

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250 and DE 14-238**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A  
EVERSOURCE ENERGY**

**Investigation of Scrubber Costs and Cost Recovery  
And  
Determination Regarding Eversource's Generation Assets**

**Order Approving Settlement Agreements<sup>1</sup>**

**ORDER NO. 25,920**

**July 1, 2016**

**APPEARANCES (in February 2016 Final Hearings on the Merits):** Robert A. Bersak, Esq. and Matthew J. Fossum, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; Office of the Consumer Advocate by Susan W. Chamberlin, Esq., on behalf of residential ratepayers; F. Anne Ross, Esq., on behalf of Advocate Staff; The New Hampshire Department of Justice, Office of the Attorney General, by Christopher G. Aslin, Esq., for the Office of Energy and Planning; Mr. Pentti Aalto, *pro se*; Senator Jeb Bradley and Senator Dan Feltes, *pro se*; Donahue, Tucker and Ciandella, PLLC, by Christopher L. Boldt, Esq., for the City of Berlin and the Town of Gorham; Arthur B. Cunningham, Esq., for Mr. Terry Cronin; Thomas F. Irwin, Esq., on behalf of the Conservation Law Foundation; Orr & Reno, by Susan S. Geiger, Esq., on behalf of the Granite State Hydropower Association; Mr. Michael Harrington, *pro se*; Carol Holahan, Esq., on behalf of the New England Power Generators Association; Melissa Lauderdale, Esq., on behalf of the Retail Energy Supply Association; Zachary M. Fabish, Esq., on behalf of the Sierra Club; and Suzanne G. Amidon, Esq., and Alexander F. Speidel, Esq., on behalf of Non-Advocate Commission Staff.

In this Order, the Commission approves the “2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement,” filed with the Commission on June 10, 2015 (2015 Settlement Agreement), as amended and adopted by the “Partial Litigation Settlement Between Settling Parties and Non-Advocate Staff,” filed with the Commission on January 26, 2016 (2016 Litigation Settlement), which we also approve. The two agreements

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<sup>1</sup> Although the Scrubber and Asset Dockets were never formally consolidated, the Commission has reviewed these two dockets in parallel following the filing of the 2015 Settlement Agreement, *see, e.g.*, Order No. 25,793 (June 25, 2015).

resolve all outstanding issues in Docket No. DE 11-250, *Public Serv. Co. of NH, Investigation of Scrubber Costs and Cost Recovery* (Scrubber Docket), and Docket No. DE 14-238, *Public Serv. Co. of NH, Determination Regarding Eversource's Generation Assets* (Asset Docket).

By approving the Settlement Agreements, the Commission is (1) granting Eversource<sup>2</sup> cost recovery for the installation of the so-called "Scrubber" pollution control equipment at Merrimack Station; (2) reducing Eversource's cost recovery for the Scrubber by \$25 million; (3) directing Eversource to begin the process of divesting its generation assets, as contemplated by HB 1602, SB 221, RSA Chapter 374-F, and allied statutes, subject to the conditions delineated in the Settlement Agreements and described in this Order; and (4) approving a proposed methodology for the compensation of Qualifying Facilities (QFs) in Eversource's territory under applicable federal statutes.

The Commission will address these three matters in the following sequence: (1) the abbreviated procedural history, positions of the parties, and Commission analysis for the Scrubber Docket-related issues; (2) the procedural history, positions of the parties, and Commission analysis for the Asset Docket and Settlement Agreements generally; and (3) the positions of the parties and Commission analysis regarding the QF issues specifically.

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<sup>2</sup> Public Service Company of New Hampshire ("PSNH") adopted the d/b/a "Eversource" during the pendency of these proceedings. To avoid reader confusion, this new naming convention will be used for this entire procedural history, and throughout this Order. See March 3, 2015 letter of Robert Bersak, Esq. to Executive Director Debra Howland at: <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-238/LETTERS-MEMOS-TARIFFS/14-238%202015-03-03%20NU%20REBRANDING%20TO%20EVERSOURCE.PDF>. However, where appropriate, we will use "Public Service Company of New Hampshire," "PSNH," and "Eversource" interchangeably.

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## **I. PROCEDURAL HISTORY – Docket No. DE 11-250**

The Scrubber Docket was opened in November 2011. In that docket, we reviewed the prudence of the costs incurred by Eversource in the installation of a wet flue gas desulfurization (Scrubber) unit at Merrimack Station, and recovery of prudently incurred costs.<sup>3</sup> The Office of the Consumer Advocate (OCA) filed a letter noticing its participation in the proceeding pursuant to RSA 363:28. In addition, the Commission granted motions to intervene filed by TransCanada Power Marketing, LTD and TransCanada Hydro Northeast, Inc. (TransCanada), the Sierra Club, New England Power Generators Association, Inc. (NEPGA),<sup>4</sup> and the Conservation Law Foundation (CLF).

Following notice and hearing, the Commission set a temporary Scrubber cost recovery rate of 0.98 cents per kilowatt hour (kWh) pursuant to RSA 378:27. Order No. 25,346 (Apr. 10, 2012). The temporary rate was designed to recover the amount deferred from the time the Scrubber was placed in service in 2011 to the date the temporary rate took effect, and to recover a portion of the total estimated capital cost. The temporary rate was effective on a service-rendered basis as of April 16, 2012. *Id.* at 18, 25-26.

The next phase of the docket concerned the establishment of permanent rates. The parties engaged in extensive discovery regarding the direct and rebuttal testimony of witnesses for Eversource, and the direct testimony of the intervenors, the OCA, and Staff. Numerous disputes arose over the meaning of RSA 125-O:11-18 (Scrubber Law), which mandated that the owner of the facility install pollution control equipment and provided for recovery of prudent costs incurred if the owner were a public utility. Numerous disputes also occurred during

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<sup>3</sup> All the documents filed in the Scrubber Docket can be viewed at <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-250.html>. Exhibits accepted into record of the scrubber docket can be viewed at <http://www.puc.nh.gov/Regulatory/Docketbk/Exhibits/2011/11-250Exhibits.html>.

<sup>4</sup> NEPGA withdrew from the docket on February 20, 2014.

discovery. The parties filed several motions for rehearing or reconsideration, resulting in the Commission's issuance of more than 20 orders. Following the lengthy discovery period, the Commission held 7 days of hearings, beginning October 14 and ending on October 23, 2014. The parties submitted post-hearing briefs on November 14, 2014.

After the submission of post-hearing briefs, Eversource filed a Motion to Stay Proceedings in both the Scrubber and Asset Dockets, stating that legislation under consideration would allow legislators, Eversource, Staff, the OCA, and other interested parties to reach a collaborative resolution of issues in both the Scrubber Docket and Asset Docket. *See* Letter dated December 26, 2014. The Commission granted the motion with regard to the Scrubber Docket by Order No. 25,755 (Jan. 15, 2015), but denied the motion with regard to the Asset Docket. Order No. 25,756 (Jan. 15, 2015). In addition, the Commission granted intervention in the Scrubber Docket, on a limited basis, to Senators Jeb Bradley and Dan Feltes, parties to the 2015 Settlement Agreement, and to Mr. Cronin, a customer of Eversource. *See* Order No. 25,831 (Oct. 28, 2015). On March 12, 2015, successful negotiations in the Legislature led the Commission's General Counsel, F. Anne Ross, Esq., and Electric Division Director, Thomas C. Frantz, to seek designation as Advocate Staff pursuant to RSA 363:32, II, in the Scrubber and Asset Dockets given their role in settlement negotiations and expected advocacy in favor of the Settlement. This designation was granted by secretarial letter on March 23, 2015. The Staff advisory work group led by Electric Division Assistant Director Leszek Stachow remained as Non-Advocate Staff.

Eversource filed the 2015 Settlement Agreement in both the Scrubber and Asset Dockets on June 10, 2015, as a global resolution of the issues in those dockets. The parties to the 2015 Settlement Agreement included the Office of Energy and Planning (OEP), Advocate Staff, OCA,

Senator Jeb Bradley, Senator Dan Feltes, the City of Berlin, Local No. 1837 of the International Brotherhood of Electrical Workers (IBEW Local 1837), the CLF, the Retail Energy Supply Association (RESA), TransCanada, NEPGA, the New Hampshire Sustainable Energy Association d/b/a NH CleanTech Council (NHCTC), and Eversource together with its corporate parent, Eversource Energy (together, 2015 Settling Parties).

Section III.D. of the 2015 Settlement Agreement is one of few provisions that relates directly to the Scrubber Docket, and resolves issues related to that docket as follows:

Effective January 1, 2016, the Temporary Rate for recovery of costs of the Scrubber shall be changed to reflect recovery of all costs of the Scrubber incurred by PSNH along with its allowed return on those costs. Upon approval of this Agreement by the Commission, that rate shall be placed into PSNH's Default Energy Service rate for recovery as a permanent rate pursuant to RSA 378:28 and :29 until closing on the R[ate] R[eduction] B[onds]. PSNH's Scrubber costs include the capital and operations and maintenance expense costs of owning and operating the Scrubber, the previously-deferred costs resulting from the temporary Scrubber rate, and final contractual costs upon payment, among others. The previously-deferred costs resulting from the temporary rate level shall be included in rates based upon an amortization period of seven years.<sup>5]</sup>

Pursuant to RSA 125-O:18 and RSA 369-B:3-a, subsequent to divestiture of its generating assets, PSNH shall be allowed to recover through securitization financing all remaining Scrubber-related costs, including any remaining deferred equity return in excess of the \$25 million in equity return which PSNH has agreed to forego. Upon closing on the RRBs, all costs of the scrubber will be removed from Default Service.

The Commission held joint hearings in the two dockets on February 2, 3, and 4, 2016, for purposes of hearing argument on the merits of the 2015 Settlement Agreement and the 2016 Litigation Settlement.<sup>6</sup> With respect to the Scrubber Docket, the Commission must determine

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<sup>5</sup> On December 22, 2015, the Commission approved Eversource's request to amend the temporary rate for recovery of Scrubber costs, consistent with the terms of the 2015 Settlement Agreement, effective with services rendered on and after January 1, 2016. Order No. 25,854 (Dec. 12, 2015).

<sup>6</sup> The 2016 Litigation Settlement did not alter the terms of the 2015 Settlement Agreement pertaining to Eversource's cost recovery for the Scrubber.

whether the resolution of the cost-recovery issue for the Scrubber as agreed to in the 2015 Settlement Agreement is a reasonable resolution of the Scrubber proceeding.

The Commission is in a unique position to judge whether Eversource was prudent in its construction and management of the Scrubber Project, and whether Section III.D. of the 2015 Settlement Agreement is a reasonable resolution of the issues and in the public interest. That is because, normally, settlement agreements are filed in advance of a merits hearing. Here, the Commission had the benefit of seven days of substantive evidentiary hearings followed by summations before the 2015 Settlement Agreement was filed in the Scrubber Docket.

## **II. POSITIONS OF THE PARTIES -- Docket No. DE 11-250**

The principal issues in the Scrubber Docket are whether the Scrubber Law mandated that Eversource install a Scrubber, whether Eversource should have retired and/or divested itself of Merrimack Station in lieu of constructing the Scrubber, and whether Eversource should have re-evaluated the economics of the Scrubber in 2009, when forecasts indicated natural gas prices would remain low as compared with the 2008 forecasts. The positions of the parties in the Scrubber Docket, prior to the filing of the 2015 Settlement Agreement, follow.

### **A. Eversource**

Eversource requested that the Commission find that the Company acted prudently with respect to the Scrubber Project, that all costs were prudently incurred, and that all components of the Scrubber are used and useful. Eversource said it acted prudently beginning in 2006, with the passage of the Scrubber Law, in its design of the Scrubber, its evaluation of bids and selection of winning bidders for the Scrubber Project. Eversource said it was also prudent in 2008 when it continued with construction of the Scrubber after determining that the estimated cost for the Scrubber had increased from \$250 million to \$457 million. In support of its

assertion, Eversource noted that Staff's consultant, the Jacobs Consultancy, LLC (Jacobs), found that the Company's processes demonstrated sound management. Hearing Exhibit (Exh). 26, at 26, 27, 38, 40, 47 and 54; Eversource Post-Hearing Brief at 4-5.<sup>7</sup>

Regarding the increase in the estimated cost of the Scrubber to \$457 million, Eversource said its consultant, concluded in a preliminary report that the cost was reasonable. Eversource said that its own 2008 analysis supported the conclusion that construction of the Scrubber would provide net customer benefits even with the increased costs. Exh. 23 at 447 and 470.

Eversource claimed that those analyses were reasonable and supported by that of its witnesses from NERA Economic Consulting (NERA). In 2014, NERA prepared an economic analysis of the Scrubber as of 2009, based on a number of scenarios that included different assumptions regarding the market price for energy, and different price assumptions for natural gas. Exh. 24, Eversource Post-Hearing Brief at 6-8.

Eversource insisted that the manner in which it disclosed the increased cost was reasonable. Eversource explained that the Company first met with Northeast Utilities' (NU) Risk and Capital Committee, and Board of Trustees, to gain the necessary corporate approval for the expected costs of the project. Exh. 23 at 437 and 461. Eversource said it informally provided similar information to Staff and the OCA, and then formally to the Commission in Docket No. DE 08-103, *Investigation of PSNH Installation of Scrubber Technology*. Exh. 39, Exh. 23 at 481, and Eversource Post-Hearing Brief at 8.

