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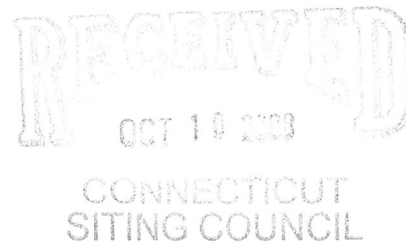
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ORIGINAL

October 10, 2008

Daniel F. Caruso, Chairman
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

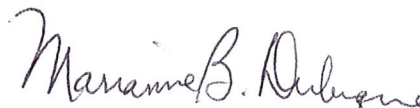


RE: Algonquin Gas Transmission, LLC – Petition
Kleen Energy Lateral
Middletown, CT

Dear Judge Caruso:

In connection with the above-referenced Petition, enclosed please find the original and twenty (20) copies of AGT's Petition and Memorandum in Support of Petition. In addition, I enclose a check in the amount of \$500.00 payable to the Treasurer, State of Connecticut, representing the filing fee.

Very truly yours,


Marianne Barbino Dubuque

MBD/ctf

Enclosures

cc: Assistant Attorney General, Robert Marconi, Esq. (w/encls.)
Lee Hoffman, Esq.

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

PETITION NO. 869

ALGONQUIN GAS TRANSMISSION, LLC :
PETITION CONCERNING A PROPOSED :
ADDITION TO ITS INTERSTATE NATURAL :
GAS TRANSMISSION SYSTEM, :
COMPRISED OF A 20-INCH DIAMETER :
LATERAL IN MIDDLETOWN, :
CONNECTICUT, 1.13 MILES IN LENGTH, :
EXTENDING FROM ALGONQUIN'S :
EXISTING W PIPELINE SYSTEM TO THE :
KLEEN ENERGY SITE AND A NEW :
METER STATION ON THE KLEEN :
ENERGY SITE :

PETITION NO. _____

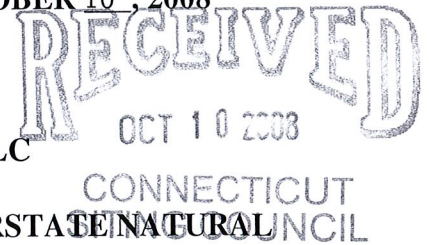
ORIGINAL

OCTOBER 10, 2008

PETITION OF

ALGONQUIN GAS TRANSMISSION, LLC

CONCERNING A PROPOSED ADDITION TO ITS INTERSTATE NATURAL
GAS TRANSMISSION SYSTEM, COMPRISED OF A 20-INCH DIAMETER
LATERAL IN MIDDLETOWN, CONNECTICUT, 1.13 MILES IN LENGTH,
EXTENDING FROM ALGONQUIN'S EXISTING W PIPELINE SYSTEM TO
THE KLEEN ENERGY SITE AND A NEW METER STATION ON THE
KLEEN ENERGY SITE



I. Description of this Petition

Algonquin Gas Transmission, LLC, a Delaware limited liability company with its principal offices at 5400 Westheimer Court, Houston, Texas ("Algonquin"), petitions the Connecticut Siting Council for a determination that no Certificate of Environmental Compatibility and Public Need ("Certificate") is required pursuant to Section 16-50g et seq. of the Connecticut General Statutes, for a proposed addition to the Algonquin interstate natural gas pipeline system, consisting of a 1.13 mile lateral, a meter station and associated facilities described herein.

Algonquin respectfully submits that the proposed modifications to its existing system are subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC") and therefore will not require a Certificate pursuant to Section 16-50k.

Notwithstanding Algonquin's position that the Council has no jurisdiction over the facilities described herein, Algonquin respectfully submits that the proposed modifications to its existing system will have no "substantial adverse environmental effect," and therefore would not require a Certificate pursuant to Section 16-50k, in the absence of the exclusive federal jurisdiction.

