Preliminary Documents:
New England Governors' Pipeline and Power Line Plan Shaped by Utility and Gas Pipeline Companies, Incomplete Analysis

In Brief

In January, the New England Governors announced a regional infrastructure plan to finance new gas pipelines and electric transmission lines with billions of dollars in funding from residents and businesses. Documents obtained by CLF through public records requests show:

→ ***Details worked out "behind closed doors."*** The states and the agency in charge of implementing the Governors' plan – the New England States Committee on Electricity (NESCOE) – are deciding on the elements, scale, and costs of the plan in secret and have repeatedly shielded technical and legal analysis regarding the plan from public scrutiny.

→ ***Self-interested industry insiders shaping the plan outside public view.*** NESCOE and state representatives have been and are currently working out many of the most important details of the plan in private discussions with gas pipeline companies and the gas and electric utilities that would earn billions from the plan. The states are using talking points directly from industry and allowing electric and gas utilities to help define their roles as middlemen who stand to profit from the plan.

→ ***Ignoring smaller, more affordable solutions***. Despite public statements to the contrary, NESCOE and the states agree in private that they "are not looking for market adjustments as alternatives to our current infrastructure investment path" that could be far less costly. According to the executive in charge of the region's electric grid, the point of the plan is to use public money to "*overbuild*" gas pipeline.

NESCOE claims that it is not subject to public records laws and is refusing to provide any documents to CLF. Several states also are withholding their documents about the plan. CLF is considering legal action to force compliance and bring these documents to light.

Introduction

In recent months, the six New England Governors have been moving forward with an increasingly complex initiative to invest billions of dollars of public money in new gas pipeline and electric transmission infrastructure, but the discussions that led to this proposal were brewing behind closed doors for well over a year.

In an effort to bring the process that led to the Governors' plan out of the region's back rooms, in March CLF filed public records requests seeking documents from the states and New England States Committee on Electricity ("NESCOE"), the entity that is working to implement the Governors' infrastructure initiative.

What we have learned to date has confirmed that the Governors' initiative is premised on extensive influence, behind closed doors, from pipeline and other energy companies that stand to profit from the Governors' plan to provide billions of dollars of customer money to the region's largest and most influential gas and electricity providers. Indeed, NESCOE has, even this spring, engaged the gas industry and utilities in an ongoing series of private meetings and phone calls to work out the details of its plan, even including how to head off legal challenges and guard against *those very same companies' conflicts of interest* as their affiliates vie for the billion-dollar deals the initiative may offer.

Just as troubling is that the documents make clear that this potentially $10 billion initiative rests on a foundation of incomplete analysis that does not meaningfully address the initiative's implications for the region's clean energy and climate goals. Despite statements that it is open to feedback and stakeholder input, NESCOE has ignored legitimate concerns and failed to analyze less costly alternatives to major pipeline and transmission infrastructure, of which there are many.

Unfortunately, the documents show that NESCOE and the Governors' representatives are deeply hostile to conducting their business in the open, with apparent contempt for the "court of public opinion" and fear of how their analysis could be "misused" by the public. While NESCOE and Governors' representatives are making "public" presentations, they have limited these to meetings and venues that are largely invisible to the broader public, that is, the labyrinthine stakeholder processes of regional electric grid operator ISO-New England and the New England Power Pool, and they have similarly limited the process for written comments. These opportunities for comment, however, appear to be largely a pretense given that the real work has been and continues to be conducted away from public view, with a preordained outcome of lucrative deals for the region's utilities, Canadian hydropower companies, and the fossil fuel industry.

Rather than relying on the region's competitive markets, painstakingly created to avoid saddling the public with the results of uneconomic investment by energy companies, the Governors are largely abandoning those markets in favor of their private deals to obligate billions in customer money.

In this document, CLF provides the details of what we've learned and the key documents themselves.

Background on the Governors' Initiative and Its Risks

When the Governors' initiative was announced in January, CLF sounded the alarm that, with so much at stake for customers and the environment, the Governors and their representatives needed to be more transparent by providing meaningful opportunities for public debate and engagement.

CLF also warned that the new proposed infrastructure could be inconsistent with the region's rapidly changing grid and states' climate laws and policies, with the risk that the states will overbuild natural gas infrastructure that would ultimately not comply with these laws, increase our overreliance on natural gas, and potentially leave the public liable for a bad bet.

