

BEFORE THE CONNECTICUT SITING COUNCIL

In re: NTE Connecticut, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a 550-megawatt dual-fuel combined cycle electric generating facility and associated electrical interconnection switchyard located at 180 and 189 Lake Road, Killingly, Connecticut

Docket No. 470

Filed: February 7, 2019

RESPONSE TO MOTION OF NTE CONNECTICUT, LLC TO REOPEN AND MODIFY THE DECISION IN DOCKET NO. 470 DUE TO CHANGED CONDITIONS

Pursuant to the Council's January 18, 2019 Notice, Connecticut Fund for the Environment, Not Another Power Plant, Sierra Club, and Wyndham Land Trust respectfully submit this response to NTE's January 18, 2019 Motion to Reopen and Modify the Decision in Docket No. 470 Due to Changed Conditions. Although ISO New England's Forward Capacity Auction (FCA) 13 was held as scheduled this week, as described below, the final status of the FCA 13 results remains uncertain due to the Federal Energy Regulatory Commission's (FERC's) effective exclusion of the 800 MW Vineyard Wind project from participating in the primary auction as a Renewable Technology Resource and a pending motion to reconduct the auction. Given this uncertainty, the Council should defer ruling on NTE's motion to reopen until FERC grants final approval of the auction results.

Should the Council nevertheless decide to reopen the record at this time, it should establish a robust evidentiary process going forward, with opportunity for discovery, witness testimony, and a hearing, in order to fully and accurately evaluate the public need for the facility and its balance with environmental impacts in light of the many developments affecting the site,

and in the state and region, that implicate the public benefit of siting a new fossil fuel-fired generation facility at this location.

I. Background

On August 17, 2016, NTE submitted an application to the Council for a Certificate of Environmental Compatibility and Public Need (Siting Certificate) to construct and operate a 550-megawatt gas-fired combined cycle electric generating facility and associated electrical interconnection switchyard in the town of Killingly, Connecticut: the Killingly Energy Center (KEC).

Pursuant to C.G.S. § 16-50p, the Council may not grant a Siting Certificate unless it finds and determines both a public need and public benefit for the proposed facility.¹ If the Council finds a public need for the facility it also must find and determine the “nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities” that “impact on, and conflict with the policies of the state concerning 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” and, additionally, must determine why these adverse effects or conflicts “are not sufficient reason to deny the application.”²

On May 16, 2017, the Council issued a final decision package denying NTE’s application.³ Based on NTE’s failure to obtain a capacity supply obligation for KEC in FCA 11, the Council observed that “ISO-NE has effectively determined that KEC is not required for

¹ Conn. Gen. Stat. § 16-50p(a)(3)(A) & (c)(1). A public need exists only when a facility is “necessary for the reliability of the electric power supply of the state.” Conn. Gen. Stat. § 16-50p(h), *see also* Conn. Gen. Stat. § 16-50p(c)(3). A “public benefit” exists when a facility “is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity.” Conn. Gen. Stat. § 16-50p(c)(3).

² Conn. Gen. Stat. § 16-50p(a)(3)(B) & (C).

³ The decision package, released on May 16, 2017, included a Decision and Order, an Opinion, and Findings of Fact, all of which are dated May 11, 2017.

resource adequacy, at least through the [Capacity Commitment Period] of 2020-2021.”⁴ The Council considered⁵ but was apparently not persuaded by NTE’s additional arguments regarding independent bases to establish the need for KEC. Rather, based on its finding that there was no need for KEC, and therefore no public benefit, the Council explained that it was not reaching any finding or determination regarding environmental impacts or why the environmental impacts are or are not sufficient reason to deny the application because “[t]here is no public benefit to balance with the environmental impacts.”⁶

On January 19, 2018, NTE filed a motion to reopen and modify the Council’s May 16, 2017 decision due to “changed conditions.” In support of its motion, NTE identified a renewed “confiden[ce]” that KEC would clear in ISO-NE’s FCA 12,⁷ as well as pointing to a modification to the proposed turbine technology⁸ and site layout.⁹ On February 6, 2018, NTE participated in FCA 12 and failed to receive a capacity supply obligation and NTE withdrew its motion on February 8, 2018.¹⁰

On January 18, 2019, prior to participation in ISO-NE’s FCA 13, NTE filed a renewed motion to reopen and modify the Council’s May 2017 decision. One of the other proposed new generation resources in the region, the 800 MW Vineyard Wind project offshore Massachusetts, also sought to participate in FCA 13, utilizing the Renewable Technology Resource (RTR) exemption from the Minimum Offer Price Rule.¹¹ Due to an “oversight” in the drafting of the RTR exemption, because the Vineyard Wind project is geographically located in federal waters

⁴ May 11, 2017 Opinion at 5.

⁵ May 11, 2017 Findings of Fact ¶¶ 114-130.

⁶ May 11, 2017 Decision and Order at 1.

