

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 23, 2017

OPPOSITION TO MOTION FOR LEAVE TO REOPEN RECORD AND MODIFY BRIEFING SCHEDULE

The Sierra Club and Connecticut Fund for the Environment respectfully submit this Opposition to NTE's February 13, 2017 Motion to Reopen Record for Limited Purpose and to Modify Briefing Schedule. NTE requests that the Council reopen the record and the evidentiary hearing in this proceeding in order to provide additional testimony regarding NTE's participation in the ISO New England's February 6, 2017 Forward Capacity Auction (FCA 11).¹ However, NTE identifies no information regarding its participation in the auction that is material to the determination before the Council, that the company did not provide or could not have provided prior to the close of the record in this proceeding, and that is not already included in ISO-NE's February 9, 2017 press release, which provides an objective summary of the auction results, and which Not Another Power Plant, The Wyndham Land Trust, Connecticut Fund for the Environment, and Sierra Club requested the Council take administrative notice of on February 10, 2017. Consequently, NTE's motion should be denied.

¹ NTE also requests that the Council hold the briefing schedule in abeyance pending resolution of the motion. On February 14, 2017, the Council issued a memorandum requesting comments or statements of position on NTE's motion and holding the briefing schedule in abeyance pending the Council's resolution of the motion on March 2, 2017.

None of the information identified in the proposed Supplemental Testimony of Seth Shortlidge warrants reopening the record at this time. Mr. Shortlidge's testimony purports to explain NTE's decision to withdraw from FCA 11 without obtaining a capacity supply obligation based on cost and schedule uncertainty associated with six of NTE's required permits and approvals.² According to Mr. Shortlidge "each could have a significant impact on the overall cost of the project and its anticipated completion date."³ Mr. Shortlidge's testimony also repeats prior arguments made by NTE about the purported need for the Killingly Energy Center (KEC) even absent the facility clearing in FCA 11.⁴ This information is either irrelevant, has already been provided to the Council, or could have been provided to the Council prior to the close of the record.

The proposed testimony of Mr. Shortlidge regarding schedule uncertainty is not relevant. Whatever uncertainty in the timing of permit approvals may have existed as of the commencement of the Forward Capacity Auction on February 6, 2017, NTE was aware of it when the auction began and the company nevertheless elected to participate in the auction and potentially receive a capacity supply obligation for the 2020-2021 capacity commitment period. That NTE subsequently "withdrew from the auction before it was concluded"⁵ cannot reasonably be attributed to uncertainty about the anticipated completion date of the facility, and the record should not be reopened on this basis.

The proposed testimony of Mr. Shortlidge regarding cost uncertainty based on the status of six of NTE's permits and approvals likewise fails to warrant reopening the record. A less than two week gap existed between the close of the record in this proceeding and the date of the

² Proposed Shortlidge Supp. Testimony at 2.

³ *Id.*

⁴ *Id.* at 2-4.

⁵ *Id.* at 2.

auction. If any permits or approvals anticipated to be received during this brief window were material to NTE's participation in the auction, this could have been disclosed to the Council prior to the close of the record. Moreover, as of the close of the record in this proceeding, at least several of the permits and approvals identified by Mr. Shortlidge—including the Certificate of Environmental Compatibility and Public Need and the air permit—were not on schedules that could have resulted in final approvals prior to the auction date. There is no basis for reopening the record to admit testimony on this issue.

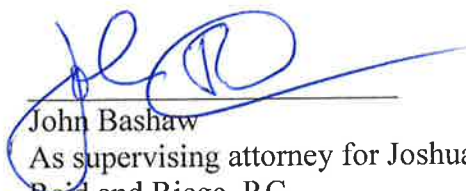
Finally, Mr. Shortlidge's proposed testimony regarding the purported need for KEC even absent obtaining a capacity supply obligation for the facility does not warrant reopening the record. Prior to the close of the record, NTE was aware of the auction date and the possibility that the facility would not receive a capacity supply obligation in the auction. Not only did NTE have ample opportunity to make its case for public need even absent KEC clearing in the auction, NTE did in fact already submit interrogatory responses to the Council on this point.⁶ Mr. Shortlidge's proposed testimony repeats and in some places directly quotes arguments NTE has made previously in this proceeding, and does not warrant reopening the record on this issue.

Ultimately, there is no dispute that the results of FCA 11 are material to the public need determination before the Council in this proceeding. However, additional testimony is neither necessary nor appropriate to incorporate those results into the record in this proceeding. Rather, as Not Another Power Plant, The Wyndham Land Trust, Connecticut Fund for the Environment, and Sierra Club have previously requested, the Council should simply take administrative notice of ISO-NE's objective summary of the FCA 11 auction results in its February 9 Press Release, which contains all of the information regarding the auction that is material to the Council's public need determination. If, however, the Council nevertheless decides to reopen the record, it

⁶ *Id.* at 3-4 (quoting NTE 14, at pp. 8-9).

should do so for the limited purpose of admitting the proposed supplemental testimony of Mr. Shortlidge as part of the record, which can be done by stipulation of the parties, and should not reopen the evidentiary hearing. Nothing in Mr. Shortlidge's testimony warrants the significant time and expense of additional days of hearing in this matter.⁷

RESPECTFULLY SUBMITTED this 23rd day of February, 2017.



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⁷ Should the Council nevertheless decide to reopen the evidentiary hearing, it should cabin the scope of the reopening to questions to Mr. Shortlidge regarding the specific answers he provided in his proposed supplemental testimony. Moreover, should the Council reopen the evidentiary hearing, the Sierra Club and Connecticut Fund for the Environment respectfully reserve the right to request the opportunity to submit supplemental testimony responding to any new arguments or information provided by Mr. Shortlidge at the future hearing.

I HEREBY CERTIFY that a copy of the foregoing document was electronically mailed to the following service list on February 23, 2017:

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