Certified Mail Return Receipt Requested

November 25, 2024

NTE Connecticut, LLC
c/o Stephanie Clarkson, Vitis Energy
99 King St. #3785
St. Augustine, FL 32085

Re: Notice of Filing of an Application for a Certificate of Environmental Compatibility and Public Need by Windham Energy Center, LLC for a Battery Energy Storage Facility at 189 Lake Road, Killingly, Connecticut

Dear Ms. Clarkson:

We are writing to you as the last known contact person for NTE Connecticut, LLC (“NTE”) and signatory to the Certificate of Cancellation of Limited Liability Company for NTE, filed with the State of Delaware’s Secretary of State on December 27, 2023 and a Statement of Withdrawal Registration for NTE, filed with the Connecticut Secretary of State on March 3, 2023. As you know, in 2019 the Connecticut Siting Council issued to NTE a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut (the “Property”).

Windham Energy Center, LLC (“WEC”) has filed an application for a Certificate of Environmental Compatibility and Public Need to construct, maintain and operate a 325MW battery energy storage facility (“WEC Project”) at 189 Lake Road in Killingly, Connecticut. The application and related materials can be accessed through Docket No. 527 maintained on the Connecticut Siting Council website.¹ Since the WEC Project would be constructed on some of

¹ Available at: https://portal.ct.gov/csc/1_applications-and-other-pending-matters/applications/4_docketnos500s/docket-no-527.

Stephanie Clarkson
November 25, 2024
Page 2

the same Property that would have hosted the NTE Project, we are providing notice of this application so that you, NTE, and/or NTE's successors in interest can advise as to whether the Certificate issued to NTE should be an impediment to the WEC Project.

It is our understanding that NTE is unable to make use of the Certificate, and will not construct the NTE Project, for at least three reasons:

1. *NTE no longer exists.* NTE filed a Statement of Withdrawal Registration of a foreign limited liability company filed with the Secretary of the State of Connecticut on March 3, 2023, by which NTE certified that it was not transacting business in Connecticut and surrenders its registration to do so. Furthermore, NTE filed in the State of Delaware a Certificate of Cancellation of Limited Liability Company documenting that NTE Connecticut, LLC was created as a Delaware limited liability company on December 30, 2015 and was voluntarily cancelled on December 27, 2023.
2. *NTE no longer has control of the Property.* The agreement by which NTE secured access to the Property is no longer in effect, and NTE no longer has any legal right to own or occupy the Property. WEC now holds an option to purchase the Property.
3. *The NTE Projects Capacity Supply Obligation and Interconnection Agreement are no longer valid.* ISO-NE submitted a termination of NTE's Capacity Supply Obligation to the Federal Energy Regulatory Commission in November 2021, which was effective in March 2022. On July 11, 2023, ISO-NE and Eversource jointly submitted a Notice of Termination notifying FERC that the Interconnection Agreement had been terminated due to NTE's breach of certain obligations under the Interconnection Agreement. FERC accepted the notice of termination on August 31, 2023.

As it is not possible for NTE to construct the NTE Project, NTE's Certificate should not be an impediment to WEC's application for the WEC Project.

If you have any questions please contact me.

Sincerely,



Kenneth C. Baldwin

Copy to: Zvi Nixon, E. Landau Law Offices

Attachment D

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| <input type="checkbox"/> Return Receipt (electronic) | \$ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ |
| <input type="checkbox"/> Adult Signature Required | \$ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ |

Postmark
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Postage

\$ 3.15

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\$ 12.10

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St. Augustine, FL 32085

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Latest Update

Your item arrived at our USPS facility in GAINESVILLE FL DISTRIBUTION CENTER on January 27, 2025 at 1:43 am. The item is currently in transit to the destination.

Get More Out of USPS Tracking:
USPS Tracking Plus®

Moving Through Network

Arrived at USPS Regional Facility

GAINESVILLE FL DISTRIBUTION CENTER

January 27, 2025, 1:43 am

Unclaimed/Being Returned to Sender

SAINT AUGUSTINE, FL 32084

January 24, 2025, 3:13 pm

In Transit to Next Facility

December 4, 2024

Arrived at USPS Regional Facility

JACKSONVILLE FL DISTRIBUTION CENTER

November 29, 2024, 12:04 pm

Departed USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER

November 27, 2024, 6:20 am

Arrived at USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER

November 26, 2024, 7:50 pm

Hide Tracking History

Feedback

KENNETH C. BALDWIN

One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
kbaldwin@rc.com
Direct (860) 275-8345

Also admitted in Massachusetts
and New York

November 21, 2024

Via First Class Mail and Electronic Mail

Melanie A. Bachman, Esq.
Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: **Docket No. 470 – Application of NTE Connecticut, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of an Electric Power Generating Facility at 180 and 189 Lake Road, Killingly, Connecticut – Motion of Windham Energy Center, LLC to Reopen and Modify the Decision in Docket No. 470B Due to Changed Conditions**

Dear Attorney Bachman:

Enclosed are the original and fifteen (15) copies of a Motion by Windham Energy Center, LLC to reopen Docket No. 470B for the limited purpose of evaluating changed conditions that, in our opinion, render the Docket No. 470B Certificate void. Copies of these materials have been forwarded to the parties and intervenors in Docket No. 470B. Electronic copies have also been sent to the Council today.

Thank you in advance for your assistance and cooperation.

Sincerely,



Kenneth C. Baldwin

Enclosures

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
	:	
APPLICATION OF NTE CONNECTICUT, LLC	:	DOCKET NO. 470B
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	:	NOVEMBER 21, 2024

**MOTION OF WINDHAM ENERGY CENTER, LLC TO REOPEN AND MODIFY
THE DECISION IN DOCKET NO. 470B DUE TO CHANGED CONDITIONS**

I. Introduction

Pursuant to Conn. Gen. Stat. § 4-181a(b), Windham Energy Center, LLC (“WEC”) hereby moves the Connecticut Siting Council (“Council”) to reopen Docket No. 470B for the limited purpose of evaluating the changed conditions as set forth below and modifying, based on such changed conditions, its June 6, 2019 Decision and Order, (the “Decision”) in Docket No. 470B. The Decision issued to NTE Connecticut, LLC (“NTE”), a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut (“Property”). As discussed in this Motion, NTE is no longer able to make use of the Certificate and construct the NTE Project due to a number of changed conditions. Based on these changed conditions, WEC respectfully requests that the Council reopen the Docket No. 470B evidentiary proceeding for the limited purpose of evaluating NTE’s ability to make use of the Certificate, modify the Decision and revoke the Certificate for the NTE Project.

II. Procedural Background

On August 17, 2016, NTE filed with the Council an application for a Certificate pursuant to Conn. Gen. Stat. Section 16-50g et seq. for the construction, maintenance and operation of the NTE Project. The Council conducted public hearings in 2016 and 2017. In early February 2017, NTE participated in the ISO New England (“ISO-NE”) Forward Capacity Auction No. 11 (“FCA 11”), but NTE elected to withdraw from FCA 11 prior to bidding in the final round of the auction due to a number of cost and schedule uncertainties associated with the NTE Project.

On May 11, 2017, the Council issued its decision in Docket No. 470, denying, without prejudice, the NTE Application. In its denial, the Council found that, following the results of FCA 11, ISO-NE had determined the NTE Project was not needed for resource adequacy, at least through the capacity commitment period of 2020 through 2021. During its deliberations on the Decision, the Council recognized and discussed NTE’s ability to request that the Docket No. 470 proceeding be reopened on a showing of changed conditions if it were successful in a future FCA auction.

Over the course of 2017 and 2018 NTE took a number of steps to resolve its cost and schedule uncertainties. In light of these changed conditions, NTE filed a Motion to Reopen and Modify The Decision In Docket No. 470 Due To Changed Conditions on January 18, 2019, which the Council granted. Following additional hearings in 2019, the Council issued its Decision on June 19, 2019, in which it issued the Certificate to NTE. The Certificate provides that, unless otherwise approved by the Council, it shall be void if all construction is not completed within five years after the effective date of the Decision, or five years after all appeals of the Decision have been resolved. Decision, § 1(p).

The Decision was appealed by Not Another Power Plant, a party in the Council’s Docket Nos. 470 and 470B, which appeal was ultimately resolved by a decision of the Connecticut

Supreme Court on September 28, 2021. *Not Another Power Plant v. Conn. Siting Council*, 265 A.3d 900 (Conn. 2021). Consequently, the Certificate will be void if all construction is not completed by September 28, 2026. Since the time of the Decision, however, conditions have changed making it impossible for NTE to complete construction of the NTE Project by September 2026, or indeed to ever construct the NTE Project.

III. The Council Has the Statutory Authority to Reopen and Modify its Decision

Pursuant to Conn. Gen. Stat. § 4-181a(b), the Council has the authority to reopen Docket No. 470B and modify its Decision due to changed conditions that have occurred since the Decision of June 6, 2019. Specifically, “on a showing of changed conditions the agency may reverse or modify the final Decision at any time at the request of any person or on the agency’s own motion”. Conn. Gen. Stat. § 4-181a(b). The Council has previously exercised its authority under Conn. Gen. Stat. § 4-181a(b) which “permits an agency to consider whether changed conditions exist and then consider whether such changed conditions if any justify reversing or modifying the Council’s original Decision...”. *See Council Docket No. 192 Reopening Pursuant to Conn. Gen. Stat. § 4-181a(b) Proceeding*, Opinion dated January 4, 2007 p. 1. The Council will find changed conditions when there is “new information or facts, identification of any unknown or unforeseen events or evidence... that were not available at the time of the final decision”. *See Docket No. 190B, Meriden Gas Turbine LLC reopening pursuant to Conn. Gen. Stat. § 4-181a(b)*, Conclusions of Law.

Consistent with this legal standard, the Council has reopened a number of electric generating facilities dockets and revised final decisions under Conn. Gen. Stat. §4-181a(b) based on new facts or when circumstances not previously contemplated by the Council have arisen. *Docket No. 187, Milford Power, LLC, Reopening Pursuant to for Conn. Gen. Stat. §4-181a(b) Proceeding*, Opinion, April 7, 2009, page 2 (reopening the docket to allow the continued use of

potable water because "at the time of certification, the record did not speak to sources of cooling water for contingency events."); *Docket NT-2010, Reopening of Final Decisions*, Opinion, March 17, 2011 (finding that the adoption of new industry practices regarding gas pipe cleaning constituted changed conditions warranting prohibitions and limitations on fuel pipeline/system cleanings); *Docket No. 187A, Milford Power, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, Dec. 2, 2010 (finding that an increase in natural gas supply, improvements to the electrical transmission grid and construction of other generation facilities were changed conditions supporting removal of dual fuel requirements); *Docket No. 225B, Kleen Energy Systems, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, July 22, 2009 (finding that the State's imposition of an aquifer protection zone was a changed condition justifying relocation of oil pipeline route); *Docket No. 189A, Lake Road Generating Co., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, Jan. 19, 2012, ¶ 20-21 (finding that the increases in the natural gas supply, natural gas pipeline capacity, and the price of fuel oil created changed conditions supporting removal of dual fuel requirements); *Docket No. 265A, Dominion Nuclear Connecticut, Inc., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, May 2, 2013, 1129-33 (finding that the changes in federal policy regarding the management of spent nuclear fuel and changes in the facility's management of spent fuel constituted changed conditions allowing the change to spent fuel storage installation).

As the discussion of changed conditions below underscores, this Motion more than satisfies applicable standards with respect to reopening the docket for the limited purpose of evaluating the changed conditions that make it impossible for NTE to make use of the Certificate. WEC therefore respectfully submits that the Council should modify the Decision and revoke the Certificate.

IV. Changed Conditions for the NTE Project

A. NTE No Longer Exists

The Certificate for the NTE Project was issued to NTE. NTE is no longer registered to do business in Connecticut and no longer exists as a Delaware limited liability company (LLC). Attached as Exhibit A is a Statement of Withdrawal Registration of a foreign limited liability company filed with the Secretary of the State of Connecticut on March 3, 2023, by which NTE certified that it was not transacting business in Connecticut and surrenders its registration to do so. Attached as Exhibit B is a State of Delaware Certificate of Cancellation of Limited Liability Company documenting that NTE Connecticut, LLC was created as a Delaware limited liability company on December 30, 2015 and was voluntarily cancelled on December 27, 2023. NTE is no longer registered to do business in Connecticut, and indeed no longer exists as a legal entity, so it is unable to make use of the Certificate. As NTE no longer exists as a legal entity, it is also not able to formally relinquish its Certificate.¹ There is no evidence in the record indicating that NTE transferred the Certificate to any other entity before it ceased to exist. Since NTE no longer exists, and NTE can no longer make use of the Certificate, the Certificate should be revoked.

B. NTE Has No Legal Interest in The Property On Which It Planned To Construct The NTE Project

The Property is owned by Gerald T. Erwin, Sr. and Annarita D. Erwin (“Owners”) and NTE secured access to the Property by virtue of a March 4, 2016 Option Agreement (the “NTE Option”), a notice of which was recorded on the Killingly land records (Exhibit C). By the terms of the NTE Option as set forth in the Notice provided as Exhibit C, the NTE Option expired no later than March 3, 2022. An entity known as Connecticut Clean Energy Holdings entered into

¹ When a Delaware LLC has been cancelled, its legal existence ends, and it cannot even secure counsel to represent it opposing the appointment of a receiver. *In re Reinz Wisconsin Gasket, LLC*, C.A. No. 2022-0859-MTZ (Del. Ch. 8 May 2023).

an Option Agreement with the Owners on March 6, 2022, which option has now been assigned to WEC. WEC timely exercised its option to purchase the Property. A Notice of Option to Purchase confirming that WEC currently holds the option to purchase the Property was recorded on the Killingly land records on November 19, 2024 and is attached as Exhibit D.

The agreement by which NTE secured access to the Property is no longer in effect, and NTE no longer has access to the Property. WEC now holds an option to purchase the Property. Since the conditions have changed, and WEC, rather than NTE, now holds an option to purchase and develop the Property, NTE can no longer make use of the Certificate to construct the NTE Project on the Property. Therefore, the Certificate should be revoked.