II. Description of the Algonquin System and the Proposed Addition

Algonquin operates a natural gas transmission pipeline system that transports natural gas in interstate commerce to points between Lambertville, New Jersey and eastern Massachusetts, and interconnects with several other interstate pipelines including, in Connecticut, those of Tennessee Gas Transmission Company and Iroquois Gas Transmission System, L.P. The proposed addition is comprised of a 20-inch diameter lateral, approximately 1.13 miles in length, and a meter station. The lateral will extend from Algonquin's existing W-System¹, located in Middletown, Connecticut, at the point of interconnection within the existing Middletown Station (on property owned by Middletown Power, LLC) situated between River Road and the Connecticut River and

¹ In 1996, The Connecticut Light and Power Company, the then owner of the Middletown Station, petitioned the Council for approval to add gas-firing capability to the Middletown Station (See Petition No. 357). Significantly, the Staff Report indicates that "[t]he natural gas supply would be provided by the Algonquin Gas Transmission Company (Algonquin) via a new 20-inch diameter underground high-pressure gas line spur from Glastonbury, Connecticut. This line would traverse the Town of Portland and cross the Connecticut River south into Middletown Station. Algonquin's work is only provided as informational purposes as this project is subject to Federal Energy Regulatory Commission jurisdiction."

will extend south through the previously disturbed portion of the Middletown Station, before turning west onto River Road. Continuing west-northwest, the pipeline alignment will be located within the River Road corridor for approximately one mile before terminating at Algonquin's new meter station facility to be located south of River Road, on property of Kleen Energy Systems, LLC ("Kleen Energy").² When completed, this addition will enable Algonquin to supply natural gas through the existing W-System pipeline and proposed interconnect to fuel the Kleen Energy generating facility.

The new pipeline will be constructed in accordance with U.S. Department of Transportation ("DOT") regulations, generally with three (3) feet of cover for the pipeline. For most of its length, the lateral will be located within the existing paved roadway known as River Road. The remainder of the route will be located within the rear portion of the Middletown Station site. The entire route will be located in an industrial/commercial area, with nearest residences being located no closer than approximately 2,700 feet west from the lateral terminus on the Kleen Energy site. The meter station will be housed in a new concrete building, approximately twelve (12) feet wide, seventy five (75) feet long, and ten (10) feet high, to be constructed on a site of approximately twelve thousand (12,000) square feet, in a gravel covered area within a fence. Associated aboveground piping and a receiver barrel assembly for receipt of tools utilized for in-line inspection will be installed within the meter station site, outside the building.

² On November 21, 2002, the Council granted Kleen Energy a Certificate of Environmental Compatibility and Public Need for a 520 MW natural gas-fired combined cycle electric generating facility and electric transmission line interconnection (See Docket No. 225 and Petition No. 579).

Algonquin will need to acquire an additional .71 acres of new permanent right-of-way for the lateral. In general, Algonquin will also need to acquire an additional 4.33 acres of temporary workspace for construction of the lateral. However, for approximately 0.36 mi., Algonquin intends to use an existing electric transmission right-of-way for the required temporary workspace. In addition, 5.7 acres of temporary workspace will be needed for special locations, such as staging to support linear occupancy of River Road with associated utility and drainage structure crossings, and for the construction of the meter station.

Only 5 landowners will be affected by the proposed construction: Middletown Power LLC (which owns the Middletown Station property); the State of Connecticut (two properties, including a portion of the railroad), The Connecticut Light & Power Company, City of Middletown (River Road) and Kleen Energy.

Significantly, the City of Middletown supports this project. See Attachment A for a copy of a letter from Middletown Mayor Sebastian Giuliano to FERC dated September 12, 2008.

The construction period is estimated to be 12 to 16 weeks, beginning in September of 2009. During construction, Algonquin will use a variety of measures consistent with previous pipeline projects to prevent and control soil erosion, including deployment of sedimentation barriers such as straw bales and silt fence; limiting the amount of land disturbance, installation of slope breakers to reduce the velocity of water flowing down slopes; and using a hydroseed and mulch combination to hold the disturbed soil in place until vegetation reestablishes itself. The construction will be coordinated

with municipal traffic and safety officials to maintain roadway access throughout the roadway construction.

Once the pipeline has been constructed, River Road will be restored as near as practicable to its pre-construction condition. As to other areas, the disturbed ground will be restored, limed, fertilized, and seeded, except for wetland areas, if any, where lime and fertilizer is not used. The overland portion of the right-of-way (outside River Road) will be mowed on an annual basis to prevent trees and shrubs from growing, and any trees growing within an area 10 feet on either side of the pipeline will be cut by hand or mechanical equipment every 3 years. This right-of-way maintenance accepted by the DOT is necessary to allow for regular safety inspections and would be a continuance of Algonquin's existing practices. Herbicides are not used to maintain the pipeline right-of-way.