Eversource acknowledged that, if it had considered whether retirement of Merrimack Station was a reasonable alternative to installing the Scrubber, the appropriate time would have been in 2009. Eversource noted that the Legislature had before it in 2009 two bills affecting the

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<sup>7</sup> Hearing Exhibits introduced during the Scrubber Docket hearings conducted in October 2014 are identified numerically (1, 2, 3, etc.). Hearing Exhibits introduced during the settlement hearings held in February 2016 are identified alphabetically (A, B, C, etc.).

Scrubber, one to cap the costs at \$250 million, and one directing the Commission to determine whether the installation of the Scrubber was in the public interest. The Legislature failed to pass either bill, and Eversource interpreted this inaction as a signal to continue construction of the Scrubber Project.

Eversource also claimed that neither retirement nor divestiture of Merrimack Station was a viable alternative to building the Scrubber. According to Eversource, it was too late to begin a divestiture proceeding in 2009 because gas prices had dropped, turning the economics in the energy market against coal-fired plants like Merrimack Station. Exh. 22 at 245-46. Eversource pointed out that no witness presented testimony contrary to this assertion. Eversource Post-Hearing Brief at 27-31.

During the hearing, questions arose concerning installation of a Secondary Wastewater Treatment (SWWT) system. Eversource explained that the decision to install a SWWT system in addition to the primary wastewater treatment (PWWT) system, was based on a conversation with the Environmental Protection Agency (EPA) concerning the 2011 draft National Pollution Discharge Elimination System (NPDES) permit for Merrimack Station pending before the EPA. Eversource stated that Jacobs found the decision to install the SWWT system to be prudent because it allowed timely startup and operation and avoided litigation expenses. Eversource further pointed out that no party challenged the prudence of building the SWWT system during the course of the proceeding. *Id.* at 31-33. At hearing, Eversource acknowledged that it made recent requests to the EPA for the right to discharge wastewater directly from the PWWT system into the Merrimack River, bypassing the SWWT system altogether. According to Eversource, those requests to discharge wastewater directly from the PWWT system do not affect the prudence of its 2010 decision to build the SWWT system. Eversource argued the

statements were merely an exercise of its authority to “push back” at what it considered to be onerous regulations, and to obtain more “operational flexibility” for the plant. *Id.* at 36-40.

Finally, some parties disputed the prudence of building a truck wash as part of the Scrubber Project. Eversource defended its decision to build the truck wash because, at the time it was constructed, Eversource was trucking coal from Portsmouth to Merrimack Station. The trucks had to be washed before loading them with gypsum, a by-product of the Scrubber. Eversource argued that, in light of the proposed use, the investment in the truck wash was prudent. Eversource also pointed out that Jacobs found the construction of the truck wash to be prudent. *Id.* at 40-41.

#### **B. TransCanada**

TransCanada first argued that the Scrubber Law did not mandate construction of the Scrubber at Merrimack Station. According to TransCanada, Eversource’s characterization of the statute as a mandate leads to the absurd result that the Scrubber had to be built regardless of cost, an argument that would absolve Eversource of any duty to act prudently. TransCanada asserted that Eversource had an obligation to act prudently, and as an alternative to building the Scrubber, Eversource could have retired Merrimack Station, divested it, or sought relief from the Legislature. TransCanada Post-Hearing Brief at 5-6, and 8-10.

In addition, TransCanada claimed that Eversource’s 2008 analysis of the economics of the Scrubber was deficient, particularly with respect to the forecast in the analysis that estimated natural gas would cost \$11/MMbtu and that gas costs would increase 2.5 percent thereafter. TransCanada said that the \$11 price was based on what Eversource actually paid at the time of the analysis, and was not based on any forecast. Exh. 20 at 992. TransCanada claimed that the

“forecast” was flawed because it conflicted with Eversource’s statement in its 2007 Least Cost Integrated Resource Plan. TransCanada Post-Hearing Brief at 35-37.

TransCanada also argued that Eversource should have re-evaluated the economics of the Scrubber in the spring of 2009 and that its failure to do so was unreasonable. TransCanada claimed that Eversource should have updated its 2008 analysis in 2009, using the lower gas prices, the reduced value of sulfur dioxide credits, and the reduced demand for energy that prevailed in 2009. *Id.* at 26-28. TransCanada asserted that Eversource knew, or should have known, that its June 2008 analysis was no longer accurate in 2009, and that the analysis should have been updated. Instead, Eversource continued to rely on the outdated 2008 analysis to justify the Scrubber’s economics. *Id.*

TransCanada accused Eversource of lacking candor in communication with the Legislature and the Commission by omitting to characterize the \$250 million cost of the Scrubber as an estimate. TransCanada argued, in addition, that Eversource failed to point out the spread of 5.27 cents between natural gas and coal prices, a critical element to Eversource’s calculation of the economics of the Scrubber Project, which similarly misled decision-makers on the merits of going forward with Scrubber construction. *Id.* at 15-20. According to TransCanada, based on those omissions, Eversource should not be granted full recovery of the Scrubber costs or of its authorized rate of return. *Id.* at 5-6. TransCanada also suggested that the Commission reduce the return on equity to be applied to the Scrubber and to the deferred Scrubber costs. *Id.* at 40.

### **C. CLF**

CLF argued that the Commission should not accept Eversource’s argument that it had a statutory mandate to build the Scrubber, regardless of the economic circumstances. CLF Post

Hearing Brief at 6. CLF concurred with TransCanada that Eversource's 2008 analysis was inadequate. CLF criticized the 2008 analysis because it did not factor in the impact of customer migration, the significant drop in gas prices, or whether retiring or divesting Merrimack Station was a viable alternative to building the Scrubber. *Id.* at 5-10. CLF also argued that the 2008 analysis should have been updated in the spring of 2009 with the new market conditions that were evident at that later time. According to CLF, if the analysis had been updated in 2009, it would have been apparent that the Scrubber Project would not provide customer benefits. CLF pointed out that CLF's witness performed five analyses based on information available in 2009, similar to the analysis conducted by NERA for Eversource. The only scenario which resulted in the Scrubber being economic was the scenario that assumed high gas prices and low environmental cost, and CLF argued that those assumptions were unreasonable. *Id.* at 12-19.

Based on the foregoing, CLF argued that Eversource was imprudent in proceeding with the Project and urged the Commission to disallow a portion of the Scrubber costs. *Id.* at 5-10. CLF recommended that the Commission consider \$128 million as the maximum amount Eversource should recover, which is the amount of sunk costs that were reported in Eversource's cancellation study as of March 2009. CLF also argued that the Commission should not allow recovery of unnecessary expenses such as the truck wash and the SWWT system. *Id.* at 24.

#### **D. Sierra Club**

The Sierra Club argued that Eversource failed to consider the future environmental compliance costs associated with Merrimack. According to Sierra Club, those costs, along with changes in the economy and energy markets in 2008 and 2009, rendered Eversource's investment in the Scrubber Project imprudent. Sierra Club Post Hearing Brief at 2-3. Sierra Club referred to capital-intensive costs of foreseeable environmental controls required for

Merrimack Station, such as the cooling water intake controls, particulate emission limits, greenhouse gas emission limitations, and air toxins regulation. Sierra Club said that Eversource should have known about and considered the costs of all potential environmental controls that would be required for Merrimack Station in its analyses of the economic benefits of the Scrubber, and that failure to do so was imprudent utility management on the part of Eversource. *Id.* at 3-5.

In addition, Sierra Club claimed that Eversource should have investigated less costly technology to control mercury emissions at Merrimack Station. Sierra Club opined that the Scrubber Law did not specify the exact design and configuration of the Scrubber technology, and Eversource should have considered a less expensive alternative to meet emissions requirements. *Id.* at 1-2 and 9-10.

According to Sierra Club, Eversource is asking the Commission to add the SWWT system to its rate base while, at the same time, asking the EPA for permission not to use the system. The Sierra Club urged the Commission to condition any finding of prudence with respect to the SWWT system on the requirement that Eversource operate the system. *Id.* at 12-14.

#### **E. OCA**

The OCA disagreed with Eversource's contention that the Scrubber Law mandated construction of the Scrubber, regardless of cost. According to the OCA, the Scrubber Law did not relieve Eversource of its obligation to evaluate changes in the economy and energy markets and to disclose to public officials the effect of those changes on the economics of the Scrubber. OCA Post-Hearing Brief at 2-5. In addition, the OCA claimed that Eversource's duty to evaluate and disclose continued even with the failure of proposed legislation in 2009. *Id.* at 11-12.

The OCA argued that, when the cost of the Scrubber was projected to increase to \$457 million, Eversource had an obligation to inform public officials about the relationship between gas and coal prices in determining the economics of the Scrubber docket, but failed to do so. The OCA alleged that this omission demonstrated a lack of candor and a failure of good utility management by Eversource. *Id.* at 13-14.

The OCA claimed that Eversource was imprudent to accelerate the installation of the Scrubber without a rigorous cost benefit analysis. According to the OCA, such an analysis would have disclosed that the early completion of the Scrubber Project would not be beneficial to customers, but instead cause deferrals. The OCA said that Eversource should recalculate the deferral balance using the statutory deadline of July 1, 2013, as the starting date. *Id.* at 15.

The OCA also questioned whether the Scrubber Project is “used and useful” as required by RSA 378:28. The OCA argued that, because Merrimack Station operates at 40 percent capacity, the Scrubber is not fully used and useful. *Id.* at 15-16. In addition, because Eversource has not been using the truck wash, the OCA argued that Eversource should not earn a return on its investment in the truck wash. *Id.* at 17. Further, the OCA argued that the SWWT system is overbuilt, and not used and useful, and that the Commission should disallow a return on the costs of the SWWT system as well. *Id.* at 22-23.

In addition, the OCA requested that the Commission find that investments in the Scrubber Project made after March 2009 were imprudent and that the Commission disallow recovery of an amount between \$290 million and \$365 million. The OCA argued that the Commission should impose an across-the-board disallowance of at least 25 percent of the Scrubber Project Costs, or \$105 million, as a penalty for Eversource’s imprudence. *Id.* at 20-21.

Finally, the OCA suggested that the Commission consider holding a proceeding, following the conclusion of the Asset Docket, to determine whether divestiture results in an offset to any of the disallowances ordered in this docket. *Id.* at 23.

#### **F. Staff**

Staff stated that, based on its review, Eversource was prudent to build the Scrubber in response to the Scrubber Law, and to proceed with construction in the spring of 2009. Although the costs of the Scrubber Project changed over time, and the resulting rate impacts are higher than initially estimated, Staff concluded that Eversource's decisions were consistent with the Scrubber Law, were based on information available at the time, and were reasonable.

Exh. 15 at 3, 16.

Staff hired Jacobs to review Eversource's management of the construction of the Scrubber. According to Jacobs, Eversource exercised good oversight in constructing the project and properly controlled project costs and the project schedule. Exh. 16 at 12. Jacobs also found that Eversource's processes for procurement of services, risk analysis, contracting strategy, and contracting approval were well-developed. Staff adopted Jacob's conclusions and recommended the Commission find that Eversource prudently oversaw and implemented the installation of the Scrubber Project. *Id.* at 18.

Although Staff raised questions about the SWWT system during the hearing, Staff recommended the Commission allow full recovery of the SWWT system costs because it was prudent to build. Staff pointed out that Jacobs concluded that the SWWT system was a necessary addition to reduce the regulatory uncertainty arising from the EPA permit process, and Staff expressed agreement with that conclusion. Staff Post-Hearing Brief at 8-9.

Staff also presented the final Staff Audit Division report (Final Report) on the Scrubber Project. Exh. 15 at 19-24. The Final Report said that the total cost associated with installing the Scrubber Project was \$417,526,603. The Final Report recommended removal of \$2,014,714 associated with the construction of a building on the site. Eversource agreed that those costs were not considered to be part of the Scrubber Project, and that recovery should be treated in the same manner as other general plant assets at Merrimack Station. *Id.* at 21-22. On that basis, Staff recommended that the Commission find the total costs of the Scrubber Project to be \$415,511,889. *Id.* at 22.

Finally, Staff said that if the Commission finds that Eversource failed to provide complete information to the Commission and Staff, the Commission had authority to implement an appropriate remedy. *Id.* at 6.

### **III. SETTLEMENT POSITIONS OF THE PARTIES – Docket No. DE 11-250**

All parties to the 2015 Settlement Agreement, as well as Non-Advocate Staff, agreed that the 2015 Settlement Agreement's disallowance of \$25 million related to the Scrubber proposes a reasonable resolution to all of the issues in Docket DE 11-250. NEPGA did not have an opinion on the portion of the 2015 Settlement Agreement related to the recovery of Scrubber Project costs. Sierra Club pointed to the additional environmental mitigation investment needed at Merrimack Station and other generation units owned by Eversource and stated support for divestiture as a first step. The next step, according to Sierra Club, would be to "transition away from aging and dirty fossil power, towards cleaner and cheaper solutions." Tr. 2/4/2016 P.M. at 28.

Terry Cronin, who intervened in the Scrubber Docket after the record was closed, requested that the Commission make a decision that installation of the Scrubber Project at

Merrimack Station was not prudent. Accordingly, Mr. Cronin expressed general opposition to the 2015 Settlement Agreement. *Id.* at 21-25.

#### **IV. COMMISSION ANALYSIS – Docket No. DE 11-250**

“The commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful.” RSA 378:28. In order to approve the settlements, which permit placement of the scrubber in rate base, we must determine the investment was prudent, used, and useful.

