

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

No. \_\_\_\_\_

**Appeal of Algonquin Gas Transmission, LLC**

---

**APPEAL BY PETITION PURSUANT TO RSA 541:6 AND RSA 365:21  
(NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION)**

---

Dana M. Horton  
New Hampshire Bar No. 266851  
Robinson & Cole LLP  
One Financial Plaza, Suite 1430  
Providence, RI 02903-2485

## Table of Contents

a. PARTIES AND COUNSEL .....	1
1. Name and Counsel of Parties Seeking Review .....	1
2. Names and Addresses of Parties and Counsel .....	2
b. ADMINISTRATIVE AGENCY'S ORDERS AND FINDINGS SOUGHT TO BE REVIEWED .....	5
c. QUESTIONS PRESENTED FOR REVIEW .....	6
d. PROVISIONS OF CONSTITUTION, STATUTES, ORDINANCES, RULES AND REGULATIONS .....	7
e. PROVISIONS OF INSURANCE POLICIES, CONTRACTS OR OTHER DOCUMENTS .....	8
f. STATEMENT OF THE CASE .....	10
1. Background .....	10
2. Access Northeast Project .....	11
3. 2015 Commission Staff Investigation .....	12
4. Eversource Petition And Related Proceeding .....	14
g. JURISDICTIONAL BASIS FOR APPEAL .....	15
h. A SUBSTANTIAL BASIS EXISTS FOR A DIFFERENCE OF OPINION ON THE CORRECT INTERPRETATION OF MULTIPLE STATUTES , THE ACCEPTANCE OF THE APPEAL WOULD PROTECT AGAINST SUBSTANTIAL AND IRREPARABLE INJURY, AND/OR PRESENT THE OPPORTUNITY TO DECIDE, MODIFY OR CLARIFY AN ISSUE OF GENERAL IMPORTANCE IN THE ADMINISTRATION OF JUSTICE .....	15
1. A Substantial Basis Exists For A Difference Of Opinion On The Questions Presented ...	17
i. Whether The Commission Erred When It Concluded That The Fundamental Purpose Of The Restructuring Statute Is To Encourage Competition .....	17
ii. Whether The Commission Erred In Ignoring The Fourteen Other Policy Principles Articulated In The Restructuring Statute .....	18
iii. Whether The Commission Erred In Concluding That The Access Northeast Program Violates The Restructuring Statute .....	20
iv. Whether The Commission Erred In Interpreting RSA 374:57 .....	21
v. Whether The Commission Erred In Interpreting RSA Chapter 374-A .....	23
vi. Whether The Commission Erred In Determining That Any Costs Incurred By Eversource Related To The Access Northeast Program Would Not Be Recoverable In Rates	

2.	The Acceptance Of The Appeal Would Protect Against Substantial And Irreparable Injury	26
3.	This Appeal Presents The Opportunity To Decide, Modify Or Clarify An Issue Of General Importance In The Administration Of Justice.....	29
i.	PRESERVATION OF ISSUES FOR APPELLATE REVIEW .....	29

**STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**Appeal of Algonquin Gas Transmission, LLC**

**APPEAL BY PETITION PURSUANT TO RSA 541:6 and RSA 365:21**

NOW COMES Algonquin Gas Transmission, LLC (“Algonquin”), by and through its attorneys, Robinson & Cole, LLP, pursuant to RSA 541:6, RSA 365:21 and Supreme Court Rule 10, and appeals to this Honorable Court from Order No. 25,950 (the “Order”) of the New Hampshire Public Utilities Commission (the “Commission” or “NHPUC”) dated October 6, 2016 and the Commission’s Order on Reconsideration, Order No. 25,970 (“Order on Reconsideration”), issued on December 7, 2016. In support of this Appeal by Petition, Algonquin states as follows:

**a. PARTIES AND COUNSEL**

**1. Name and Counsel of Parties Seeking Review**

**Appellants:**

Algonquin Gas Transmission, LLC  
5400 Westheimer Court  
Houston, TX 77056

**Counsel:**

Dana Horton  
New Hampshire Bar No. 266851  
Robinson & Cole LLP  
One Financial Plaza, Suite 1430  
Providence, RI 02903-2485

Joey Lee Miranda  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103-3597  
*Pro hac vice* status to be requested

Jennifer R. Rinker  
Algonquin Gas Transmission, LLC  
5400 Westheimer Court  
Houston, TX 77056  
*Pro hac vice* status to be requested

**2. Names and Addresses of Parties and Counsel**

**Parties:**

Coalition to Lower Energy Costs  
60 State Street, Ste. 1100  
Boston, MA 02109

Conservation Law Foundation  
27 North Main St.  
Concord, NH 03301

ENGIE Gas & LNG LLC  
1990 Post Oak Boulevard, Suite 1900  
Houston, TX 77056

**Counsel:**

Robert B. Borowski  
Preti Flaherty Beliveau Pachios LLC  
One City Center  
Portland, ME 04101

Peter Brown  
Preti Flaherty Beliveau Pachios LLC  
PO Box 1318  
Concord, NH 03302

Anthony Buxton  
Preti Flaherty Beliveau & Pachios LLC  
PO Box 1058  
Augusta, ME 04332

Thomas F. Irwin  
Melissa E. Birchard  
Conservation Law Foundation  
27 North Main St.  
Concord, NH 03301

Robert A. Olson  
770 Broad Cove Road  
Hopkinton, NH 03229

Thaddeus A. Heuer  
Adam P. Kahn  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210

Public Service Co. of New Hampshire  
d/b/a Eversource Energy  
780 N. Commercial St.  
PO Box 330  
Manchester, NH 03105

Wilbur A. Glahn, III  
McLane Middleton, PA  
900 Elm Street, PO Box 326  
Manchester, NH 03105

Robert A. Bersak  
Matthew J. Fossum  
Eversource Energy Service Company  
780 N. Commercial Street  
Manchester, NH 03101

Exelon Generation Company, LLC  
100 Constellation Way, Ste. 500C  
Baltimore, MD 21202

Mark Haskell  
Thomas R. Millar  
Cadwalader Wickersham & Taft LLP  
700 Sixth St., NW  
Washington, DC 20001

Richard Husband  
10 Mallard Court  
Litchfield, NH 03052

n/a

NH Municipal Pipeline Coalition  
c/o Burns & Levinson LLP  
125 Summer St.  
Boston, MA 02110

Richard A Kanoff  
Saib Hossain  
Burns & Levinson LLP  
125 Summer St.  
Boston, MA 02110

NextEra Energy Resources, LLC  
P.O Box 14000  
Juno Beach, FL 33408

Christopher T. Roach  
William D. Hewitt  
Roach Hewitt Ruprecht Sanchez &  
Bischoff, LLP  
66 Pearl Street, Ste. 200  
Portland, ME 04101