C. The NTE Project's Capacity Supply Obligation ("CSO") and Interconnection Agreement are No Longer Valid

The CSO that NTE secured in FCA 13 in 2019, which covered the 2022-23 capacity commitment period, was revoked in 2022. Termination Order, 178 FERC ¶ 61,001 (2022) (Exhibit E); Order Addressing Arguments Raised on Rehearing, 178 FERC ¶ 61,130 (2022) (Exhibit F). By virtue of its CSO the NTE Project was required to begin commercial operations by June 1, 2022, though a series of delays pushed the projected operation date back to June 1, 2024. 178 FERC ¶ 61,001, pp. 3-4. Under ISO-NE's Transmission, Markets and Services Tariff, ISO-NE may terminate a resource's CSO if the date by which the resource will have achieved its critical path schedule milestones is more than two years after the capacity commitment period for which the resource first received a CSO. *Id.* at 2. ISO-NE submitted a termination of NTE's CSO to the Federal Energy Regulatory Commission ("FERC") in November 2021, which (following a stay and rehearing) was effective in March 2022. *In re NTE Connecticut, LLC*, No. 22-1011 (D.C. Cir., Mar. 2, 2022) (order lifting temporary stay of FERC

termination order) (Exhibit G). Since NTE no longer has a CSO for the NTE Project, it can no longer demonstrate that there is a public need for the NTE Project and the Certificate should be revoked. See *Docket No. 470, NTE Connecticut, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, May 11, 2017 (denying NTE's initial application for a Certificate because a public need for the NTE Project had not been demonstrated).

The NTE Project also lost its ability to supply its power to the ISO-NE electric grid. An interconnection agreement between the Connecticut Light & Power Company, d/b/a/ Eversource ("Eversource") and NTE, dated June 16, 2020 (the "Interconnection Agreement"), had authorized the NTE Project to feed its power into the electric grid, subject to certain terms and conditions. On July 11, 2023, ISO-NE and Eversource jointly submitted a Notice of Termination notifying FERC that the Interconnection Agreement had been terminated due to NTE's breach of certain obligations under the Interconnection Agreement. (Exhibit H). FERC accepted the notice of termination on August 31, 2023. (Exhibit I). Finally, since NTE did not commence construction within two years after the issuance of its wastewater discharge permit (on January 20, 2021)² or within 18 months after the reissuance of its air permit (November 24, 2020),³ the Connecticut Department of Energy and Environmental Protection (CTDEEP) may elect to revoke one or both of these permits.

² C.G.S. § 22a-430-4(k)(5) ("If any person has not completed construction of the [approved facility] within two years of the approval, the commissioner may revoke such approval and require that a new application be submitted.").

³ C.G.S. § 22a-174-3a(f)(2)(A) ("The commissioner shall review and may modify, revise or revoke any permit if the owner or operator...[h]as not commenced construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later."). The original air permit was issued in December 2018 and was recertified by CTDEEP (restarting the 18-month timeline) on November 24, 2020.

NTE no longer has a CSO, there is therefore, no public need for the NTE Project. Even if there was an active CSO for the NTE Project, it would be unable to feed its power to the grid because its interconnection agreement has been revoked. Finally, due to the time that has elapsed without any construction progress, the NTE Project could lose the environmental permits it secured from CTDEEP. Due to all of these changed conditions, the Certificate should be revoked.

V. Conclusion

For all of the reasons discussed above and in the attached, WEC respectfully requests that the Council grant its Motion to Reopen this proceeding for the limited purpose of evaluating NTE's ability to make use of the Certificate and modify the Docket No. 470B Decision to revoke the Certificate.

Respectfully submitted,
WINDHAM ENERGY CENTER, LLC

By: 

Kenneth C. Baldwin
ROBINSON & COLE LLP
One State Street
Hartford, CT 06103

Its Attorneys

CERTIFICATION OF SERVICE

I hereby certify that on this 21st day of November 2024, a copy of the foregoing was sent

Certified Mail Return Receipt Requested and/or by electronic mail to the following:

Stephanie Clarkson, Managing Partner
NTE Connecticut, LLC
24 Cathedral Place
St. Augustine, FL 32084

Mary Mintel Miller, Esq.
Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
mmiller@rrlawpc.com

Mary Calorio, Town Manager
Town of Killingly
172 Main Street
Killingly, CT 06239
mcalorio@killinglyct.org

Joshua Berman, Staff Attorney
Sierra Club
50 F Street NW., 8th Floor
Washington, DC 20001
josh.berman@sierraclub.org

John Looney, Esq.
Roger Reynolds, Esq.
Connecticut Fund for the Environment
900 Chapel Street
Upper Mezzanine
New Haven, CT 06510
jlooney@ctenvironment.org
rreynolds@ctenvironment.org



Kenneth C. Baldwin

EXHIBIT A



Secretary of the State of Connecticut

Statement of Withdrawal Registration

Foreign Limited Liability Company

Filing Details

Filing Number: 0011721996
Filed On: 3/3/2023 8:41:08 AM

Number of Pages: 2
Effective Date & Time: 03/03/2023 8:45 AM

Primary Details

Name of the Limited Liability Company in its State or Country of Formation:
NTE CONNECTICUT, LLC

Business ALEI US-CT.BER:1203712
State/Country of Formation DEUnited States

Surrender of Certificate and Appointment of Agent

The undersigned asserts that the above-named limited liability company is not transacting business in Connecticut and surrenders its certificate of registration to do so. It further revokes the authority of its registered agent and consents that process in any action, suit or proceeding based upon any cause of action arising in Connecticut during the time the limited liability company was authorized to transact business in this state may be served upon the Secretary of the State.

Service of Process Address

Address to mail process served upon the Secretary of the State pursuant to the appointment made above:
378599 King Street, St. Augustine, FL, 32085, United States

Acknowledgement

I hereby certify and state under penalties of false statement that all the information set forth on this document is true.

I hereby electronically sign this document on behalf of:

Name of Authorizer: Stephanie Clarkson
Authorizer Title: Managing Partner

Filer Name: Shani Lee
Filer Signature: Shani Lee
Execution Date: March 3, 2023

Filing Number: 0011721996

Filed On: 3/3/2023 8:41 AM



Secretary of the State of Connecticut Statement of Withdrawal Registration

Foreign Limited Liability Company

This signature has been executed electronically

EXHIBIT B

STATE OF DELAWARE
CERTIFICATE OF CANCELLATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to cancel the limited liability company pursuant to Section 18-203 of the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is _____
NTE Connecticut, LLC

2. The Certificate of Formation of the limited liability company was filed on
12/30/2015

By: Stephanie Clarkson
Authorized Person

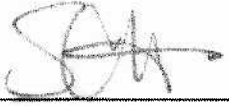
Name: 
Print or Type

EXHIBIT C

Receipt # 68117 Instr # 2016-00574



VOL 1300 PG 7

03/15/2016 12:15:14 PM

8 Pages

NOTICE IN GENERAL

TOWN OF KILLINGLY

Elizabeth M. Wilson, Town Clerk

Record and return to:

Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103
Attn: Mimi M. Lines, Esq.

NOTICE OF OPTION TO PURCHASE

This Notice of Option to Purchase made as of this 4th day of March, 2016, between Geoffrey A. Sorrow, of 189 Lake Road, Killingly, Connecticut 06241, Gerald T. Erwin, Sr. and Annarita D. Erwin, both of 324 Beechwood Road, West Hartford, Connecticut 06107 (collectively, the "**Seller**") and NTE Connecticut, LLC, a Delaware limited liability company with an address of 24 Cathedral Place, Suite 300, St. Augustine, Florida 32084 (the "**Buyer**").

1. Buyer and Seller entered into an Option Agreement (the "**Option**") on March 4, 2016 pursuant to which the Seller has agreed to grant the Buyer an option to purchase Seller's property known as 180 and 189 Lake Road, Killingly, Connecticut more particularly described **Exhibit A** attached hereto and made a part hereof (the "**Property**").

2. The term of the Option is one year, commencing on March 4, 2016 and ending on March 3, 2017.

3. The Buyer has the right to extend the term of the Option for up to five (5) an additional terms of one (1) year each, beginning on March 4, 2017 and ending on March 3, 2022.

4. If the Buyer exercises the Option, the Seller will sell the Property to the Buyer in accordance with the terms set forth in the Option.

5. A copy of the Option is on file in the office of the Buyer.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Seller and Buyer have caused this Notice of Option to be duly executed as of March 4, 2016.

This Notice of Option may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE NEXT PAGE IS THE SIGNATURE PAGE

SELLER:

Jamie L Kimck
Witness Jamie L Kimck

Carla J Demers
Witness Carla J Demers

Geoffrey A. Sorrow
Geoffrey A. Sorrow

Witness

Gerald T. Erwin, Sr.

Witness

Witness

Annarita D. Erwin

Witness

BUYER:

NTE Connecticut, LLC
A Delaware limited liability company

Witness

By: _____
Name: Seth Shortlidge
Title: Authorized Representative

Witness

SELLER:

Witness

Geoffrey A. Sorrow

Witness

Toby Block
Witness Toby Block

Michael M. Ciolek
Witness Michael M. Ciolek

As to
GTE +
ADE

Gerald T. Erwin, Sr.
Gerald T. Erwin, Sr.

Annarita D. Erwin
Annarita D. Erwin

Witness

Witness

BUYER:

NTE Connecticut, LLC
A Delaware limited liability company

Witness

By: _____
Name: Seth Shortlidge
Title: Authorized Representative

Witness

SELLER:

Witness

Geoffrey A. Sorrow

Witness

Witness

Gerald T. Erwin, Sr.

Witness


Witness

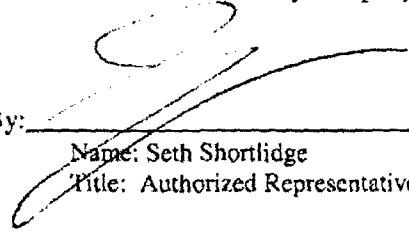
Annarita D. Erwin

Witness

BUYER:

NTE Connecticut, LLC
A Delaware limited liability company

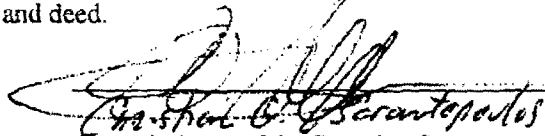

Witness Mark Mirabito

By: 
Name: Seth Shortlidge
Title: Authorized Representative


Witness David Groleau

State of Connecticut)
County of *Windsor*) SS: *DANIELSON*

The foregoing instrument was acknowledged before me this 4th day of MARCH, 2016 by Geoffrey A. Sorrow as his free act and deed and the free act and deed.


Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
County of) SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Gerald T. Erwin, Sr. as his free act and deed and the free act and deed.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
County of) SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by Annarita D. Erwin, as her free act and deed and the free act and deed.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
)
County of) SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by
Geoffrey A. Sorrow as his free act and deed and the free act and deed.

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
)
County of *Hartford*) SS: *W. Hartford*

The foregoing instrument was acknowledged before me this *4th* day of *March*, 2016 by
Gerald T. Erwin, Sr. as his free act and deed and the free act and deed.

[Signature]

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Connecticut)
)
County of *Hartford*) SS: *W. Hartford*

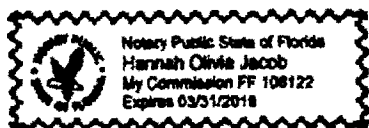
The foregoing instrument was acknowledged before me this *4th* day of *March*, 2016 by
Annarita D. Erwin, as her free act and deed and the free act and deed.

[Signature]

Commissioner of the Superior Court
Notary Public
My Commission Expires:

State of Florida)
) SS: *St. Augustine*
County of *St. John*)

The foregoing instrument was acknowledged before me this 4 day of March, 2016 by Seth Shortlidge, authorized representative of NTE Connecticut LLC, a Delaware limited liability company on behalf of the limited liability company. He is personally known to me or has produced _____ as identification.



Hannah Jacob

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

180 & 189 Lake Road
Killingly, Connecticut

A certain tract of land with all buildings thereon, situated in the Town of Killingly, County of Windham and State of Connecticut, and more particularly bounded and described as follows:

Bounded on the east by land of Sylvanus Wright, land of Edward Williams and land of one Phillips, and land of Evan Richmond and land of heirs of Simon Cotton; on the west by the Quinebaug River; on the South by land of Arnold Joslyn and on the north by land of Jedediah Sabin, and being the land described in a deed from James F. Chase and Ella F. Chase to Cromwell D. Chase which deed is dated October 26, 1900 and recorded in Killingly Land Records, in Book 61, Page 91, and conveyed by said Cromwell D. Chase to Thomas Dunn by deed dated December 28, 1900, and recorded in said Records, Book 60 at Page 259, to which deeds and all deed therein referred to reference is herein had and made and may be had for further description of said property.

Excepting from the above described property, all that strip of land sold by Thomas Dunn on Quinebaug River, to Frank R. Kingman by deed dated February 24, 1908, and recorded in Killingly Land Records, Book 64 at Page 546.

Also the right conveyed to The Shore Line Electric Railway Company to erect their wires and cables, towers and poles as set forth in an instrument dated June 26, 1918 and recorded in said Killingly Land Records, Book 71 at Page 548.

Also excepting from the above described property that tract of land sold by Eliza M. Dunn to J. Carlton Witter by Warranty Deed dated June 23, 1933, and recorded in Killingly Land Records, Vol. 86, Page 136.

Also excepting from the above described property a parcel of land conveyed by James J. Byrnes to Connecticut Light and Power Company by Warranty Deed dated June 11, 1969 recorded in Killingly Land Records, Volume 179, at Page 55. Reference is also made to a correcting Warranty Deed from James J. Byrnes to Connecticut Light and Power Company dated January 15, 1970, and recorded in Killingly Land Records, Volume 181 at Page 455.

Excepting from the above described property a parcel of land, consisting of approximately 2.064 acres of land, which was conveyed by Geoffrey A. Sorrow to John R. Dunn, Jr., by deed dated December 29, 1989.

Excepting therefrom the above described real property a parcel sold to Preston Bristow and Lillian Bristow by deed dated November 23, 1956 and recorded in Killingly Land Records, Volume 126, Page 299.

EXHIBIT D

**Record and return to:**

Robinson & Cole LLP
1055 Washington Street
Stamford, Connecticut 06901
Attn: Anthony J. Vogel, Esq.