The proposed facilities will be operated and maintained in a manner such that pipeline integrity is maintained in the interest of assuring that a safe, continuous supply of natural gas reaches its delivery point. Maintenance activities will include regularly scheduled gas-leak surveys, emergency repair and the review for other construction activities in the vicinity of the pipeline. All fence posts, signs, marker posts, aerial markers and decals will be painted or replaced to ensure that the pipeline locations will be visible from the air and ground. Because the proposed Project has been sited nearly entirely within an existing roadway, additional maintenance activities will be minimal and will include maintenance of a supply of emergency pipe, leak repair clamps, sleeves and other equipment needed for repair activities.

An application for a Certificate of Public Convenience and Necessity was filed with the FERC in Docket No. CP08-462 on August 15, 2008. The target in-service date is January 1, 2010.

III. Correspondence

Correspondence and other communications with regard to this Petition are to be addressed to, and notices, orders and other papers may be served upon the following:

Thomas L. Stanton, Esq.
Algonquin Gas Transmission, LLC
890 Winter Street
Suite 300
Waltham, MA 02451

Anthony M. Fitzgerald, Esq.
Marianne Barbino Dubuque, Esq.
Carmody & Torrance LLP
50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06721

Dated October 10, 2008.

Respectfully submitted,

ALGONQUIN GAS TRANSMISSION, LLC

BY 

Anthony M. Fitzgerald
Marianne Barbino Dubuque

For: Carmody & Torrance LLP
50 Leavenworth Street
PO Box 1110
Waterbury, CT 06721-1110
Its Attorneys

Attachment A



OFFICE OF THE MAYOR

City of Middletown
CONNECTICUT 06457

SEBASTIAN N. GIULIANO
MAYOR

September 12, 2008

SECRETARY OF THE
COMMISSION

2008 SEP 22 P 3 21

FEDERAL ENERGY
REGULATORY COMMISSION

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

Re: Algonquin Gas Transmission, LLC - Docket No. CP08-462-000
Application for a Certificate of Public Convenience and Necessity and for Related
Authorizations

Dear Secretary Bose:

Pursuant to the Commission's requirements concerning the provision of comments for open dockets, the City of Middletown, Connecticut ("City") hereby submits an original and two copies of these comments in support of the above-referenced Application. As the Commission is undoubtedly aware, Algonquin's proposed 1.13 mile natural gas transmission pipeline, meter station and other ancillary facilities, (hereinafter referred to as the "Kleen Energy Lateral") are necessary for the operation of the Kleen Energy Systems Project. This Project, a 620 MW natural gas-fired cogeneration station, will be located in Middletown, Connecticut. The City of Middletown supports the Kleen Energy Project, and by association, supports the construction of the Kleen Energy Lateral.

Throughout the permitting process, Kleen Energy has been mindful of the City's concerns and has taken those concerns into account as it designed its facility. From the Connecticut Siting Council Certificate of Environmental Compatibility and Public Need process, through local zoning and inland wetlands approvals, Kleen Energy and the City have consistently worked together to ensure that the Project could be constructed while ensuring that the residents of Middletown would not be unduly burdened by the Project's construction.

It is fair to say that the City and Kleen Energy have been working collaboratively on the Kleen Energy Project since its inception. Indeed, the City and Kleen Energy have jointly entered into a water diversion project whereby Kleen Energy will be able to obtain the water it needs for cooling and operation, while the City will have access to over 1.5 million gallons of raw water per day for the City's uses.

The City anticipates a similar collaborative process will govern the siting and construction of the Kleen Energy Lateral. The City has been informed of the proposed routing of the Kleen Energy Lateral, and concurs that the disruption to the environment and the citizens of Middletown should be minimal, given the Lateral's proposed routing. The Lateral takes advantage of existing

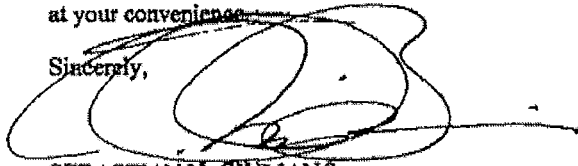
Municipal Building, 245 deKoven Drive, Telephone: (860)344-3401, Fax: (860) 344-3540, email address: mayor@cityofmiddletown.com

pipeline infrastructure in the area, particularly the natural gas pipeline at the NRG facility located in Middletown. The proposed routing of the pipeline will take the pipe through the NRG facility and along the River Road corridor in Middletown. There are no residences along the Lateral's proposed route, the proposed route consists of largely paved surfaces, and the environment along the route has been previously disturbed by industrial facilities and/or the construction of River Road. As such, the City does not anticipate that the Kleen Energy Lateral would have an adverse impact on the City's property in the area, or on the citizens of the City of Middletown.

