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October 7, 2021  
VIA ELECTRONIC FILING

The Honorable Richard Glick, Chairman  
The Honorable James Danly, Commissioner  
The Honorable Allison Clements, Commissioner  
The Honorable Mark Christie, Commissioner

Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**RE: Comments on *NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC and NextEra Energy Seabrook, LLC*, Docket No. EL21-6-000**

Dear Chairman Glick and Commissioners Danly, Clements and Christie,

Pursuant to the Commission's order of September 7, 2021 in the captioned proceeding, the Office of the Attorney General of the Commonwealth of Massachusetts ("Massachusetts AGO") respectfully submits these comments concerning the issues raised by this litigation and the impact on Massachusetts of the delays in the New England Clean Energy Connect (NECEC) transmission project. As the Commonwealth's Ratepayer Advocate, the Massachusetts AGO is authorized by statute to represent the interests of Massachusetts customers before state and federal courts, and before the Commission.<sup>1</sup> The Massachusetts AGO timely intervened in both this matter and the related section 206 investigation in EL21-94.

The NECEC Project is of vital importance to Massachusetts. It will enable the delivery of up to 1,200 megawatts of clean, affordable hydroelectric energy from the province of Quebec to New England for an initial term of twenty years. Under the Federal Power Act, states are the entities primarily responsible for shaping the electric generation mix.<sup>2</sup> In Massachusetts, we are committed

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<sup>1</sup> Massachusetts General Law, c. 12 § 10; *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262, 1266 (1977); *Secretary of Administration and Finance v. Attorney General*, 367 Mass. 154, 163, 326 N.E.2d 344, 348 (1977); Massachusetts General Law, c. 12, § 11E.

<sup>2</sup> 16 U.S.C. § 824(b) (2012); *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016); *see also Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190, 205 (1983) (recognizing that issues including the "[n]eed for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States").

to moving towards a more diverse and cleaner energy portfolio. Our Clean Energy and Climate Plan for 2020 calls for an increase in clean energy and we have passed laws to procure this clean energy, including a large amount of hydroelectric power from Canada via the NECEC project.<sup>3</sup> Canadian hydro also offers New England a non-fossil fuel approach to help address regional energy concerns, including winter fuel security. Delay in acting on this significant dispute is inconsistent with the Commission's stated objective to address fuel security and support the Commonwealth's statutory requirement to reshape our electric generation mix.

Further, this dispute is a harbinger of a larger problem given the Commission's recent emphasis on facilitating regional transmission and integration of clean energy into wholesale markets. The fact that in this case a direct competitor of NECEC can thwart a major transmission project simply by refusing to negotiate and agree to commercially reasonable terms manifests a weakness in the interconnection process that must be addressed. Not only should the Commission resolve this dispute as soon as possible, but it should create a process to resolve any such future disputes expeditiously.<sup>4</sup> This may not be the last dispute involving the needed upgrade at Next Era's Seabrook facility, or a similar dispute involving other entities at another New England site.

The Massachusetts AGO urges the Commission not to delay decision in this case while the section 206 investigation in EL21-94 proceeds. The two matters, while related, are not coterminous, and the schedule the Commission has set in EL21-94 pushes the Commission's decision out approximately 7 months from today. Given that NECEC Transmission and Avangrid filed their complaint in October 2020, and given long construction lead times, an additional delay of seven months will significantly compromise the Spring 2023 in-service date of the NECEC project.

We appreciate the opportunity to share our views and concerns in this matter and request that the Commission consider the above comments in reaching a timely decision.

Sincerely,



Rebecca Tepper, Chief  
Christina H. Belew  
Assistant Attorney General  
Energy and Environment Bureau  
Massachusetts Office of  
the Attorney General

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<sup>3</sup> See *Global Warming Solutions*, G.L. c.21N, c. 30, § 61 (2008), *An Act Relative to Green Communities*, St.2008, c. 169, *An Act to Promote Energy Diversity*, St.2016, c. 188.

<sup>4</sup> The investigation in EL21-94 may be the appropriate docket in which to consider such a process. There will doubtless be other disputes of this nature as significant amounts of new transmission are added in furtherance of New England states' clean energy and climate goals. Ratepayers and state clean energy goals cannot afford the delays, costs or procedural uncertainty associated with such disputes.