⁷ Jan. 19, 2018 Motion to Reopen and Modify at 8.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

¹⁰ Ltr. from Kenneth C. Baldwin to Melanie A. Bachman, Esq. (Feb. 8, 2018).

¹¹ *See* Petition of Vineyard Wind LLC for Waiver of Tariff Provisions and Expedited Commission Action, FERC Dkt. ER19-570-000 (Dec. 14, 2018).

offshore Massachusetts rather than in Massachusetts itself, the facility required a waiver from FERC to receive the RTR exemption.¹² Despite Vineyard Wind's filing of its waiver request on December 14, 2018, as of February 4, 2019—the date of the auction—FERC had not responded. Consequently, on February 4, 2019, Vineyard Wind filed an emergency motion for a stay of FCA 13, or in the alternative a requirement that the auction be reconducted subsequent to action by FERC.¹³ FERC has not ruled on the emergency motion, and FCA 13 went forward on February 4th without Vineyard Wind's participation in the primary auction.¹⁴ In response to this failure to act on Vineyard Wind's waiver request and emergency stay motion prior to ISO-NE moving ahead with FCA 13, two of the FERC commissioners released a statement that same day raising their concern that FERC had “introduced significant uncertainty” into the auction.¹⁵ On February 6, 2019, ISO-NE issued a press release providing the preliminary results of the auction indicating that KEC had received a capacity supply obligation and that the auction cleared 34,839 MW, including 1,089 MW of “surplus supply” over the capacity requirement.¹⁶

II. The Council Should Not Rule on NTE's Motion to Reopen Until FERC Approves the FCA 13 Results

As identified by two of FERC's commissioners, the effective exclusion of Vineyard Wind from participation in the primary FCA 13 auction due to FERC's failure to respond to Vineyard Wind's RTR waiver request prior to the commencement of FCA 13 has created “significant

¹² See *id.* at 3 (citing Joint Filing of ISO New England Inc. and New England Power Pool regarding Conforming Changes to ISO Tariff for CSAPR, Docket No. ER19-444-000 at 38 (Nov. 30, 2018)).

¹³ Vineyard Wind, LLC, Emergency Motion for an Immediate Stay of the ISO-NE Forward Capacity Auction, or, in the Alternative a Requirement that the Auction be Reconducted Subsequent to Commission Action, FERC ER19-570-000 (Feb. 4, 2019).

¹⁴ Vineyard Wind ultimately was forced to participate in the subsequent substitution auction and received a limited 54 MW capacity supply obligation. ISO-NE, Press Release: New England's Forward Capacity Auction Closes with Adequate Power System Resources for 2022-2023 (Feb. 6, 2019), available at https://www.iso-ne.com/static-assets/documents/2019/02/20190206_pr_fca13_initial_results.pdf.

¹⁵ Statement of Commissioner Cheryl A. LaFleur and Commissioner Richard Glick, FERC ER19-570-000 (Feb. 4, 2019).

¹⁶ ISO-NE Press Release, *supra* note 14, at 1.

uncertainty” regarding the status of the FCA 13 results.¹⁷ Vineyard Wind’s motion to require that the auction be reconducted remains pending before FERC. And FERC has yet to give its approval to the results of FCA 13. Given the uncertainty regarding the results of FCA 13 and the motions pending before FERC, the Council should defer ruling on NTE’s motion until FERC issues a final approval of the FCA 13 results.

III. If the Council Reopens the Record in This Docket, It Should Establish a Robust Evidentiary Process that Enables Evaluation of all Relevant Developments Post-Dating the Commission’s 2017 Denial Order

Should the Council nevertheless decide to reopen the record in this docket, the Council should adopt a sufficiently robust evidentiary process to fully evaluate the factors relevant to granting or denying a Siting Certificate in light of the most up-to-date information. As the Council explained in its May 2017 Decision and Order, because it determined there was no public benefit for KEC, it “[did] not reach any finding and determination on the second decision criterion regarding environmental impacts” and it likewise “[did] not reach any finding and determination on the third decision criterion regarding why the environmental impacts are or are not sufficient reason to deny the application.”¹⁸ In answering these critical questions, the Council should adopt an evidentiary process that allows it to be guided by the most current information, including allowing for discovery, additional witness testimony, and an evidentiary hearing.

As identified by NTE, several important changes have occurred at and around the project site since the Council’s prior decision.¹⁹ In addition, many developments have occurred in Connecticut and the region over the past 20 months that implicate the Council’s balancing of the need for siting new fossil fuel generating stations like KEC and the environmental impacts of

¹⁷ *Id.*

¹⁸ May 11, 2017 Decision and Order at 1.