Put simply, the City of Middletown believes that the benefits of the Kleen Energy Project in general, and the Kleen Energy Lateral in particular, outweigh any potential costs associated with these activities. Accordingly, the City of Middletown offers its support to Algonquin Gas Transmission, LLC's Application for a Certificate of Public Convenience and Necessity.

Should the Commission have questions concerning the foregoing, please contact the undersigned at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sebastian N. Giuliano', written over a horizontal line.

SEBASTIAN N. GIULIANO

Mayor

PETITION NO. 869

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

ALGONQUIN GAS TRANSMISSION, LLC : PETITION NO. _____
MEMORANDUM OF LAW IN SUPPORT :
OF PETITION SEEKING A : ORIGINAL
DETERMINATION THAT NO CERTIFICATE :
OF ENVIRONMENTAL COMPATIBILITY :
AND PUBLIC NEED IS REQUIRED : OCTOBER 10, 2008

**MEMORANDUM OF LAW IN SUPPORT OF PETITION SEEKING A
DETERMINATION THAT NO CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED IS REQUIRED**

I. INTRODUCTION

Pursuant to Conn. Gen. Stat. §§ 4-176(a) and 16-50g *et seq.*, Algonquin Gas Transmission, LLC (“Algonquin”) hereby respectfully submits this memorandum of law in support of its Petition seeking a determination from the Connecticut Siting Council (“Council”) that it need not obtain a certificate of environmental compatibility and public need (“Certificate”) pursuant to Connecticut’s Public Utility Environmental Standards Act (“PUESA”), Conn. Gen. Stat. § 16-50g *et seq.* The Petition, filed on even date herewith, seeks to excuse the addition of a 1.13-mile lateral to Algonquin’s existing interstate natural gas transmission system from the Certificate requirement of Conn. Gen. Stat. § 16-50k(a) on the grounds that: (1) the Natural Gas Act (the “NGA”), 15 U.S.C. § 717 *et seq.*, and the Natural Gas Pipeline Safety Act, 49 U.S.C. §10601 *et seq.*, grant the Federal Energy Regulatory Commission (“FERC”) and the Federal Department of Transportation (the “U.S. DOT”) “exclusive jurisdiction” over the matter; and

(2) jurisdictional issues aside, the environmental effects of the proposed addition to Algonquin's transmission system are so minimal that under Conn. Gen. Stat. § 16-50k(a) (hereinafter sometimes referred to as the "Certificate provision"), Algonquin need not obtain a Certificate.

II. BACKGROUND

Algonquin is engaged in the business of transporting natural gas in interstate commerce under certificates of public convenience and necessity ("CPCNs") issued by FERC pursuant to Section 7 of the NGA, 15 U.S.C. § 717f(c). Algonquin owns and operates approximately 1100 miles of interstate natural gas pipeline extending from Lambertville, New Jersey to Salem, Massachusetts. Algonquin intends to install a 20-inch diameter lateral between an existing span of pipeline in Middletown, Connecticut, and a generating facility owned by Kleen Energy Systems, LLC, located approximately 1.13 miles away (the "Project").

III. LAW AND ARGUMENT

Federal law preempts PUESA, the state law that would otherwise require Algonquin to obtain a Certificate from the Council before commencing the Project. The Project is subject to the exclusive jurisdiction of FERC and the U.S. DOT and is therefore subject only to FERC and U.S. DOT regulations and requirements. Furthermore, the potential environmental impact of the Project is so minimal that even if the Council *did* have jurisdiction, applicable PUESA provisions would not require Algonquin to obtain a Certificate before proceeding with the Project.

A. ALGONQUIN IS NOT REQUIRED TO OBTAIN A CERTIFICATE FROM THE COUNCIL BECAUSE FERC AND THE U.S. DOT HAVE EXCLUSIVE JURISDICTION OVER THE PROJECT.

The Council's authority to regulate natural gas transmission lines stems from PUESA. In most instances, PUESA requires companies contemplating the construction of "fuel transmission facilities" in Connecticut to first obtain a Certificate from the Council. Conn. Gen. Stat. § 16-50k(a). Specifically, PUESA states that:

no person shall ... commence the preparation of the site for, or commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the [C]ouncil, have a substantial adverse environmental effect in the state without having first obtained a certificate of environmental compatibility and public need ...

Id.