NOTICE OF OPTION TO PURCHASE

This Notice of Option to Purchase made as of this 19th day of November, 2024, between **Gerald T. Erwin, Sr.** and **Annarita D. Erwin**, both of 324 Beechwood Road, West Hartford, Connecticut 06107 (collectively, the “**Seller**”) and **WINDHAM ENERGY CENTER LLC**, a Delaware limited liability company with an address of c/o Robinson & Cole LLP, 1055 Washington Street, Stamford, Connecticut 06901, Attention: Anthony J. Vogel, Esq. (the “**Buyer**”).

1. Buyer’s predecessor-in-interest and Seller’s predecessor-in-interest entered into that certain Option Agreement, dated as of March 6, 2022 (the “**Original Option**”), which Original Option was amended by that certain First Amendment to Option Agreement, dated as of March 4, 2024 (the “**First Amendment**”), by that certain Second Amendment to Option Agreement, dated as of September 26, 2024 (the “**Second Amendment**”; the Original Option, as amended by the First Amendment and the Second Amendment, the “**Option**”), between Buyer and Seller, pursuant to which the Seller has agreed to grant the Buyer an option to purchase Seller’s property known as 180 and 189 Lake Road, Killingly, Connecticut more particularly described **Exhibit A** attached hereto and made a part hereof (the “**Property**”).

2. The term of the Option was to expire on June 6, 2024.

3. Buyer timely exercised the Option, and the Seller will sell the Property to the Buyer in accordance with the terms set forth in the Option.

4. A copy of the Option is on file in the office of the Buyer.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, Seller and Buyer have caused this Notice of Option to be duly executed as of the above date.

This Notice of Option may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

THE NEXT PAGE IS THE SIGNATURE PAGE

SELLER:

Gerald T. Erwin Sr
Gerald T. Erwin, Sr.

Annarita D. Erwin
Annarita D. Erwin

BUYER:

WINDHAM ENERGY CENTER LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Christian G. Sarantopoulos
Witness Christian G. Sarantopoulos

Tracy R. Dawn
Witness Tracy R. Dawn

Christian G. Sarantopoulos
Witness Christian G. Sarantopoulos

Tracy R. Dawn
Witness Tracy R. Dawn

Witness

Witness

SELLER:

Witness

Witness

Witness

Witness

Gerald T. Erwin, Sr.

Annarita D. Erwin

BUYER:

WINDHAM ENERGY CENTER LLC,
a Delaware limited liability company

By: 

Randal B. Peterson
Authorized Signatory



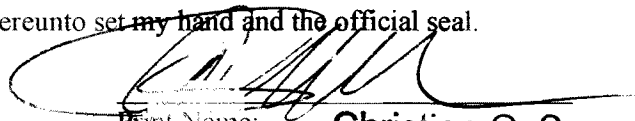
Witness


Witness

STATE OF CT)
COUNTY OF HARTFORD) ss: WEST HARTFORD

On the 1st day of October, in the year 2024, before me, the undersigned, personally appeared **Gerald T. Erwin, Sr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

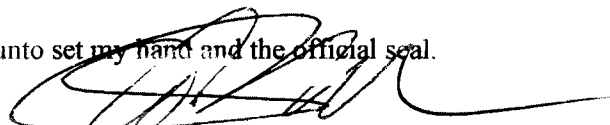
IN WITNESS WHEREOF, I hereunto set my hand and the official seal.


Print Name: Christian G. Sarantopoulos
Commissioner of the Superior Court/Notary Public
My commission expires:

STATE OF CT)
COUNTY OF HARTFORD) ss: WEST HARTFORD

On the 1st day of October, in the year 2024, before me, the undersigned, personally appeared **Annarita D. Erwin**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual named in and who executed the foregoing instrument and acknowledged that he executed the same as her voluntary act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal.


Print Name: Christian G. Sarantopoulos
Commissioner of the Superior Court/Notary Public
My commission expires:

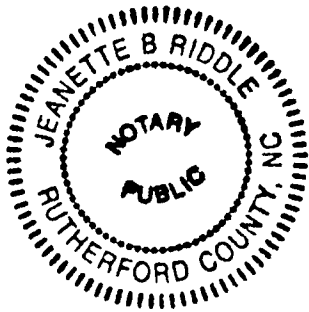
STATE OF North Carolina

SS:

COUNTY OF Rutherford)

On the 12th day of November in the year 2024, before me, the undersigned, personally appeared RANDY H. PEARSON, Attorney at Law of WINDHAM ENERGY CENTER LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual named in and who executed the foregoing instrument and acknowledged that he executed the same as his/her voluntary act and deed and the voluntary act and deed of said limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and the official seal



Jeanette B. Riddle
Print Name: Jeanette B. Riddle
Commissioner of the Superior Court/Notary Public
My commission expires: 6-2-2029

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

180 & 189 Lake Road
Killingly, Connecticut

A certain tract of land with all buildings thereon, situated in the Town of Killingly, County of Windham and State of Connecticut, and more particularly bounded and described as follows:

Bounded on the east by land of Sylvanus Wright, land of Edward Williams and land of one Phillips, and land of Evan Richmond and land of heirs of Simon Cotton; on the west by the Quinebaug River; on the South by land of Arnold Joslyn and on the north by land of Jedediah Sabin, and being the land described in a deed from James E. Chase and Ella F. Chase to Cromwell D. Chase which deed is dated October 26, 1900 and recorded in Killingly Land Records, in Book 61, Page 91, and conveyed by said Cromwell D. Chase to Thomas Dunn by deed dated December 28, 1900, and recorded in said Records, Book 60 at Page 259, to which deeds and all deed therein referred to reference is herein had and made and may be had for further description of said property.

Excepting from the above described property, all that strip of land sold by Thomas Dunn on Quinebaug River, to Frank R. Kingman by deed dated February 24, 1908, and recorded in Killingly Land Records, Book 64 at Page 546.

Also the right conveyed to The Shore Line Electric Railway Company to erect their wires and cables, towers and poles as set forth in an instrument dated June 26, 1918 and recorded in said Killingly Land Records, Book 71 at Page 548.

Also excepting from the above described property that tract of land sold by Eliza M. Dunn to J. Carlton Witter by Warranty Deed dated June 23, 1933, and recorded in Killingly Land Records, Vol. 86, Page 136.

Also excepting from the above described property a parcel of land conveyed by James J. Byrnes to Connecticut Light and Power Company by Warranty Deed dated June 11, 1969 recorded in Killingly Land Records, Volume 179, at Page 55. Reference is also made to a correcting Warranty Deed from James J. Byrnes to Connecticut Light and Power Company dated January 15, 1970, and recorded in Killingly Land Records, Volume 181 at Page 455.

Excepting from the above described property a parcel of land, consisting of approximately 2.064 acres of land, which was conveyed by Geoffrey A. Sorrow to John R. Dunn, Jr., by deed dated December 29, 1989.

Excepting therefrom the above described real property a parcel sold to Preston Bristow and Lillian Bristow by deed dated November 23, 1956 and recorded in Killingly Land Records, Volume 126, Page 299

EXHIBIT E

178 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

ISO New England Inc.

Docket No. ER22-355-000

ORDER ACCEPTING RESOURCE TERMINATION FILING

(Issued January 3, 2022)

■ On November 4, 2021, pursuant to section 205 of the Federal Power Act (FPA),¹ ISO New England Inc. (ISO-NE) submitted privileged and public (i.e., redacted) versions of a filing requesting to terminate the Capacity Supply Obligation (CSO) for Resource No. 38663/Project 12280, also known as Killingly Energy Center (Killingly). The Project Sponsor² is NTE Connecticut, LLC (NTE). As discussed further below, we accept ISO-NE's termination filing.

I. Background

■ Through its Forward Capacity Auction (FCA), ISO-NE procures the capacity resources that it needs to ensure resource adequacy within its footprint. ISO-NE holds FCAs annually, three years in advance of the relevant delivery year (Capacity Commitment Period). Resources compete in the auctions to obtain a commitment to supply capacity, the CSO, in exchange for a market-priced capacity payment.

■ A resource that is planned or under construction may qualify to offer capacity into an FCA if the Project Sponsor provides the requisite information to allow ISO-NE to evaluate the feasibility of the resource achieving commercial operation by the start of the

¹ 16 U.S.C. § 824d.

² Capitalized terms not defined herein are used consistent with the definitions in the Transmission, Markets and Services Tariff (Tariff or ISO-NE Tariff). *See* ISO-NE, Transmission, Markets and Services Tariff, § I.2 (Rules of Construction; Definitions) (139.0.0) (ISO-NE Tariff); *see also id.* (defining "Project Sponsor" as "an entity seeking to have a New Generating Capacity Resource, New Import Capacity Resource or New Demand Capacity Resource participate in the Forward Capacity Market").

associated Capacity Commitment Period. Among other things, the Project Sponsor must provide a critical path schedule that includes the dates by which a number of project development milestones are expected to occur.³

■ Under Tariff section III.13.3.4, if any development milestone date is revised such that the resource will not achieve commercial operation by the start of the Capacity Commitment Period for which it holds a CSO, the Project Sponsor must cover its entire CSO for the portion of the Capacity Commitment Period for which the resource will not be operational. A Project Sponsor may cover the CSO either by purchasing replacement capacity through a reconfiguration auction or by entering into one or more CSO bilateral transactions.⁴

■ Under Tariff section III.13.3.4A, ISO-NE may seek to terminate a resource's CSO if one or more of several conditions are satisfied. Relevant to the matter before the Commission in this proceeding, section III.13.3.4A states that ISO-NE is allowed to terminate a resource's CSO for any future Capacity Commitment Periods, as well as the resource's right to any payments associated with that CSO in the Capacity Commitment Period if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a CSO.⁵ The Tariff further states that, upon Commission ruling, the Project Sponsor forfeits any financial assurance provided to ISO-NE with respect to that CSO.

■ In a January 2021 order on ISO-NE's filing regarding the qualification of capacity resources to participate in FCA 15, the Commission determined that the record in that proceeding showed that, to date, Killingly had complied with the critical path schedule provisions. The Commission further held that if a triggering event were to occur in the future, ISO-NE would have the right, after consultation with the Project Sponsor, to submit a filing with the Commission to terminate Killingly's CSO.⁶

³ See ISO-NE Tariff, § III.13.1 (Forward Capacity Auction Qualification) (67.0.0), § III.13.1.1.2.2.2. The specified milestones involve major permits, project financing closing, major equipment orders, substantial site construction, major equipment delivery, major equipment testing, commissioning, and commercial operation.

⁴ See ISO-NE Tariff, § III.13.3 (Critical Path Schedule Monitoring) (17.0.0).

⁵ See ISO-NE, Tariff, § III.13.3.4A

⁶ *ISO New England Inc.*, 174 FERC ¶ 61,046, at PP 39-40 (2021).

II. Filing

■ ISO-NE cites Tariff section III.13.3.4A, which provides for termination when, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path milestones, including commercial operation, is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a CSO. ISO-NE states that this trigger for termination of Killingly's CSO has been met; therefore, through this filing and following consultation with NTE, ISO-NE is exercising its right to seek termination of Killingly's CSO for any future Capacity Commitment Periods.⁷ ISO-NE states that Killingly, a proposed combined cycle generator, acquired a 631.955 MW CSO in FCA 13,⁸ which is associated with the 2022-2023 Capacity Commitment Period and that, accordingly, Killingly would be required to achieve commercial operation on June 1, 2022. In support of the termination of Killingly's CSO, ISO-NE submitted confidential, non-public market participant information. This information contains updates provided by NTE to ISO-NE regarding Killingly's status and critical path schedule and an analysis regarding Killingly's ability to achieve its critical path schedule milestones.

■ ISO-NE states that the termination removes the resource's right to any payments associated with that CSO and the resource's qualified capacity for participation in the Forward Capacity Market.⁹ ISO-NE states that, if the Commission accepts the termination filing, then it will terminate Killingly's CSO, draw down the financial assurance that NTE provided for Killingly's CSO, and remove Killingly's qualified capacity.¹⁰ ISO-NE contends that these actions will make Killingly ineligible to participate in FCA 16, which will commence on February 7, 2022.

■ ISO-NE requests that the Commission accept its termination filing with an effective date of January 3, 2022. In addition, ISO-NE states that Commission action on this termination filing is important because ISO-NE and Market Participants need certainty on the status of Killingly prior to FCA 16, which is scheduled to commence on February 7, 2022.¹¹

⁷ Transmittal at 1-2.

⁸ *Id.* at 3. ISO-NE states that Killingly also acquired a CSO in FCA 14 and FCA 15. *Id.*

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 8.

III. Notice of Filing and Responsive Pleadings

■ Notice of ISO-NE's filing was published in the *Federal Register*, 86 Fed. Reg. 66,293 (Nov. 22, 2021), with interventions and protests due on or before November 26, 2021. Calpine Corporation; Connecticut Department of Energy and Environmental Protection; Connecticut Light and Power Company; Electric Power Supply Association; Emera Energy Services, Inc.; Gemma Power Systems, LLC (Gemma); National Grid; New England Power Generators Association, Inc.; New England States Committee on Electricity; Sierra Club; Public Citizen, Inc.; William Tong, Attorney General of the State of Connecticut; and Yankee Gas Services Company filed timely motions to intervene. North Atlantic States Regional Council of Carpenters and Mitsubishi Power Americas, Inc. (Mitsubishi) filed out-of-time motions to intervene.

■ On November 26, 2021, NTE filed a timely motion to intervene and request for extension of time to comment from November 26, 2021 to December 3, 2021, which was granted. NTE filed a protest on December 3, 2021. ISO-NE filed a motion for leave to file an answer and answer on December 20, 2021. NTE filed a motion for leave to answer and answer on December 28, 2021.

A. NTE's Protest

■ NTE submitted privileged and public (i.e., redacted) versions of a protest to ISO-NE's filing. NTE states that this proceeding is about whether ISO-NE has deprived NTE of its reasonable expectations under the Tariff by prematurely seeking to terminate Killingly's CSO. NTE does not dispute that, for ISO-NE to seek termination, one of the termination conditions in the Tariff must be met.¹² However, NTE asserts that ISO-NE's filing for termination is unripe, that there is no concrete evidence that one of the triggers in the Tariff has been satisfied, and that the Commission must not allow ISO-NE to terminate Killingly's CSO without such concrete evidence.¹³ NTE argues that ISO-NE's termination filing is premature and based on faulty assumptions and that ISO-NE has unjustly, unreasonably, and unlawfully sought to deprive NTE of its CSO for Killingly.¹⁴ NTE maintains that it will meet all of its critical path milestones by June 1, 2024.