Supreme Court precedent provides the standard for our prudence review: “(t)he principle of prudence requires that an investment or a constituent element of an investment that was foreseeably wasteful when made be excluded from the rate base.” *Appeal of McCool*, 128 N.H. 124, 139 (1986). “[P]rudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned and made.” *Appeal of CLF*, 127 N.H. 606, 638 (1986). Prudence does not require that the utility make the correct choice, which can only be known in hindsight, but that the utility’s decision was within a “range of reasonableness.” *Incentives for Conservation and Load Management*, 75 NH PUC 527, 541 (1990). Reasonableness of utility managers is not the same as the “reasonable person” standard because utility managers are experts. It is our “responsibility and obligation under the law to determine whether PSNH... conducted [itself] with the level of care expected of highly trained and compensated specialists.” *Public Serv. Co. of N.H.*, 81 NH PUC 531, 541 (1996).

We find that Eversource prudently managed its investment in the Scrubber Project. We also find that the resolution of the Scrubber Docket as proposed in the 2015 Settlement Agreement is just and reasonable and serves the public interest.

### **A. Installation of Scrubber Technology Was Prudent**

As detailed in our prior orders in the Scrubber Docket, RSA 125-O:13 is plain on its face that the owner of Merrimack Station was required to install scrubber technology. We previously have held, however, that,

While . . . PSNH had no discretion . . . to install and operate the Scrubber if it remain[ed] the owner and operator of Merrimack Station, the Scrubber Law [did] not allow PSNH to act irrationally with ratepayer funds. RSA 125-O:18 makes clear that PSNH retained the management discretion to divest itself of Merrimack Station, if appropriate. Likewise, under RSA 369-B:3-a, PSNH retained the management discretion to retire Merrimack Station in advance of divestiture.

*Public Service Co. of N.H.*, Order No. 25,546 at 8 (July 15, 2013). Given the legislative mandate that the facility owner install scrubber technology and Eversource's identified management discretion, presentations at hearing focused on whether Eversource acted prudently by installing the Scrubber rather than retiring or divesting Merrimack Station. Those presentations required us to review Eversource's decision-making in light of increased construction and environmental compliance costs and changes in the market place that decreased both the dispatch of Merrimack Station and the projected value of the power the facility would produce.<sup>8</sup>

Prior to exercising the little discretion that it had, Eversource would have had to conduct an analysis to determine whether retirement or divestiture was in the economic interest of retail customers, as required by RSA 369-B:3-a. While it did not conduct this specific analysis, Eversource did conduct an economic analysis in the summer of 2008, when the estimated cost of the Scrubber increased from \$250 to \$457 million. That analysis was to determine whether the cost of generating electricity at Merrimack Station, with the addition of the Scrubber at the

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<sup>8</sup> Sierra Club argued that scrubber technology was not the best or least cost available, and that Eversource could have used other technology to abate mercury emissions. However, the Scrubber Law dictated the type of technology to be used. RSA 125:0-13 ("The owner shall install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013.").

updated estimated cost of \$457 million, would be less expensive than the cost of purchasing electricity from other generation resources. Based on its analysis, Eversource concluded that Merrimack Station, with the Scrubber, would generate electricity at a lower cost than from other resources, provided that the difference between coal and natural gas prices remained at least \$5.29. Exh. 23 at 469-70.

Several witnesses testified that Eversource was imprudent in failing to update its analysis in 2009, given the changes in the economy and the then current forecasts of energy wholesale market prices. Although the OCA's witness did not challenge Eversource's 2008 conclusion that the Scrubber was economical, he did fault Eversource's failure to update that analysis by the Spring of 2009. "[E]ven though I could accept what the Company did in the summer of 2008, I believe that the Company should have undertaken updates over the ensuing three months, six months, nine months." Tr. 10/16/14 A.M. at 12. "[I]f anything, given the fact that we're dealing with an investment that's going to be something like at least a third of the Company's asset base, the need for an update, a timely update, is even more important. ..." *Id.* at 19. Dr. Stanton, CLF's witness, also concluded that, "in the Spring of 2009, first of all, [Eversource] had a prudence obligation to do this kind of [financial] analysis at that time." Tr. 10/17/14 A.M. at 42. The NU corporate manual that governed review of large capital projects also contemplated financial updates during the course of such projects. Exh. 118 at 9-10 (NU's *Capital Project Approval Policy and Procedures*). Eversource's post-hearing brief is notably silent on the existence of a duty to update its analysis despite prolonged cross examination at hearing.

Eversource, however, did not re-evaluate its economic analysis in 2009. To defend its decision to proceed with the Scrubber despite the changed economic circumstances, Eversource presented an after-the-fact analysis in this proceeding that examined the information available in

2008 and 2009. NERA conducted that analysis. NERA compared the predicted cost of power produced by Merrimack Station, Scrubber installed, to the cost of power that would have been produced by a new, gas-fired power plant, or purchased through the wholesale energy market. Exh. 24. NERA concluded that Merrimack Station with the Scrubber would provide customer benefits under some sets of assumptions, and would generate more expensive electricity under others. *Id.* at 400. Eversource claimed that continuing with the Scrubber installation was prudent, because it fell within the range of reasonable assumptions.

In addition, Eversource presented evidence that the divestiture process would have taken up to two years to complete. Such a time line would have brought any sale of Merrimack Station at least into 2010. The record shows that the statutory requirement to install the Scrubber by July 2013 would likely have caused any prospective buyer to insist on contingencies that would have exceeded the Scrubber's estimated cost. Exh. 22 at 33-34. Eversource also presented testimony that market conditions existing in 2009 rendered divestiture impractical. Eversource stated that the "technology advances in gas fracking" lowered natural gas prices in 2008 and 2009. *Id.* at 28. Although "it was impossible to know" where prices would settle in 2008 or 2009, "it became clear" that "low prices were actually sustainable." *Id.* Those low gas prices harmed "the economics for coal plants ... and it became very difficult to sell such plants." *Id.* According to Eversource, a divestiture during that time frame would likely have ended with Eversource paying someone to take Merrimack Station off its hands. *Id.* at 35-36.

We have carefully reviewed Eversource's 2008 economic analysis, Intervenor testimony, and the hearing record concerning whether the economic information available in 2009 supported Eversource's contention that the Scrubber would provide economic benefits. Although the competing experts used the same type of analysis and reached differing outcomes,

we find that Eversource's retention of Merrimack Station and construction of the Scrubber was within the bounds of reasonableness, and prudent, based on the information in the record.

**B. Eversource Prudently Managed the Construction of the Scrubber**

RSA 125-O:18 specifically provides that if the owner of Merrimack Station is a regulated utility, "the owner shall be allowed to recover all prudent costs of complying with the requirements of this subdivision in a manner approved by the public utilities commission." (emphasis added).

The Commission, therefore, has authority to review management of the construction of the Scrubber, the selection of vendors, its continued evaluation of the project, and other aspects of the Scrubber Project under the control of Eversource to determine whether such conduct was prudent. This is consistent with our "responsibility and obligation under the law to determine whether PSNH, or its agents, conducted themselves with the level of care expected of highly trained and compensated specialists." *Public Service Co. of N.H.*, 81 NH PUC 531, 541 (1996).

Most of the evidence relating to this topic was presented by Eversource and Jacobs. Mr. Smagula's 2012 testimony described the design and construction of the Scrubber, the permitting process, the project management functions, the manner in which Eversource hired vendors and managed those contracts, and the then-estimated total costs and how Eversource managed those costs during the project. Exh. 11 at 6-20.

Staff hired Jacobs in January 2010 "to complete a due diligence review on the completed portion of the project and ... to monitor the project through completion." Exh. 26 at 7. Jacobs prepared an initial Due Diligence report that reviewed the work already completed, three Quarterly Reports in April, July, and October 2011, and a Final Report in September 2012. *Id.*

at 1, 75, 97, 114, and 132, respectively. Jacobs presented favorable opinions on all areas of the Scrubber project that they reviewed. In conclusion, Jacobs said that “PSNH responsibly managed the project of installing the wet flue gas desulfurization unit at Merrimack Station.” *Id.* at 10-11. No party challenged Jacobs’ opinion that Eversource managed the Scrubber project well. Cross-examination of the two Jacobs witnesses centered on issues that did not affect this conclusion. We have reviewed the Jacobs reports, agree with their conclusions, and find Eversource prudently managed the construction of the Scrubber.

### **C. Installation of the SWWT System Was Prudent**

Merrimack Station has been operating for many years under an extension of a previously issued NPDES permit. Tr. 10/14/14 A.M. at 24. The initial Scrubber design included only a primary wastewater treatment (PWWT) system from which the effluent would be discharged into the Merrimack River. The Environmental Protection Agency (EPA), however, disagreed with this design and so informed Eversource on November 8, 2010. *Id.* at 26. Although Eversource disagreed with the EPA, the Company decided to build the SWWT system to bring the Scrubber on-line in a timely manner. *Id.* at 27. The SWWT system was designed to treat the waste water from the PWWT system to the point that it would discharge clean water and solid wastes, obviating the need for a change to Eversource’s existing EPA permit. *Id.* Eversource built the SWWT system at a cost of \$36.4 million. *Id.* at 30.<sup>9</sup>

The parties raised concerns over the pending EPA permit application, Eversource’s statements regarding that permit, the actual capabilities of the SWWT system, and Eversource’s intended use of the SWWT system. *Id.* at 21-33 and Tr. 10/14/14 P.M. at 8-12, 81-86. Jacobs nonetheless testified that Eversource’s decision was reasonable. In Jacobs’ opinion, the decision

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<sup>9</sup> The SWWT system was not part of the \$457 Scrubber estimate that Eversource disclosed in 2008. It was added to the project some years later when Eversource learned of the permitting issues summarized here.

to install the SWWT system was the proper one, as it allowed the completion and timely start-up and operation of this relatively environmentally benign power resource. Exh. 26 at 189. In making its decision, Jacobs assumed that the SWWT system would be permanently used at Merrimack Station. Tr. 10/14/14 P.M. at 86.

No party directly argues that Eversource's decision to build the SWWT system was imprudent. In its closing, CLF asked us to condition any finding that construction of the SWWT system was prudent on the requirement that Eversource continually operate the SWWT system, but stopped short of arguing that the investment was imprudent.

Regardless of its intended use, the question before us is whether the decision to build the SWWT system was prudent. We find that it was reasonable for Eversource to decide that installation of the SWWT system would allow Eversource to move forward with the project in the absence of an amended permit, to help Eversource finish the Scrubber by the July 2013 deadline, and reduce the risk of higher carrying costs. We thus find that it was reasonable at the time for Eversource to install the SWWT system.

#### **D. The Scrubber, Truck Wash, and SWWT System are Used and Useful**

As described above, pursuant to RSA 378:28, a utility may include in its rate base only those assets that are used and useful. Again, the Supreme Court provides the standard for our review. Costs must be "attributable to property that is used and useful in the public service." *Appeal of McCool*, 128 N.H. at 139. "[U]sefulness judges its value at the time its reflection in the rate base is under consideration." *Appeal of CLF*, 127 N.H. at 638. It is possible for a utility to make a prudent investment but for that investment not to be used and useful. In such a case the utility may recover the cost of the investment but cannot place that asset into rate base and earn a return on its value.

Neither of these principles of rate base limitation can be reduced to a precise formula. The principle of prudence entails the uncertainty that is inherent in any backward-looking judgment, and the principle of usefulness is commonly described as allowing a rate-setting commission substantial flexibility for pragmatic judgments about what should or should not be regarded as useful. This flexibility mirrors the need to provide an opportunity for the exercise of expert judgment in giving due recognition to the two competing interests that come to the fore in any contested rate proceeding, the interests of investors who would like a guaranteed return on any investment and the interests of customers who would like low rates.

*Appeal of McCool*, at 139-40 (citations omitted).

The OCA makes three used and useful arguments. First, the OCA argues we should allow only part of the Scrubber into rate base under a “partial used and useful” standard to reflect the fact that Merrimack Station is being used far less than its designed capacity. We recently declined to adopt the OCA’s partial used and useful argument in Order No. 25,647 (Apr. 8, 2014), because RSA 378:28 does not include the concept of utility plant being “partially” used and useful. *Id.* at 20. Second, “the concept of a partially used and useful status is contrary to rate setting principles of the New Hampshire Supreme Court.” *Id.* (citing *Appeal of CLF*, 127 N.H. at 634-40). Third, we found the OCA’s argument not to be sufficiently developed in that docket. *Id.* at 21. Finally, we found that to change how we address the used and useful concept “would likely create market uncertainty and affect utilities’ earnings and financial stability, and increase borrowing rates” *Id.* We do not adopt the OCA’s “partial” used and useful concept in this case for the same reasons.

Second, the OCA argues the truck wash is not being used at all and has not been used since May 2012. Eversource built the truck wash because it was then trucking Venezuelan coal from its facility in Portsmouth to Merrimack Station and intended to truck gypsum, a saleable byproduct of the Scrubber process, back to the seacoast. To prevent contamination of the gypsum and to reduce truck traffic, Eversource needed a facility to wash the coal out of the

trucks for the return trip. Exh. 66 and Exh. 67. Based on this logic, Jacobs found the decision to build the truck wash to be prudent. Tr. 10/15/14 P.M. at 21-22. We accept this rationale and find that PSNH was prudent in building the truck wash, a conclusion no party contested.

There is evidence that Eversource has not used the truck wash since at least April 2012 because the Company no longer buys Venezuelan coal and Merrimack Station now burns coal that arrives by rail. Exh. 57 (“Coal trucking between Schiller Station and Merrimack Station has not occurred since April 13, 2012, due to the unavailability of Venezuelan coal”); Tr. 10/15/14 A.M. at 119. Although this evidence could support a finding that the truck wash is not “used and useful,” the issue was not a central part of this proceeding. On the record before us, we find that the truck wash is “used and useful” because it may facilitate the purchase of coal from different markets and over different transportation systems.