A bit of context for CLF's concerns: the historic decline of coal in New England and its replacement with mostly gas-fired power have had enormous environmental and economic benefits. But that doesn't mean New England should depend on gas indefinitely. Indeed, we need to move to lower- and no-carbon resources much faster and more comprehensively, with a recognition that gas is only a way station on the road to a decarbonized electric grid. That's been our message to policymakers considering natural gas expansions in Connecticut, Massachusetts, Maine, and Vermont.

CLF is fully aware of the economic challenges presented by the wholesale electric market price spikes experienced last winter when gas-fired power plants had trouble buying gas at reasonable prices, or at all. That's why CLF has repeatedly proposed a lighter, faster, and less expensive set of solutions to those problems that will provide economic (as well as environmental) relief to households and businesses without increasing pollution. Much of that work was summarized in CLF's most recent comments on the Governors' initiative, filed on May 30, 2014, which reference a series of CLF filings and presentations to federal and state regulators. Many market participants, including some potentially standing to gain from the use of public funding for more infrastructure, have filed comments in agreement with CLF: there are lower cost solutions than what the Governors propose.

Stonewalling CLF's Requests for Public Records and Expressing Hostility to Public Input

Turning to the Governors' initiative, a threshold problem is that some of the states and especially NESCOE are doing their best to keep the inner workings of the initiative out of public view.

NESCOE is acting on behalf of state governments (as an "instrumentality" of the states). For example, in the Governors' December statement regarding regional energy infrastructure issues, they committed "to continue to work together, in coordination with ISO-New England and ***through the New England States Committee on Electricity (NESCOE)***, to advance a regional energy infrastructure initiative..." (italics added). Likewise, in an April memorandum to the New England Power Pool, NESCOE

> NESCOE has claimed that it is not subject to public records laws and has refused to provide any documents.

admits that the six New England states are now "***acting through NESCOE***" (italics added). More broadly, NESCOE is plainly a publicly oriented organization that coordinates the states' work on electricity matters.

"[D]eal strategy [should] be formulated behind closed doors" because "the court of public opinion can be fickle and recalcitrant."

NESCOE staff member

Despite this governmental role and the fact that its 6-person staff's $2 million budget is funded by the public through a charge on New Englanders' electric bills, NESCOE has claimed that it is not subject to public records laws and has refused to provide ***any*** documents. The states themselves are withholding tens of thousands of documents and only slowly making disclosures to CLF. In Rhode Island, CLF has already filed an administrative appeal of the state's illegal decisions to withhold vast numbers of documents and to provide only heavily redacted versions of other documents. Massachusetts has yet to provide *any* documents. CLF is now reviewing its options with respect to other legal action to compel greater disclosure. To date, CLF has obtained a large number of documents from Maine and New Hampshire agencies.

Unfortunately, NESCOE has made clear on several occasions before the initiative began that it prefers to withhold salient information from the public, to ignore information at odds with its preconceived direction, and to work out the details of the initiative's billions of dollars in customer investments in private. Key documents obtained by CLF:

- ***Email*** expressing the view of a NESCOE staff member that "deal strategy [should] be formulated behind closed doors" because "the court of public opinion can be fickle and recalcitrant," an observation with which NESCOE Manager and Maine Public Utilities Commission Chair Tom Welch agreed. This staff member, Ben D'Antonio, managed NESCOE's engagement of the consulting firm Black & Veatch to conduct analyses of gas and hydropower issues in 2013 and is helping to coordinate ongoing closed-door discussions with industry detailed below.[1]
- ***Emails*** showing that NESCOE withheld from the public several elements of the 2013 Black & Veatch analysis that consisted of modeling of a "Clean Energy Future" scenario and a "Gas Pipeline plus Hydro" scenario, with NESCOE's executive director noting that "[w]e did not issue notice of these extra runs so there is no stakeholder expectation to see them" and "[t]here is the potential for various interests to use/misuse the results," notwithstanding that NESCOE recognized that stakeholders could force disclosure through public records requests.[2] CLF is publicly posting these two withheld modeling analyses here and here.
- ***Email*** showing that NESCOE did not seriously consider CLF's submission of information on the greenhouse gas emissions of large-scale hydropower to NESCOE in August 2013, with NESCOE's executive director taking little more than an hour to circulate the information to the states with the recommendation that "I don't think a response beyond an email back

with a 'thanks for your views' is necessary,"[3] a decision borne out in a footnote to NESCOE's hydropower white paper utterly ignoring the issue.