¹⁹ Including, for example, different turbine technology (NTE Motion to Reopen at 7), modified site plan (*id.* at 8), further developments regarding the pipeline interconnection (*id.* at 6).

these facilities pursuant to C.G.S. §16-50p. Among other things, since the Council’s previous denial of KEC’s Siting Certificate, Connecticut has expanded and extended its renewable portfolio standard from 20 percent by 2020 to 40 percent by 2030.²⁰ The State has adopted a new state climate target of reducing greenhouse gas emissions 45 percent below 2001 levels by 2030.²¹ The Governor’s Council on Climate Change has released its draft report and recommendations identifying as one of three “fundamental objectives” the need to promote zero-carbon electricity generation²² and to achieve 84 percent carbon-free electric generation by 2050.²³ And Connecticut has announced the results of its zero-carbon resource selection, totaling 45 percent of Connecticut’s electric load, which include long-term contracts with both the Millstone and Seabrook nuclear plants.²⁴

Adjacent states have similarly doubled down on their commitment to zero-carbon and non-fossil fuel resources, implicating the appropriateness of siting new fossil fuel plants across the border in Connecticut. Massachusetts recently doubled the rate at which its renewable energy portfolio standard increases for the years 2020 to 2030,²⁵ and adopted a Clean Energy Standard that ramps to 80 percent clean generation (i.e., generation that emits greenhouse gases at a rate at least 50 percent below that of a new combined cycle natural gas facility like KEC²⁶) by 2050.²⁷ New York last month announced its intention to mandate that 100 percent of electricity

²⁰ Pub. Act 18-50, available at <https://www.cga.ct.gov/2018/act/pa/pdf/2018PA-00050-R00SB-00009-PA.pdf>.

²¹ Pub. Act 18-82, available at <https://www.cga.ct.gov/2018/ACT/pa/pdf/2018PA-00082-R00SB-00007-PA.pdf>.

²² Governor’s Council on Climate Change, Building a Low Carbon Future for Connecticut: Achieving a 45% GHG Reduction by 2030 (Draft Report Dec. 5, 2018), at iii (“GC3 Draft Report”), available at https://www.ct.gov/deep/lib/deep/climatechange/publications/building_a_low_carbon_future_for_ct_gc3_recommendations.pdf.

²³ GC3 Draft Report at 13.

²⁴ Conn. Dept. of Energy & Env’tl. Protection, Press Release: Gov. Malloy Announces Zero-Carbon Resource Selections (Dec. 28, 2018), available at <https://www.ct.gov/deep/cwp/view.asp?Q=607002&A=4965>.

²⁵ 2018 Mass. Acts Ch. 227, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter227>.

²⁶ 310 C.M.R. § 7.75(7)(a)(1).

²⁷ 310 C.M.R. § 7.75(4).

consumed in New York be zero carbon by 2040²⁸ and to establish a Climate Action Council to develop a plan to make the state carbon neutral.²⁹

This Council has also recently re-evaluated Connecticut's electric energy future and found that "even taking into account the most conservative prediction . . . the resources (i.e. generation plus import) for Connecticut during 2018-2027 will be adequate to meet demand. Connecticut currently has and is projected to have a sizeable surplus of resources for the forecast period."³⁰ ISO-NE's projections at the regional level have trended the same way. In contrast to the forecasts available when the Council issued its Decision and Order in this docket in 2017, which projected that peak load would continue to rise over the coming decade, ISO-NE now projects that peak load will shrink. Summer peak is expected to decline at a compound annual growth rate (CAGR) of 0.4 percent from 2018 to 2027, and winter peak is anticipated to decline at an even larger CAGR of 0.7 percent during that 10-year period.³¹ This equates to nearly a gigawatt less peak summer demand and more than a gigawatt less winter peak demand in 2027.³²

In light of this Council's prior finding of a lack of need for KEC, the Council's initial Decision and Order left significant questions unaddressed regarding the existence of a public benefit for the facility and whether any purported benefit could counterbalance the adverse environmental impacts. Should the Council decide to reopen the record in this docket at this time, it should do so in a way that ensures that its future evaluation of KEC will be based on a

²⁸ Andrew M. Cuomo, 2019 State of the State Book: Justice Agenda, The Time Is Now (Jan. 2019), at 314, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2019StateoftheStateBook.pdf>.

²⁹ *Id.* at 316.

³⁰ Connecticut Siting Council Load Forecast (Nov. 2018), at 17. This worst case projection incorporates the ISO-NE 90/10 forecast, a slated retirement of Bridgeport Harbor Unit #3, at-risk power plant retirements, the worst-case generating output (the summer output), and the inclusion of Bridgeport Harbor Unit #5, and neglects the load reducing effects of small distributed generation. *Id.*

³¹ ISO-NE, CELT Report: 2018-2027 Forecast Report of Capacity, Energy, Loads, and Transmission (May 1, 2018, rev'd May 9, 2018), at Tab 1.5.1.

³² *Id.*

complete and current record reflecting the many developments that have occurred in Connecticut and the region affecting whether there is a public benefit for the facility.

RESPECTFULLY SUBMITTED this 7th day of February, 2019.



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