Third, the OCA argues the SWWT system is not used and useful because Eversource intends not to use it if the EPA grants Eversource’s request to discharge wastewater from the primary system. OCA Post-Hearing Brief at 17-18. As with the truck wash, the SWWT system was in use when we approved temporary rates. In addition, the SWWT system remained in use through hearings in this matter. Consequently, we find the SWWT system to be used and useful, and that its costs are appropriate to place in rate base.

#### **E. Staff Audited Project Costs**

The Commission’s Audit Division performed a comprehensive review of the Scrubber Project. The Audit Division prepared draft audits that Eversource had the opportunity to review and provide comment. The Audit Division then generated its Final Audit Report. Exh. 15 at 252. The Final Audit Report calculated that the cost to build the Scrubber is \$415,511,889. *Id.* at 284. No party objected to the figures in the Final Audit Report. We have reviewed the

Final Audit Report and find that it properly reflects the costs Eversource incurred to build the Scrubber, which costs we find to be prudent. Therefore, subject to our discussion below, we find that Eversource may recover the \$415,511,889 in costs that it prudently incurred to build the Scrubber.

**F. Eversource Failed to Exercise Good Utility Management, Was Not Candid About Negative Information, and Needs to Improve Its Document Discovery Mechanisms**

1. Good Utility Management

TransCanada, CLF, and the OCA argued that Eversource should have updated its 2008 economic analysis in early 2009 when market conditions changed. Mr. Kahal, OCA's witness, asserted the size of the Scrubber investment, likely to be one third of the Company's asset base, dictated the importance of the update. Tr. 10/16/14 A.M. at 12. Eversource, as part of its duty to use good judgment in the prudent management of its utility assets, has a duty to update its evaluation of alternatives when proceeding with large capital projects. *See New Hampshire Elec. Co-op, Inc.* 70 N.H. PUC 422, 465 (1985) ("We find that the Company has in fact made adequate analyses of the possible alternatives that have been raised in this docket and that it used sound judgment in not expending time and effort to pursue alternatives which were clearly beyond the capability of the Cooperative itself"); *In the Matter of PacifiCorp*, Order No. 12,493 at 31 (Oregon PUC Dec. 20, 2012) ("Based on our findings that Pacific Power failed to reasonably examine alternative courses of action and perform adequate analysis to support its investments, we conclude that a partial disallowance is warranted.").

We find evidence in the NU corporate manual that governs review of large capital projects that Eversource knew of and understood this duty. This manual contemplates financial updates during the course of each project. Exh. 118 at 9-10 (NU's Capital Project Approval

Policy and Procedures); *see also* Tr. 10/22/14 A.M. at 74-75. As stated above, Eversource's post-hearing brief did not address the existence of a duty to update its analysis despite the cross examination on the issues at hearing. *Id.* at 32-33, 57-58, 139.

Eversource's duty to update the 2008 financial analysis is separate from the Scrubber Law. While the Scrubber Law mandated installation of certain pollution control systems at Merrimack Station, it did not eliminate Eversource's duty to act prudently. *See* Order No. 25,565 (Aug. 27, 2013) at 7 ("no utility may proceed blindly with the management of its assets or to act irrationally with ratepayer funds"); *see also* Order No. 25,546 (July 15, 2013) at 8 ("we have never construed RSA 125-O to mandate that PSNH continue with the Scrubber's installation if continuing would require PSNH to engage in poor or imprudent management of its generation fleet." ).

Despite its duty to update as required by its own policies and procedures, and despite the need for such an update in light of the changed market conditions in early 2009, Eversource did not update its 2008 economic analysis. Failure to conduct this analysis at the appropriate time risked damaging the Company and thereby ratepayers with an imprudent investment of significant magnitude. The result of such an updated analysis would have informed the appropriate NU management committee, the legislative debate in 2009, and this Commission. We find Eversource's failure to update the analysis to be contrary to good utility management. The Commission previously disallowed cost-recovery under similar circumstances, albeit for expenses. *Granite State Elec. Co.*, 76 NH PUC 495, 500 (1991). Fortunately for the Company, its after-the-fact economic analysis demonstrates that when it moved forward with construction of the Scrubber in 2009, an economic "prudence" evaluation would have forecast customer benefits. *See* Section IV.A, above.

## 2. Eversource's Lack of Candor to the Commission

Intervenors alleged that Eversource breached its duty of candor to the Commission when it failed to disclose the necessary spread between the costs of natural gas and the “economic” price of the Scrubber in its 2008 filing with the Commission. They also accused Eversource of not being candid with the Legislature when legislation affecting the Scrubber was considered in 2009. We are very concerned that Eversource failed to disclose the spread to the Commission during the investigation of the increased costs of the Scrubber Project in Docket No. DE 08-103. We strongly caution Eversource that public utilities have a duty to present all relevant information, good or bad, to the Commission for its consideration on all matters. We expect the public utilities we regulate to keep us informed.

## 3. Eversource Document Discovery Mechanisms

TransCanada claimed that Eversource failed to comply with Order No. 25,718 (Sept. 17, 2014) and disclose certain price forecasts important to the economic analysis necessary to evaluate Eversource's prudence. At hearing, Eversource introduced evidence that suggested it had other forecasts that were not included in discovery responses as ordered. At our direction, Eversource provided a detailed description of the steps it took to find responsive documents, a description of the electronic document search that was conducted, and copies of the relevant documents. We find that Eversource exercised good faith in producing the documents. However, we are concerned that all relevant documents may not have been produced in a timely manner. We direct Eversource to reevaluate its document management system to make certain that it provides complete and timely responses to discovery requests.

### **G. No Adverse Inference Made Against TransCanada**

Finally, in Order No. 25,687 (July 2, 2014), the Commission ruled that the TransCanada Intervenors improperly failed to comply with orders to produce “fuel price forecasts from the TransCanada Intervenors and their affiliates, and statements by any TransCanada official regarding the predicted effects on natural gas prices of horizontal drilling and hydraulic fracturing.” *Id.* at 2. As a sanction the Commission struck portions of Mr. Hachey’s testimony and stated that it would “be prepared to draw an adverse inference from the missing affiliate information when appropriate.” *Id.* at 11.

An adverse inference allows the fact finder to “infer that the [missing] evidence was unfavorable.” *Id.* at 6. If properly invoked here, the adverse inference would allow us to infer, for example, that the TransCanada affiliates had fuel price forecasts that contradicted the position of the TransCanada Intervenors or that were consistent with Eversource’s forecast. Eversource requested an adverse inference several times in its efforts to impeach Mr. Hachey and undermine arguments of the TransCanada Intervenors.

We find that it is unnecessary to draw an adverse inference because Eversource presented direct evidence that was consistent with, but more detailed than, any adverse inference that we could have drawn. Drawing an adverse inference would thus be redundant, less specific, and would not have changed our decisions.

### **H. Conclusion – Docket No. DE 11-250**

We have reviewed the terms of the 2015 Settlement Agreement, the record in both dockets, and the positions of the parties regarding the 2015 Settlement Agreement and its treatment of the Scrubber. Based on this review, we find that the 2015 Settlement Agreement, particularly the shareholder funding of \$25 million of deferred equity contained in Section III.D.,

is a reasonable resolution of the issues in the Scrubber Docket. While the economic evidence supports our finding that investment in the Scrubber continued to show customer benefits and was therefore prudent, we could have penalized Eversource for its failure to update its analysis and for its failure to keep the Commission informed of the economics of the project at key points in time. We find that a \$25 million disallowance would have been within the bounds of reasonableness and, therefore, that the reduced recovery under the terms of the 2015 Settlement Agreement is appropriate. Furthermore, no argument advanced by Mr. Cronin changes our conclusion that the comprehensive settlement represents a reasonable compromise and fair resolution of the issues in the Scrubber Docket.

**V. PROCEDURAL HISTORY -- Docket No. DE 14-238**

On September 16, 2014, the Commission issued an Order of Notice opening the Asset Docket in response to the enactment of HB 1602, which became effective on August 1, 2014. HB 1602 amended RSA 369-B:3-a to require the Commission to commence and expedite a proceeding to determine whether all or some of the Company's generation assets should be divested. Under HB 1602, the Commission was given the authority to order Eversource to divest all or some of its generation assets if the Commission found that it was in the economic interest of retail customers of Eversource to do so, and provided for the cost recovery of such divestiture. In the Order of Notice, the Commission scheduled a prehearing conference on October 2, 2014, and made Eversource a mandatory party to the proceeding.

Following the issuance of the Order of Notice, a series of motions to intervene were made by the following parties during September 2014: the Office of Energy and Planning (OEP); the International Brotherhood of Electrical Workers Local 1837 (IBEW Local 1837); the Business and Industry Association of New Hampshire (BIA); the City of Manchester; the Conservation

Law Foundation (CLF); the City of Berlin; the New England Power Generators Association, Inc. (NEPGA), and the Retail Energy Supply Association (RESA); TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast, Inc. (together, TransCanada); Granite State Hydropower Association (GSHA); the Sierra Club; New Hampshire Sustainable Energy Association d/b/a NH CleanTech Council (NHCTC); and Mr. Pentti J. Aalto. Also, the Office of the Consumer Advocate (OCA) filed its letter of participation on behalf of residential ratepayers, consistent with RSA 363:28. At the October 2014 prehearing conference, the Commission granted leave to Eversource to file its objections to those intervention requests on that day, and granted leave for responses to such objections by October 9. The Commission also ordered a technical session for November 6; and the filing of briefs by parties on the proper scope of the proceeding on December 5, with responses to briefs due on January 7, 2015.

On October 2, 2014, Eversource filed its objection to several of the intervention requests, with responses made by Sierra Club, BIA, NEPGA, RESA, TransCanada, NHCTC, and GSHA. The Commission issued Order No. 25,733 on November 6, 2014, granting all of the outstanding petitions to intervene.

In early December 2014, as ordered by the Commission, briefs regarding the expected scope of this proceeding and other matters were filed by Commission Staff, Sierra Club, GSHA, NEPGA, RESA, IBEW Local 1837, CLF, OEP (indicating no position on scope), City of Berlin, Eversource, OCA, and Mr. Pentti Aalto. Responses were filed in early January 2015 by Eversource, NEPGA, RESA, CLF, and Sierra Club.

In the meantime, on December 26, 2014, Eversource filed a “Motion to Stay Proceedings” in both the Scrubber and Asset Dockets. In its motion, Eversource referenced a Legislative Services Request by Senator Jeb Bradley and stated, “[B]oth Senator Bradley and

[Eversource] desire an opportunity to seek a collaborative resolution to the myriad issues that are under consideration in the Dockets [DE 11-250 and DE 14-238].” After responses were filed to Eversource’s Motion to Stay in early January 2015, the Commission issued Order No. 25,756 on January 15, 2015, denying the Motion to Stay the Asset Docket, but encouraging legislatively-driven settlement processes. The Commission also required that a stipulation on scoping matters be filed in early March 2015. A stipulation on scope was filed by all parties except the City of Manchester.

On March 13, 2015, Eversource filed a Term Sheet and Draft Legislation package outlining the expected terms of a legislative settlement of this proceeding. The Term Sheet was executed by Eversource executives, OEP, OCA, Advocate Staff, and Senators Bradley and Feltes. At that time as stated above the Commission designated Ms. Ross and Mr. Frantz as advocate staff. *See page 5 supra.* The draft legislation in question was proposed as SB 221, and would be enacted, with some modifications, in final form in July 2015.

Through the spring of 2015, Eversource made a series of three monthly informational filings with the Commission in this docket regarding SB 221-related developments, culminating in the filing of the 2015 Settlement Agreement on June 10, 2015. The original signatories to the 2015 Settlement Agreement were Eversource (together with its corporate parent, Eversource Energy), Senator Jeb Bradley, Senator Dan Feltes, Advocate Staff, OCA, OEP, the City of Berlin, CLF, IBEW Local 1837, NEPGA, NHCTC, RESA, and TransCanada (together, 2015 Settling Parties).

As part of their filing of the 2015 Settlement Agreement, the 2015 Settling Parties included a Motion to Expedite the proceedings, with a request for an abbreviated procedural schedule with hearings contemplated in early November 2015 and a final Commission decision

by December 31, 2015. *See* Joint Motion for Expedited Approval of Settlement Agreement and Rate Adjustments at 8.

On June 10, 2015, Eversource also filed a motion for approval of the continuation of Eversource's reliability enhancement program (REP), together with testimony and supporting exhibits, in connection with the filing of the 2015 Settlement Agreement. Following a hearing, the Commission granted the request to continue the REP on its own merits by Order No. 25,793, issued on June 25, 2015.

On June 17, 2015, Non-Advocate Staff filed a response to the Motion to Expedite that incorporated additional procedural schedule features, including a conditional auction of Eversource's assets, environmental assessments of Eversource's generation fleet, and an expected hearing date in early February 2016.

On June 29, 2015, the Commission issued a Supplemental Order of Notice in light of the execution of the 2015 Settlement Agreement and the incorporation of the 2015 Settlement Agreement in the proposed SB 221 language. The Supplemental Order of Notice scheduled a prehearing conference on July 9, 2015, and invited further motions to intervene. Coincidentally, SB 221 was enacted and made effective on July 9, 2015. Timely motions to intervene were filed by the Town of Gorham, Representative Frank Edelblut, Senator Jeb Bradley, Senator Dan Feltes, Mr. Michael Harrington, Mr. Terry Cronin, and North American Power and Gas, LLC. Representative Howard Moffett made an oral motion to intervene at the July 9, 2015, prehearing conference, that was granted by the Commission, together with all of the other new intervention requests. *See* Tr. 7/9/15 A.M. at 9-10.