- ***Emails*** showing that when the Massachusetts Department of Energy Resources submitted questions regarding draft work by Black & Veatch, NESCOE and the states promptly quashed any effort to answer those questions out of concern that "answering many of the questions would produce more information that could find its way into the public record."[4]
- ***Email*** showing that, two months before the initiative was even announced, NESCOE formulated talking points for the states' internal use that imagined and rejected potential objections to the plan.[5]
- ***An April 2014 memorandum*** in which NESCOE defensively focuses on cataloguing its public presentations and reports and explains that its regional work has "encouraged, enabled and informed state and stakeholder dialogue," presumably in response to CLF's criticisms of the initiative's process to date.[6]

Documents Reveal Pervasive Influence by Pipeline and Utility Companies

States have been engaged in closed-door discussions with the gas industry about means of financing new pipelines since at least 2012.[7] The current Governors' Initiative began to take clear shape in the fall of 2013, following the issuance of a heavily negotiated and measured energy Resolution at the conference of the New England Governors and Eastern Canadian Premiers in Québec and the release of several NESCOE-commissioned studies by Black & Veatch on hydro and gas-electric issues.[8]

The package deal[9] that the states settled on: commit billions of dollars of funding, collected from electric customers, to the construction of new gas pipeline (heavily favored by Maine) and new transmission lines linking Canada and New England (heavily favored by Massachusetts and Connecticut), on the theory that those steps would ultimately reduce market prices for electricity (paying back the customer infrastructure investments through the savings). Key documents obtained by CLF:

Kinder Morgan felt comfortable enough to share legal talking points with NESCOE and state officials.

- ***A briefing paper*** authored by Tony Buxton, a Maine attorney representing Kinder Morgan, the developer of a potential cross-regional gas pipeline, as well as a coalition of big energy users known as the Industrial Energy Consumers Group that favors cross-regional gas pipeline development. According to the documents, this paper was sent directly to Tom Welch, Chair of the Maine Public Utilities Commission, who circulated it, with Buxton's permission and some minor edits, as his own argument for new gas pipeline in communications within NESCOE.[10] At present, Welch is presiding over a pending proceeding, initiated under a state law he helped draft with Buxton, that could obligate Maine taxpayers to finance the Kinder Morgan pipeline project.

- ***Emails*** detailing private meetings and calls between NESCOE and state officials on the one hand and, on the other, several pipeline companies, the region's gas utilities, and ISO-New England, which operates the New England electric grid.
    - ***Email*** showing that ISO-New England was intimately involved in shaping the Governors' initiative, months before it was announced.[11]
    - ***Email*** explaining that the pipeline companies were invited to calls where they could explore with NESCOE, ISO-New England, and the states "how agreements could be structured with our company to support a pipeline project."[12]
    - ***Email*** containing the questions that NESCOE, ISO-New England, and the states asked the pipelines, including "Would some form of regulated payment under an electric tariff provide sufficient security for a party to move forward to build/contract for new pipeline capacity or is a firm contract with counterparty an absolute requirement?" and "Is there any specific tariff language that you would consider a 'must have' in order to rely on funding via a tariff provision?"[13]
    - ***Email*** revealing that Kinder Morgan felt comfortable enough in these discussions to share legal talking points with Chair Welch, a NESCOE staffer, and a New Hampshire official.[14]

NESCOE has been leading a process to implement the Governors' initiative with a veneer of openness, where the real details are being worked out outside public view, during extensive closed-door interaction with the pipeline companies discussed above and also the electric and gas utilities that could benefit handsomely from the plan. Key documents obtained by CLF:

- ***A February 25, 2014, NESCOE memo*** proposing the initiative's implementation teams consult directly with "representatives of [electric distribution utilities] with procurement responsibility for those conversations and document production related to power supply," "representatives of the gas distribution companies [and] pipelines," and, on legal issues, counsel for "transmission owners" and "distribution companies."[15]
- On the transmission side of the initiative, ***emails*** showing closed-door discussions between NESCOE, states, and electric utilities on how to avoid the utilities' own conflicts of interest, such as when utility affiliates bid to provide transmission projects, the power from which would be purchased by the same utilities. The most prominent example of such a conflict: energy deals with Northeast

> Northeast Utilities itself drafted the document the states and NESCOE are using to manage conflicts of interest when utilities buy power from their own transmission projects, like NU's Northern Pass project.