However, PUESA's provisions clearly state that its Certificate provision "shall not apply to any matter over which any agency, department or instrumentality of the federal government has exclusive jurisdiction[.]" Conn. Gen. Stat. § 16-50k(d). As discussed below, FERC and the U.S. DOT, two federal instrumentalities, are granted exclusive jurisdiction over the Algonquin Project by the NGA and the NGPSA, respectively. Therefore, under Conn. Gen. Stat. § 16-50k(d), the Council must cede its authority over the Project to federal regulatory powers, and the Council's Certificate provision is thus inapplicable to the Project.

1. A Comprehensive Federal Regulatory Scheme Preempts Any State Regulation of Interstate Natural Gas Transportation Facilities.

A. The NGA Preempts State Regulation of the Interstate Transportation and Sale of Natural Gas.

Section 1(b) of the NGA, 15 U.S.C. § 717(b), grants FERC jurisdiction over the “transportation of natural gas in interstate commerce” as well any natural gas company engaged in the transportation or sale of natural gas. As a company engaged in the transportation of natural gas in interstate commerce, Algonquin is within the ambit of FERC’s regulatory powers.

Before it can commence the Project, which involves the transportation of natural gas in interstate commerce, Algonquin must comply with FERC’s certificate process under Section 7 of the NGA, which provides that:

[n]o natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of facilities therefor ... unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations

15 U.S.C. § 717f(c)(1)(A). FERC will only issue such a CPCN where it finds that:

the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

15 U.S.C. § 717f(e). Acting under the NGA, FERC has promulgated detailed regulations setting forth application requirements for such CPCNs. *See* 18 C.F.R. § 380 (2008).

Since the NGA's passage in 1938, the U.S. Supreme Court has repeatedly held that the NGA preempts state regulation of the interstate transportation of natural gas.¹ *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U.S. 498, 506-08 (1942); *Federal Power Comm'n v. Panhandle Eastern Pipeline Co.*, 337 U.S. 498, 503 (1949); *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 89-91 (1963). "[It] is now well settled: Congress *occupied the field* of matters relating to wholesale sales and transportation of natural gas in interstate commerce." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 305 (1988) (emphasis added) ("*Schneidewind*"). Regulations promulgated by FERC pursuant to its delegated authority under the NGA also preempt state law. *National Fuel Gas Supply Corp. v. Public Service Comm'n of N.Y.*, 894 F.2d 571, 576 (2nd Cir. 1990), *cert. denied*, 497 U.S. 1004 (1990) ("*National Fuel*").

The opinion written by the Second Circuit in *National Fuel* is especially instructive in this case due to the similarities between the law that was preempted by the NGA in that case and PUESA, the law in question here. In *National Fuel*, the court held that the NGA preempted a New York statute requiring an interstate pipeline company to

¹ The Supremacy Clause of the U.S. Constitution provides that "the Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Under the Supremacy Clause, federal law preempts state law where:

- (i) Congress expressly intended to preempt state law; (ii) there is an actual conflict between federal and state law; (iii) compliance with both federal and state law is impossible; (iv) there is an implicit federal barrier to state regulation; (v) *Congress has "occupied the field" of the regulation*, leaving no room for a state to supplement the federal law; or (vi) the state statute forms an obstacle to the realization of Congressional objectives.

National Fuel Gas Supply Corp. v. Public Service Comm'n of N.Y., 894 F.2d 571, 575 (2nd Cir. 1990) (internal citations omitted) (emphasis added), *cert. denied*, 497 U.S. 1004 (1990). See also *Northern Natural Gas Co. v. Iowa Utilities Board*, 377 F.3d 817, 820-24 (8th Cir. 2004) (discussing *National Fuel* and the NGA's complete occupation of the field of regulation).

apply for and obtain a “certificate of environmental compatibility and public need” from the New York State Public Service Commission (the “PSC”) before commencing installation. 894 F.2d at 579. The court held that, given the “exclusive authority over the ‘rates *and facilities*’ of interstate gas pipelines” that the NGA grants to FERC, *id.* at 576 (emphasis in original), “[t]he matters sought to be regulated by the PSC were directly considered by FERC . . . [and] such direct consideration is more than enough to preempt state regulation.” *Id.* at 579.