■ NTE states that it experienced three significant delays in developing the Killingly project that were beyond its control—a challenge by incumbent generators in 2019 to ISO-NE's FCA 13 results, including Killingly's offer; an administrative challenge by environmental groups to the Connecticut Siting Council's decision to approve Killingly

¹² NTE Protest at 8 (citing ISO-NE Tariff, § III.13.3.4A).

¹³ NTE Protest at 12-13.

¹⁴ *Id.* at 2.

that resulted in a complaint in the Connecticut Superior Court that was not resolved until September 28, 2021; and the COVID-19 pandemic, which affected NTE's schedule due to the inability to access the site during legally imposed stay-at-home orders, key NTE employees becoming ill, disruption of supply chains, and access to construction labor, amongst others.¹⁵

■ NTE states that, as required under the terms of ISO-NE's Tariff and its Large Generator Interconnection Agreement, NTE provided ISO-NE with a critical path schedule and regular updates, and cooperated closely with ISO-NE throughout the process, including by agreeing to update ISO-NE monthly rather than quarterly.¹⁶ NTE states that, on September 17, 2021, ISO-NE requested that NTE respond to a number of questions regarding Killingly's status, which NTE answered two weeks later.¹⁷ NTE also notes that, on October 12, 2021, NTE requested a discussion with ISO-NE to ensure that ISO-NE understood NTE's submittals or to identify whether ISO-NE required additional information, but ISO-NE did not respond to NTE's request.¹⁸ NTE states that, on November 4, 2021, ISO-NE informed NTE of its intent to terminate Killingly's CSO. NTE states that Killingly will offer both immediate and long-term benefits to the New England region.¹⁹

B. ISO-NE Answer

■ In its answer, ISO-NE disputes NTE's claim that ISO-NE is prematurely seeking to terminate the CSO and that termination would deprive NTE of its reasonable expectations under the Tariff. ISO-NE contends that the only question before the Commission is whether Killingly will be able to achieve commercial operation prior to June 1, 2024, and arguments in NTE's protest unrelated to that inquiry are outside the scope of this proceeding.²⁰ ISO-NE explains that NTE has made no progress on the project and has revised the milestones to later dates; as such ISO-NE lost confidence that the project could be built in time to meet the June 1, 2024 deadline. ISO-NE states that

¹⁵ *Id.* at 4-6.

¹⁶ *Id.* at 7 (citing Termination at 4).

¹⁷ NTE Protest at attach. B, Declaration of Timothy Eves, ¶ 16.

¹⁸ *Id.*

¹⁹ *Id.* at 3 (citing attach. B, Declaration of Timothy Eves, ¶ 5).

²⁰ *Id.* at 3.

the trigger in the Tariff for termination has been met and, accordingly, it is now filing with the Commission to seek termination of Killingly's CSO.²¹

■ ISO-NE avers that NTE's statement that it "cooperated closely with ISO-NE throughout the process, including by agreeing to update ISO-NE monthly rather than quarterly"²² intimates that it provided monthly reports because it was going above and beyond the Tariff requirements of its own volition, which is not the case. ISO-NE explains that monthly reports are a requirement that ISO-NE imposed for Killingly pursuant to the Tariff, as it does for all resources that miss critical path schedule milestone dates.²³ Additionally, ISO-NE notes that a resource's failure to provide monthly reports in a timely manner would also trigger ISO-NE's right to seek termination of a CSO pursuant to section III.13.3.4A of the Tariff.²⁴

■ ISO-NE argues that its treatment of Killingly is the same as its treatment of all other resources and disputes NTE's claim that ISO-NE chose not to wait to terminate the Killingly CSO because it would enable ISO-NE to reflect the termination in the inputs for FCA 16.²⁵ ISO-NE contends that by referencing the preparation for FCA 16, it is appropriately taking into account the timing of upcoming activities on the Forward Capacity Market calendar, and its interest in including the correct resources in the auction input file is consistent across the board and does not single out Killingly.²⁶

■ ISO-NE argues that NTE mischaracterizes ISO-NE's consultation process as cursory and rushed. ISO-NE states that consultation lasted for nearly two months and was sufficient to meet the consultation requirement in the Tariff. ISO-NE also refutes NTE's statement that it was unresponsive to NTE's October 12, 2021 request for consultation and states that ISO-NE responded on October 21, 2021 with a follow up question.²⁷ ISO-NE notes that NTE was unresponsive to specific delay questions and did

²¹ ISO-NE Answer at 5.

²² NTE Protest at 7.

²³ ISO-NE Answer at 5 (citing ISO-NE Tariff, § III.13.3.3).

²⁴ *Id.* at 5.

²⁵ NTE Protest at 12.

²⁶ ISO-NE Answer at 6.

²⁷ *Id.* at 8-9.

not provide requested evidence to the September 17, 2021 consultation questions.²⁸ ISO-NE further states that it considered all the arguments that NTE provided before making this termination filing, but it did not find any of NTE's arguments compelling based on ISO-NE's experience with many other projects with similar milestone timeframes and under similar circumstances.²⁹

C. NTE's Answer

■ In NTE's answer to ISO-NE's answer, NTE disputes that ISO-NE has met its burden under either the Tariff or section 205 of the FPA to show that Killingly will not enter service by June 1, 2024. Rather, NTE states that ISO-NE only speculates that Killingly will not meet the June 1, 2024 deadline, which is not the objective standard required by the Tariff.³⁰ NTE further states that in prior ISO-NE termination proceedings, project sponsors of projects for which CSO were to be terminated had admitted to having met the termination trigger in the Tariff.³¹ NTE further states that the evidence on the record confirms that it was on track to meet the June 1, 2024 deadline at the time that ISO-NE filed the termination filing and that ISO-NE has not sufficiently refuted this evidence.³²

IV. Discussion

A. Procedural Matters

■ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

■ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2021), we grant North Atlantic States Regional Council of Carpenters' and Mitsubishi's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

²⁸ *Id.* at 11, 14.

²⁹ *Id.* at 10.

³⁰ NTE Answer at 1-3.

³¹ *Id.* at 3-4.

³² *Id.* at 5.

■ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's and NTE's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

■ We accept ISO-NE's termination filing, to become effective January 4, 2022, following the 60-day notice period required by FPA section 205.³³ As further discussed below, we accept ISO-NE's request to terminate the CSO for Resource No. 38663/Project 12280, also known as Killingly, beginning with the 2022-2023 Capacity Commitment Period.

■ Section III.13.3.4A of the Tariff states that ISO-NE shall have the right to seek termination of a CSO, after consultation with the Project Sponsor, if, as relevant here, as a result of milestone date revisions, the date by which the Project Sponsor will have achieved all its critical path schedule milestones will be more than two years after the beginning of the Capacity Commitment Period for which it first received a CSO.³⁴

■ Based on a review of the record, including the confidential information provided by ISO-NE and NTE, we find that the relevant condition for termination set forth in Tariff section III.13.3.4A has been met. Killingly first received its CSO in FCA 13, which is associated with the 2022-2023 Capacity Commitment Period. The first day of that Capacity Commitment Period is June 1, 2022. Accordingly, Killingly must be able to achieve all its critical path schedule milestones, including commercial operation, by June 1, 2024. If, as a result of milestone date revisions, Killingly is unable to achieve that date, then the Tariff's trigger for CSO termination is met.³⁵ Since receiving its first CSO, ISO-NE states that NTE has revised critical path milestones to later dates, while making "virtually no progress" on the Killingly project.³⁶

³³ Per section 205 of the FPA, absent waiver, the earliest a filing can become effective is after 60-days' notice, which in this case is January 4, 2022. *See* 16 U.S.C. § 824d; *Alabama Power Co.*, 177 FERC ¶ 61,178, at P 11 (2021).

³⁴ *See* ISO-NE Tariff, § III.13.3.

³⁵ ISO-NE Answer at 2.

³⁶ ISO-NE Answer at 4-5.

■ We do not agree with NTE that ISO-NE's requested termination is premature or based on faulty assumptions.³⁷ We are persuaded by the evidence provided by ISO-NE that, the milestone date revisions indicate that Killingly will not have achieved all of its critical path schedule milestones, including commercial operation, until after June 1, 2024, i.e., more than two years after June 1, 2022—the beginning of the 2022-2023 Capacity Commitment Period. While the Commission determined in January 2021 that none of the triggering events had yet occurred, the Commission cautioned that if such a triggering event were to occur in the future, ISO-NE would have the right, after consultation with the Project Sponsor, to submit a filing with the Commission to terminate Killingly's CSO.³⁸ The present record now reflects that such a triggering event has indeed occurred in the intervening 12 months and that Killingly will not achieve commercial operation by the time specified in the Tariff.³⁹

■ Additionally, ISO-NE fulfilled the requirement to consult with the Project Sponsor before termination, as demonstrated by several meetings in a two-month period in which NTE would receive written questions as part of the consultation process.⁴⁰ The consultation process concluded at the November 4, 2021 meeting with NTE at which ISO-NE informed NTE it planned to submit the termination filing later that day.⁴¹

The Commission orders:

ISO-NE's filing to terminate Killingly's CSO is hereby accepted, to become effective on January 4, 2022, as discussed in the body of this order.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁷ NTE Protest at 2.

³⁸ *ISO New England Inc.*, 174 FERC ¶ 61,046 at PP 39-40.

³⁹ Because much of the pertinent information has been filed on a non-public basis, this public order cannot go into detail regarding the specifics of the triggering event or the basis for ISO-NE's judgment that Killingly will not be able to achieve all of its milestones including commercial operations by June 1, 2024 as required by the tariff. Our review of these non-public materials, however, satisfies us that this is the case.

⁴⁰ NTE Protest at 7-8.

⁴¹ *Id.* at 9.

EXHIBIT F

178 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

ISO New England Inc.

Docket No. ER22-355-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued February 23, 2022)

■ On January 3, 2022, the Commission issued an order¹ accepting ISO New England Inc.’s (ISO-NE) request, pursuant to section 205 of the Federal Power Act (FPA),² to terminate the Capacity Supply Obligation (CSO) for Resource No. 38663/Project 12280, also known as Killingly Energy Center (Killingly). The Project Sponsor³ is NTE Connecticut, LLC (NTE). On January 11, 2022, NTE filed a request for rehearing of the Termination Order.⁴

¹ *ISO New England Inc.*, 178 FERC ¶ 61,001 (2022) (Termination Order).

² 16 U.S.C. § 824d.

³ Capitalized terms not defined herein are used consistent with the definitions in the Transmission, Markets and Services Tariff (Tariff or ISO-NE Tariff). *See* ISO-NE, Transmission, Markets and Services Tariff, § I.2 (Rules of Construction; Definitions) (139.0.0) (ISO-NE Tariff); *see also id.* (defining “Project Sponsor” as “an entity seeking to have a New Generating Capacity Resource, New Import Capacity Resource or New Demand Capacity Resource participate in the Forward Capacity Market”).

⁴ In the same filing, NTE also moved for a stay of the Termination Order, which the Commission denied. *ISO New England Inc.*, 178 FERC ¶ 61,063 (2022). NTE also sought a stay of the Termination Order in the United States Court of Appeals for the District of Columbia Circuit. On February 4, 2022, the court granted the stay until 30 days after the Commission resolves the pending rehearing request. *NTE Connecticut, LLC*, No. 22-1011 (D.C. Cir. Feb. 4, 2022). Because NTE’s request for a stay has been resolved, for the sake of simplicity we here refer to the motion to stay and request for rehearing as the “NTE Rehearing Request.”

■ Pursuant to *Allegheny Defense Project v. FERC*,⁵ the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,⁶ we are modifying the discussion in the Termination Order and continue to reach the same result in this proceeding, as discussed below.⁷

I. Background

■ Briefly, under ISO-NE's Tariff, Killingly must achieve all of its critical path schedule milestones, including commercial operation, by June 1, 2024.⁸ If, as a result of milestone date revisions, Killingly is unable to achieve those milestones by that date, then the Tariff's trigger for CSO termination is met.⁹

■ Following NTE's August 2021 critical path schedule report for Killingly, which provided an October 31, 2021 financing milestone and an April 14, 2024 commercial operation milestone, ISO-NE sent NTE follow-up questions expressing concern about whether the project could meet the above-noted June 1, 2024 date and seeking further

⁵ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁶ 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁷ *Allegheny Defense Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Termination Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁸ The Termination Order provides additional relevant background information. See Termination Order, 178 FERC ¶ 61,001 at PP 2-6.

⁹ Termination Order, 178 FERC ¶ 61,001 at P 25; see also ISO-NE Answer at 2; ISO-NE Tariff, § III.13.3.4A (trigger for termination occurs "if, as a result of milestone date revisions, the date by which a resource will have achieved all its critical path schedule milestones is more than two years after the beginning of the Capacity Commitment Period for which the resource first received a Capacity Supply Obligation").

information and evidence demonstrating that this date remained feasible.¹⁰ NTE responded to those questions on September 29, 2021.¹¹

■ In its September 2021 critical path schedule report for Killingly, NTE again modified the financing and commercial operation dates. The milestone for equity financing was revised to January 14, 2022; the milestone for debt financing was revised to March 3, 2022; and the milestone for commercial operation was revised to May 31, 2024—the last day before the June 1, 2024 deadline.¹² The project schedule provided for the issuance of full notices to proceed and “commencement of on-site activities” on January 1, 2022, roughly two weeks prior to the January 14, 2022 date for the equity financing milestone.¹³

■ On October 22, 2021, NTE issued “Interim Limited Notice[s] to Proceed” (Interim Notices) to its Engineering, Procurement and Construction (EPC) contractor, Gemma Power Systems, LLC (Gemma), and its equipment manufacturer Mitsubishi Power Americas, Inc. (Mitsubishi).¹⁴ These Interim Notices did not issue until the day after ISO-NE inquired about their status and were backdated to October 1, 2021.¹⁵

■ NTE sent a letter to ISO-NE and the Connecticut Light and Power Company (CL&P) on October 28, 2021, updating—and pushing back—the milestones in its Large Generator Interconnection Agreement (LGIA).¹⁶ This letter also provided a May 31, 2024, commercial operation date, and provided that a notice to proceed would issue on November 30, 2021, again well before the milestones for securing financing.¹⁷

¹⁰ See Transmittal at 4; Transmittal attach. B at 2; Transmittal attach. C at 1.

¹¹ See Transmittal attach. C.

¹² Transmittal at 4-5; Transmittal attach. B at 2.