Utilities' southern New England subsidiaries NSTAR and Connecticut Light and Power that would facilitate Northeast Utilities' Northern Pass transmission project in New Hampshire.

  - ***Email*** in which a NESCOE staffer agrees to begin with a *Northeast Utilities-drafted* document to memorialize how utilities "ensure that conflicts of interest do not arise through your participation in the contemplated joint RFP process."[16]

- ***Email*** showing that a Massachusetts state official traveled to Washington, D.C., to conduct a closed Congressional briefing regarding the Governors' initiative alongside a representative of the most likely Canadian source for hydropower to be purchased through the initiative, Hydro-Québec.[17]
- ***Email*** showing that, during private calls with NESCOE and state representatives, three gas pipeline companies (Kinder Morgan, TransCanada, and Spectra) expressed that they were "willing (even anxious) to remain engaged in the discussions on how to structure contracts and a tariff to support additional pipeline construction into New England" and were told that "ISO and NESCOE/NESCOE counsel would be moving very quickly to work on possible language for a tariff, and that that group would be reaching out to the various pipeline companies (among others) for input."[18]
- On funding new gas pipelines, emails showing private communications and closed-door meetings with the utilities in line to manage and profit from implementation of the initiative.
  - ***Email*** showing state officials were in touch with gas utilities negotiating with pipeline companies for pipeline capacity and were "invited to 'be in the room' in an observer status," less than a week after the announcement of the Governors' initiative.[19]
  - ***Email*** showing private NESCOE and state discussions with utilities Northeast Utilities, National Grid, and Connecticut Natural Gas in March 2014 to gather their "perspective and input on issues associated with managing incremental gas pipeline capacity" and "to discuss a 'Capacity Manager' role."[20]
  - ***Email*** showing a private NESCOE and state meeting in April 2014 with the three utilities above and also United Illuminating, Power Options, and Unitil, regarding the Capacity Manager role.[21] This meeting took place the same day three of the utilities sent a letter to NESCOE proposing to take on that role and to take an equity stake in new pipeline, which followed private discussions involving these utilities and Connecticut officials, to which NESCOE and state officials were invited.[22]

Documents Reveal Initiative's Hollow Foundation and Failure to Consider Alternatives

The most alarming thing about the documents CLF has reviewed to date may be what they *do not* contain. NESCOE and the states have undertaken virtually no rigorous analytical work evaluating the many less costly alternatives to pursuing the Governors' initiative as currently conceived and their potential net benefits for the region.

Among these alternatives: gas-electric market reforms, increased energy efficiency in both the electric and natural gas systems, increased use of existing infrastructure such as existing gas pipelines and transmission ties, deployment of additional New England renewables, and the strategic use of Liquefied Natural Gas during times of winter gas constraints. CLF highlighted several of these alternatives in our May 30, 2014, comments to NESCOE.

These alternatives have tremendous promise, as NESCOE's own limited work confirms. The final Black & Veatch gas study devoted a chapter to several "short-term" solutions, highlighting their modest cost, "significant net benefits," and potential to drive immediate reductions in electric and gas prices. Similarly, ***an internal NESCOE memo*** shows that, for exceedingly modest investments in upstate New York, Hydro-Quebec's existing Phase II transmission line could supply 600 to 800 megawatts of additional power to New England without new transmission lines.[23]

> "What you need to do is overbuild" gas pipeline.
>
> *Gordon Van Welie*

But now, despite much posturing to the contrary, NESCOE *is no longer even considering alternatives* that would avoid major infrastructure investments. In an April 29 email regarding an upcoming NESCOE presentation, NESCOE Manager and Connecticut Department of Energy and Environmental Protection Deputy Commissioner Katie Dykes states that NESCOE needs to be clear that "we are not looking for market adjustments as alternatives to our current infrastructure investment path."[24]

The documents point to a potential explanation for this single-mindedness – NESCOE, the states, and ISO New England are uninterested in a careful process geared toward identifying the right-sized solution set to the region's energy challenges. According to ***meeting notes*** from a February gathering in Washington, D.C., Gordon Van Welie, President and Chief Executive Officer of ISO New England, stunningly admits that the purpose of the initiative and what the region needs is to "*overbuild*" gas pipeline (italics added).[25] Clearly a plan to "overbuild" is for some purpose other than reliability. Using customer funding for purposes of "overbuilding" the gas pipeline system amounts to a transfer of wealth (i.e., tax) without legislative or public oversight.