Office of Consumer Advocate  
21 South Fruit St., Ste. 18  
Concord, NH 03301

Donald M. Kreis  
Office of Consumer Advocate  
21 South Fruit St., Ste. 18  
Concord, NH 03301

Office of Energy and Planning  
107 Pleasant St.  
Johnson Hall  
Concord, NH 03301

n/a

Pipeline Awareness Network Of The  
Northeast, Inc.  
244 Allen Road  
Ashby, MA 01431

Richard A Kanoff  
Saqib Hossain  
Burns & Levinson LLP  
125 Summer St.  
Boston, MA 02110

Repsol Energy North American  
Corporation  
2455 Technology Forest Blvd.  
The Woodlands, TX 77381

Xochitl M. Perales  
Repsol Energy North American  
Corporation  
2455 Technology Forest Blvd.  
The Woodlands, TX 77381

Portland Natural Gas Transmission  
System  
One Harbour Place, Ste. 375  
Portsmouth, NH 03801

Richard Bralow  
TransCanada USPL  
700 Louisiana St., 11th Floor  
Houston, TX 77002

Tennessee Gas Pipeline Company LLC  
1001 Louisiana St., Ste. 1000  
Houston, TX 77002

Susan Geiger  
Douglas L. Patch  
Orr & Reno PA  
45 S. Main St.  
PO Box 3550  
Concord, NH 03302

C. Todd Piczak  
Tennessee Gas Pipeline Company LLC  
1001 Louisiana St., Ste. 1000  
Houston, TX 77002

Sunrun Inc.  
595 Market St., 29th Flr.  
San Francisco, CA 94105

Joseph F. Wiedman  
Keyes, Fox & Wiedman LLP  
436 14th Street, Ste. 1305  
Oakland, CA 94612

**b. ADMINISTRATIVE AGENCY'S ORDERS AND FINDINGS SOUGHT TO BE REVIEWED**

The Commission issued the Order (Order No. 25,950) on October 6, 2016 and the Order on Reconsideration (Order No. 25,970) on December 7, 2016. Copies of the Order, Order on Reconsideration and the following documents are contained in the Joint Appendix of Algonquin Gas Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy<sup>1</sup> ("Appendix" or "App."):

Commission Order Dismissing Petition Order No. 25,950 October 6, 2016	Appendix, page 1
---	------------------

Algonquin Gas Transmission, LLC's Motion for Rehearing and/or Reconsideration November 7, 2016	Appendix, page 20
--	-------------------

Public Service Company of New Hampshire d/b/a Eversource Energy Motion for Reconsideration November 7, 2016	Appendix, page 37
--	-------------------

Response of the Coalition to Lower Energy Costs to Algonquin and Eversource Motions for Reconsideration November 14, 2016	Appendix, page 50
--	-------------------

Objection of Conservation Law Foundation to Motions for Rehearing and/or Reconsideration November 15, 2016	Appendix, page 58
--	-------------------

Opposition of the Office of the Consumer Advocate to Motions for Rehearing and Reconsideration November 15, 2016	Appendix, page 63
---	-------------------

---

<sup>1</sup> The Appendix is being provided with the Appeal by Petition of Public Service Company of New Hampshire d/b/a Eversource Energy.



NextEra Energy Resources, LLC  
Objection to Motions for Rehearing and/or  
Reconsideration of Order No. 25,950  
November 15, 2016

Appendix, page 74

Commission Order Denying Motions for  
Reconsideration  
Order No. 25,970  
December 7, 2016

Appendix, page 93

**c. QUESTIONS PRESENTED FOR REVIEW**

The questions presented for review are:

1. Whether the Commission erred when it concluded that the fundamental purpose of RSA Chapter 374-F (the “Restructuring Statute”) is to encourage competition.
2. Whether the Commission erred in ignoring the fourteen other policy priorities articulated in RSA 374-F:3.
3. Whether the Commission erred in concluding that the contract between Public Service Co. of New Hampshire d/b/a Eversource Energy (“Eversource”) and Algonquin for natural gas capacity on Algonquin’s Access Northeast Project (the “Access Northeast Contract”); an Electric Reliability Service Program (“ERSP”) to set parameters for the release of capacity and liquefied natural gas (“LNG”) to electric generators; and/or a Long-Term Gas Transportation and Storage Contract tariff (“LGTSC”) to provide for recovery of costs associated with the Access Northeast Contract (collectively, the “Access Northeast Program”) violate the Restructuring Statute.
4. Whether the Commission erred in interpreting RSA 374:57, which provides for Commission approval of certain electric distribution company (“EDC”) contracts for the

purchase of “generating capacity, transmission capacity or energy” as applicable only to contracts for *electric* transmission capacity but not natural gas transmission capacity.

5. Whether the Commission erred in interpreting RSA Chapter 374-A as “no longer apply[ing] to an EDC like Eversource” and, thus, improperly concluded that RSA Chapter 374-A was repealed by implication.
6. Whether the Commission erred in determining that any costs incurred by Eversource related to the Access Northeast Program would not be recoverable in rates.

**d. PROVISIONS OF CONSTITUTION, STATUTES, ORDINANCES, RULES AND REGULATIONS**

The constitutional provisions, statutes and rules involved in this case are:

1996 N.H. Laws, 129:1	Appendix, page 101
RSA 4-E	Appendix, page 108
RSA 21:2	Appendix, page 109
RSA 362:4	Appendix, page 110
RSA Chapter 362-A	Appendix, page 112
RSA Chapter 362-F	Appendix, page 121
RSA 365:21	Appendix, page 132
RSA 374:1	Appendix, page 133
RSA 374:2	Appendix, page 134
RSA 374:57	Appendix, page 135

RSA Chapter 374-A Appendix, page 136

RSA Chapter 374-F Appendix, page 141

RSA 378:37 Appendix, page 150

RSA 378:38 Appendix, page 151

RSA 541:6 Appendix, page 152

**e. PROVISIONS OF INSURANCE POLICIES, CONTRACTS OR OTHER DOCUMENTS**

The following documents are contained in the Appendix:

NHPUC Docket No. DE 16-241 Appendix, page 153  
Petition for Approval of Gas Infrastructure  
Contract Between Public Service Company of  
New Hampshire d/b/a Eversource Energy and  
Algonquin Gas Transmission, LLC  
February 18, 2016  
(the "Petition")

NHPUC Docket No. DE 16-241 Appendix, page 168  
Precedent Agreement  
Attachment EVER-JGD-2 to the Petition  
February 18, 2016  
(the "Precedent Agreement")

ICF International Appendix, page 253  
Access Northeast – Reliability Benefits and  
Energy Cost Savings to New England Consumers  
Attachment EVER-KRP-2 to the Petition  
December 18, 2015  
(the "ICF Study")