At the prehearing conference, Non-Advocate Staff presented a Stipulation executed by Eversource, Senator Bradley, Senator Feltes, Advocate Staff, Non-Advocate Staff, OCA, OEP,

the City of Berlin, CLF, IBEW Local 1837, NEPGA, NHCTC, RESA, and TransCanada. The Stipulation called for an expanded procedural schedule, and provided that (1) after any auction of one or more of Eversource's generation assets, the Commission shall have the final authority to approve or disapprove each proposed sale, under a public interest standard and pursuant to any additional statutorily mandated considerations, following a hearing to be held on an expedited basis; (2) Eversource would hire an unaffiliated consultant to perform a Phase I environmental assessment of all its physical generation assets, such assessments to be provided to all parties; (3) Non-Advocate Staff would have the authority to request additional environmental assessment of any of the generation assets if such additional assessment is warranted on the basis of the Phase I analysis; and (4) Non-Advocate Staff would have use of the REMI analytical model (referenced below) to be used by the Settling Parties in their testimony.

Testimony supporting the 2015 Settlement Agreement was filed by Eversource, Senator Bradley, Senator Feltes, Advocate Staff, City of Berlin, the Town of Gorham, OCA, OEP, NEPGA, RESA, and CLF.

In the July 2015-December 2015 period, the other parties to this proceeding engaged in discovery related to the 2015 Settling Parties' testimony, and filed responsive testimony. The 2015 Settling Parties propounded discovery in turn. Certain discovery disputes arose among the parties, which were adjudicated by the Commission in the following written Orders: Order No. 25,829 (Oct. 22, 2015); Order No. 25,830 (Oct. 23, 2015); Order No. 25,837 (Nov. 3, 2015); Order No. 25,847 (Dec. 3, 2015). Also, the Commission adjudicated a discovery-related dispute involving Non-Advocate Staff's consultant, LaCapra Associates, Inc. *See* Tr. 10/8/15 P.M. at 44-45; *see also* Exh. W. On October 16, 2015, LaCapra Associates, Inc., filed a motion for confidential treatment, pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08,

regarding certain analytical materials provided to Staff in Docket No. DE 14-238 and in Docket No. IR 13-020. That motion was granted at hearing. Tr. 2/2/16 A.M. at 12.

On September 18, 2015, Commissioner Robert R. Scott filed a letter of recusal due to his involvement in Scrubber matters during his tenure as Director of the Air Resources Division at the Department of Environmental Services (DES). Special Commissioner Michael J. Iacopino was thereafter appointed. On October 28, 2015, NEPGA and RESA filed a joint letter indicating their “withdrawal of support” for the 2015 Settlement Agreement. On November 20, 2015, the Commission approved the final hearing dates for this proceeding by secretarial letter, with hearings scheduled for February 2-4, 2016. On November 30, 2015, Eversource filed with the Commission its Phase I environmental assessments prepared on its behalf by Haley & Aldrich, Inc., of Bedford, pursuant to the July 9, 2015 stipulation.<sup>10</sup>

On January 21, 2016, Mr. Cronin filed a motion requesting that the Commission take administrative notice of a March 31, 2014, PSNH Generation Asset and PPA Valuation Report, an August 2105 update prepared by LaCapra Associates, Inc., and an October 26, 2015, deposition of LaCapra witnesses Richard Hahn and Daniel Koehler. At hearing, the Commission took administrative notice of the first document, but denied the request as to the remaining documents. However, the Commission permitted parties to refer to and introduce those documents if they chose to do so. Tr. 2/2/16 A.M. at 12-13.

On January 26, 2016, Eversource filed the 2016 Litigation Settlement. The 2016 Litigation Settlement was signed by Non-Advocate Staff, together with Eversource (with its corporate parent, Eversource Energy), Senator Bradley, Senator Feltes, Advocate Staff, OCA,

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<sup>10</sup> Links to the Phase I Environmental Assessment reports, posted on the DES website, may be found here (select “Site Documents” menu item on the DES website): [http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-238/LETTERS-MEMOS-TARIFFS/14-238\\_2015-11-30\\_PSNH\\_DBA\\_EVERSOURCE\\_ATT\\_ENVIRONMENTAL\\_ASSESSMENTS.PDF](http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-238/LETTERS-MEMOS-TARIFFS/14-238_2015-11-30_PSNH_DBA_EVERSOURCE_ATT_ENVIRONMENTAL_ASSESSMENTS.PDF)

OEP, the City of Berlin (in part<sup>11</sup>), CLF, IBEW Local 1837, NHCTC, and TransCanada, all of whom were parties to the 2015 Settlement Agreement.

The 2016 Litigation Settlement was the culmination of Non-Advocate Staff reaching an agreement with the 2015 Settling Parties during late 2015-early 2016 that divestiture of Eversource's generation assets in the immediate future was in the public interest (as defined by HB 1602, SB 221, and allied statutes). The 2016 Litigation Settlement also provided a vehicle for the coordination of evidentiary presentations between Non-Advocate Staff and the bulk of the 2015 Settling Parties (excluding NEPGA and RESA), including the introduction of an economic analysis prepared by Non-Advocate Staff's consultant, the Brattle Group, led by Dr. Dean Murphy. *See* Exh. E. The 2016 Litigation Settlement also incorporated a motion to remove the designation of Advocate Staff (Ross and Frantz) for the purpose of selecting an auction advisor.

The Commission held final hearings regarding the 2015 Settlement Agreement and 2016 Litigation Settlement as scheduled on February 2, 3, and 4, 2016. The Commission also granted leave to the parties to submit written closing statements (regarding the general issues of the proceeding), and legal briefs (regarding the Qualifying Facilities issues), which were subsequently filed during the first two weeks of February 2016. A secretarial letter, dated February 8, 2016, partially lifting the designation of Advocate Staff (Ross and Frantz) was also issued by the Commission.

## **VI. GENERAL TERMS OF THE SETTLEMENT AGREEMENTS**

### **A. 2015 Settlement Agreement**

As filed on June 10, 2015, the 2015 Settlement Agreement presents a comprehensive approach to divestiture of Eversource's generation assets. *See* Exh. A. Section I of the 2015

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<sup>11</sup> The City of Berlin entered into the 2016 Litigation Settlement as to its Section II only, without opposition to Sections I and III, as will be discussed below.

Settlement Agreement provides a general introduction to the Agreement's terms, and a stipulation by the settling parties that the terms of the 2015 Settlement Agreement reflect a fair resolution to the litigation in both the Scrubber and Asset Dockets, and is consistent with all applicable New Hampshire law and policy, including RSA Chapter 374-F. Exh. A at 2-4. Section II of the 2015 Settlement Agreement outlines the technical definitions used throughout the Agreement. *Id.* at 5-9.

Section III.A. of the 2015 Settlement Agreement outlines the so-called "Individual Rate Components" of the post-divestiture rate distribution recovery structure contemplated by the parties. The rate components include the Stranded Cost Recovery Charge (SCRC) and its sub-components, the Rate Reduction Bond (RRB) Charge, or "Part 1," necessary to cover RRB Costs (i.e., the stranded costs resulting from the sale of Eversource generation assets upon divestiture) and a general sub-component, or "Part 2," covering all other Non-Securitized Stranded Costs not being rolled into the Rate Reduction Bonds recovery tranche. *Id.* at 10-11. Section III also specifies that the SCRC shall be recovered as a non-bypassable charge from all customers served by Eversource within its service territory, pursuant to the following schedule: Rate Class LG, 5.75 percent of revenue requirement; Rate Class GV, 20.00 percent of revenue requirement; Rate Class G, 25.00 percent of revenue requirement; Rate Class R, 48.75 percent of revenue requirement; Rate Class OL, 0.50 percent of revenue requirement.

Section III.A. of the 2015 Settlement Agreement further specifies the classes of securitized assets that will be authorized for inclusion in the RRB securitization vehicle. Specifically, "RRBs shall be authorized in an amount sufficient to fund reasonably expected stranded costs, cost and revenue deferrals, transaction costs, transaction advisor fees, tax liabilities, employee protections, tax stabilization payments, decommissioning costs, retirement

costs, environmental costs, and other costs, liabilities, and expenditures set forth in this Agreement.” *Id.* at 11. The Part 2 costs for inclusion in the SCRC for non-securitized recovery, include Independent Power Producer Costs, Purchase Power Agreement Costs, and other “prudently incurred on-going costs (including asset retirement costs) required to maintain and operate any generating asset that Eversource is unable to divest (such as due to a Failed Auction) and prudently incurred decommissioning, environmental, and any other residual costs or liabilities related to such generation assets.” *Id.* at 12.

Section III.B. of the 2015 Settlement Agreement delineates the terms under which Default Service would be provided for Eversource customers. Specifically, default service would be “acquired and provided in accordance with RSA Chapter 369-B until divestiture of [Eversource’s] generating assets” and “[n]o later than six months after the final financial closing resulting from divestiture of [Eversource’s] generating assets, [Eversource] will transition to a competitive procurement process for default service,” consistent with the process determined by the Commission in Docket No. IR 14-338, “Review of Default Service Procurement Processes for Electric Distribution Utilities,” as may subsequently be modified by the Commission. *Id.* at 12-13.

Section III.C. of the 2015 Settlement Agreement specifies the ongoing post-divestiture avoided cost rate to be provided for independent power producers (IPPs), a matter discussed in greater detail in a later section of this Order. Under this section, “avoided cost rates for purchases of IPP power pursuant to PURPA<sup>12</sup> and LEEPA<sup>13</sup> shall be equal to the market price for sales into the ISO-NE power exchange, adjusted for line losses, wheeling costs, and administrative costs.” *Id.* at 13.

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<sup>12</sup> Public Utility Regulatory Policies Act. 16 C.F.R. §824a.

<sup>13</sup> Limited Electrical Energy Producers Act, RSA Chapter 362-A.

Section III.D. of the 2015 Settlement Agreement addresses the recovery of Scrubber costs, for the pollution-control installation at the Merrimack Station plant, defined as “the capital and operations and maintenance expense costs of owning and operating the Scrubber, the previously-deferred costs resulting from the temporary Scrubber rate, and final contractual costs upon payment, among others. The previously-deferred costs resulting from the temporary rate level [for the Scrubber] shall be included in rates based upon an amortization period of seven years.” Furthermore, Eversource, in Section III.D., agrees to forego \$25 million in equity return for the Scrubber, and upon the issuance of the RRBs after divestiture, all costs of the Scrubber will be removed from Default Service rates and placed in the distribution-side SCRC rates. *Id.* at 13.

Sections III.E. and III.F. of the 2015 Settlement Agreement address technical matters related to distribution reliability funding and storm funding. The distribution reliability funding provision of this agreement was addressed in separate orders. Section III.F. specifies that the Major Storm Cost Reserve “shall continue at the current funding levels of \$12 million for the reserve, along with the dedicated funding for the December 2008 ice storm.... [Eversource] may seek a modification to the storm funding level should additional major storms occur.” *Id.* at 15. Section III.G. specifies “Exogenous Events,” which under the terms of the 2015 Settlement Agreement would permit Eversource to seek additional rate adjustments (upwards or downwards), as appropriate. *Id.* at 15-17. Section III.H. specifies that Eversource’s next general distribution rate case may not have rates that take effect prior to July 1, 2017. *Id.* at 17.

Sections IV.A., IV.B., IV.C., and IV.F. of the 2015 Settlement Agreement outline the technical specifics of the process for divestiture undertaken if approved by the Commission, including the retention of an auction expert (Auction Advisor), the oversight of the Commission

throughout the process (“with the Commission retaining such direction and control as it deems necessary”), the identity of the assets to be divested, including fossil-fueled assets, hydroelectric assets, and Eversource’s minority interest in Wyman Unit 4, located in Yarmouth, Maine.

Section IV.D. outlines the approvals expected to be required by Eversource in connection with divestiture transactions. Section IV.E., specifies that Eversource shall retain Power Purchase Agreements (PPAs), including that for the Berlin Biomass Plant, and “sell the energy and capacity from those agreements into the market, with the difference between the contract costs and the market revenues associated with the PPAs’ energy and capacity to be recovered through the SCRC. RECs [Renewable Energy Credits] from such PPAs will be managed prudently to benefit customers.” *Id.* at 22-23.

Section IV.G. of the 2015 Settlement Agreement provides for so-called “failed auction” procedures in the following manner:

Should generation assets be left unsold as a result of the auction process or as a result of the Commission not approving a sale, the Commission shall initiate a new divestiture process for such unsold assets no later than ninety days from the date of the Commission’s order approving the sale of the other generating assets or direct [Eversource] to pursue retirement of such unsold assets in an economic manner, with recovery of the prudent costs of such retirement via the SCRC, including costs such as environmental, decommissioning, penalties imposed based upon capacity obligations, and employee protection costs. Should a second divestiture process also result in a failed auction, the retirement option for any such unsold generating assets will be pursued in an economic manner overseen by the Commission as quickly as reasonably possible. Until such asset is divested or retired, PSNH shall retain the assets, entitlements, or obligations, operate them prudently, and bid the output into the market with the net of costs and revenues included in Part 2 of the SCRC.

*Id.* at 23.

Section IV.H. of the 2015 Settlement Agreement provides for “property tax stabilization payments” to be made to host municipalities for Eversource’s generation assets, including Bow, Portsmouth, Berlin, and Manchester, among others. The payments are designed to protect

property tax revenue streams for those municipalities for a period of time post-divestiture. *Id.* at 23-25.

