

BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Eversource Energy Petition for Approval of Gas
Infrastructure Contract with Algonquin Gas
Transmission, LLC

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) DOCKET NO. DE 16-241
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PETITION FOR LEAVE TO INTERVENE OF ENGIE GAS & LNG LLC

Pursuant to RSA 541-A:32, New Hampshire Public Utilities Commission

(“Commission”) Code Admin. Rules Puc 203.17, and the Commission’s Order of Notice dated March 24, 2016, ENGIE Gas & LNG LLC (“ENGIE”) respectfully petitions the Commission for leave to intervene without any conditions on its participation in the above-referenced proceeding. In support of this petition, ENGIE states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

1. On April 17, 2015, the Commission issued an Order of Notice announcing its *Investigation into Potential Approaches to Ameliorate Adverse Wholesale Electricity Market Conditions in New Hampshire*, Docket No. IR 15-124. This investigation addressed the question whether electric distribution companies (“EDCs”) could lawfully enter long-term contracts to fund development of new infrastructure for added natural gas pipeline capacity in New England, with cost recovery from EDC ratepayers.

2. On January 19, 2016, the Commission issued its *Order Accepting Staff Report and Stakeholder Comments, and Outlining Review Process for Any Petitions for Capacity Acquisitions and Associated Competitive Bidding* (Order No. 25,860). In this Order, the Commission acknowledged that “no consensus exists regarding the potential legality of such an acquisition of gas capacity by a New Hampshire EDC.” Docket No. IR 15-124, Order 25,860 at

3. The Commission stated that it intended to rule on this legal question within the context of a full adjudicative proceeding on a petition for approval of a New Hampshire EDC's contract for capacity acquisition, and following a competitive procurement process. *Id.*

3. In the same Order, the Commission established a two-phase framework to evaluate any proposals by New Hampshire EDCs for proposed capacity acquisition. *Id.* In the first phase, the Commission will rule on the legality of such a proposal under New Hampshire law. Should the Commission rule in the affirmative, it would then open a second phase of the proceeding "to examine the appropriate economic, engineering, environmental, cost recovery, and other factors presented by the actual proposal." *Id.*

4. On February 18, 2016, the Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") filed its *Petition for Approval of a Gas Infrastructure Contract Between Public Service Company of New Hampshire d/b/a Eversource Energy and Algonquin Gas Transmission, LLC* related to the proposed Access Northeast pipeline project (the "Eversource Petition"). Specifically, Eversource sought approval of: (1) a 20-year interstate pipeline transportation and storage contract providing natural gas capacity for use by electric generation facilities in the ISO-NE region (the "Proposed Contract"); (2) an Electric Reliability Service Program ("ERSP") to set parameters for the release of capacity and the sale of liquefied natural gas supply available by virtue of the Proposed Contract; and (3) a Long-Term Gas Transportation and Storage Contract ("LGTSC") tariff, which allows for recovery costs associated with the Proposed Contract from electric ratepayers. *Eversource Petition* at ¶ 5.

II. STANDARD OF REVIEW

5. The Commission "shall grant one or more petitions for intervention if . . . [t]he petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or

other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law” and “the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32(I)(b)-(c).

III. ENGIE SHOULD BE GRANTED INTERVENTION IN THIS PROCEEDING

A. ENGIE’s substantial rights and interests will be affected because it is a major supplier of liquefied natural gas to and participant in the New Hampshire energy markets that are the subject of this proceeding.

6. ENGIE is a Delaware limited liability corporation with a principal place of business at 20 City Square, Suite 3, Charlestown, MA 02129. ENGIE imports liquefied natural gas (“LNG”) and sells this product in natural gas vapor or LNG liquid form to customers in New England, including New Hampshire. ENGIE’s customers include local gas distribution companies (“LDCs”), electric generating facilities, natural gas marketers, and industrial end-users. The LNG facility located in Everett, Massachusetts, owned by ENGIE’s affiliate, Distrigas of Massachusetts LLC, is a major supplier of LNG liquid, with 22 percent of the total LNG storage capacity and a quarter of the LNG liquid delivery capacity of LNG facilities in New England.