Another set of glaring omissions in NESCOE's work: the specific climate implications of the initiative. As mentioned above, NESCOE made no effort whatsoever to analyze or evaluate the significant hydropower emissions associated with newly developed hydropower, the very supply the transmission side of the initiative is intended to tap. Likewise, NESCOE's analysis of building a new cross-regional gas pipeline contains no consideration of such a project's long-term implications for meeting the region's climate goals.

NESCOE has been the first to downplay the economic and emissions reports completed on its behalf in 2013, which serve as the most significant analytical underpinning for the Governors' initiative. In two notices posted on its website, NESCOE offers the following disclaimer:

"Such studies are based on hypothetical assumptions, any one or more of which history may prove wrong in the near-term or at any time during the study period. Further, study results are directional and indicative. They are not predictive or precise.... By assessing different hypothetical futures, the analysis does not pretend to have perfect foresight. Rather, it assumes policymakers will apply their judgment to the assumptions in each of the hypothetical scenarios studied, and their proximity to policymakers' beliefs about of the future. [They] should be viewed accordingly and critically." This disclaimer shines the light on why the energy markets were restructured in the late 1990s: so that market participants that elect to invest capital in infrastructure bear the risk of future conditions – not the region's energy customers who would be obligated for decades under the Governors' plan.

A document obtained by CLF hints that the work's limitations were more pronounced; an ***email*** from Maine PUC Chair Welch states that, according to a "very reliable source," Black & Veatch "did not do a first rate job" in its work for NESCOE.[26] Presumably, New England deserves at least "first-rate" analytical evidence before it commits billions in customer dollars to new infrastructure.

The documents also raise major questions about the economic value of pursuing hydropower imports through new customer-subsidized transmission projects and contain information refuting the notion that such imports will insulate New England against winter volatility in natural gas supply and price. Key documents obtained by CLF:

> NESCOE's economic consulting firm "did not do a first rate job" and "significantly overstates" the benefits of Canadian hydropower.
>
> *Maine PUC Commissioner Tom Welch*

- ***A questions-and-answers document*** prepared for the Massachusetts Department of Energy Resources and circulated within NESCOE before the initiative was announced stating that importing purportedly cheap hydropower over new transmission lines will result in "minimal" benefits to customer retail electric bills.[27] The underlying Massachusetts analysis, which Massachusetts nonetheless touted within NESCOE as supporting investments in hydropower transmission, is posted here.
- ***Email*** from Maine PUC Chair Welch stating that, "fundamentally, I don't think [hydropower] has any real chance of being an economically superior solution. It would be purchased, if at all, to satisfy a carbon goal" and that the Black & Veatch analysis "significantly overstates" the economic benefits of large hydropower.[28] As pointed out, it ignores the greenhouse gas emissions resulting from development of new hydropower facilities.
- ***Email*** from NESCOE's Executive Director asserting that "[w]e don't know how Canadians will price that power… in any case whatever number one assumes is wrong."[29]
- ***Email*** from NESCOE showing that, according to ISO-New England market data, Hydro-Québec curtailed its exports to New England during January 2014, leaving hundreds of

megawatts of transmission capacity unused during the grid's most challenging cold-weather periods.[30]

- ***A report*** prepared for the Massachusetts Attorney General's Office showing that a "Canadian hydroelectricity project [and associated transmission to New England] can expect to make profits that exceed a 15% internal rate of return without needing any additional payments via a long-term contract or otherwise," calling into question the initiative's assumption that such contracts are necessary to facilitate transmission development.[31]

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As further documents are received and reviewed, CLF will continue to update the public on the Governors' initiative and NESCOE's work to implement it.