¹³ Transmittal at 5; Transmittal attach. C at 1, 7-8.

¹⁴ Transmittal attach. D.

¹⁵ See Transmittal attach. C at 8; Transmittal attach. D; ISO-NE Answer attach. B.

¹⁶ See Transmittal attach. E.

¹⁷ *Id.*

■ On November 4, 2021, ISO-NE sought to terminate Killingly's CSO under the Tariff.

■ NTE filed a protest in response to ISO-NE's request for termination; ISO-NE filed an answer; and NTE filed a further answer to ISO-NE's answer. Those filings are described in the Termination Order.¹⁸

■ In the Termination Order, the Commission accepted ISO-NE's request to terminate Killingly's CSO, beginning with the 2022-2023 Capacity Commitment Period, to become effective January 4, 2022. The Commission found, based on a review of the record, including information that had been designated as confidential by ISO-NE and NTE, that the relevant condition for termination set forth in Tariff section III.13.3.4A had been met.¹⁹ The Commission further noted that "[b]ecause much of the pertinent information has been filed on a non-public basis, this public order cannot go into detail regarding the specifics of the triggering event or the basis for ISO-NE's judgment that Killingly will not be able to achieve all of its milestones including commercial operations by June 1, 2024 as required by the tariff."²⁰

■ In its request for rehearing, NTE argues that the Termination Order was arbitrary and capricious because "it failed to provide any reasoning to support its determination that NTE could not complete the Killingly Project by June 1, 2024, and to justify its termination of the Project in any event."²¹ It further argues that the Commission's determination in the Termination Order is not supported by substantial evidence in the record and is contrary to law in light of the record evidence.²²

II. Discussion

A. Public Disclosure of Information Designated as Confidential

■ On February 11, 2022, Commission staff sent a letter to ISO-NE and NTE, pursuant to 18 C.F.R. § 388.112(d), notifying them that the Commission was considering the release of the material designated as confidential in the filings referenced above

¹⁸ Termination Order, 178 FERC ¶ 61,001 at PP 12-19.

¹⁹ Termination Order, 178 FERC ¶ 61,001 at PP 25-26.

²⁰ *Id.* P 26 note 39.

²¹ NTE Rehearing Request at 11; *see also id.* at 11-14.

²² *Id.* at 11; *see also id.* at 14 & n.37.

(388.112 Letter).²³ On February 15, 2022, ISO-NE and NTE confirmed that they do not object to the public release of the documents they designated as confidential in this matter.²⁴ As a result, we construe their requests for confidential treatment of this material as withdrawn, and we direct NTE and ISO-NE to submit in this docket public versions of the documents previously filed as confidential through an informational filing within 5 days of the date of this order.²⁵

B. Rehearing Request

■ We are not persuaded by the arguments in NTE's rehearing request that the Termination Order is not adequately supported by the record or that ISO-NE failed to carry its burden to show that the termination trigger was met. In this order, following the withdrawal of ISO-NE and NTE's requests for confidential treatment of documents in this matter, we more fully explain our reasoning in support of the Termination Order. Briefly, we conclude that, after NTE repeatedly delayed its milestones, ISO-NE has sufficiently demonstrated that NTE will not meet its May 31, 2024 critical path milestone for commercial operation of the Killingly project (or the next-day June 1, 2024 deadline), as required by the ISO-NE Tariff.

■ Addressing ISO-NE's termination request requires us to assess, based upon the record before us, whether ISO-NE appropriately terminated Killingly's CSO under Tariff section III.13.3.4A. In this proceeding, ISO-NE bears the burden of proof to show that the termination trigger was met.²⁶

²³ The 388.112 Letter sought comment on the public release of the following pleadings: (1) ISO New England Inc. Resource Termination Filing, filed November 4, 2021, under Accession No. 20211104-5203; (2) NTE Connecticut, LLC Protest, filed December 3, 2021, under Accession No. 20211203-5249; (3) ISO New England Inc. Motion for Leave to File Answer and Answer, filed December 20, 2021, under Accession No. 20211220-5169; (4) NTE Connecticut, LLC Motion for Leave to Answer and Answer, filed December 28, 2021, under Accession No. 20211228-5225; and (5) NTE Connecticut, LLC Emergency Motion for Stay, Request for Rehearing, and Request for Shortened Comment Period, filed January 11, 2022, under Accession No. 20220110-5027.

²⁴ NTE 388.112 Letter Response (Feb. 15, 2022); ISO-NE 388.112 Letter Response (Feb. 15, 2022).

²⁵ ISO-NE and NTE are directed to ensure that the pagination in the publicly filed versions of these submissions remains consistent with the pagination in the previously-filed, confidential versions of these submissions.

²⁶ We do not apply, and did not apply in the Termination Order, a subjective "lost

■ In support of the termination of Killingly’s CSO, ISO-NE submitted, in its filing with the Commission, updates and answers to questions provided by NTE to ISO-NE regarding Killingly’s status and critical path schedule. ISO-NE’s filing with the Commission was supported in part by a “Review of Critical Path Schedule” for the Killingly project performed by Lummus Consultants International (Lummus).²⁷ Also included in ISO-NE’s termination filing was a letter dated November 4, 2021, from Korea Western Power Company (Korea Western) relating to its investment approval process for the Killingly project.²⁸

■ We begin with the construction milestones that NTE provided to ISO-NE.²⁹ The May 31, 2024 commercial operation milestone occurs on the day before the June 1, 2024 deadline required by ISO-NE’s Tariff. NTE’s financing milestones were postponed 14 times, with the most recent postponement reflected in NTE’s September 2021 critical path schedule update, where NTE reported the close of equity financing was set at January 14, 2022, and the close of debt financing was set at March 1, 2022.³⁰ The record reflects that no construction activities whatsoever had occurred at the project site, and—even assuming the project schedule NTE provided was feasible—would not occur before January 1, 2022.³¹

■ A thorough assessment of these construction milestones and surrounding facts reflects that NTE will not meet the June 1, 2024 date for commercial operation of the Killingly project. When ISO-NE asked NTE for examples of similar projects completed within approximately 30 months, NTE identified three projects completed in 30 to 31 months.³² This 30- to 31-month construction schedule is also the timetable NTE

confidence” standard, as NTE suggests. *See* Termination Order, 178 FERC ¶ 61,001 PP 15 (quoting ISO-NE); *id.* P 26 (concluding that “Killingly will not have achieved all of its critical path schedule milestones” by the relevant deadline).

²⁷ Transmittal attach. F (Lummus Report).

²⁸ Transmittal attach. G.

²⁹ *See also* ISO-NE, Tariff, § III.13.3.4A (termination trigger is met “if, as a result of milestone date revisions” all milestones will not be achieved in a timely fashion as provided by the Tariff).

³⁰ Transmittal at 4-5; Transmittal attach. B at 2.

³¹ Transmittal at 5; Transmittal attach. C at 16 (site photographs); *id.* at 1, 7-8.

³² Transmittal attach. C at 5-6.

repeatedly cited in its protest to ISO-NE's filing.³³ On this timetable, construction would need to begin no later than December 1, 2021, to meet the June 1, 2024, deadline. It is undisputed, however, that, even on NTE's proposed schedule, no on-site construction had occurred nor was planned to occur before January 1, 2022, at the earliest.³⁴

■ We recognize that the Lummus Report states that a 29-month construction schedule would be an "aggressive but achievable schedule for a project of this scope."³⁵ Taken alone, this "aggressive" 29-month schedule would seem to dovetail with a January 1, 2022 "start" date that NTE provided for issuance of full notices to proceed and commencement of on-site activities and, just barely, allow the Killingly project to achieve commercial operation by May 31, 2024. NTE relies heavily on this aspect of the Lummus Report.³⁶

■ The Lummus Report's conclusion that a 29-month construction schedule would be "aggressive but achievable," however, was premised on the issuance of full notices to proceed "without financing in place"³⁷ The record does not support accepting this premise. As Lummus explained, in order to achieve the aggressive 29-month schedule, "[s]ignificant sums of money, in the order of about 10% of the purchase price, are generally required at the time of issuing full [notices to proceed] for major equipment purchases; therefore, the Equity Financing Secured date would likely have to be earlier to provide the necessary funds."³⁸ NTE's January 1, 2022 date for issuance of full notices to proceed and the start of construction was thus undermined by its own, self-selected

³³ NTE Protest at 1, 9, 10; *see also* NTE Protest attach. B, Eves Decl. ¶ 7 (declaration of Timothy Eves, providing an initial estimate of a 32-month construction schedule); *id.* ¶ 13 (30/31-month expected construction timetable).

³⁴ NTE argues that this timeline should be measured by reference to its issuance of the Interim Notices, rather than the issuance of full notices to proceed or commencement of on-site construction. We address that argument below. *See infra* PP 24-27.

³⁵ Transmittal attach. F at 4; *see also id.* at 5 (explaining that, assuming full notices to proceed could be executed without financing in place and that all dates on the September 2021 critical path schedule were met, commercial operation "could occur on or about the proposed commercial operation date of May 31, 2024").

³⁶ *See* NTE Rehearing Request at 5, 12; NTE Protest at 2, 11.

³⁷ Transmittal attach. F at 5 (noting, similarly, that this assumes that "the necessary full NTPs . . . can be executed without financing in place, which we believe is unlikely").

³⁸ *Id.* at 3; *see also id.* at 5-6.

critical path milestone of January 14, 2022, to secure equity financing.³⁹ To the extent key activities—such as issuing a full notice to proceed to Gemma, the EPC contractor—must await debt financing, that critical path milestone’s being set at March 1, 2022, would only further delay the project.⁴⁰ Thus, notwithstanding that NTE selected a May 31, 2024 date for Killingly’s commercial operation milestone, its other critical path milestones did not support achievement of this milestone, or that commercial operation would occur before the next day, June 1, 2024.

■ The Lummus Report therefore concluded that a “realistic scenario that incorporates financing availability”—even on a 29-month construction schedule—would not result in achievement of a May 31, 2024 commercial operation milestone, and that this deadline would most likely be missed by several months.⁴¹ In many respects, moreover, even this conclusion was based on assumptions favorable to NTE.⁴²

³⁹ See *id.* at 4 (noting that even a two-week delay would likely result in a consequential delay to the project). Even NTE acknowledges that ISO-NE “need not wait until June 1, 2024, to make a termination filing” and that “ISO-NE may have been within the law to seek termination if NTE missed its January deadline for providing the Full Notices.” NTE Protest at 12; see also NTE Answer at 6 (acknowledging that, if “NTE and [Korea Western] would be unable to issue final notices by early January,” the Lummus Report would not support their ability to meet their critical path milestones).

⁴⁰ See *id.* at 4 (explaining that full notices to proceed to the EPC contractor would not likely issue until financing closed with the lending institutions); *id.* at 5-6. NTE asserts that the debt financing date was irrelevant because NTE and Korea Western were structuring the transaction as an “equity-first investment.” NTE Protest at 9 n. 47; Eves Decl. ¶ 15. This assertion does not persuade us that Lummus had not identified a significant prospect for further delay of the project or that the debt-financing date was irrelevant. NTE has provided no detail to support this claim or to establish that debt financing was irrelevant to the project schedule. See NTE Protest at 9 n. 47; Eves Decl. ¶ 15. Regardless, this argument, which relies on the structure of the NTE-Korea Western transaction, would necessarily be contingent on NTE closing financing with Korea Western, but—as explained below—no commitment had been made in that respect.

⁴¹ Transmittal attach. F at 5-6.

⁴² *Id.* at 2-3 (assuming that any activity start or finish dates prior to September 30, 2021, had been met); *id.* at 5 (assuming that pandemic-related supply chain issues have been rectified and noting that “significant delays” in equipment orders or availability could result in further delay); *id.* (assuming that the financing milestones would be met); *id.* at 6 (assuming that sufficient engineering had been completed to specify major

■ As evidence in the record also demonstrates, when offered the opportunity to demonstrate that it would meet its critical path milestones in response to ISO-NE's questions, NTE failed to give persuasive answers. ISO-NE asked about the reason for delays to NTE's financing milestone—which at that time was October 31, 2021, years later than initially projected—and an explanation for why the financing milestone would not again be similarly delayed.⁴³ NTE offered several reasons for these delays and explained that those particular reasons were no longer likely to cause further delays.⁴⁴ However, NTE did not affirmatively demonstrate that it was now on-track to secure financing, instead offering a generalized statement that it is “finalizing its schedules and related contracts, including financing and procurement activities” and referring to the proposed project schedule.⁴⁵ NTE similarly provided only unsupported assurances in response to ISO-NE's requests for evidence from NTE's EPC contractor that it expected to complete the project by the then-operative April 14, 2024 commercial operation date and for evidence that NTE's major equipment manufacturers expected to deliver equipment in time to meet that date.⁴⁶ In fact, in the September critical path schedule report, NTE again delayed the financing milestones to the January 14 and March 1, 2022 dates discussed above, and delayed the commercial operation date to May 31, 2024.

■ Accordingly, the analysis in the Lummus Report, NTE's responses to ISO-NE's questions, and NTE's milestone updates to ISO-NE support the conclusion that, even assuming an “aggressive” 29-month schedule, the Killingly project would not achieve commercial operation by May 31, 2024, and instead would be delayed by at least several weeks even if full notices to proceed were issued immediately after the January 14, 2022

equipment and negotiations were ongoing to allow full NTP after funds are available). These assumptions favor a finding that the termination trigger was met, because they reflect a prospect for further potential delays if they prove to be inaccurate.

⁴³ Transmittal attach. C at 2. NTE claims that its answers to these questions became “stale” by November 4, 2021. NTE Answer at 4. But NTE's assertion that “the Connecticut Supreme Court did not reject the challenge to Killingly's state siting certificate until *September 28, 2021*, well after Killingly answered the questionnaire,” *id.*, is wrong, *see* Transmittal attach. C at 1, 4 (dated September 29, 2021 and referencing this decision). NTE also points to the issuance of the Interim Notices and Korea Western letter as intervening events, but ISO-NE considered these and—as explained below—they are not persuasive evidence that the Killingly project would meet its milestones.

⁴⁴ *See* Transmittal attach. C at 2-4.

⁴⁵ *See id.* at 4.

⁴⁶ *See id.* at 6-7.

date to secure equity financing, and likely by much longer. Thus, ISO-NE makes a strong showing that the trigger for termination of Killingly's CSO is met.