Section V of the 2015 Settlement Agreement outlines Eversource's clean energy and energy efficiency commitments, specifically; the creation of a Clean Energy Fund with \$5 million in Eversource shareholder monies (not to be recovered from Eversource customers), to be administered in a collaborative process involving Eversource, OEP, and Commission Staff, to be applied to a range of potential clean-energy initiatives. Eversource, in Section V.B., agrees to "work with interested parties to establish and implement increased energy efficiency savings and distributed energy investment targets." *Id.* at 26.

Section VI.A. of the 2015 Settlement Agreement specifies reporting requirements and frameworks for the transitional operation of Eversource's generation assets; Section VI.B. governs the treatment of costs arising from Qualifying Facilities/Independent Power Producers under PURPA, and costs arising from Purchase Power Agreements, and related recovery of stranded costs through the SCRC mechanism. Section VI.C. specifies that Eversource "shall annually file a report and such other information as the Commission shall require for review by the Commission supporting [Eversource's] plant operations and the results of the sale of the output from [Eversource's] plants, entitlements, and purchase obligations. Such filings shall be made on a time schedule to be determined by the Commission." *Id.* at 26-27.

Section VII of the 2015 Settlement Agreement provides for a protection program for Eversource employees whose employment could be affected by divestiture. Employees with representation by IBEW Local 1837 would be granted the protections outlined by the collective bargaining agreement, as modified by a memorandum of understanding. *Id.* at 27-28; 53-59.

Affected Eversource employees not represented by IBEW Local 1837 would be extended the employee protections required by RSA 369-B:3-b. Exh. A at 27.

Section VIII of the 2015 Settlement Agreement specifies that “[s]hould any entity to whom [Eversource] sells its generating assets desire to seek Exempt Wholesale Generator status [under Federal law], the Settling Parties agree that they will support the purchaser’s efforts to obtain any necessary approvals and findings from the Commission and/or the Federal Energy Regulatory Commission, as applicable.” *Id.* at 28.

Section IX of the 2015 Settlement Agreement delineates the technical mechanics of the securitization of stranded costs post-divestiture, for issuance in the RRB vehicle, and for inclusion for rate recovery through the SCRC. *Id.* at 28-34.

Sections X, XI, and XII of the 2015 Settlement Agreement specify that the parties intend that the Scrubber and Asset dockets are to be resolved via the execution of the 2015 Settlement Agreement; that the Commission must issue a final Order and the Legislature must pass enabling legislation for the terms of the 2015 Settlement Agreement to go into effect (SB 221 met the second criterion); and that certain technical legal savings clauses are in effect. *Id.* at 34-36.

### **B. Amendment to the 2015 Settlement Agreement**

The 2015 Settlement Agreement was amended in January 2016. Section IV was modified to provide the structure and details regarding the asset auction. *See* Exh. B.

### **C. 2016 Litigation Settlement**

The parties to the 2016 Litigation Settlement submitted it to compromise disputed issues and to enhance the mechanics of the 2015 Settlement Agreement’s implementation, including by adding clarifications of the 2015 Settlement Agreement’s terms. *See* Exh. C. Parts I and II of the 2016 Litigation Settlement outline: (I) the parties’ agreement that near-term divestiture of

Eversource's generation assets is in the public interest and advances the economy in Eversource's service territory, as well as the ability to attract and retain employment across industries; and (II) that the design of the asset auction process contemplated by the 2015 Settlement Agreement should be determined in a separate proceeding. Exh. C at 1-6.

The provisions of Parts I and II of the 2016 Litigation Settlement are reproduced, verbatim, as follows (note that the naming convention "PSNH" is used in this document, as referred to in Footnote 1 above, and "Settlement Agreement" refers to the 2015 Settlement Agreement):

[PART I].

1. Pursuant to RSA 369-B:3-a, as amended by SB 221 (2015), "divestiture of PSNH's generation plants and securitization of any resulting stranded costs . . . is in the public interest . . ." RSA 369-B:3-a, I.
2. As part of SB 221 (2015), the General Court enacted a "public interest" standard for the Commission's expedited review of the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement (the "Settlement Agreement"). RSA 369-B:3-a, II ("As part of an expedited proceeding, the commission shall review the 2015 settlement proposal and determine whether its terms and conditions are in the public interest.").
3. In addition, RSA 363-B:3-a, II requires that the Commission shall "take into account the impact on all PSNH customer classes," and "consider the impacts on the economy in PSNH's service territory, the ability to attract and retain employment across industries, and whether the proposed rate design fairly allocates the costs of divestiture of PSNH's generation plants among customer classes."
4. Following the submission of direct and rebuttal testimony by all parties, Non-Advocate Staff initiated a further analysis of the estimated net financial impact of divestiture on Eversource's retail customers in order to provide a more complete record to the Commission, and solicited collaboration from the Settling Parties.
5. The Settling Parties and Staff recognize and agree that any projection of customer savings must rely on forecasting of future market and regulatory conditions, and therefore can provide a reasonable directional estimation. In support of the initial settlement between the Company and the state

negotiating team and the Legislature's consideration of SB 221, Mr. Eric Chung of PSNH prepared a long-term (15 year) analysis of the impacts of the Settlement Agreement, including divestiture. Mr. Chung's analysis arrived at an estimate of potential savings based on the comprehensive Settlement Agreement in the range of \$380 million over the initial 5-year period following a near-term divestiture of PSNH's generating assets.

6. Staff consultant, the Brattle Group, conducted a new analysis at the request of Staff and with the Agreement of the Settling Parties regarding the estimated benefits to customers of divestiture and non-divestiture scenarios using updated inputs from industry recognized sources (the "Brattle Analysis") resulting in customer savings of approximately \$165 million (over the initial 5 years), based on a full sale of divestiture assets effective on January 2017.

7. Through a collaborative process, PSNH provided projected cost and operational inputs related to the PSNH generation fleet, which the Settling Parties and Staff agree represent reasonable estimates of those inputs for the near-future in a non-divestiture scenario.

8. Through a collaborative process, the Settling Parties and Staff reached agreement that the commercially available SNL forecasts of natural gas prices and forward capacity prices represent a reasonable projection of future market conditions.

9. The Settling Parties and Staff agree that these agreed-upon inputs and forecasts fall within a reasonable range of projections of near-term conditions in a non-divestiture scenario.

10. Using the agreed upon inputs and forecasts, the Brattle Analysis projects that retail customers will derive economic benefit in the first five years following a prompt divestiture of PSNH's generation assets.

11. The Settling Parties and Staff agree that in light of the economic benefits reasonably expected from divestiture, the prompt divestiture of PSNH's generation assets is in the economic interest of retail customers of PSNH.

12. The Settling Parties and Staff agree that the prompt divestiture of PSNH's generation assets will eliminate customer risks arising from potential future capital costs and future regulatory and environmental compliance costs, and will effectuate the Legislature's intent to "harness the power of competitive markets" set forth in the "Electric Utility Restructuring" enactment in 1996 at RSA 374-F:1, I.

13. The Settling Parties and Staff agree that in light of reasonably expected customer savings, divestiture will have a positive economic impact on

the economy in PSNH's service territory and will not hinder the ability to attract and retain employment across industries.

14. The Settling Parties and Staff agree that divestiture of PSNH's generation assets and securitization of any resulting stranded costs will mitigate the risk of increased migration of retail customers, which would result in increasing default service rates to cover PSNH's cost of owning and operating generation assets.

15. Accordingly, the Settling Parties and Staff agree that the prompt divestiture of PSNH's generation assets is in the public interest.

16. The Settling Parties and Staff agree, consistent with RSA 369-B:3-a, I, that securitization of stranded costs resulting from divestiture of PSNH's generation assets, as set forth in the Settlement Agreement, will result in savings for retail customers and is in the public interest.

17. The Settling Parties and Staff agree that the prompt divestiture of PSNH's generation assets and securitization of the resulting stranded costs will benefit the economy in PSNH's service territory and the ability to attract and retain employment across industries.

*[PART II].*

18. Pursuant to Section IV of the Settlement Agreement, the Settling Parties set forth the objectives of an asset auction. Section IV of the Settlement Agreement further recommends that the Commission retain an expert auction advisor to establish the design and details of an asset auction under the direct supervision of the Commission Staff.

19. The Settling Parties and Staff agree that it is premature to establish a specific auction design prior to the Commission's retention of an expert auction advisor.

20. The Settling Parties and Staff agree that selection of an expert auction advisor by the Commission should be accomplished through a competitive request for proposals ("RFP") process conducted by the Commission with appropriate input from other parties to this proceeding.

21. The Settling Parties and Staff agree that it would be in the interest of ratepayers for the RFP for an auction advisor to commence prior to a final Commission order on the Settlement Agreement and this Litigation Settlement, so long as payment under any contract entered into with an auction advisor is conditioned upon Commission approval of the Settlement Agreement.

22. The Settling Parties and Staff agree that the participation of designated Advocate Staff in the Commission's selection and management of an auction advisor would be in the interests of the Commission, the parties, and ratepayers.

23. Accordingly, pursuant to RSA 363:32, IV and RSA 363:33, the Settling Parties and Staff stipulate to the immediate removal of Advocate Staff's designation with regard to the selection and management of an expert auction advisor. A joint motion of the Settling Parties and Non-Advocate Staff to remove Advocate Staff's designation as outlined above is submitted concurrently with this Litigation Settlement.

24. In order to effectuate the above stipulated agreements, the Settling Parties submit herewith an amendment to Section IV of the Settlement Agreement with regard to the asset auction process. (*Note: These technical amendments are filed in Docket No. DE 14-238 at Exh. B*).

25. In order to simplify the issues presented at hearing, and in recognition of the above stipulated agreements and the amendment to the Settlement Agreement, the Settling Parties and Staff agree that the issue of specific auction design(s) shall be presented in a separate adjudicatory docket to be opened by the Commission rather than in the February hearings in this docket.

Part III of the 2016 Litigation Settlement specifies the parameters for the updated evidentiary presentation of Non-Advocate Staff and the other Settling Parties of the 2016 Litigation Settlement to be presented for the Commission's consideration. Exh. C at 6-7.

## **VII. SETTLEMENT POSITIONS OF THE PARTIES – Docket No. DE 14-238 (QUALIFYING FACILITIES ISSUES EXCEPTED)**

A witness panel provided testimony at hearing in support of the Settlement Agreements. The panel included Leszek Stachow, Assistant Director in the Electric Division of the NHPUC and Dean Murphy, Principal with The Brattle Group, consultant to Non-Advocate Staff; Eric Chung, Director of Revenue Requirements and Regulatory Projects for Eversource Energy; John Antonuk, President of the Liberty Consulting Group, on behalf of the Office of Energy and Planning; Jim Brennan, Finance Director with the Office of Consumer Advocate; and Thomas Frantz, Director of the Electric Division of the NHPUC, for Advocate Staff.

A witness panel testifying about rate design included Senators Bradley and Feltes, and Mr. Chung, Mr. Brennan, Mr. Frantz, and Mr. Antonuk.

A witness panel discussing the REMI Model results demonstrating the economic benefits of the 2015 Settlement Agreement included Mr. Frantz, Mr. Chung, and Billy Leung, Vice President of Regional Economic Models, Incorporated (REMI).

**A. Eversource**

Eversource sought approval of the 2015 Settlement Agreement. Eversource also supported the 2016 Litigation Settlement as a reasonable resolution of outstanding issues. In support of its position, Eversource filed testimony regarding a series of topics, including: general settlement issues (Eric Chung, Exh. G); auction design (John Reed, Exh. H); generation assets (William Smagula, Exh. F); securitization (Philip Lembo and Emilie O'Neil, Exh. I); recovery of stranded costs and avoided costs (James Shuckerow, Exh. J); and rate design (Eric Chung, Exh. G). Eversource representatives were also on panels formed to discuss each of the key issues of the 2015 Settlement Agreement.

Regarding its generation assets, Eversource agreed that there is a range of potential solutions and costs to address future environmental requirements at Merrimack Station, from \$44 million to \$158 million. Tr. 2/2/16 A.M. at 36. Once the generation assets transfer to new owners, Eversource would have no further obligations to support the needs of those owners and would not have any decommissioning responsibilities since Eversource would no longer own the assets. Tr. 2/2/16 A.M. at 40, 43. Eversource testified that it was operating and maintaining the units responsibly, using good utility practices, and conducting necessary maintenance and modest capital investments that would sustain reliable, safe, and efficient operation of the plants.

Eversource assured that it would continue diligent operation and maintenance for reliable service to its customers until the day it transfers ownership. Tr. 2/2/16 A.M. at 44-45.

Some of the costs Eversource anticipates in preparing for the sale of its generation assets include preparation for the auction process, collection of data and information to supply to potential bidders, development of an offering memorandum using consultants, analyses of the properties to determine any environmental concerns, and hiring an agent to facilitate the auction. Tr. 2/2/16 A.M. at 45, 47. Eversource indicated that other similarly run auctions, such as in Connecticut and Massachusetts, went smoothly, with no penalties imposed on the Company. The commissions, rather than the regulated utility, conducted the auctions and were responsible for hiring the successful bidding auction agent. The three entities (the commission, the auction agent, and Eversource) worked together. Eversource cooperated fully and willingly, providing as much support as the commissions and auction agents required. Tr. 2/2/16 A.M. at 57-61.

John J. Reed, Chairman and CEO of Concentric Energy Advisors, testified regarding his assistance in preparing Eversource's generation assets for the sale process. He was retained by Eversource and is not the Commission's advisor. Tr. 2/4/16 A.M. at 13. Mr. Reed discussed a potential mercury issue with respect to the Schiller Station, stating his concern that there are residual amounts of mercury in the pipe ends and other components still on site. In addition, there are small amounts of asbestos, and potentially small amounts of other hazardous materials like PCBs and lead paint. His opinion is that, although not legally required at this time, those matters should be taken care of before a potential sale, which would involve abatement of those conditions, and demolition and disposal of related equipment. Mr. Reed said he believes most bidders would insist that the issues be fully addressed and a clean site assessment issued.