7. ENGIE’s substantial rights and interests will be directly affected by this proceeding because the Proposed Contract will markedly alter the mechanics of the established market for natural gas in the New England — a market in which ENGIE is a significant participant. Furthermore, these market mechanics will be altered in a manner ENGIE believes is contrary to both state and federal law, and in a manner that is not in the public interest. The ratepayer-financed pipeline capacity investment at issue in this proceeding will inequitably diminish the market for LNG, and will impermissibly discriminate against electric generators

based on their fuel type and geographic location. It is also contrary to the market principles required by New Hampshire's restructured energy market.

B. ENGIE's substantial rights and interests will be affected in this proceeding because ENGIE was an unsuccessful bidder in the competitive procurement process through which Eversource selected the Algonquin Proposal.

8. ENGIE's substantial rights and interests will further be affected by this proceeding because it submitted, in response to Eversource and National Grid's jointly issued Request for Proposals ("RFP"), an alternative to the Access Northeast proposal.

9. On October 23, 2015, Eversource and National Grid issued the RFP to six interstate pipeline companies serving the New England region, and to two LNG providers, including ENGIE. The RFP sought to "solicit proposals for interstate capacity/gas supplies to further the goals of reduction of the cost of electricity and increasing the reliability of the New England electric system to benefit electric distribution customers." *Eversource Petition*, Exh. EVER-JGD-4 at 1.

10. The RFP required each proposal for capacity/gas supplies to address the following: (1) delivery and receipt locations; (2) service type and operational flexibility; (3) quantity; (4) price; (5) contract term and renewal rights; (6) pro-forma contract/precedent agreements; (7) tariffs and pro-forma service agreements; (8) documentation of experience with development and management of natural gas resources; (9) regulatory/siting/approvals/timing; (10) audited financial statements, annual reports, and credit ratings; (11) business conditions and financial reports; and (12) disclosure of legal matters and conflicts of interest. *Id.* at 4-8.

11. ENGIE developed a proposal that both addressed each of the twelve categories of key criteria outlined in the RFP and presented several viable, regional options that would further the goals stated in the RFP. ENGIE's proposal included three options to supply LNG via the

Everett LNG marine terminal and/or the Neptune LNG deepwater port. Under ENGIE's proposal, re-gasified LNG would be delivered from the Everett LNG marine terminal to the existing Tennessee and Algonquin transmission systems for downstream delivery to New England power stations.

C. The Massachusetts Department of Public Utilities granted ENGIE intervention as a full party in the parallel Massachusetts proceeding, M.D.P.U. 15-181.

12. ENGIE's substantial interests as a market participant and bidder have already been acknowledged by the Massachusetts Department of Public Utilities ("M.D.P.U.") in a parallel proceeding, in which Eversource filed a similar petition for approval of transportation and storage contracts with Algonquin. *See* M.D.P.U. 15-181, *Petition of Eversource Energy*, (Dec. 18, 2015). On March 8, 2016, the M.D.P.U. hearing officer – under a similar standard of review – granted ENGIE full party status in that proceeding, finding that ENGIE is substantially and specifically affected by the Eversource proposal. *See* M.D.P.U. 15-181, *Hearing Officer Ruling on Petitions to Intervene* at 2, 8.

IV. ENGIE'S INTERVENTION WILL SERVE THE INTERESTS OF JUSTICE AND ASSIST WITH THE ORDERLY AND PROMPT CONDUCT OF THIS PROCEEDING

A. ENGIE's intervention will serve the interests of justice because ENGIE can provide the Commission both with information it has accumulated in similar proceedings and with its own experience as a critical market participant.