NHPUC Docket No. DE 16-241  
Commission Order of Notice  
March 24, 2016  
(the "Order of Notice")

Appendix, page 294

NHPUC Docket No. DE 16-241  
Transcript, Prehearing Conference  
April 13, 2016

Appendix, page 301

NHPUC Docket No. IR 15-124  
Order of Notice  
April 17, 2015  
(the "IR 15-124 Order of Notice")

Appendix, page 343

NHPUC Docket No. IR 15-124  
Memorandum re: Gas Capacity Acquisitions by  
N.H. Electric Distribution Utilities  
July 10, 2015  
(the "Staff Legal Memorandum")

Appendix, page 348

NHPUC Docket No. IR 15-124  
Report on Investigation into Potential Approaches  
to Mitigate Wholesale Electricity Prices  
September 15, 2015  
(the "Staff Final Report")

Appendix, page 356

NHPUC Docket No. IR 15-124  
Commission 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  
January 19, 2016

Appendix, page 405

Eli Okun  
New England's Energy Situation 'Precarious,'  
ISO Leader Says  
N.H. UNION LEADER  
September 28, 2016

Appendix, page 411

Press Release, ISO New England  
Managing Reliable Power Grid Operations This  
Winter  
December 5, 2016  
(the "ISO New England Press Release")

Appendix, page 413

**f. STATEMENT OF THE CASE**

**1. Background**

This case arises out of efforts to ensure that New England's natural gas pipeline infrastructure is sufficient to support the large, and growing, percentage of New England's electricity supplied by natural gas in order to reduce the price of electricity to consumers and to enhance the reliability of the electric system. Approximately 16,000 megawatts ("MW") of natural gas-fired generation currently is interconnected to the New England gas pipeline system, yet only a small fraction of these units obtain their natural gas through "firm" contracts that can be relied upon even in times of very high demand (e.g., during cold weather when there is high demand for natural gas for heating). The overwhelming majority of these natural gas-fired units rely on interruptible or secondary services that are not available during peak demand periods to deliver to these plants the natural gas required to generate electricity. The inadequate supply of natural gas to New England's natural gas-fired electric generators causes electric consumers in New Hampshire (and the rest of New England) to face high and volatile electric prices and concerns about electric reliability, particularly in the winter.

Algonquin owns and operates the existing Algonquin Pipeline, which delivers Marcellus-region natural gas to New England. The affiliated Maritimes & Northeast Pipeline ("Maritimes

& Northeast”) is interconnected with Algonquin, and serves electric generators and other natural gas customers in northeastern Massachusetts, New Hampshire and Maine.<sup>2</sup> Approximately sixty (60) percent of New England’s natural gas generation is served by the existing Algonquin and Maritimes & Northeast pipelines. Natural gas-fired generators have not participated in recent pipeline capacity expansions, and, consequently, Algonquin and pipelines in general are not designed to serve electric power generators. Those projects currently planned and moving forward are designed to serve traditional natural gas local distribution company (“LDC”) demand, not electric power generation.

## **2. Access Northeast Project**

Algonquin is the developer of the Access Northeast Project (“Access Northeast”), a suite of targeted upgrades to the existing Algonquin Pipeline designed to provide cost-effective resources to increase the reliability of electric service and reduce electric costs for the benefit of electric customers. Natural gas-fired electric generators typically operate on a fairly short planning horizon, attuned to the three-year timeline of the Forward Capacity Auction.<sup>3</sup> As a result, if an electric power generator invests in a long-term supply of natural gas, there is no guarantee that it will continue to be dispatched in the long term or be able to recover the cost associated with its investment. By contrast, natural gas pipelines must operate on a much longer planning horizon, with extensive capital investment that requires returns over a long term. This mismatch has prevented natural gas-fired electric generators from supporting a build-out of natural gas pipeline infrastructure to support the needs of the electric generation sector.

Eversource, as an EDC, operates on a long-range planning horizon and is already required to

---

<sup>2</sup> See map of Algonquin and Maritimes & Northeast Pipelines, Staff Final Report at 16 (App. at 371).

<sup>3</sup> The Forward Capacity Auction is a wholesale market for electric generation capacity managed by ISO New England, the entity charged with operating New England’s electric grid. The auctions that assign capacity supply obligations to electric power generators occur approximately three years before the capacity supply obligation begins.

ensure resource adequacy in future years.<sup>4</sup> Through the Access Northeast Contract, Eversource would acquire natural gas pipeline capacity, which it would then release (through a competitive, arms-length auction process) to natural gas-fired generators. The natural gas-fired generators would thereby have an opportunity to access the natural gas pipeline capacity necessary to operate even in times of high natural gas demand without necessitating the economic commitment of entering into long-term firm contracts for which generators have no cost recovery guarantee in the competitive wholesale electric market.<sup>5</sup>

### **3. 2015 Commission Staff Investigation**

In 2015, when Access Northeast and other similar projects were still in the planning stages, the Commission recognized that “the average retail price of electricity in New England is the highest in the continental United States, posing a threat to our region’s economic competitiveness.”<sup>6</sup> Specifically, the Commission noted that:

During recent winters, significant constraints on natural gas resources have emerged in New England, despite abundant natural gas commodity production in the Mid-Atlantic States and elsewhere. These constraints have led to extreme price volatility in gas markets in the winter months in our region, which, in turn have resulted in sharply higher wholesale electricity prices.<sup>7</sup>

In recognition of its “fundamental duty to ensure that the rates and charges assessed by EDCs are just and reasonable,” the Commission expressed a view that “the potential development of additional natural gas resources for the benefit of the electricity supply in our region should be carefully considered.”<sup>8</sup> The Commission directed its Staff to undertake an investigation to

---

<sup>4</sup> RSA 378:37, *et seq.*

<sup>5</sup> Petition, at 11 (App. at 163).

<sup>6</sup> IR 15-124 Order of Notice, at 2 (App. at 344).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

“examine the gas-resource constraint problem” and identify potential solutions to such problem.<sup>9</sup>

Similar efforts to study or authorize the expansion of natural gas pipeline capacity, for the purpose of improving the cost and reliability of electric service, were undertaken in other states across the region.<sup>10</sup>

Commission Staff concisely explained many of the legal issues at play (and subject to this appeal) in its July 10, 2015 Staff Legal Memorandum.<sup>11</sup> While Staff left room for further analysis by the Commission, the Staff Legal Memorandum noted that the Commission “could rule that EDC acquisition of gas capacity for the benefit of gas-fired generators does not violate” RSA Chapter 374-F and its requirement that generation and transmission/distribution functions be separated.<sup>12</sup> Staff also identified two statutes as potential sources of EDC corporate authority to enter into contracts for natural gas capacity: RSA 374-A:2 and RSA 374:57.<sup>13</sup> Finally, Staff recognized that the Commission could find that EDC costs associated with natural gas capacity contracts are recoverable in rates, and set forth a preliminary framework through which the Commission may make that assessment.<sup>14</sup> In the September 15, 2015 Staff Final Report, Staff

---

<sup>9</sup> *Id.* at 3 (App. at 345).