Like the preempted statute in *National Fuel*, the PUESA Certificate provision attempts to regulate matters within FERC’s exclusive jurisdiction. PUESA mandates that any person planning to construct a natural gas facility must obtain a Certificate from the Council if the facility could have “a substantial adverse environmental effect” within the state. Conn. Gen. Stat. § 16-50k(a). This approval process directly interferes with FERC’s authority under Section 7 of the NGA, which vests FERC with the power to regulate the “construction or extension” of natural gas facilities through a certificate process. 15 U.S.C. § 717f(c)(1)(A). Because Section 7 of the NGA directly conflicts with the Certificate provision of PUESA, and because PUESA clearly states that its Certificate provision “shall not apply to any matter over which any agency, department or instrumentality of the federal government has exclusive jurisdiction,” Conn. Gen. Stat. § 16-50k(d), the regulatory authority granted to the Council under PUESA is preempted by the regulatory authority granted to FERC by Section 7 of the NGA. Thus, the Council has no authority to regulate the interstate transportation of natural gas, and therefore no authority to require Algonquin to obtain a Certificate before commencing its Project.

Nevertheless, FERC encourages the entities it regulates to cooperate with state and local siting councils even when those councils have no authority to directly regulate those entities. In a 1997 order, FERC stated that it would encourage entities to “cooperate with state and local agencies with regard to the siting of pipeline facilities, environmental mitigation measures, and construction procedures.” *Maritimes & Northeast Pipeline, LLC*, 81 FERC ¶ 61,166, 61,729 (1997) (“*Maritimes*”). Such cooperation allows state and local councils to provide input to entities and to FERC regarding proposed pipeline routes and construction plans. *Id.* at 61,730.² Nevertheless, FERC’s cooperation policy “does not change the preemptive effect of the NGA as enacted by Congress.” *Northern Natural Gas Co. v. Iowa Utilities Board*, 377 F.3d 817, 824 (8th Cir. 2004). “[T]he NGA ... vests sole authority to determine an interstate pipeline route in the Commission . . . and preempts State and local agencies from regulating the construction and operation of interstate pipeline facilities,” *Maritimes* at 61,729-30.

B. The NGPSA Preempts State Safety Standards for Interstate Pipeline Facilities

The NGPSA requires the Secretary of Transportation to adopt federal safety standards for pipeline facilities and the transportation of natural gas. 49 U.S.C. § 60102. Section 4(c) of the NGPSA explicitly prohibits state agencies from adopting or enforcing “safety standards for interstate pipeline facilities or interstate pipeline transportation.” *Id.* at § 60104(c). Courts have used Section 4(c) to invalidate a number of attempts by states and municipalities to enforce their own interstate pipeline safety standards. *ANR Pipeline*

² This consultation process is analogous to the siting consultation process governed by Conn. Gen. Stat. § 16-50l(e), which gives the Council the authority to “conduct public hearings and meetings as it deems necessary for it to advise the applicant of its recommendation concerning the proposed facility” even where the Council has no authority to directly regulate the proposed facility.

Co. v. Iowa State Commerce Comm’n, 828 F.2d 465 (8th Cir. 1987) (Congress intended to preclude states from regulating “in any manner whatsoever” the safety of interstate gas pipelines and therefore Iowa safety standards are preempted by the NGPSA); *Natural Gas Pipeline Co. v. Railroad Comm’n of Texas*, 679 F.2d 51 (5th Cir. 1982) (safety regulations promulgated pursuant to the NGPSA preempt state and local regulation of safety issues); *United Gas Pipeline Co. v. Terrebone Parish Police Jury*, 319 F. Supp. 1138 (D. La. 1970), *aff’d*, 115 F.2d 301 (5th Cir. 1971) (“Congress by completely preempting this area of interstate pipeline safety has specifically prohibited the states from doing anything in this regard”). Thus, any state law that attempts to set interstate pipeline facility safety standards, PUESA included, will be preempted by the NGPSA.

Under PUESA, the Council is charged with evaluating whether a natural gas project will have a “substantial adverse environmental effect” within the state – a multi-step analysis that requires the Council to consider, among other things, the project’s potential impact on “public health and safety”. Conn. Gen. Stat. §§ 16-50k(a), 16-50p(a)(3). This provision, which gives the Council the power to manage natural gas project safety issues, is clearly preempted by the NGPSA. In the face of a regulatory conflict such as this, PUESA acknowledges the limits of its jurisdiction, noting that its Certificate provision “shall not apply to any matter over which any agency, department or instrumentality of the federal government has exclusive jurisdiction[.]” Conn. Gen. Stat. § 16-50k(d). Thus, the U.S. DOT’s power to regulate the safety of interstate gas pipelines unequivocally preempts the Council’s authority to regulate those same activities through its Certificate process. This, combined with FERC’s exclusive power to regulate the “construction or extension” of interstate natural gas pipelines, leaves the Council

without any authority to regulate the Algonquin Project through its Certificate process. Thus, Algonquin need not obtain a Certificate from the Council before commencing its Project.