13. ENGIE's participation in this proceeding will aid the interests of justice because ENGIE has been an active participant in the debate over the legality of EDC contracts to acquire gas capacity, such as the one Eversource proposes in this proceeding. ENGIE's participation will contribute to a full and fair analysis of the proposal under New Hampshire law.

14. For instance, in M.D.P.U. 15-37, the Massachusetts D.P.U. conducted a review similar to the review that the Commission will perform in Phase I of this proceeding.¹ ENGIE participated in M.D.P.U. 15-37 (under its former name GDF SUEZ Gas NA LLC) by submitting two sets of comments analyzing the authority of EDCs to acquire gas capacity under Massachusetts and federal law.

15. Additionally, ENGIE filed a Petition for Appeal with the M.D.P.U. on October 22, 2015, challenging the legality of the Order in M.D.P.U. 15-37, and filed that Appeal with the Supreme Judicial Court of Massachusetts on November 2, 2015. The matter is docketed for oral argument before the Supreme Judicial Court on May 5, 2016 as SJC-12051.

16. In Phase I of this proceeding, if ENGIE's petition for leave to intervene is granted, ENGIE anticipates submitting briefs and otherwise participating to assist the Commission in determining the legality of the Proposed Contract under New Hampshire law.

B. ENGIE's participation will assist the Commission in developing an informed analysis of the matters at issue in this proceeding.

17. If the Commission determines that an acquisition of gas capacity by a New Hampshire EDC is permitted under New Hampshire Law, ENGIE also anticipates participating in Phase II of the proceeding on issues such as a) legal obstacles associated with approving or implementing the Proposed Contract, b) the effect of Eversource's proposals on energy markets, c) the ways in which Eversource's proposals assume a single future scenario and fail to

¹ See *Investigation by the Department of Public Utilities on its own Motion into the means by which new natural gas delivery capacity may be added to the New England Market, including actions to be taken by the electric distribution companies*, M.D.P.U. 15-37, Order at 1 (Oct. 2, 2015) (investigating, among other things, whether "there is an 'innovative mechanism' for EDCs or other parties to secure new natural gas capacity into the region to benefit electric ratepayers").

adequately consider the uncertainty surrounding energy markets, and d) how the proposed contracting approach is not in the public interest.

18. Because ENGIE is actively involved in the central issues raised in this proceeding, allowing intervention by ENGIE will not delay the proceeding or otherwise frustrate its purpose. Through its active participation in other proceedings related to issues to be addressed by the Commission, ENGIE already has assembled information that it believes will be beneficial to the Commission.

V. CONCLUSION

19. ENGIE's unique perspective as a major supplier of LNG in New England for over forty years will allow ENGIE to assist the Commission with regard to the legal issues to be addressed in Phase I. If the Commission proceeds to Phase II, ENGIE's experience will allow it to assist the Commission in assessing the effects the Proposed Contract will have on energy markets, by providing comprehensive and accurate information about alternative means of meeting the region's energy needs. ENGIE's intervention will neither impair the interests of justice nor impede the orderly and prompt conduct of the proceeding.

WHEREFORE, ENGIE respectfully requests that the Commission GRANT this Petition for Leave to Intervene as a full party in the above-referenced docket.

Respectfully Submitted,
ENGIE Gas & LNG LLC

By its attorneys,



Adam P. Kahn
Thaddeus A. Heuer
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Mass. 02210-2600
617-832-1000

Dated: April 11, 2016

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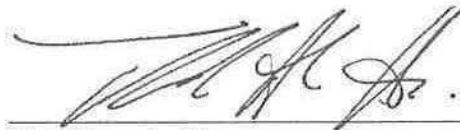
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Petition for Leave to Intervene of ENGIE Gas & LNG LLC upon all persons on the Commission's service list in this docket via electronic mail.

Dated: April 11, 2016



Thaddeus A. Heuer
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Mass. 02210-2600
617-832-1000
theuer@foleyhoag.com