<sup>10</sup> See, e.g., Connecticut Public Act 15-107 (authorizing the Connecticut Department of Energy and Environmental Protection to conduct a solicitation for natural gas resources); Maine Public Utilities Commission Docket No. 2014-00071, *Investigation of Parameters for Exercising Authority Pursuant to the Maine Energy Cost Reduction Act, 35-A M.R.S. § 1901*; Massachusetts Department of Public Utilities Docket No. D.P.U. 15-37, *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*; Rhode Island General Laws § 39-31-1 *et seq.* (providing authority to National Grid, the local EDC, to voluntarily efforts to procure incremental, natural gas pipeline infrastructure and capacity into New England).

<sup>11</sup> The Staff Legal Memorandum evaluated three issues: 1) whether the Electric Utility Restructuring statute (RSA Chapter 374-F) prohibits EDCs from acquiring natural gas capacity; 2) whether New Hampshire EDCs have the corporate power to acquire natural gas capacity; and 3) whether New Hampshire EDCs may recover the costs associated with natural gas capacity acquisition in rates. App. at 348 *et seq.*

<sup>12</sup> Staff Legal Memorandum, at 3 (App. at 350).

<sup>13</sup> *Id.* at 4-5 (App. at 351-52).

<sup>14</sup> *Id.* at 6-8 (App. at 353-55).



reaffirmed its legal analysis from the Staff Legal Memorandum.<sup>15</sup> In its Order No. 25,860, the Commission accepted the Staff Final Report and indicated that the legal issues would be further analyzed in the context of a specific petition for approval of a contract for natural gas capacity.<sup>16</sup>

#### **4. Eversource Petition And Related Proceeding**

On February 18, 2016, Eversource submitted such a petition seeking approval of the Access Northeast Program.<sup>17</sup> The Commission opened Docket No. DE 16-241 to consider the Petition. Several parties, including Algonquin, intervened and were granted party intervenor status by the Commission.<sup>18</sup>

On March 24, 2016, the Commission issued the Order of Notice setting forth a two-phase proceeding. In the first phase ("Phase I"), the Commission would consider whether the Access Northeast Program is allowed under New Hampshire law.<sup>19</sup> In the event of an affirmative decision on this issue, the Commission would then open a second phase ("Phase II") "to examine the appropriate economic, engineering, environmental, cost recovery, and other factors presented by Eversource's proposal."<sup>20</sup> Initial Briefs and Reply Briefs regarding Phase I issues were submitted on or about April 28, 2016 and May 12, 2016, respectively. On October 6, 2016, the Commission issued the Order on Phase I issues (Order No. 25,950). In the Order, based primarily on incorrect statutory interpretations including, *inter alia*, that that the "overriding

---

<sup>15</sup> Staff Final Report, at 10 (App. at 365).

<sup>16</sup> Docket No. IR 15-124, *Investigation into Potential Approaches to Ameliorate Adverse Wholesale Electricity Market Conditions in New Hampshire*, Order No. 25,860 (Jan. 19, 2016) (App. at 405 *et seq.*).

<sup>17</sup> See generally, Petition (App. at 152 *et seq.*).

<sup>18</sup> Order No. 25,950 discusses the two rough groupings of parties, and for convenience this Appeal maintains those groupings. The "Supporters" include Eversource, Algonquin and the Coalition for Lower Energy Costs ("CLEC"). The "Opponents" include Conservation Law Foundation ("CLF"); Exelon Generation Company, LLC ("ExGen"); ENGIE Gas & LNG LLC ("ENGIE"); Office of Consumer Advocate ("OCA"); New Hampshire Municipal Pipeline Coalition ("Municipal Coalition"); NextEra Energy Resources, LLC ("NEER"); and Pipe Line Action Network for the Northeast ("PLAN"). See Order, at 4-5 (App. at 4-5).

<sup>19</sup> Order, at 4 (App. at 4).

<sup>20</sup> *Id.*

purpose” of the Restructuring Statute was that electric generation be “at least functionally separated from transmission and distribution services” (the “Functional Separation Principle”) and that RSA Chapter 374-A was implicitly repealed by the enactment of RSA Chapter 374-F, the Commission concluded that the Access Northeast Contract was not permitted under New Hampshire law and dismissed the Petition.<sup>21</sup>

Algonquin and Eversource timely filed motions for rehearing and/or reconsideration pursuant to RSA 541:3 and N.H. Admin Rule Puc 203.33<sup>22</sup> and various Opponents filed oppositions.<sup>23</sup> On December 7, 2016, the Commission issued the Order on Reconsideration (Order No. 25,970) denying the motions for rehearing and/or reconsideration and re-stating the conclusions it articulated in the Order.<sup>24</sup> This appeal followed.

**g. JURISDICTIONAL BASIS FOR APPEAL**

RSA 541:6 and RSA 365:21 supply the jurisdictional basis for this appeal.

**h. A SUBSTANTIAL BASIS EXISTS FOR A DIFFERENCE OF OPINION ON THE CORRECT INTERPRETATION OF MULTIPLE STATUTES, THE ACCEPTANCE OF THE APPEAL WOULD PROTECT AGAINST SUBSTANTIAL AND IRREPARABLE INJURY, AND/OR PRESENT THE OPPORTUNITY TO DECIDE, MODIFY OR CLARIFY AN ISSUE OF GENERAL IMPORTANCE IN THE ADMINISTRATION OF JUSTICE**

Eversource is authorized by statute (RSA 374:57 and RSA 374-A:2) to enter into the Access Northeast Contract. Based on an incorrect interpretation of the Restructuring Statute, the Commission erroneously concluded that the Restructuring Statute conflicts with the statutes authorizing Eversource’s participation. But for the Commission’s erroneous interpretation, there

---

<sup>21</sup> *Id.* at 15 (App. at 15).

<sup>22</sup> App. at 20 *et seq.*; App. at 37 *et seq.*

<sup>23</sup> App. at 58-92. CLEC also filed a response in support of the motions for rehearing and/or reconsideration. App. at 50 *et seq.*

<sup>24</sup> *See, generally*, Order on Reconsideration (App. at 93 *et seq.*).

would be no conflict between the Restructuring Statute and other provisions of New Hampshire law.