■ NTE offers two principal arguments in support of its proposed schedule.⁴⁷ First, NTE asserts that the 29- to 31-month construction "clock" started to run in October 2021, when it issued the Interim Notices. Second, NTE claims that it would have secured financing prior to January 1, 2022, notwithstanding the later milestone date, enabling it to issue full notices to proceed at that time. Neither argument is persuasive.

■ We are not persuaded by NTE's reliance on the Interim Notices. The Interim Notices did not identify any work to be performed, reference a purchase order, or include any compensation to be paid as a consequence of their issuance.⁴⁸ While they attached a project schedule, that schedule similarly has no indication of the work to be performed.⁴⁹ The Interim Notices also state that NTE anticipated issuing full notices to proceed by January 4, 2022, that NTE would "work to complete the current financing," and that NTE was doing so "during the month of October," which did not occur.⁵⁰ Failure to provide the materials referenced in the Interim Notices was grounds to suspend whatever (unspecified) work was to be performed under the Interim Notices—underscoring the importance of both securing financing and issuing the full notices to proceed.⁵¹

■ The Interim Notices thus provide no indication as to how construction activities for the Killingly project would make any significant progress toward meeting the critical path milestones starting in October 2021, such that the construction timeline should be measured from October 2021 rather than from the issuance of full notices to proceed. Indeed, NTE argues only that the Interim Notices allowed Gemma and Mitsubishi to "*continue* with less-intensive *planning* activities."⁵² There is no explanation of the work that Gemma performed, or was expected to perform, under the Interim Notices.⁵³ As to

⁴⁷ See NTE Protest at 1-2, 9-11; NTE Answer at 4-5.

⁴⁸ Transmittal attach. D at 1, 3.

⁴⁹ See *id.* at 2, 4.

⁵⁰ *Id.* at 1, 3.

⁵¹ See *id.*

⁵² NTE Protest at 6 (emphasis added).

⁵³ See NTE Protest at 10 (no work identified for Gemma under the Interim Notices); *cf.* Transmittal at 5; Transmittal attach. C at 1, 7-8 (providing, even under NTE's timeline that on-site activities were not expected until January 1, 2022). The declaration

Mitsubishi, NTE states that “prior to November 4, 2021, Mitsubishi had selected a heat-recovery steam generator supplier, selected a steam generator supplier, and had reserved manufacturing slots for the combustion turbines.”⁵⁴ But NTE does not tie these activities to the issuance of Interim Notices, or explain how these activities reflect substantial progress on construction that would enable them to meet their milestones.⁵⁵ On the whole, NTE fails to explain or provide evidence of how the Interim Notices enabled NTE to meet its critical path milestones, including commercial operation.

■ In addition, this finding is consistent with the premise identified in the Lummus Report that material progress on construction would not occur prior to the issuance of full notices to proceed, which would require financing to be secured.⁵⁶ It is also consistent with ISO-NE’s representations that, in contrast to the Killingly project, when other projects are 30 to 31 months from completion, notices to proceed have issued that define the scope of work and demonstrate substantial compensation has been paid and significant work has occurred at the project site to prepare for construction.⁵⁷ The Interim Notices lack such components and do not appear to authorize such work, undermining any suggestion that they started the construction “clock” in October 2021.

provided from Gemma’s CEO similarly identifies no work to be performed under the Interim Notices and, in fact, confirms the necessity of receiving full notices to proceed, among other things. *See* Collins Decl. ¶ 4 (“[A]ssuming Gemma received the Full Notice to proceed by January 4, 2022 and equipment manufacturers would meet required delivery dates, it would have been feasible to complete the Project by May 31, 2024.” (emphasis added)). And, as already explained, our evaluation of the record reflects that full notices to proceed would not issue on the timeline that Gemma’s CEO assumes.

⁵⁴ NTE Protest at 10.

⁵⁵ Particularly in light of their limited content, the circumstances surrounding the issuance of the Interim Notices—particularly that they issued only after ISO-NE inquired about them, and with a backdate to October 1, 2021—also undercut a claim that they marked a meaningful development in terms of the project’s ability to meet its milestones.

⁵⁶ *See supra* P 19; *see also* Transmittal attach. F at 3-4 (issuance of Interim Notices did not change Lummus’s analysis).

⁵⁷ *See* ISO-NE Answer at 13, 15; *cf.* Transmittal Att. C at 16. NTE claims that such comparisons are “inapposite,” pointing to the Lummus Report. NTE Answer at 5-6. But the Lummus Report’s conclusion that, if full notices to proceed were issued by January 1, 2022, it was possible that the Killingly project might meet its milestones on an “aggressive” schedule does not render ISO-NE’s experience with comparable projects irrelevant. It also does not establish that the Interim Notices were meaningful.

■ We thus do not agree that the Interim Notices demonstrate that the 29- to 31-month construction “clock” started to run in October 2021.

■ We now turn to NTE’s second argument, that it would have secured financing prior to January 1, 2022, such that NTE and Korea Western could have issued full notices to proceed allowing the Killingly project to meet its critical path milestones under the aggressive, 29-month schedule Lummus posited. Here, too, we are unpersuaded.

■ NTE relies primarily on a letter from Korea Western dated November 4, 2021, that briefly states that Korea Western is “nearing completion” of a government review process, but still must obtain certain government approvals later that month, and then secure approval by Korea Western’s board of directors.⁵⁸ NTE supplements this letter with the Eves Declaration, which states that “[i]n conversations with NTE, [Korea Western] specified that it expected to obtain Board approval and to issue Final Notices in December.”⁵⁹

■ The Korea Western letter, however, makes no commitment to finance the Killingly project—indeed, it is clear that no final decision on this point had been made and that financing remained contingent on further processes and approvals—nor does it indicate the level of financing being considered. And, while it states that Korea Western is “trying to expedite financing,” it does not provide any timeline on which it might do so or by which the approval process might be completed.⁶⁰ While the Eves Declaration attempts to fill this gap, we find it significant that Korea Western itself did not make any representation to this effect.⁶¹ Moreover, the Eves Declaration is of only limited value. It provides no significant detail on the conversations that occurred with Korea Western, such as their level of formality, what assurances were given, or any level of certainty on this intended timeline. It states only that Korea Western “expected” to obtain approval and issue full notices to proceed in December, and it reflects no commitment to provide financing or to do so on this timetable.

■ We conclude that NTE has not provided persuasive evidence that it would have closed financing in December 2021, particularly when weighed against the milestones,

⁵⁸ Transmittal attach. G.

⁵⁹ NTE Protest attach. B, Eves Decl. ¶ 15.

⁶⁰ *See id.*

⁶¹ NTE requested, and was afforded, an extension of time to “provide a complete evidentiary record,” and particularly cited the need to coordinate with Korea Western and Mitsubishi. *See* Mot. to Intervene and Request for Extension of Time at 2 (Nov. 26, 2021). NTE then provided no further evidence from these entities.

which NTE itself selected,⁶² for securing financing and ISO-NE's representations regarding the agreements and documents typically submitted as evidence of financing.⁶³

■ We cannot rule out the possibility that equity financing might have closed prior to January 1, 2022.⁶⁴ Likewise, we cannot state with certainty that, even if financing did not close until after this date, it was impossible for NTE to meet its current May 31, 2024 commercial operation date. But we are not required to do so to reach the conclusion that ISO-NE carried its burden to show that the termination trigger was met.⁶⁵ Based on our considered judgment of the record, we find unpersuasive NTE's arguments that financing would have closed, enabling full notices to proceed to issue, prior to January 1, 2022, and that Killingly would have met the May 31, 2024 commercial operation date.

■ NTE also cursorily asserts that the Commission "failed to conduct any balancing of the interests affected by the extreme sanction of termination or consideration of lesser alternatives."⁶⁶ It offers no legal analysis or any supporting citation to explain the basis for this argument. Nor did NTE urge in its pleadings prior to the Termination Order that the Commission should have conducted this balancing and imposed some (unspecified) "lesser alternative" if the termination trigger was met. Indeed, its request for rehearing

⁶² We recognize that these milestones were deadlines for securing financing, and that it is conceivable that financing might have closed earlier. But these milestones still reflect NTE's own assessment of when NTE would be required to ensure financing closed, and—as discussed—the other evidence that NTE itself submitted does not reflect that it would have closed equity financing before these deadlines.

⁶³ ISO-NE Answer at 12; *see also Rural Cellular Ass'n v. F.C.C.*, 588 F.3d 1095, 1105 (D.C. Cir. 2009) (explaining that where agencies must make predictions as to uncertain future events, complete factual support in the record for the agency's prediction may not be possible); *accord Growth Energy v. Env't Prot. Agency*, 5 F.4th 1, 15 (D.C. Cir. 2021).

⁶⁴ We also again note, *see supra* P 19 & note 41, that NTE has not presented persuasive evidence or argument to establish the irrelevance of debt financing. In addition, we note that NTE submitted its answer on December 28, 2021, and the Termination Order did not issue until January 3, 2022, such that had NTE's financing closed prior to January 1, 2022, it had the opportunity to put further evidence before the Commission.

⁶⁵ *See, e.g., TC Ravenswood, LLC v. FERC*, 741 F.3d 112, 119 (D.C. Cir. 2013) (explaining that, when weighing competing evidence, the Commission must consider the record and make a "reasonable choice").

⁶⁶ NTE Rehearing Request at 13; *see also id.* at 11 (similar).

states that this was not a question before the Commission.⁶⁷ We decline to address this argument, raised for the first time on rehearing and which has not been adequately developed even now.⁶⁸

The Commission orders:

(A) In response to NTE's request for rehearing, the Termination Order is hereby modified and the result sustained, as discussed in the body of this order.

(B) ISO-NE and NTE are hereby directed to re-file public versions of the confidential submissions referenced in the 388.112 Letter within five days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

⁶⁷ See NTE Rehearing Request at 1 (the "sole question" before the Commission was whether "NTE could complete its Killingly Energy Center . . . prior to the June 1, 2024 deadline"); *id.* at 4.

⁶⁸ See, e.g., *Turlock Irrigation Dist. Modesto Irrigation Dist.*, 175 FERC ¶ 61,144, at P 14 (2021); *Vill. of Morrisville, Vermont*, 174 FERC ¶ 61,141, at P 18 (2021); *Vitol Inc. & Federico Corteggiano*, 169 FERC ¶ 61,070, at PP 30-31 (2019); *Barclays Bank PLC*, 144 FERC ¶ 61,041, at P 20 (2013).

EXHIBIT G

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1011**September Term, 2021****FERC-ER22-355-000****Filed On: March 2, 2022**

In re: NTE Connecticut, LLC,

Petitioner

ISO New England Inc. and New England
Power Generators Association, Inc.,
Intervenors

BEFORE: Tatel, Wilkins, and Rao, Circuit Judges

ORDER

Upon consideration of the emergency motion to lift stay, the responses thereto, and the reply, it is

ORDERED that the temporary stay entered by the court on February 4, 2022, be lifted. ISO New England has demonstrated that, due to changed circumstances, the stay is no longer equitable. Cf. Franklin Twp. Sewerage Auth. v. Middlesex Cnty. Utils. Auth., 787 F.2d 117, 121 (3d Cir. 1986). Since our stay order, the Federal Energy Regulatory Commission (“FERC”) has issued an order on rehearing, addressing some of the deficiencies in its earlier termination order. See In re NTE Conn., LLC, No. 22-1011, 2022 WL 552060, at *4–6 (D.C. Cir. Feb. 24, 2022); ISO New England Inc., 178 FERC ¶ 61,130 (2022). Moreover, it is undisputed that NTE has defaulted on its financial assurance obligations under the ISO-NE Tariff, which default provides an independent ground for terminating the Killingly plant’s capacity supply obligation. In light of these developments, our stay of FERC’s termination order is no longer equitable.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Manuel J. Castro
Deputy Clerk

EXHIBIT H



July 11, 2023

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**RE: ISO New England Inc. and The Connecticut Light and Power Company –
Notice of Termination of Original Service Agreement No. LGIA-ISONE/CLP-
20-02 under Schedule 22 of the ISO New England Inc.’s Open Access
Transmission Tariff; Docket No. ER23-____-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² ISO New England Inc.³ (“ISO-NE”) and The Connecticut Light and Power Company (“CL&P”) (together, the “Filing Parties”)⁴ hereby submit this notice of termination of an executed conforming Standard Large Generator Interconnection Agreement (the “Interconnection Agreement”) by and among ISO-NE as System Operator, CL&P as the Interconnecting Transmission Owner, and NTE Connecticut, LLC (“Interconnection Customer”) as the Interconnection Customer. The Interconnection Agreement, designated as Original Service Agreement No. LGIA-ISONE/CLP-20-02, became effective on June 16, 2020 and has been reported in the Electric Quarterly Report since Q2 2020. The Filing

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Part 35 (2014).

³ Capitalized terms not defined herein have the meanings ascribed thereto in the ISO New England Inc. Transmission, Markets and Services Tariff (“Tariff”). Section II of the Tariff contains ISO-NE’s Open Access Transmission Tariff (“OATT”). Schedule 22 of the OATT contains the *pro forma* Large Generator Interconnection Procedures (“LGIP”) and Large Generator Interconnection Agreement (“LGIA”).

⁴ Section 11.3 of the LGIP provides that “the System Operator and Interconnecting Transmission Owner shall jointly file the executed LGIA, or amendments thereto, with the Commission under Section 205 of the Federal Power Act.” Consistent with Section 11.3 of the LGIP, the Filing Parties are jointly filing herein pursuant to Section 205 of the Federal Power Act.

Parties seek to terminate the Interconnection Agreement in accordance with Articles 2.3 and 17 of the agreement.

The Filing Parties respectfully request that the Commission accept this notice of termination, with an effective date of July 12, 2023, the day after its submission, to allow the Filing Parties to promptly complete any restudies of lower-queued projects that respected the Large Generating Facility proposed in the Interconnection Agreement in their respective Interconnection Studies and exclude the facility from the Base Cases of future Interconnection Studies to avoid the need for additional restudies.