Tr. 2/4/16 A.M. at 7-9. He suggested that neglecting the issues before sale would devalue additional divestiture property. There are interrelationships between Schiller and Newington, and Schiller and Merrimack that argue for those units to be operated in tandem. Therefore, a failed auction of Schiller Station would also put Newington and Merrimack at risk. Tr. 2/4/16 A.M. at 10-11.

Mr. Reed said it would be difficult to know the extent, quantity, and cost to remedy the environmental issues until they are actually undertaken, but he expects remedial costs would be in the \$20 to \$30 million range. Mr. Reed stated his understanding that the remediation, environmental clean-up, decommissioning, and retirement costs are all to be recovered from ratepayers. Tr. 2/4/16 A.M. at 21. He believes that the estimated \$20 to \$30 million for cleanup costs was not included in the estimated stranded costs in this proceeding. To his knowledge, the stranded costs were derived from a La Capra analysis and valued at \$5 million, but did not include environmental liabilities. Tr. 2/4/16 A.M. at 50. Mr. Reed said that the environmental issues of mercury, asbestos, and PCBs at Schiller were discovered in a Phase I Assessment in preparation for the original plans to divest all of PSNH's generating assets in 1998-1999. Counsel for Eversource, Mr. Bersak, clarified the record by stating that the mercury was not discovered, it was deliberately put there by the Company as part of the operation of the plant. Tr. 2/4/16 A.M. at 85. There were no cleanup obligations regarding exposure to toxins at that time, but subsequently, there have been some cleanup activities at the plant and some disposal of mercury during general routine maintenance. Tr. 2/4/16 A.M. at 47. Mr. Reed was not certain if a Phase II Assessment had begun. He clarified that a Phase I Assessment is largely a document-based review. A Phase II Assessment is a physical site assessment which is more invasive; it

may mean that holes are bored in the ground for sampling and testing soil or water. Tr. 2/4/16 A.M. at 48-49.

Mr. Reed speculated that by the time the Commission solicits an auction advisor, the Company would be ready to proceed immediately with the sale without delay. Tr. 2/4/16 A.M. at 55. Mr. Reed anticipated that from the point when the Commission sends a first letter to potential bidders asking them to submit a response, to signing an asset sales agreement (not closing) to come back to the Commission for approval is typically four to six months. He also predicted that after an auction agent is appointed and the Commission has fully approved the process, an early interest letter can issue within a couple of days. Approval to closing could be a matter of days. Tr. 2/4/16 A.M. at 58, 80-81.

Mr. Reed said that Eversource should not ever have to worry about forward capacity market penalties being assessed to it from an asset withdrawing from the capacity market because the risk always goes with the purchaser; the purchaser will make the decision whether to retire the asset. There is always going to be an “assumed liability” section to an asset sale agreement that will protect Eversource. Tr. 2/4/16 A.M. at 66-67. Mr. Reed said that “the clarity offered by the [2015 Settlement] Agreement significantly reduces regulatory risk and uncertainty.” *See* Exh. H at 19. He testified that the 2015 Settlement Agreement is clear, and that it should be approved with a finding that “proceeding promptly with divestiture is in the public interest.” Tr. 2/4/16 A.M. at 70. Mr. Reed emphasized that although the Commission is to retain the auction manager and provide direction, the auction is, and in his opinion should be, a cooperative process. Tr. 2/4/16 A.M. at 71-73. Mr. Reed stated that the 2015 Settlement Agreement was more progressive than some in other states regarding addressing the issue of

retirement or securitization in the event of a failed auction. The agreement contains more protections for, and is more beneficial to, ratepayers than others he has seen. Tr. 2/4/16 A.M. at 77.

Philip Lembo, Treasurer of Eversource, and Emilie O'Neil, Director of Corporate Finance and Cash Management of Eversource, testified as to the securitization issue. Mr. Lembo testified that New Hampshire law states that securitization must not occur until after the divestiture when stranded costs are determined. Tr. 2/4/16 A.M. at 92. The Eversource witnesses explained how the securitization process would work regarding the PSNH/Eversource assets. Tr. 2/4/16 A.M. at 93, 95-97, 106-108. Ms. O'Neil reminded the Commission that it had participated in securitizations, and issued financing orders, on two other PSNH dockets. Tr. 2/4/16 A.M. at 108. Ms. O'Neil testified that once the assets are divested and stranded costs are known, the Company may move forward with securitization. Tr. 2/4/16 A.M. at 89. In order to determine the stranded costs, the property needs to be sold or retired. Tr. 2/4/16 A.M. at 98. Ms. O'Neil stated that if the property were retired, any incurred ongoing costs, such as environmental or decommissioning, would be added to Part 2 stranded costs and would not be securitized, absent new legislation. RSA 369-B says that only stranded costs resulting from the divestiture of all or some of PSNH's generation assets may be securitized. Tr. 2/4/16 A.M. at 98-104. The 2015 Settlement Agreement states that "asset sales may require consent of certain lenders under PSNH's existing credit agreements." Ms. O'Neil explained that PSNH has mortgage indentures secured in part by the generation plants. Once the generation plants are sold, Eversource must have assets sufficient to provide security to the lenders. She stated that Eversource has sufficient assets remaining to secure the loans and execute documents releasing the generation assets from indenture. Tr. 2/4/16 A.M. at 90.

## **B. Governor's Office of Energy and Planning**

The OEP stated that the 2015 Settlement Agreement represents a balanced and reasonable resolution to long-standing adversarial issues and provides a carefully crafted framework for the Commission to approve divestiture. It achieves the Legislative mandates of RSA 374-F to restructure the electric industry to a fully-competitive market. It brings a conclusion to contentious prudency issues regarding the Scrubber, and its inherent significant risk to ratepayers. It provides protections for affected employees as required by RSA 369-B:3-b, and potentially creates local jobs. In addition, it provides a rate design that is fair and reasonable, recognizing the current imbalance between migrated and non-migrated consumers. The OEP supports the divestiture and securitization matters as outlined in the 2015 Settlement Agreement. Tr. 2/4/16 P.M. at 45-48.

## **C. Senator Dan Feltes**

Senator Dan Feltes of Concord was one of the key sponsors of the 2015 enactments in the Legislature, and was also a signatory to both the 2015 Settlement Agreement and the 2016 Litigation Settlement. Together with Senator Bradley, Senator Feltes submitted written testimony. *See* Exh. O and Exh. P. Senator Feltes also provided oral testimony in support of the 2015 Settlement Agreement, specifically regarding rate design, at hearing. Tr. 2/3/16 A.M. at 68-75. Finally, he filed a closing statement jointly with Senator Bradley on February 4, 2016, later joined by Representative Moffet, reiterating their support of the 2015 Settlement Agreement. Senator Feltes stated that the Senators supported the 2015 Settlement Agreement as a global resolution of all the issues. He testified that the rate design was an important component that will help ensure positive economic impacts in Eversource's service territory. He encouraged the Commission to specifically consider the provisions related to municipal property tax

stabilization, in addition to customer savings, in terms of impact. In addition, Senator Feltes pointed to certain protections for Eversource generation workers (*see* Appendix B to Settlement). Tr. 2/3/16 A.M. at 69. Senator Feltes expressed his support for the rate design in the 2015 Settlement Agreement. *See* Attachment A to Exh. P; Tr. 2/3/16 A.M. at 70.

Senator Feltes stated that the 2015 Settlement Agreement is in the public interest and encouraged Commission approval. Tr. 2/3/16 A.M. at 71. Senator Feltes also said that it is the job of the Senate to represent everyone, and the 2015 Settlement Agreement is appropriately balanced to represent everyone. It reflects the interests of businesses, residential customers, and the stakeholders that signed on to it to get a balanced result. Tr. 2/3/16 A.M. at 90. Senator Feltes said that at this time, under the current rate design, residential customers are disproportionately responsible for costs of the Scrubber. He stated that now we are “trying to make the best of a bad situation” and under the 2015 Settlement Agreement, move away from an equi-proportional rate design. He defined “equi-proportional” in the context of the stranded cost charge as “the same energy unit . . . cost, regardless of the customer class.” He asserted that the 2015 Settlement Agreement rate design is fair. Tr. 2/3/16 A.M. at 93-94. Senator Feltes stated that “stranded costs” as part of the costs of divestiture referred to in RSA 369-B:3-a, II “include, by statute, stranded cost deferrals, transaction costs, tax liabilities, employee protections, payments in lieu of taxes, and other expenditures as contemplated by the 2015 Settlement [Agreement] proposal, if approved by the Commission.” He confirmed that certain PPAs are part of those divestiture costs. Tr. 2/3/16 A.M. at 125-126. Senator Feltes asserted the way they were dealt with in the settlement will help facilitate competition, ultimately helping the economy in Eversource’s service territory. Other positive impacts resulting from the 2015 Settlement Agreement are comprehensive worker protections as the Eversource plants are divested, and how

municipalities within Eversource's service territories are affected in terms of property tax stabilization.

**D. Senator Jeb Bradley**

Senator Jeb Bradley of Wolfeboro was one of the key sponsors of the 2015 enactments in the Legislature, and was also a signatory to both the 2015 Settlement Agreement and the 2016 Litigation Settlement. Together with Senator Feltes, Senator Bradley sponsored written testimony. *See* Exh. O and Exh. P. Senator Bradley also provided oral testimony in support of the Settlement Agreements, specifically regarding rate design, at hearing. Tr. 2/3/16 A.M. at 72-74. Finally, he filed a closing statement jointly with Senator Feltes on February 4, 2016, later joined by Representative Moffet, reiterating their support of the comprehensive settlement. Senator Bradley indicated that the rate design should not be changed; to change it would change the dynamics of the settlement. Tr. 2/3/16 A.M. at 72. He testified that the high cost of energy in New Hampshire is a significant impediment to job growth, causing blue chip firms to relocate. According to the Senator, the settlement helps propel the State forward. Tr. 2/3/16 A.M. at 73. Senator Bradley stated it is important to allocate stranded costs in a way that is fair to residential customers. Tr. 2/3/16 A.M. at 74.

Senator Bradley testified that given the high electric rates within Eversource's service territory, the global settlement is the most equitable way of allocating all of the costs to all customer classes. He stated his belief that the rate design will protect the economy of the State of New Hampshire and the job-producing sector, while being fair to residential ratepayers whom he believes will see lower rates. Tr. 2/3/16 A.M. at 126-127. He stated that "the battle of the Scrubber should be put behind us and that we need to securitize those costs when interest rates

are as low as possible.” He indicated that the settlement was the best way to achieve that, which is why the Legislature adopted Senate Bill 221. Tr. 2/3/16 A.M. at 90-91.

**E. Representative Howard Moffett**

In his July 30, 2015, motion to intervene, Representative Howard Moffett explained his role in hearing and deliberating on SB 221 in the Legislature. Representative Moffet joined in and agreed with the joint closing statement of Senators Bradley and Feltes filed on February 4, 2016. Tr. 2/4/16 P.M. at 44.

**F. Representative Frank Edelblut**

In his July 1, 2015, motion to intervene, Representative Frank Edelblut indicated that he had “a material interest in ensuring that the underlying intent of the enabling legislation is preserved through the hearing and possible implementation of the [2015] Settlement Agreement,” having been involved in the pertinent negotiations. Representative Edelblut did not express any further position regarding the 2015 Settlement Agreement.

**G. Michael Harrington**

Mr. Harrington did not support the 2015 Settlement Agreement. His primary concern was the treatment of PPAs between Eversource and the Burgess Biomass Generating Facility and the Lempster Wind Facility. Mr. Harrington argued that during the hearing, it was implied that a portion of the 2015 Settlement Agreement could not be modified without destroying the entire Agreement. Mr. Harrington asserted that this premise is wrong, and that RSA 369-B:3-a, II specifically requires the Commission to determine whether the agreements meet the public interest standard. He pointed out that the Commission has a long history of modifying proposed settlement agreements, even though they were accepted by the settling parties. Mr. Harrington asserted that the risk associated with generation should shift to stockholders instead of

ratepayers. He said that PSNH/Eversource, and the stockholders (who have a choice to be associated with Eversource) should have to deal with the consequences of their decisions.

Harrington Comments (2/4/16).

#### **H. Conservation Law Foundation**

CLF, a settling party, supported the divestiture of Eversource's generating assets to facilitate moving New Hampshire's electric generating sector to a fully competitive market. Tr. 2/2/16 A.M. at 23-24. CLF stated that one of the essential benefits of divestiture will be relieving ratepayers of the risk of high capital expenditures and environmental compliance costs associated with Eversource's aging fleet of fossil-fuel electric generating facilities. CLF Closing Statement (2/5/16).

#### **I. IBEW Local 1837**

Aside from having signed the 2015 Settlement Agreement and 2016 Litigation Settlement, thereby indicating its support, IBEW Local 1837 did not further elaborate its position regarding the Settlement Agreements during this proceeding.