Over the course of one and a half years, the various participants in this proceeding made numerous arguments regarding the issues presented by this appeal. Algonquin's view was supported by other participants, including Commission Staff. For instance, "[f]rom a legal perspective, Staff...concluded that the Commission may hold that New Hampshire EDCs have authority to enter into gas capacity contracts for the benefit of gas-fired generators, if such a proposal were to be made by a New Hampshire EDC."<sup>25</sup> Yet the Commission concluded that the EDCs do not have such authority.<sup>26</sup> The different interpretations put forth by the Commission<sup>27</sup> and its own Staff,<sup>28</sup> not to mention the various filing parties in the underlying docket, demonstrate a substantial basis for a difference of opinion on the appropriate interpretation of the Restructuring Statute and other provisions of New Hampshire law. If, despite this difference in opinion, the Commission's decision stands, Algonquin and New Hampshire's electric customers would suffer irreparable injury.

In the Order, the Commission interpreted various provisions of New Hampshire law, including the Restructuring Statute. In doing so, the Commission ignored the plain language of the statutes and the canons of statutory construction. The Commission's incorrect interpretation of the statutes at issue have implications not only for this case but also for utility practices in the

---

<sup>25</sup> Staff Final Report, at 4 (App. at 359).

<sup>26</sup> See, generally, Order (App. at 1 *et seq.*).

<sup>27</sup> See, e.g., Order at 13 (App. at 13) ("While the Supporters' reading of [RSA 374:57] is plausible, we believe the Opponents have the better argument.").

<sup>28</sup> See, e.g., Staff Legal Memorandum at 2-3 (App. at 349-50) (outlining contrasting interpretations of the Restructuring Statute, i.e., that the "Commission may determine that [RSA 374-F:3, III] is prescriptive and overrides any other statute related to the Commission's jurisdiction, including any other Restructuring Policy Principle [set forth at RSA 374-F:3]" or, alternately, that the Commission could find that an EDC purchase of natural gas capacity satisfied other public policy goals like displacement of legacy coal- and oil-fired generation).

future. Thus, the acceptance of this appeal will “present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.”<sup>29</sup>

**1. A Substantial Basis Exists For A Difference Of Opinion On The Questions Presented**

Algonquin disputes several of the legal conclusions set forth by the Commission in the Order and Order on Reconsideration. Given this disagreement and the support for Algonquin’s position by Commission Staff and in New Hampshire statutes, regulations, case law and legislative history, there is substantial basis for a difference of opinion on the following issues:

***i. Whether The Commission Erred When It Concluded That The Fundamental Purpose Of The Restructuring Statute Is To Encourage Competition***

In the Order, the Commission found that “the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity.”<sup>30</sup> The Commission did not modify its position on reconsideration.<sup>31</sup> However, this finding directly contravenes the plain language of the Restructuring Statute, is inconsistent with its legislative history, and confuses the goals of the Restructuring Statute with the methods by which to achieve those goals.

As the Order itself recognizes, the plain language of the Restructuring Statute explicitly provides that “[t]he *most compelling reason* to restructure the New Hampshire electric utility industry *is to reduce costs for all consumers* of electricity . . . .”<sup>32</sup> Yet, the Commission found that “the overriding purpose of the Restructuring Statute is *to introduce competition to the generation of electricity*.”<sup>33</sup> Both the plain language of the Restructuring Statute and its

---

<sup>29</sup> N.H. Supreme Court Rule 10(1)(h).

<sup>30</sup> Order, at 8 (App. at 8).

<sup>31</sup> Order on Reconsideration, at 5 (App. at 97).

<sup>32</sup> Order, at 7-8 (App. at 7-8) (emphasis added); *see also* RSA 374-F:1, I.

<sup>33</sup> *Id.* at 8 (App. at 8) (emphasis added).

legislative history specifically provide that the most compelling and most important goal of the statute is to “reduce costs” and “lower rates.” In fact, the Commission itself recognized in the Order that the “purpose” of the Restructuring Statute was to lower prices and create a more productive economy.<sup>34</sup> However, the Commission incorrectly leapt to the illogical and unsupported conclusion that the Functional Separation Principle was the primary goal of the Restructuring Statute.<sup>35</sup> Based on this erroneous finding, the Commission then incorrectly concluded that the Access Northeast Contract is inconsistent with New Hampshire law.

***ii. Whether The Commission Erred In Ignoring The Fourteen Other Policy Principles Articulated In The Restructuring Statute***

The Commission concluded that “the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity.”<sup>36</sup> In support of this conclusion, the Commission stated that RSA 374-F:3, III “directs the restructuring of the industry, separating generation activities from transmission and distribution activities, and unbundling the rates associated with each of the separate services.”<sup>37</sup> In reaching this conclusion, the Commission failed to give any consideration to the other restructuring policy principles articulated at RSA 374-F:3 (“Restructuring Policy Principles”).<sup>38</sup>

Although the Restructuring Statute provides for the functional separation of the generation function and the transmission and distribution function, this principle is just one of

---

<sup>34</sup> *Id.* at 9-10 (App. at 9-10).

<sup>35</sup> *Id.* at 8-9 (App. at 8-9).

<sup>36</sup> Order, at 8-9 (App. at 8-9). The Commission also acknowledged the differing interpretations of the parties, highlighting the need for the issue to be evaluated on appeal. *Id.* at 8 (App. at 8-9) (“The disagreement in this matter is based on the multiple [public policy] objectives in the [Restructuring Statute]. Supporters point to the purpose of reducing costs to customers, and argue that having EDCs purchase gas capacity for use by electric generators will further that goal. Opponents argue that competition, furthered by restructuring and unbundling, is the ultimate purpose of the statutory scheme.”).

<sup>37</sup> *Id.* at 9 (App. at 9).

<sup>38</sup> RSA 374-F:3.

*fifteen (15)* Restructuring Policy Principles articulated by the legislature. The Commission inexplicably ignores the other fourteen principles, the application of some of which (for example, enhancing reliability, which unlike the functional separation principle, is a statutory mandate of the Restructuring Statute)<sup>39</sup> would support an alternate conclusion than the one the Commission reached in its Order. First and foremost, the Order does not cite or discuss any of the other Restructuring Policy Principles. Furthermore, while these Restructuring Principles are “intended to guide” the Commission in its implementation of electric market restructuring,<sup>40</sup> the Restructuring Statute does not prioritize the Functional Separation Principle of the Restructuring Policy Principles over any of the others. Had the General Court intended, as the Commission concludes, that the Functional Separation Principle take primacy, it would have said so—the Commission improperly read the Restructuring Statute to include a directive that is not there.<sup>41</sup>

By focusing on the Functional Separation Principle, the Commission failed to recognize that many, if not all, of the other fourteen Restructuring Policy Principles would be advanced by the Access Northeast Program. The Restructuring Policy Principles provide that “[r]eliable electricity service *must* be maintained while ensuring public health, safety, and quality of life.”<sup>42</sup> ISO New England, the entity responsible for managing New England’s electric grid, has acknowledged that New England’s increasing reliance on natural gas for electric generation, without a corresponding expansion of natural gas infrastructure, threatens reliability.<sup>43</sup> The Access Northeast Program would enhance reliability by providing a critical upgrade to natural

---

<sup>39</sup> RSA 374-F:3, I (“Reliable electricity service *must* be maintained...”).