I. DESCRIPTION OF THE FILING PARTIES; COMMUNICATIONS

ISO-NE is the private, non-profit entity that serves as the RTO for New England. ISO-NE plans and operates the New England bulk power system and administers New England's organized wholesale electricity markets pursuant to the Tariff and the Transmission Operating Agreement ("TOA") with the Participating Transmission Owners ("PTOs"). In its capacity as an RTO, ISO-NE has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

CL&P is a public utility subsidiary of Eversource Energy, a Massachusetts business trust and public utility holding company under the Public Utility Holding Company Act of 2005.⁵ CL&P owns and operates transmission facilities in Connecticut that are used to provide Regional Network Service under the OATT and Local Service under Schedule 21-ES of the OATT and that are subject to ISO-NE operating authority pursuant to the TOA. Eversource Energy Service Company, a service company subsidiary of Eversource Energy, provides various corporate services to Eversource Energy's subsidiaries, including CL&P.

All correspondence and communications in this proceeding should be addressed to the undersigned for the ISO-NE as follows:

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⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1262, 119 Stat. 594, 972-73 (2005).

To CL&P as follows:

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Email: thomas.lemon@eversource.com

II. BACKGROUND AND DISCUSSION

The Interconnection Agreement governs the interconnection of Interconnection Customer's proposed Large Generating Facility to the Administered Transmission System at CL&P's new Cotton Bridge 345 kV Switching Station.⁶ The facility is a 714-megawatt combined cycle generating facility comprising one combustion turbine generator unit and one steam turbine generator unit and located in Killingly, Connecticut.⁷

Pursuant to Article 17 of the Interconnection Agreement, on October 3, 2022, CL&P notified the Interconnection Customer that it was in Breach of its obligations under Article 5.6.3 of the Interconnection Agreement to provide CL&P timely written authorization to proceed with construction by dates specified in the Milestones in Appendix B to the Interconnection Agreement. CL&P provided the Interconnection Customer with 30 days to cure the Breach, consistent with Article 17 of the Interconnection Agreement, but Interconnection Customer failed to cure the Breach within the specified time period. Additionally, Interconnection Customer ceased to comply with all other milestones in Appendix B to the Interconnection Agreement.

On March 1, 2023, CL&P sent a Notice of Termination of Interconnection Agreement ("Notice") to the Interconnection Customer via e-mail and physically to the notice addresses contained in the Interconnection Agreement as required by Article 15. CL&P did not receive a response or acknowledgement that the Notice had been received. The Filing Parties subsequently made numerous attempts to contact Interconnection Customer for delivery of the Notice and to confirm Interconnection Customer's agreement to voluntarily terminate the Interconnection Agreement. These attempts included contacting the Interconnection Customer by e-mail and regular mail using the contacts listed in Appendix E of the Interconnection Agreement. However, ISO-NE and CL&P received no response to any of those additional communications.

Articles 2.3 and 17 of the Interconnection Agreement provide that, in the event of a Breach by one of the Parties, the non-Breaching Party(ies) may terminate the Interconnection Agreement by written notice and the submission of a notice of termination to the Commission. Specifically, Article 17.1.2 states that "...the non-Breaching Party(ies) shall have the right to terminate this

⁶ See Interconnection Agreement at Appendix A.

⁷ See Interconnection Agreement at Appendix C.

LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder....” Article 2.3 requires the non-Breaching Parties to file a notice of termination of the Interconnection Agreement with the Commission, and the Commission must accept such notice in order for the termination to be effective.

Interconnection Customer is in breach of the Interconnection Agreement, has failed to cure the Breach within a reasonable time, and has effectively abandoned the Large Generating Facility. Accordingly, the Filing Parties are proceeding with termination of the Interconnection Agreement.

The Filing Parties submit that termination of the Interconnection Agreement is appropriate under its terms. It is also consistent with the Commission’s June 13, 2023 acceptance of the New England Power Pool’s (“NEPOOL”) April 21, 2023 termination of Interconnection Customer’s membership in NEPOOL and the Market Participant Service Agreement between ISO-NE and the Interconnection Customer.⁸ Accordingly, the Commission should accept this termination notice.

III. REQUESTED EFFECTIVE DATE AND REQUEST FOR WAIVER OF 60-DAY NOTICE REQUIREMENT

The Filing Parties respectfully request that the Commission accept this notice of termination with an effective date of July 12, 2023, which is one day after the filing hereof. In order to permit this effective date, the Filing Parties respectfully request that the Commission grant any waivers of its rules and regulations necessary for acceptance of this filing under the Federal Power Act, including, specifically, the Commission’s prior notice requirement set forth in 18 C.F.R. § 35.3.

The Commission has granted waivers when a filing has no rate impact (*e.g.*, changes in non-rate terms and conditions),⁹ when “all affected parties have had sufficient notice that [the] change will be incorporated into the [Tariff],”¹⁰ and where prompt termination of an agreement will provide commercial certainty to other parties and stakeholders and filing parties followed procedures in an agreement to terminate.¹¹

In this case, good cause exists to grant the proposed effective date because it will allow ISO-NE and CL&P to promptly complete any restudies of lower-queued projects that respected the Large Generating Facility proposed in the Interconnection Agreement in their respective

⁸ See *ISO New England*, Delegated Letter Order Accepting Termination of NTE Connecticut as a Market Participant, ER23-1689-000 (June 13, 2023).

⁹ See *Central Hudson Gas & Elec. Co., et al.*, 60 FERC ¶ 61,337, *reh’g denied*, 61 FERC ¶ 61,089 (1992) (stating, “the Commission believes that waiver of notice will generally be appropriate when the filing has no rate impact”).

¹⁰ *California Independent System Operator Corp.*, 111 FERC ¶ 61,073 at P26 (2005).

¹¹ See *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,175 (2023).

Interconnection Studies and exclude the facility from the Base Cases of future Interconnection Studies to avoid the need for additional restudies.

IV. CONTENTS OF THE FILING

This filing includes the following:

- this transmittal letter;
- a copy of the Notice issued by CL&P on March 1, 2023.¹²

V. CONCLUSION

For the foregoing reasons, the Filing Parties respectfully request that the Commission accept the notice of termination of the Interconnection Agreement, as submitted without modification or condition, with an effective date of July 12, 2023.

Respectfully submitted,

By: /s/ Graham Jesmer
Graham Jesmer, Esq.
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Tel: (413) 540-4557

Counsel for ISO New England Inc.

By: /s/ Thomas O. Lemon
Thomas O. Lemon, Esq.
Eversource Energy Service Company
247 Station Drive, SE100
Westwood, MA 02090
Tel: (781) 441-8692

Counsel for The Connecticut Light and Power
Company

Attachment

¹² In accordance with guidance given by the Commission staff during technical conferences on eTariff, the Filing Parties submit this notice of termination through a letter through the eFiling system. The Filing Parties had not previously placed this rate schedule (*i.e.*, the Interconnection Agreement) into its eTariff database; therefore, it is not necessary to use eTariff for the cancellation process or to include a cancellation tariff sheet with this filing.

Via Email

March 1, 2023

NOTICE OF TERMINATION OF INTERCONNECTION AGREEMENT

To Whom It May Concern:

On October 3, 2022, The Connecticut Light and Power Company (the “Company”) provided NTE Connecticut, LLC (“Interconnection Customer”) the enclosed Notice of Breach (“Notice of Breach”) pursuant to Article 17 of the Large Generator Interconnection Agreement by and among ISO New England Inc. (“ISO-NE”), the Company and Interconnection Customer effective June 16, 2020 and designated as Original Service Agreement No. LGIA-ISONE/CLP-20-02 (the “Interconnection Agreement”). Specifically, the Notice of Breach asserted that the Interconnection Customer is in breach of its obligations under Article 5.6.3 of the Interconnection Agreement by failing to provide timely written authorization to proceed with construction to the Company by dates specified in the Milestones in the currently effective Appendix B to the Interconnection Agreement.

As a result of Interconnection Customer’s failure to cure its breach of the Interconnection Agreement within the time frame specified in the Interconnection Agreement, and pursuant to Article 17.1.2 thereof, the Company hereby notifies Interconnection Customer that it is terminating the LGIA. The Company and ISO-NE will expeditiously be filing a Notice of Termination at the Federal Energy Regulatory Commission that, when accepted by the Commission, will render the termination effective pursuant to Article 2.3.2 of the Interconnection Agreement. The Company shall serve such Notice of Termination on the Interconnection Customer when it is filed with the Commission.

Sincerely,



Vandan D. Divatia
Eversource Energy Service Company
Vice President, Transmission Policy and Compliance

NTE Connecticut, LLC

March 1, 2023

Page 2

cc via email:

Monica Gonzalez – ISO-NE Legal Department

Cheryl Ruell – ISO-NE Transmission Strategy and Services

Johanna Truswell – ISO-NE Transmission Strategy and Services

Mary Grover – Eversource Energy Legal Department

Suprabha Prabhakaran – Eversource Energy Transmission Interconnection Services

Brian Romero – NTE Energy

Stephanie Clarkson – NTE Energy

Maribel Zambrana – NTE Energy

EXHIBIT I

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

ISO New England Inc.
The Connecticut Light and Power Company
Docket No. ER23-2378-000

Issued: August 31, 2023

On July 11, 2023, ISO New England Inc. (ISO-NE) and The Connecticut Light and Power Company (CL&P) submitted a notice of termination of an executed conforming Standard Large Generator Interconnection Agreement among ISO-NE as System Operator, CL&P as the Interconnecting Transmission Owner, and NTE Connecticut, LLC as the Interconnection Customer. Pursuant to authority delegated to the Director, Division of Electric Power Regulation – East, under 18 C.F.R. § 375.307, the submittal is accepted for filing, effective July 12, 2023, as requested.

The filing was publicly noticed. No protests or adverse comments were filed. Pursuant to Rule 214 of the Commission's regulations (18 C.F.R. § 385.214), notices of intervention, timely-filed motions to intervene, and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed document(s); nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

Document Content(s)

ER23-2378-000 DLO.docx.....1

Attachment E

7017 1450 0001 8948 0942

U.S. Postal Service™	
CERTIFIED MAIL® RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee	\$ 4.85
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 4.00
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ 2.04
Total Postage and Fees	\$ 10.99
Sent To	NTE Connecticut, LLC
Street and Apt. No., or PO Box No.	
99 King st #3785	
City, State, ZIP+4®	
St. Augustine, FL 32085	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



Tracking Number:

70171450000189480942

Remove X

Copy

Add to Informed Delivery (https://informedelivery.usps.com/)

Latest Update

This is a reminder to arrange for redelivery of your item or your item will be returned to sender.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivery Attempt

Reminder to Schedule Redelivery of your item

January 19, 2025

Available for Pickup

SAINT AUGUSTINE
99 KING ST
SAINT AUGUSTINE FL 32084-9998
M-F 0900-1800; SAT 0900-1400
January 14, 2025, 10:38 am

Available for Pickup

SAINT AUGUSTINE, FL 32085
January 14, 2025, 8:01 am

Arrived at Post Office

SAINT AUGUSTINE, FL 32084
January 14, 2025, 7:50 am

Arrived at USPS Regional Facility

JACKSONVILLE FL DISTRIBUTION CENTER
January 13, 2025, 1:55 pm

In Transit to Next Facility

January 12, 2025

Departed USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER
January 11, 2025, 6:31 am

Arrived at USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER
January 10, 2025, 11:52 pm

Hide Tracking History

One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
kbaldwin@rc.com
Direct (860) 275-8345

Also admitted in Massachusetts
and New York

Via Certified Mail Return Receipt Requested

January 10, 2025

NTE Connecticut, LLC
c/o Stephanie Clarkson, Vitis Energy
99 King St. #3785
St. Augustine, FL 32085

Re: Docket No. 527 – Application for a Certificate of Environmental Compatibility and Public Need by Windham Energy Center, LLC for a Battery Energy Storage System Facility at 189 Lake Road, Killingly, Connecticut

Dear Ms. Clarkson:

We are writing to you as the last known contact person for NTE Connecticut, LLC (“NTE”). As you know, in 2019 the Connecticut Siting Council issued to NTE a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut.

In recent months we have made repeated attempts to provide you with 1) a letter notifying you that Windham Energy Center, LLC (“WEC”) has filed an application for a Certificate of Environmental Compatibility and Public Need to construct, maintain and operate a 325MW battery energy storage facility at 189 Lake Road in Killingly, Connecticut (i.e., some of the same property that would have been used for the NTE Project) (**Attachment A**); and 2) a copy of WEC’s motion to reopen Connecticut Siting Council Docket No. 470B for the limited purpose of evaluating changed conditions and revoking NTE’s Certificate for the NTE Project (**Attachment B**). Since our prior attempts to provide these documents have largely been returned or rejected, and it is not clear to us that any copies have been received, we are reattaching the above documents to this letter out of an abundance of caution.



Stephanie Clarkson
January 10, 2025
Page 2

If you have any questions please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth C. Baldwin".

Kenneth C. Baldwin

Attachments

Attachment A

One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
kbaldwin@rc.com
Direct (860) 275-8345

Also admitted in Massachusetts
and New York

Via Certified Mail Return Receipt Requested

November 25, 2024

NTE Connecticut, LLC
c/o Stephanie Clarkson, Vitis Energy
99 King St. #3785
St. Augustine, FL 32085

Re: Notice of Filing of an Application for a Certificate of Environmental Compatibility and Public Need by Windham Energy Center, LLC for a Battery Energy Storage Facility at 189 Lake Road, Killingly, Connecticut

Dear Ms. Clarkson:

We are writing to you as the last known contact person for NTE Connecticut, LLC (“NTE”) and signatory to the Certificate of Cancellation of Limited Liability Company for NTE, filed with the State of Delaware’s Secretary of State on December 27, 2023 and a Statement of Withdrawal Registration for NTE, filed with the Connecticut Secretary of State on March 3, 2023. As you know, in 2019 the Connecticut Siting Council issued to NTE a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut (the “Property”).

Windham Energy Center, LLC (“WEC”) has filed an application for a Certificate of Environmental Compatibility and Public Need to construct, maintain and operate a 325MW battery energy storage facility (“WEC Project”) at 189 Lake Road in Killingly, Connecticut. The application and related materials can be accessed through Docket No. 527 maintained on the Connecticut Siting Council website.¹ Since the WEC Project would be constructed on some of

¹ Available at: https://portal.ct.gov/csc/1_applications-and-other-pending-matters/applications/4_docketnos500s/docket-no-527.

Stephanie Clarkson
November 25, 2024
Page 2

the same Property that would have hosted the NTE Project, we are providing notice of this application so that you, NTE, and/or NTE's successors in interest can advise as to whether the Certificate issued to NTE should be an impediment to the WEC Project.