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1 Welch email to D'Antonio, Aug. 8, 2013 (RE: Hydro Call Thurs: add'l policy question)
2 Hunt email, Nov. 25, 2013 (B&V: gas + hydro modeling run); Hunt email to Welch, Oct. 15, 2013 (RE: material type correction RE: Gas-Elec Study: final run decision – CT + ME feedback); Hunt email to Berwick et al., Aug. 27, 2013 (Clean Energy Future – question for Managers)
3 Hunt email, Aug. 12, 2013 ([FWD: NESCOE Hydro Study - CLF Letter, Info and Data])
4 Hunt email, Oct. 10, 2013 (seeking feedback: requests from state consultant on B&V Hydro work); Berwick email to Welch, Oct. 10, 2013 (seeking feedback: requests from state consultant on B&V Hydro work)
5 Hunt emails, Nov. 6 and 13, 2013 (FAQs/Assertions & Q on timing and timelines, FAQs/Assertions re: Regional Infra Dev. Efforts)
6 Hunt email, Apr. 10, 2014 (Background docs; Qs for Monday)
7 Welch emails regarding Maine legislation, Sept/Oct. 2012
8 McCluskey email to Scott, Oct. 16, 2013 (Esty's Vision)
9 Welch email to Woodcock, Dec. 10, 2013 (transmission math); Esty email to Scott, Oct. 11, 2013 (transmission and more); Welch email to Woodcock, Sept. 17, 2013 (gas pipelines)
10 Emails between Welch and Buxton, between Welch and Woodcock, and Welch and Dykes/Esty, Sept. 13, 17, 19, 2013 (Confidential Gas Document, gas pipelines, pipelines, Materials for 9/25)
11 Hunt email, Nov. 19, 2013 (gas material - RE: call Friday 11/22 12-2 on T & Pipe)
12 Crisp email to Welch, Dec. 19, 2013 (Voice Mail). *See also* Welch email to Armstrong, Dec. 18, 2013 (contact info for conversation with regional group); various emails (Gas pipeline conversation group); Welch email, Jan. 22, 2014 (Call with PNGTS); McCluskey email to Scott, Jan. 30, 2014 (Kinder Morgan Call)
13 Welch email, Dec. 18, 2013 (Gas pipeline conservation group)
14 Heckman email to Welch et al., Feb. 8, 2014 (Kinder Morgan on Capacity Release)
15 NESCOE Memo, Regional Infrastructure – Organizational Approach, Feb. 25, 2014
16 Marshall email to Rabadjija, Gerwatowski, Randell, April 13, 2014 (Next Steps)
17 Clarke email to Dykes et al., Apr. 25, 2014 (FW: Final details – Congressional briefing)
18 Welch email, Feb. 6, 2014 (RE: legal issues call reminder: Thurs. 2:30)
19 Hunt email, Jan. 30, 2014 (RE: Call Thurs. 2/6 @ 2:30 and other)
20 McCluskey email to D'Antonio, Mar. 5, 2014 (RE: Gas Team – call at 4 today; New England system information)
21 D'Antonio email to McNamara et al., Apr. 17, 2014 (Re: April 22 Capacity Manager Meetings)
22 Dykes email, Mar. 24, 2014 (CT Meeting with LDCs & EDCs on Gas Capacity Concepts)
23 Hunt email, Jun. 5, 2013 (Info on 1200MW limit/ties)
24 Hunt email, Apr. 30, 2014 (any add'l feedback by noon pls -RE: short slide deck for PC; to send Wed)
25 Hunt email, Feb. 26, 2014 (Re: 2/28/2014 Weekly Infrastructure Call Notice)
26 Welch email to Woodcock and Schneider, Sept. 3, 2013 (Consultant)
27 Clarke email, Dec. 30, 2013 (Responses to Synapse Questions)
28 Welch email to D'Antonio, Aug. 8, 2013 (RE: Hydro Call Thurs: add'l policy question)
29 Welch email to D'Antonio, Aug. 8, 2013 (RE: Hydro Call Thurs: add'l policy question)
30 NESCOE Memo, Flow from Canada in January 2014, circulated Jan. 31, 2014, in Hunt email (FW_ material following 1_24 mtg)
31 Hunt email, Apr. 18, 2014 (fyi, MA AG analysis on clean energy sources)