<sup>40</sup> RSA 374-F:1, III.

<sup>41</sup> *Appeal of Old Dutch Mustard Co., Inc.*, 166 N.H. 501, 506 (2014) (holding that a tribunal may “neither consider what the legislature or commissioner might have said nor add words that they did not see fit to include.”).

<sup>42</sup> RSA 374-F:3, I. (emphasis added.)

<sup>43</sup> See, e.g., ISO New England Press Release (App. at 413-14).

gas infrastructure. By displacing wintertime use of legacy fuels, like coal and oil, and providing a backstop for intermittent renewable generation, the Access Northeast Program further advances the goals of environmental improvement<sup>44</sup> and encouraging renewable energy.<sup>45</sup> The Access Northeast Program is also a regional solution, consistent with the goal of regionalism.<sup>46</sup>

**iii. *Whether The Commission Erred In Concluding That The Access Northeast Program Violates The Restructuring Statute***

In the Order, the Commission found that the Access Northeast Program is inconsistent with the purposes of the Restructuring Statute because it “is a component of ‘generation services’ under RSA 374-F:3, III . . . .”<sup>47</sup> Even if the Functional Separation Principle were the “overriding purpose” of the Restructuring Statute (which Algonquin vehemently contests), the Access Northeast Program would not abrogate that separation. The Access Northeast Program would simply provide a mechanism by which natural gas capacity would be made available to generators.

While Eversource will make additional primary firm pipeline capacity available in New England, that capacity will be auctioned by a capacity manager in an arms-length process consistent with Federal Energy Regulatory Commission (“FERC”) rules on capacity release. Generators, acting in their own economic interests in a fully competitive market, will either utilize it or not as they see appropriate. Thus, the decision of whether to procure and/or use the natural gas capacity made available by Eversource will rest firmly with generators. Eversource’s sole and critical role will be making primary firm natural gas capacity available—Eversource

---

<sup>44</sup> See RSA 374-F:3, VIII.

<sup>45</sup> See RSA 374-F:3, X.

<sup>46</sup> See RSA 374-F:3, XIII.

<sup>47</sup> Order, at 9 (App. at 9).



will not be providing or engaged in centralized generation.<sup>48</sup> The Access Northeast Program would not pick winners and losers. In fact, the Access Northeast Program would enhance the viable range of generators by allowing natural gas generators that were previously unavailable to operate when dispatched available, even on the coldest winter days, and by providing a backstop to support additional intermittent renewable generation resources. Additionally, all of the many layers of competition in the electric generation supply chain would remain: generators will still competitively secure the natural gas commodity and pipeline capacity; generators will still compete in the wholesale electric marketplace; and retail electric suppliers will still competitively procure energy and compete for end-user market share. Each of these opportunities for competition drives innovation and lower cost. Thus, the Access Northeast Program does not contravene the Restructuring Statute.

*iv. Whether The Commission Erred In Interpreting RSA 374:57*

Despite the plain language of the statute (and notable lack of the word “electric”), the Commission concluded that “RSA 374:57 concerns long-term contracts for electric supply and does not authorize EDCs to purchase gas capacity under long-term contract.”<sup>49</sup> Well-recognized canons of statutory construction provide that a tribunal, such as the Commission, must interpret statutes consistent with the plain meaning of the language used and without adding or subtracting words.<sup>50</sup> A tribunal must “first look to the language of the statute or regulation itself, and, if

---

<sup>48</sup> Cf. Staff Legal Memorandum, at 3 (App. at 350) (“provision of gas capacity to unaffiliated merchant generators does not violate the functional separation principle of RSA 374-F:3, III in the first instance, in that New Hampshire EDCs would not actually acquire the gas capacity for their own use, but rather, would make such capacity available for the use of merchant generators in a bilateral transaction.”); see also RSA 374-F:1, I (the “Purpose” section of the Restructuring Statute, which limits the issue of functional separation to “*centralized* generation services,” not an ancillary service such as fuel supply) (emphasis added).

<sup>49</sup> Order, at 13 (App. at 13). The Commission also acknowledged that multiple “plausible” readings of the statute exist, supporting Algonquin’s contention that a substantial basis exists for a difference of opinion on the questions presented. *Id.*

<sup>50</sup> *Old Dutch Mustard*, 166 N.H. at 506.



possible, construe that language according to its plain and ordinary meaning.”<sup>51</sup> A tribunal may “neither consider what the legislature or commissioner might have said nor add words that they did not see fit to include.”<sup>52</sup>

RSA 374:57 authorizes EDCs, like Eversource, to acquire “transmission capacity” but does *not* limit it to electric transmission capacity.<sup>53</sup> Contrary to the canons of statutory construction, however, the Commission concluded that “[t]he meaning of ‘capacity’ in that legislation is limited to electric generating capacity and electric transmission capacity....”<sup>54</sup> Had the legislature intended to add the word “electric” before the phrase “transmission capacity,” it would have done so.<sup>55</sup> The legislature has used the words “transmission capacity” in other contexts to refer to *either* natural gas or electric transmission capacity, not just electric transmission capacity.<sup>56</sup> Furthermore, the fact that the legislature included “energy” within the types of contracts that EDCs are authorized to enter (with Commission approval) evidences its intent not to limit the types of contracts permissible under 374:57 to just electricity.<sup>57</sup> Thus, the Commission improperly added the word “electric” to the relevant statutory language and, as a consequence, erred in interpreting RSA 374:57.

---

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> RSA 374:57; *see also*, Staff Legal Memorandum, at 5 (App. at 352) (“The ‘capacity’ in question is not specified as either gas or electric capacity....It could be argued that this reporting requirement does not only pertain to electric transmission capacity arrangements by New Hampshire EDCs, but to gas transmission capacity arrangements as well, which would dovetail with the corporate powers of RSA Chapter 374-A, and establish a public interest standard for a Commission review proceeding.”).

<sup>54</sup> Order, at 13 (App. at 13).

<sup>55</sup> *Old Dutch Mustard*, 166 N.H. at 506.

<sup>56</sup> For example, RSA 378:38 requires every “electric and natural gas utility” to include “an assessment of distribution and transmission requirements” in its least cost integrated resource plan. RSA 378:38, IV.