It is our understanding that NTE is unable to make use of the Certificate, and will not construct the NTE Project, for at least three reasons:

1. *NTE no longer exists.* NTE filed a Statement of Withdrawal Registration of a foreign limited liability company filed with the Secretary of the State of Connecticut on March 3, 2023, by which NTE certified that it was not transacting business in Connecticut and surrenders its registration to do so. Furthermore, NTE filed in the State of Delaware a Certificate of Cancellation of Limited Liability Company documenting that NTE Connecticut, LLC was created as a Delaware limited liability company on December 30, 2015 and was voluntarily cancelled on December 27, 2023.
2. *NTE no longer has control of the Property.* The agreement by which NTE secured access to the Property is no longer in effect, and NTE no longer has any legal right to own or occupy the Property. WEC now holds an option to purchase the Property.
3. *The NTE Projects Capacity Supply Obligation and Interconnection Agreement are no longer valid.* ISO-NE submitted a termination of NTE's Capacity Supply Obligation to the Federal Energy Regulatory Commission in November 2021, which was effective in March 2022. On July 11, 2023, ISO-NE and Eversource jointly submitted a Notice of Termination notifying FERC that the Interconnection Agreement had been terminated due to NTE's breach of certain obligations under the Interconnection Agreement. FERC accepted the notice of termination on August 31, 2023.

As it is not possible for NTE to construct the NTE Project, NTE's Certificate should not be an impediment to WEC's application for the WEC Project.

If you have any questions please contact me.

Sincerely,



Kenneth C. Baldwin

Copy to: Zvi Nixon, E. Landau Law Offices

Attachment B

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
	:	
APPLICATION OF NTE CONNECTICUT, LLC	:	DOCKET NO. 470B
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	:	NOVEMBER 21, 2024

**MOTION OF WINDHAM ENERGY CENTER, LLC TO REOPEN AND MODIFY
THE DECISION IN DOCKET NO. 470B DUE TO CHANGED CONDITIONS**

I. Introduction

Pursuant to Conn. Gen. Stat. § 4-181a(b), Windham Energy Center, LLC (“WEC”) hereby moves the Connecticut Siting Council (“Council”) to reopen Docket No. 470B for the limited purpose of evaluating the changed conditions as set forth below and modifying, based on such changed conditions, its June 6, 2019 Decision and Order, (the “Decision”) in Docket No. 470B. The Decision issued to NTE Connecticut, LLC (“NTE”), a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain a 650-megawatt (“MW”) dual fuel combined cycle electric generating facility (the “NTE Project”) on property at 180 and 189 Lake Road in Killingly, Connecticut (“Property”). As discussed in this Motion, NTE is no longer able to make use of the Certificate and construct the NTE Project due to a number of changed conditions. Based on these changed conditions, WEC respectfully requests that the Council reopen the Docket No. 470B evidentiary proceeding for the limited purpose of evaluating NTE’s ability to make use of the Certificate, modify the Decision and revoke the Certificate for the NTE Project.

II. Procedural Background

On August 17, 2016, NTE filed with the Council an application for a Certificate pursuant to Conn. Gen. Stat. Section 16-50g et seq. for the construction, maintenance and operation of the NTE Project. The Council conducted public hearings in 2016 and 2017. In early February 2017, NTE participated in the ISO New England (“ISO-NE”) Forward Capacity Auction No. 11 (“FCA 11”), but NTE elected to withdraw from FCA 11 prior to bidding in the final round of the auction due to a number of cost and schedule uncertainties associated with the NTE Project.

On May 11, 2017, the Council issued its decision in Docket No. 470, denying, without prejudice, the NTE Application. In its denial, the Council found that, following the results of FCA 11, ISO-NE had determined the NTE Project was not needed for resource adequacy, at least through the capacity commitment period of 2020 through 2021. During its deliberations on the Decision, the Council recognized and discussed NTE’s ability to request that the Docket No. 470 proceeding be reopened on a showing of changed conditions if it were successful in a future FCA auction.

Over the course of 2017 and 2018 NTE took a number of steps to resolve its cost and schedule uncertainties. In light of these changed conditions, NTE filed a Motion to Reopen and Modify The Decision In Docket No. 470 Due To Changed Conditions on January 18, 2019, which the Council granted. Following additional hearings in 2019, the Council issued its Decision on June 19, 2019, in which it issued the Certificate to NTE. The Certificate provides that, unless otherwise approved by the Council, it shall be void if all construction is not completed within five years after the effective date of the Decision, or five years after all appeals of the Decision have been resolved. Decision, § 1(p).

The Decision was appealed by Not Another Power Plant, a party in the Council’s Docket Nos. 470 and 470B, which appeal was ultimately resolved by a decision of the Connecticut

Supreme Court on September 28, 2021. *Not Another Power Plant v. Conn. Siting Council*, 265 A.3d 900 (Conn. 2021). Consequently, the Certificate will be void if all construction is not completed by September 28, 2026. Since the time of the Decision, however, conditions have changed making it impossible for NTE to complete construction of the NTE Project by September 2026, or indeed to ever construct the NTE Project.

III. The Council Has the Statutory Authority to Reopen and Modify its Decision

Pursuant to Conn. Gen. Stat. § 4-181a(b), the Council has the authority to reopen Docket No. 470B and modify its Decision due to changed conditions that have occurred since the Decision of June 6, 2019. Specifically, “on a showing of changed conditions the agency may reverse or modify the final Decision at any time at the request of any person or on the agency’s own motion”. Conn. Gen. Stat. § 4-181a(b). The Council has previously exercised its authority under Conn. Gen. Stat. § 4-181a(b) which “permits an agency to consider whether changed conditions exist and then consider whether such changed conditions if any justify reversing or modifying the Council’s original Decision...”. *See Council Docket No. 192 Reopening Pursuant to Conn. Gen. Stat. § 4-181a(b) Proceeding*, Opinion dated January 4, 2007 p. 1. The Council will find changed conditions when there is “new information or facts, identification of any unknown or unforeseen events or evidence... that were not available at the time of the final decision”. *See Docket No. 190B, Meriden Gas Turbine LLC reopening pursuant to Conn. Gen. Stat. § 4-181a(b)*, Conclusions of Law.

Consistent with this legal standard, the Council has reopened a number of electric generating facilities dockets and revised final decisions under Conn. Gen. Stat. §4-181a(b) based on new facts or when circumstances not previously contemplated by the Council have arisen. *Docket No. 187, Milford Power, LLC, Reopening Pursuant to for Conn. Gen. Stat. §4-181a(b) Proceeding*, Opinion, April 7, 2009, page 2 (reopening the docket to allow the continued use of

potable water because "at the time of certification, the record did not speak to sources of cooling water for contingency events."); *Docket NT-2010, Reopening of Final Decisions*, Opinion, March 17, 2011 (finding that the adoption of new industry practices regarding gas pipe cleaning constituted changed conditions warranting prohibitions and limitations on fuel pipeline/system cleanings); *Docket No. 187A, Milford Power, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, Dec. 2, 2010 (finding that an increase in natural gas supply, improvements to the electrical transmission grid and construction of other generation facilities were changed conditions supporting removal of dual fuel requirements); *Docket No. 225B, Kleen Energy Systems, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, July 22, 2009 (finding that the State's imposition of an aquifer protection zone was a changed condition justifying relocation of oil pipeline route); *Docket No. 189A, Lake Road Generating Co., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, Jan. 19, 2012, ¶ 20-21 (finding that the increases in the natural gas supply, natural gas pipeline capacity, and the price of fuel oil created changed conditions supporting removal of dual fuel requirements); *Docket No. 265A, Dominion Nuclear Connecticut, Inc., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, May 2, 2013, 1129-33 (finding that the changes in federal policy regarding the management of spent nuclear fuel and changes in the facility's management of spent fuel constituted changed conditions allowing the change to spent fuel storage installation).

As the discussion of changed conditions below underscores, this Motion more than satisfies applicable standards with respect to reopening the docket for the limited purpose of evaluating the changed conditions that make it impossible for NTE to make use of the Certificate. WEC therefore respectfully submits that the Council should modify the Decision and revoke the Certificate.

IV. Changed Conditions for the NTE Project

A. NTE No Longer Exists

The Certificate for the NTE Project was issued to NTE. NTE is no longer registered to do business in Connecticut and no longer exists as a Delaware limited liability company (LLC). Attached as Exhibit A is a Statement of Withdrawal Registration of a foreign limited liability company filed with the Secretary of the State of Connecticut on March 3, 2023, by which NTE certified that it was not transacting business in Connecticut and surrenders its registration to do so. Attached as Exhibit B is a State of Delaware Certificate of Cancellation of Limited Liability Company documenting that NTE Connecticut, LLC was created as a Delaware limited liability company on December 30, 2015 and was voluntarily cancelled on December 27, 2023. NTE is no longer registered to do business in Connecticut, and indeed no longer exists as a legal entity, so it is unable to make use of the Certificate. As NTE no longer exists as a legal entity, it is also not able to formally relinquish its Certificate.¹ There is no evidence in the record indicating that NTE transferred the Certificate to any other entity before it ceased to exist. Since NTE no longer exists, and NTE can no longer make use of the Certificate, the Certificate should be revoked.

B. NTE Has No Legal Interest in The Property On Which It Planned To Construct The NTE Project

The Property is owned by Gerald T. Erwin, Sr. and Annarita D. Erwin (“Owners”) and NTE secured access to the Property by virtue of a March 4, 2016 Option Agreement (the “NTE Option”), a notice of which was recorded on the Killingly land records (Exhibit C). By the terms of the NTE Option as set forth in the Notice provided as Exhibit C, the NTE Option expired no later than March 3, 2022. An entity known as Connecticut Clean Energy Holdings entered into

¹ When a Delaware LLC has been cancelled, its legal existence ends, and it cannot even secure counsel to represent it opposing the appointment of a receiver. *In re Reinz Wisconsin Gasket, LLC*, C.A. No. 2022-0859-MTZ (Del. Ch. 8 May 2023).

an Option Agreement with the Owners on March 6, 2022, which option has now been assigned to WEC. WEC timely exercised its option to purchase the Property. A Notice of Option to Purchase confirming that WEC currently holds the option to purchase the Property was recorded on the Killingly land records on November 19, 2024 and is attached as Exhibit D.

The agreement by which NTE secured access to the Property is no longer in effect, and NTE no longer has access to the Property. WEC now holds an option to purchase the Property. Since the conditions have changed, and WEC, rather than NTE, now holds an option to purchase and develop the Property, NTE can no longer make use of the Certificate to construct the NTE Project on the Property. Therefore, the Certificate should be revoked.

C. The NTE Project's Capacity Supply Obligation ("CSO") and Interconnection Agreement are No Longer Valid

The CSO that NTE secured in FCA 13 in 2019, which covered the 2022-23 capacity commitment period, was revoked in 2022. Termination Order, 178 FERC ¶ 61,001 (2022) (Exhibit E); Order Addressing Arguments Raised on Rehearing, 178 FERC ¶ 61,130 (2022) (Exhibit F). By virtue of its CSO the NTE Project was required to begin commercial operations by June 1, 2022, though a series of delays pushed the projected operation date back to June 1, 2024. 178 FERC ¶ 61,001, pp. 3-4. Under ISO-NE's Transmission, Markets and Services Tariff, ISO-NE may terminate a resource's CSO if the date by which the resource will have achieved its critical path schedule milestones is more than two years after the capacity commitment period for which the resource first received a CSO. *Id.* at 2. ISO-NE submitted a termination of NTE's CSO to the Federal Energy Regulatory Commission ("FERC") in November 2021, which (following a stay and rehearing) was effective in March 2022. *In re NTE Connecticut, LLC*, No. 22-1011 (D.C. Cir., Mar. 2, 2022) (order lifting temporary stay of FERC

termination order) (Exhibit G). Since NTE no longer has a CSO for the NTE Project, it can no longer demonstrate that there is a public need for the NTE Project and the Certificate should be revoked. See *Docket No. 470, NTE Connecticut, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, May 11, 2017 (denying NTE's initial application for a Certificate because a public need for the NTE Project had not been demonstrated).

The NTE Project also lost its ability to supply its power to the ISO-NE electric grid. An interconnection agreement between the Connecticut Light & Power Company, d/b/a/ Eversource ("Eversource") and NTE, dated June 16, 2020 (the "Interconnection Agreement"), had authorized the NTE Project to feed its power into the electric grid, subject to certain terms and conditions. On July 11, 2023, ISO-NE and Eversource jointly submitted a Notice of Termination notifying FERC that the Interconnection Agreement had been terminated due to NTE's breach of certain obligations under the Interconnection Agreement. (Exhibit H). FERC accepted the notice of termination on August 31, 2023. (Exhibit I). Finally, since NTE did not commence construction within two years after the issuance of its wastewater discharge permit (on January 20, 2021)² or within 18 months after the reissuance of its air permit (November 24, 2020),³ the Connecticut Department of Energy and Environmental Protection (CTDEEP) may elect to revoke one or both of these permits.

² C.G.S. § 22a-430-4(k)(5) ("If any person has not completed construction of the [approved facility] within two years of the approval, the commissioner may revoke such approval and require that a new application be submitted.").

³ C.G.S. § 22a-174-3a(f)(2)(A) ("The commissioner shall review and may modify, revise or revoke any permit if the owner or operator...[h]as not commenced construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later."). The original air permit was issued in December 2018 and was recertified by CTDEEP (restarting the 18-month timeline) on November 24, 2020.

NTE no longer has a CSO, there is therefore, no public need for the NTE Project. Even if there was an active CSO for the NTE Project, it would be unable to feed its power to the grid because its interconnection agreement has been revoked. Finally, due to the time that has elapsed without any construction progress, the NTE Project could lose the environmental permits it secured from CTDEEP. Due to all of these changed conditions, the Certificate should be revoked.

V. Conclusion

For all of the reasons discussed above and in the attached, WEC respectfully requests that the Council grant its Motion to Reopen this proceeding for the limited purpose of evaluating NTE's ability to make use of the Certificate and modify the Docket No. 470B Decision to revoke the Certificate.

Respectfully submitted,
WINDHAM ENERGY CENTER, LLC

By: 

Kenneth C. Baldwin
ROBINSON & COLE LLP
One State Street
Hartford, CT 06103

Its Attorneys

CERTIFICATION OF SERVICE

I hereby certify that on this 21st day of November 2024, a copy of the foregoing was sent

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