2. The Council Acknowledges That FERC Has Exclusive Jurisdiction Over Facilities Used for the Transportation of Natural Gas in Interstate Commerce.

The Council has repeatedly acknowledged that FERC has exclusive jurisdiction over facilities used for the transportation of natural gas in interstate commerce and that its own role is wholly advisory. For instance, in its *Decision and Order* regarding the Iroquois Brookfield Compressor Station and Brookfield Additions, the Council wrote:

The Connecticut Siting Council (Council) does not have jurisdiction to rule whether or not there is a need for the proposed projects (Petitions 540 & 555). The projects are under the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC). The FERC encourages the applicants to cooperate with agencies, such as the Council, regarding the siting of pipeline facilities, environmental mitigation, and construction procedures. The FERC alone will decide whether there is a need for the proposed projects, and whether this project or another one can best provide that service.

Petition Nos. 540 and 555, *Decision and Order* (Sept. 25, 2002). Similarly, as then-Chairman Gelston stated in his opening remarks during those proceedings:

The Siting Council does not have jurisdiction to rule whether or not there is a need for this project. The project is in the exclusive jurisdiction of the Federal Energy Regulatory Commission, known as FERC. FERC encourages the applicants to cooperate with agencies, such as the Council, regarding the siting of pipeline facilities, environmental mitigation, and construction procedures....

Also, the Council is not the decision-making authority in matters involving safety of gas pipelines. Matters involving pipeline safety issues are under the jurisdiction of the United States Department of Transportation Office of Pipeline Safety. Therefore, the comments that will be most helpful to us in doing the work that the FERC has left us to do would concern the likely environmental effects of the proposed facilities and how they might be mitigated.

Docket Nos. 540 and 555, Hearing Transcript, at 5 (Sept. 4, 2002). The Council has also concluded on at least one prior occasion that a pipeline addition proposed by the petitioner in this matter, Algonquin, was outside of its jurisdiction:

The Federal Energy Regulatory Commission (FERC) has exclusive jurisdiction for the siting of interstate natural gas transmission facilities including the route selected, the determination of public need, and the mitigation of environmental impacts. The United States Department of Transportation (U.S. DOT) has exclusive jurisdiction over the regulation of the safety of interstate natural gas transmission facilities including the safety aspects of their design, construction, and maintenance. The FERC has encouraged applicants before it to cooperate with agencies, such as the Council, with regard to the siting of pipeline facilities, environmental mitigation measures, and construction procedures.

Docket No. 221, *Findings of Fact*, at ¶ 2 (Aug. 1, 2002). *See also* Docket No. 221, Letter from Pamela B. Katz, P.E., to Anthony M. Fitzgerald (May 29, 2003).

More recently, the Council responded favorably to a petition filed by Algonquin requesting that the Council excuse the installation of a new compressor station and related facilities in Oxford, Connecticut, from PUESA's Certificate provision, finding that "Federal agencies have 'exclusive jurisdiction' over the Project, and therefore, the Council lacks jurisdiction under PUESA to issue a Certificate[.]" Petition No. 757 (Feb. 22, 2006). Furthermore, in a 1996 Staff Report that addresses a request by The Connecticut Light and Power Company to add gas-firing capability to the Middletown Station (now the Kleen Energy site), it is noted that:

[t]he natural gas supply would be provided by [Algonquin] via a new 20-inch diameter underground high-pressure gas line spur from Glastonbury, Connecticut. This line would traverse the Town of Portland and cross the Connecticut River south into Middletown Station. Algonquin's work is only provided as informational purposes as this project is subject to [FERC] jurisdiction.

Petition No. 357, *Staff Report* (Aug. 8, 1996).

In light of these precedents, the Council should conclude that its role in the Algonquin Project is wholly advisory and that Algonquin need not obtain a Certificate prior to initiating its Project.

B. ALGONQUIN IS NOT REQUIRED TO OBTAIN A CERTIFICATE FROM THE COUNCIL BECAUSE THE PROJECT WILL NOT HAVE A “SUBSTANTIAL ADVERSE ENVIRONMENTAL EFFECT”.