<sup>57</sup> For example, “energy” can be used to refer to district hot water distribution systems. RSA 362:4-d. By contrast, the Restructuring Statute (RSA Chapter 374-F), which restructured electric utilities in particular, used the words “electricity” and “electric” instead of “energy” unless using specific phrases that typically include the word “energy” such as “energy efficiency,” “renewable energy” and the like.

v. *Whether The Commission Erred In Interpreting RSA Chapter 374-A*

The Commission concluded that “[t]he change in the industry through the Restructuring Statute, first passed in 1996, effectively ended a restructured EDC’s ability to participate in the generation side of the electric industry.”<sup>58</sup> In the Order on Reconsideration, the Commission stated that it “stand[s] by our conclusions that ‘RSA 374-A no longer applies to an EDC like Eversource...’”<sup>59</sup> In doing so, the Commission implicitly repealed RSA 374-A’s grant of authority for EDCs to “participate” in electric generation facilities in contravention of New Hampshire precedent.<sup>60</sup>

As the Commission itself recognized in the Order, “the Court construes statutes, where reasonably possible, so that they lead to reasonable results and do not contradict each other.”<sup>61</sup> This Court has specifically held that “implied repeal of former statutes is a disfavored doctrine in this State.”<sup>62</sup> Thus, “[t]he party arguing a repeal by implication must demonstrate it by evidence of convincing force.”<sup>63</sup> “If *any reasonable construction* of the two statutes taken together can be found, this [C]ourt will not find that there has been an implied repeal.”<sup>64</sup> The Supreme Court of the United States has also held that “[i]n the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.”<sup>65</sup> While it is generally true that when a conflict

---

<sup>58</sup> Order, at 14 (App. at 14).

<sup>59</sup> Order on Reconsideration, at 5 (App. at 97).

<sup>60</sup> *Board of Selectmen v. Planning Bd.*, 118 N.H. 150, 152-53 (1978).

<sup>61</sup> Order, at 7 (App. at 7).

<sup>62</sup> *Board of Selectmen*, 118 N.H. at 152-53.

<sup>63</sup> *Id.* at 153.

<sup>64</sup> *Id.* (emphasis added).

<sup>65</sup> *Morton v. Mancari*, 417 U.S. 535, 550 (1974) (holding that the Equal Employment Opportunity Act had not implicitly repealed the statute authorizing the Bureau of Indian Affairs to afford a preference to certain Native American job applicants).

exists between two statutes, the later statute will control, “[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, *regardless of the priority of enactment*.”<sup>66</sup>

Although RSA 374-A was passed prior to the Restructuring Statute, RSA 374-A provides EDCs with the authority to undertake specific actions while the Restructuring Act is more general. Under established federal and New Hampshire precedent there is simply no question that the more specific statute, RSA 374-A, controls over the more general Restructuring Statute.<sup>67</sup> Furthermore, in this case, the legislature itself has specifically determined that RSA Chapter 374-A prevails in the event of a conflict with any other law. RSA 374-A:2 explicitly provides that “[n]otwithstanding any contrary provision of any general or special law relating to the powers and authorities of domestic electric utilities or any limitation imposed by a corporate or municipal charter,” domestic electric utilities have the power to undertake numerous actions, including, without limitation, to participate in electric power facilities or portions thereof and to enter into and perform contracts and agreements for such participation in electric power facilities.<sup>68</sup> Thus, Eversource’s authority to enter into contracts related to electric power facilities was not nullified by and still exists “notwithstanding” the Restructuring Statute (RSA 374-F). Further, Eversource still fits the definition of “electric utility” under RSA 374-A, because it is “primarily engaged in the...transmission” of electricity.<sup>69</sup> As a consequence, the Commission’s determination that enactment of the Restructuring Statute implicitly repealed the

---

<sup>66</sup> *Id.* at 550-51 (emphasis added); see also *EnergyNorth Nat. Gas v. City of Concord*, 164 N.H. 14, 16 (2012) (“To the extent two statutes conflict, the more specific statute controls over the general statute.”).

<sup>67</sup> See *Morton*, 417 U.S. at 550-51; *EnergyNorth Nat. Gas*, 164 N.H. at 16.

<sup>68</sup> RSA 374-A:2; see also Staff Legal Memorandum, at 5 (noting that “RSA Chapter 374-A’s survival into the current ‘restructured’ age” as “worthy of attention” and that “the savings clause ‘[n]otwithstanding any contrary provision of any general or special law...’ still stands, which should be a factor for consideration by the Commission when interpreting RSA Chapter 374-A in light of the Restructuring Principles of RSA 374-F.”).

<sup>69</sup> RSA 374-A:1, IV.

EDCs' authority to "participate" in electric generation facilities and its finding that RSA 374-A is no longer applicable in a restructured market, was unlawful and unreasonable.<sup>70</sup>

RSA 374-A and the Restructuring Statute may be rationally harmonized and, therefore, must be.<sup>71</sup> While the Access Northeast Program would permit Eversource to make additional transmission capacity available on a primary firm basis to generators in New England, it would not provide Eversource with any ownership or operation rights or other direct interest in electric power facilities. As noted above, Eversource's sole and critical role will be making primary firm natural gas capacity available. However, generators will continue to own, operate and retain their interests in the centralized electric generation facilities. Thus, Eversource will not be participating in centralized electric generation facilities. Since, through a reasonable construction of the two statutes taken together, the two statutes are reconcilable, the Commission's implicit repeal of the EDCs' authority to "participate" in electric generation facilities was unlawful and unreasonable.<sup>72</sup> And, if indeed RSA Chapters 374-A and 374-F could not be interpreted harmoniously, the General Court has expressly determined that Chapter 374-A prevails, "[n]otwithstanding any contrary provision...of law...".<sup>73</sup>

**vi. *Whether The Commission Erred In Determining That Any Costs Incurred By Eversource Related To The Access Northeast Program Would Not Be Recoverable In Rates***

The Commission's erroneous conclusions regarding the Restructuring Statute led to its further conclusion that Eversource would not be able to recover costs related to the Access

---

<sup>70</sup> See *Morton*, 417 U.S. at 550.

<sup>71</sup> *Associated Press v. State of New Hampshire*, 153 N.H. 120 (2005).

<sup>72</sup> *Morton*, 417 U.S. at 550 (holding that repeal by implication is only justified "when the earlier and later statutes are irreconcilable.").

<sup>73</sup> RSA 374-A:2.

Northeast Program.<sup>74</sup> For all of the reasons discussed above, the Commission erred in its interpretation of the Restructuring Statute. Because the Commission's analysis of the recoverability of these costs was inextricably linked to its conclusions regarding the purpose of the Restructuring Statute and whether the Access Northeast Program was consistent with that statute and a substantial basis exists for a difference of opinion with respect to those issues, a substantial basis for a difference of opinion also exists with respect to the recoverability of the costs associated with the Access Northeast Program.

**2. The Acceptance Of The Appeal Would Protect Against Substantial And Irreparable Injury**

The issues raised by this appeal are of importance to this State and its citizens, as the Commission itself recognized. The Commission acknowledged that “the increased dependence on natural gas-fueled generation plants within the region and the constraints on gas capacity during peak periods of demand have resulted in electric price volatility” and that the Access Northeast Project has “the potential to reduce that volatility...”<sup>75</sup> Moreover, after the Commission issued the Order and just days before it issued the Order on Reconsideration, ISO New England acknowledged that “[w]inter has become a challenging time for New England grid operations, especially during the coldest weeks of the year when the availability of natural gas supplies is uncertain.”<sup>76</sup>

As ISO New England recently highlighted, the lack of adequate natural gas pipeline infrastructure, which prevents natural gas-fired electric generators from operating, causing reliability concerns. “New England’s natural gas infrastructure was not designed to serve

---

<sup>74</sup> Order, at 14 (App. at 14).

<sup>75</sup> Order at 15 (App. at 15).

<sup>76</sup> Press Release, ISO New England, Managing Reliable Power Grid Operations This Winter (Dec. 5, 2016) (App. at [413]).

demand for natural gas for both heating and power generation, so on cold winter days, New England's network of pipelines is near or at capacity for commercial and residential heating.”<sup>77</sup> Electric generators typically obtain their natural gas through unreliable arrangements that are only available after heating customers are served. As ISO New England noted, “approximately 3,450 MW of natural-gas-fired generating capacity may be at risk this winter because of pipeline constraints.”<sup>78</sup> Each winter without Access Northeast it will become more and more difficult to ensure reliability. ISO New England Chief Operating Officer Vamsi Chadalavada stated that “[b]eyond this winter, the situation will grow even more uncertain because non-gas power plants are retiring and being replaced primarily with new, gas-fired generation” and that ISO New England is “currently evaluating how [it] will maintain reliability in the future under these conditions.”<sup>79</sup> Reliable electric supply is critical for those living and working in New Hampshire, and anything less than reliable electric supply would cause substantial and irreparable harm.

Indeed, New Hampshire ratepayers have already been harmed by inadequate natural gas pipeline capacity. For example, on one of the coldest winter days in 2013/14 (January 28, 2014), only 3,100 MW of New England's natural gas-fired generation was able to run and the average day ahead energy clearing price in New England was \$360/MWH; meanwhile 70 percent of those power plants that could only run on natural gas sat idle due to pipeline constraints. Additionally concerning is the fact that much of the 3,100 MW of natural gas-fired generation that was able to run on January 28, 2014 used fuel purchased on the spot market—an unreliable and expensive

---

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

source of fuel during peak demand periods.<sup>80</sup> If Access Northeast had been in service, 5,000 MW of natural gas-fired generation would have been available using firm pipeline capacity and more reliable, less expensive sources of fuel. In fact, the ICF Study estimates that under normal weather conditions, Access Northeast would generate *net* savings to New England electric consumers of \$900 million to \$1.3 billion per year.<sup>81</sup> If this appeal is not accepted, those savings will not be realized and ratepayers will continue to be faced with high and volatile electric prices.

Every cold winter day without adequate natural gas pipeline capacity means that more electricity is generated by burning legacy fossil fuels (i.e., coal and oil) causing increased emissions of greenhouse gasses and other pollutants. Had Access Northeast been in service on January 28, 2014, natural gas-fired generation would have increased 160% from 3,100 MW to 8,100 MW, practically eliminating the region's reliance on oil and coal generation. Each day of increased emissions due to inadequate natural gas pipeline capacity causes New Hampshire citizens substantial and irreparable injury.

Finally, both Algonquin and Eversource have invested substantially in proposing and evaluating a project to ensure that New England's natural gas pipeline infrastructure is sufficient to support the large, and growing, percentage of New England's electricity supplied by natural gas. Access Northeast is a regional solution to a regional problem. Without participation by New Hampshire, it will be more difficult for EDCs in other New England states to secure regulatory approval for participation in the Access Northeast Program. As a result, Algonquin would suffer substantial and irreparable injury if the appeal is not accepted.

---

<sup>80</sup> On January 28, 2014 the Algonquin Citygate price for natural gas spiked to \$29.94/MMBtu, compared to \$9.85/MMBtu just two days later on January 30. Price spikes at the Algonquin Citygate can be even more severe – on January 22, 2014 the Algonquin Citygate price for natural gas was \$81.99/MMBtu, compared to an average Algonquin Citygate price of \$21.25 that winter and an average Henry Hub price that winter of \$5.00.

<sup>81</sup> ICF Study, at 4-5 (App. at 256-57). As New Hampshire comprises approximately 10% of the region's electricity consumption, New Hampshire's electric customers would receive approximately 10% of these region-wide annual savings.



**3. This Appeal Presents The Opportunity To Decide, Modify Or Clarify An Issue Of General Importance In The Administration Of Justice**

This is the first time that the Court has been asked to interpret the statutes relating to an EDC's authority to enter into contracts for the purchase of natural gas resources for the benefit of electric ratepayers. More broadly, this appeal presents an opportunity to clarify an issue of general importance in the administration of justice by providing needed guidance to the Commission, EDCs, ratepayers and other stakeholders in the New Hampshire electric market regarding the scope of the Restructuring Statute generally and the activities in which the EDCs are permitted to engage after the passage of that statute more specifically.

**i. PRESERVATION OF ISSUES FOR APPELLATE REVIEW**

Each issue raised in this appeal was presented to the Commission by Algonquin in its Brief on Phase I Legal Issues (dated April 28, 2016), its Reply Brief on Phase I Legal Issues (dated May 12, 2016) and its Motion for Rehearing and/or Reconsideration (dated November 7, 2016) and has been properly preserved for appellate review.



Dated: January 6, 2017

Respectfully submitted,

ALGONQUIN GAS TRANSMISSION, LLC

By: Dana M. Horton / CMS

Dana M. Horton  
New Hampshire Bar No. 266851  
Robinson & Cole LLP  
One Financial Plaza, Suite 1430  
Providence, RI 02903-2485

Joey Lee Miranda  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103-3597

Jennifer R. Rinker  
Algonquin Gas Transmission, LLC  
5400 Westheimer Court  
Houston, Texas 77056

Its Attorneys

Certificate of Compliance

I hereby certify that a copy of the foregoing Appeal by Petition has on this 6<sup>th</sup> day of January, 2017 been either hand delivered or sent by first class mail, postage prepaid, to the parties of record and/or their counsel as listed in Section a above, as well as 1) the New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, NH 03301 and 2) the Attorney General of the State of New Hampshire, 33 Capitol Street, Concord, NH 03301. The Joint Appendix of Algonquin Gas Transmission, LLC and Public Service Company of New Hampshire d/b/a Eversource Energy is being provided with the Appeal by Petition of Public Service Company of New Hampshire d/b/a Eversource Energy.

Dana M Horton /EMS  
Dana M. Horton