Although it has already been established that the Council does not have the authority to require Algonquin to obtain a Certificate for its Project pursuant to Conn. Gen. Stat. § 16-50k(a), the remainder of this memorandum will demonstrate that the environmental effects of the Project are so minimal that even in the absence of any jurisdictional issues, Algonquin would not need to secure a Certificate from the Council. As discussed below, the Algonquin Project will not have a “substantial adverse environmental effect” within the state.³

In evaluating whether a proposed natural gas project will have a “substantial adverse environmental effect” within the state, the Council may consider its potential impact on “the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife,” among other things. *See* Conn. Gen. Stat. § 16-50p(a)(3). The impact that the Algonquin Project will have in each of these areas is minimal or non-existent.

³ Like the Council under PUESA, FERC must consider the environmental impacts of the construction, operation and maintenance of a proposed facility over which it has jurisdiction. 18 C.F.R. § 380.12. And like the Council, FERC must evaluate the facility’s impact on water use and quality, 18 C.F.R. § 380.12(d); fish, wildlife, and vegetation, *id.* at § 380.12(e); cultural resources, *id.* at § 380.12(f); soils, *id.* at §§ 380.12(h), 380.12(i); and land use, recreation, and aesthetics, *id.* at § 380.12(j).

1. Natural Environment

The Algonquin Project will have no substantial effect on the natural environment surrounding it. During construction, Algonquin will use a variety of measures to control soil erosion, including deployment of sedimentation barriers, installation of slope breakers, and using a hydroseed-and-mulch combination to hold any disturbed soil in place until the vegetation reestablishes itself. Once Algonquin has completed the Project, the landscape of the construction area, River Road in Middletown, will be restored as near as practicable to its pre-construction condition. As to other areas, any disturbed ground will be restored, limed, fertilized, and seeded (except for wetlands, where lime and fertilizer will not be used). Herbicides will not be used. The overland portion of the right-of-way for the lateral (outside River Road) will be mowed annually and trees growing within 10 feet of the lateral will be cut back every three years to maintain safety.

2. Public Health and Safety

The Algonquin Project will have no substantial effect on public health and safety. During the construction period, Algonquin will coordinate with municipal traffic and safety officials to maintain public roadway access and minimize traffic disruptions. Only five landowners will be affected by the proposed construction – the State of Connecticut, the City of Middletown, and three utility companies. Middletown's mayor, Sebastian Giuliano, has written a letter in support of the Project to FERC (see Petition Attachment A).

3. Forests and Parks and Scenic, Historic, and Recreational Values

The Project is not within close proximity to any known archaeological or historical architectural properties, nor does it cross any public lands, recreational areas, or scenic areas. There are no residences within 50 feet of the construction workspace, and residential units along the Project route are generally sparse. No new residences, subdivisions, or commercial developments have been approved within 0.25 miles of the construction workspace. The Project is not anticipated to have any effect on the scenic, historic, and recreational values of Middletown.

4. Air Quality

No temporary or permanent impacts to air quality are anticipated.

5. Groundwater and Surface Water Quality

The Project is not anticipated to have any substantial adverse effects on groundwater quality or supply, surface water quality or quantity, or area wetlands. The Project does not cross any groundwater protection zones, public watersheds, or potable surface water supplies. The Project is not located within 250 feet of any groundwater protection zones or within 150 feet of any public or private water supply wells. Algonquin does not anticipate any impacts to any of the eight intermittent stormwater and runoff drainages flowing north under River Road. The Project will have minimal impact on area wetlands. Although a small section of wetland may suffer soil disturbance and loss of vegetation during construction, pre-construction contour elevations and hydrologic patterns will be restored after the Project is completed. If any hazardous materials are uncovered during the Project, Algonquin will dispose of or mitigate the potential contamination in accordance with FERC policies and procedures. Thus, while

some temporary disruption to a small amount of wetlands is anticipated, Algonquin does not foresee any substantial or long-term adverse effects to area groundwater or surface water.

6. Ecological Balance and Aquaculture, Wildlife and Vegetation

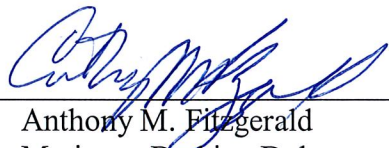
Aquaculture, wildlife, and vegetation will not suffer any permanent adverse effects. The Project's temporary impacts on the local ecology should be minimal, as the Project area is primarily situated on land that has been previously disturbed and permanent changes to the landscape surrounding the Project will be minimal.

IV. CONCLUSION

Based on the foregoing, and pursuant to Conn. Gen. Stat. §§ 4-176(a) and 16-50g *et seq.*, Algonquin respectfully requests that the Council conclude Algonquin need not satisfy the Certificate requirement of Conn. Gen. Stat. § 16-50k(a) before commencing its Project.

Respectfully submitted,

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