#### **J. NEPGA and RESA**

NEPGA indicated its support of divestiture leading to a fully-competitive electric market in New Hampshire. NEPGA expressed concern regarding the competitive procurement process. Tr. 2/2/16 A.M. at 29. On July 17, 2015, RESA witness Daniel Allegretti, an employee of RESA member Exelon Corp., participated in the joint pre-filed testimony with NEPGA witness Dan Dolan. *See* Exh. R., Tr. 2/3/16 A.M. at 50. Messrs. Allegretti and Dolan also testified jointly at the hearing. RESA and NEPGA strongly supported divestiture of Eversource generation assets in order to end the bifurcated market, to shift risk away from consumers, and to provide transparency and competition. Tr. 2/3/16 A.M. at 50-51. RESA and NEPGA initially

participated in settlement negotiations but withdrew their support of the Agreement. They testified that “through divestiture the investors, not consumers, bear the risk of capital investment. This is the most compelling reason to move forward with divestiture.” Exh. R at 11. RESA and NEPGA testified that they continue to be supportive of the asset divestiture as a positive and helpful move in the right direction. They conceded that they may have overstated in their pre-filed testimony the argument for completion of restructuring through this settlement and that the goals outlined in their pre-filed testimony may not be fully attainable at this time. RESA and NEPGA stated that potential for additional stranded costs in the future is possible. Tr. 2/3/16 A.M. at 52. RESA and NEPGA were very concerned that future power purchase agreement commitments for fixed quantities of power could create stranded costs that might impede restructuring. These concerns were the reason they withdrew from the settlement.

RESA and NEPGA further testified that they anticipated Eversource would procure default service for the benefit of its customers through wholesale contracts. They believed, however, that contracts would be for competitively-bid full-requirements, load-following service rather than commitments for fixed quantities of power not tied to default service. Fixed-quantity power purchase agreements have a different implication for incentives in restructuring than the type of default service procurement they anticipated would take place under the settlement. They stated their concern that consumers would bear the costs and risks of further long-term obligations entered into by Eversource. Tr. 2/3/16 A.M. at 55-56. RESA and NEPGA indicated that it is their hope the Commission would include in its order a statement that default service customers should receive their power and their supply in an open, competitive, and transparent manner. Tr. 2/3/16 A.M. at 64, Tr. 2/4/16 P.M. at 16.

**K. The Sierra Club**

At hearing, the Sierra Club indicated that it neither supported nor opposed the 2015 Settlement Agreement. The Sierra Club argued that the long-term economic prospects for the fossil fuel generation assets of Eversource's generation fleet were not good, due to upcoming environmental compliance capital expenditures expected by the Sierra Club, and that divestiture itself was not a sufficient move away from fossil-fueled generation. The Sierra Club also expressed concerns regarding the potential costs of Schiller Station mercury, asbestos, and PCB remediation matters. Tr. 2/4/16 P.M. at 27-28.

**L. TransCanada Power Marketing Ltd. And TransCanada Hydro Northeast Inc.**

Aside from having executed the 2015 Settlement Agreement and the 2016 Litigation Settlement, TransCanada did not further elaborate its position regarding the 2015 Settlement Agreement.

**M. New Hampshire CleanTech Council**

Aside from having executed both the 2015 Settlement Agreement and the 2016 Litigation Settlement, the NHCTC did not indicate any specific positions regarding its support for these Settlements, beyond those outlined in the documents themselves.

**N. City of Berlin**

The City of Berlin was a signatory to the entire 2015 Settlement Agreement. With regard to the 2016 Litigation Settlement, the City of Berlin was a signatory to Part II only (relating to the features of auction design). The City of Berlin offered no position on the question of divestiture itself, but expressed a desire that the existing power purchase agreement with Burgess Biomass remain protected. Tr. 2/2/16 A.M. at 24-24. The City of Berlin also had an expectation that issues related to auction design would be addressed in the separate proceeding contemplated

by the 2016 Litigation Settlement. *Id.* The City of Berlin stated that its main concern is to protect the tax base of North Country communities. Tr. 2/4/16 P.M. at 40. The City supports the Agreements as long as the Burgess Biomass PPA will not be divested. If revisions regarding the PPA are revised, then the City may consider withdrawing its support. Tr. 2/4/16 P.M. at 42.

**O. Town of Gorham**

The Town of Gorham was not a signatory to either the 2015 Settlement Agreement or the 2016 Litigation Settlement. However, the Town of Gorham offered general comments at hearing, noting that protection of Gorham's tax base and development of a fair and transparent auction process were of great importance to that municipality. Tr. 2/4/16 P.M. at 40-44. Gorham also indicated no official position regarding divestiture itself, but expressed the same concern regarding the Burgess Biomass PPA as did the City of Berlin. Tr. 2/2/16 A.M. at 24-25, Tr. 2/4/16 P.M. at 42.

**P. City of Manchester**

The City of Manchester did not indicate any position regarding the Settlement Agreements.

**Q. Pentti J. Aalto**

Mr. Aalto, an intervenor ratepayer whose business is as an energy systems consultant, did not oppose the sale of Eversource assets, but suggested that there may be other options that would provide more value to customers. Tr. 2/2/16 A.M. at 26. He took no position on the prudence issue. Tr. 2/4/16 A.M. at 132. Mr. Aalto suggested alternatives to the settlement, one of which was securitizing all of the assets, instead of selling them, and having the Company continue to operate them as fully depreciated assets, which Mr. Aalto admitted might require changes to statute. He suggested other options might be (1) to sell the assets in a reserve auction

instead of an absolute auction; or (2) to sell the assets under a contract that would have a portion of the revenues from the new owner committed to customers to support the stranded cost payments going forward. Tr. 2/4/16 A.M. at 133-134. Mr. Aalto stated that while he does not have an issue with the basic concept of selling the plants, he would like to maximize the benefit to customers. Tr. 2/4/16 P.M. at 26.

**R. Terrance M. Cronin**

Attorney Cunningham appeared to speak for Mr. Cronin, an intervening ratepayer. Mr. Cunningham stated that “this Settlement Agreement was not competently done. It wouldn’t satisfy the standards of any competent law office that had to draft an agreement that is protective of ratepayers. . . . [N]ot only is the Settlement Agreement not competently prepared, it didn’t satisfy the law.” Tr. 2/4/16 P.M. at 18-19. Mr. Cunningham expressed concerns about a fair rate design and term for residential ratepayers. He argued regarding stranded costs that the settlement is flawed and contrary to RSA 374-F:3, XII(d). He requested that the Commission fix the costs and set an end-date so residential ratepayers will know what they are facing. Tr. 2/2/16 A.M. at 26-29. During the hearing, Mr. Cronin read testimony supplemental to what he pre-filed. He opened by stating he opposed the 2015 Settlement Agreement but knew that divestiture and restructuring were urgent and important. He claimed the Scrubber prudence issues had not been addressed to his satisfaction. He also asserted that including the Burgess Biomass PPA in stranded costs was unfair and not in the public interest. Mr. Cronin suggested that the settling parties had made financial contributions to certain senators in exchange for their support, and claimed that the settlement negotiations were not diligently explored or negotiated, were held in secret with a lack of transparency, and caused harm to the public interest. Mr. Cronin stated that

it is urgent to reach a just and reasonable settlement that is in the public interest. Tr. 2/4/16 A.M. at 116-119.

**S. Business and Industry Association**

The BIA indicated that the proposed rate design in the 2015 Settlement Agreement is the fairest approach following divestiture, and urged the Commission to approve the rate design in the 2015 Settlement Agreement. BIA Closing Statement (2/4/16).

**T. North American Power and Gas, LLC**

North American Power and Gas, LLC, did not indicate any position regarding the Settlement Agreements.

**U. OCA**

The OCA stated that the rate design in the 2015 Settlement Agreement brings significant benefits to Eversource residential default service customers. The OCA indicated that the determination of stranded costs, securitization, and rate design called for in the 2015 Settlement Agreement is far more fair than the status quo and is a significant benefit to Eversource default service ratepayers. The OCA agreed that through the settlement, the industry is moving from a position where residential ratepayers carry 65 percent of a large and unknown amount of costs to one where they will carry 48 percent of a known and capped amount. Tr. 2/3/16 A.M. at 137-138. The risk of plant ownership is transferred away from residential customers to the market and implements Legislation in favor of competition. The OCA stated that the settlement is a better way to manage the economic burdens of Eversource generation assets. Tr. 2/4/16 P.M. at 39. For those reasons, the OCA supports the 2015 Settlement Agreement. Tr. 2/3/16 A.M. at 79-80. The OCA commented that it is premature at this juncture for the Commission to require environmental remediation with the costs allocated to ratepayers. The OCA argued that the

Commission should wait for the recommendation of an Auction Manager regarding how to proceed to get the best possible value for the plants. Tr. 2/4/16 P.M. at 39.

#### **V. Advocate Staff**

Advocate Staff supported both the 2015 Settlement Agreement and the 2016 Litigation Settlement. Regarding the issue of rate design, Mr. Frantz testified that he believes the rate design to be fair. Mr. Frantz reminded the Commission and parties during his testimony that during the 1999-2000 settlement period, everyone was a customer of Eversource - there was no retail choice, so everyone contributed to and took part in generation offerings from the Company. At that time, it made sense to have an equi-proportional rate design for stranded costs. Migration reports indicate that it is different today, and the 2015 Settlement Agreement incorporates a fair rate design in today's market. Tr. 2/3/16 A.M. at 77. Mr. Frantz said that over 90 percent of large commercial class customers get their energy service from a competitive electric power supplier; between 70 and 80 percent of GV-class customers are in the market; and approximately 80 percent of residential customers receive default service from the Company. The rate design in the 2015 Settlement Agreement is a product of settlement negotiations. *Id.* at 77-78, 143.

Mr. Leung testified that REMI developed an economic modeling program to assist governments in determining economic impacts of various government policies. Advocate Staff asked REMI to model the impact of various energy cost savings by customer class on the New Hampshire economy. Over a 5-year period from 2017 through 2021, the results of the model showed a net positive impact to the New Hampshire economy of a total employment gain of 1,658 man years of employment. It grew the economy, increased population by 2,759 people, growing the labor force by 1,733 people, and added personal income of \$188 million in the New Hampshire economy. Mr. Leung testified that there was also additional growth in the

commercial and industrial sectors. Tr. 2/3/16 P.M. at 40-42. Mr. Frantz agreed that looking forward to a new competitive world where Eversource is fully divested, will result in lower rates. He stated that, more importantly, divestiture shifts the risk and prudence determinations where they were intended in electric restructuring: away from customers and toward generators and suppliers in the wholesale market. *Id.* at 73.

#### **W. Non-Advocate Staff**

Non-Advocate Staff conducted an independent economic analysis comparing the cost implications of divesting Eversource's generation assets to retaining them. Exh. D. at 3. Staff had concerns with Eversource's analysis of customer savings resulting from the 2015 Settlement Agreement. Staff believed that additional analysis was necessary to compare divestiture with the status quo. Staff also believed that updated data was necessary to more accurately determine the status quo. *Id.* at 5. To that end, Staff hired the Brattle Group to perform an analysis. That analysis indicated an estimated average nominal savings of \$33.0 million per year, or \$165 million total, over the five year period 2017-2021 following divestiture. *Id.* at 6; Exh. C at 3; Tr. 2/2/16 P.M. at 23-152. Based on the Brattle Group analysis, Staff supported the 2016 Litigation Settlement and the near-term divestiture of Eversource's generation assets as being in the public interest. Exh. D at 3-5.

As set forth in the 2016 Litigation Settlement, Staff supported a modification to the 2015 Settlement Agreement's treatment of the auction process. Staff supported allowing the Auction Manager to guide the auction process under the auspices of the Commission, especially with regard to potential advisability of pre-auction environmental remediation. *Id.* at 6-7. As a result of the 2016 Litigation Settlement, Staff believed that there are better safeguards for

municipalities. *Id.* at 10. However, from Staff's point of view, the extent of environmental remediation required at Schiller Station remains unresolved by the 2016 Litigation Settlement.

Staff stated that the 2016 Litigation Settlement did not resolve the issue of recovery of stranded costs in the fairest manner among rate classes. Exh. D at 7. While Staff believed that the allocation set forth in the 2015 Settlement Agreement falls within a spectrum of fairness, Staff asserted that it would be better and more in line with traditional rate-making required by RSA 378:3 to allocate the non-residential portion of stranded costs equally among non-residential rate classes. *Id.* at 7-8; Exh. S at 12-21; Tr. 2/3/16 P.M. at 10, 13, 35 and 36.

#### **VIII. COMMISSION ANALYSIS – Docket No. DE 14-238 (QUALIFYING FACILITY ISSUES EXCEPTED)**

We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002); *see* RSA 541-A:31, V(a) (“informal disposition may be made of any contested case ... by stipulation [or] agreed settlement”). Even when all parties join a settlement, however, we must independently determine that the result comports with “applicable standards.” *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 at 48 (May 29, 2009) (“we must scrutinize settlement agreements thoroughly regardless of whether a party appears at hearing to raise objections”). We conduct this analysis through a transparent process to ensure that a just and reasonable result has been reached. *Id.*; *see* N.H. Code Admin. Rules Puc 203.20(b) (“The commission shall approve a disposition of any contested case by stipulation [or] settlement ... if it determines that the result is just and reasonable and serves the public interest”).

The “applicable standard” governing the proposed dual settlements in this proceeding relating to the question of divestiture is that of SB 221, *i.e.*, RSA 369-B:3-a, II, which specifies that: “[T]he [C]ommission shall review the 2015 settlement proposal and determine whether its terms and conditions are in the public interest ...” RSA 369-B:3-a, II. As part of our public interest review of the 2015 Settlement Agreement, we must take into account the impact on all Eversource customer classes, the impacts on the economy in Eversource’s service territory, the ability to attract and retain employment across industries, and whether the rate design proposed in the 2015 Settlement Agreement fairly allocates the costs of divestiture among Eversource’s customer classes. *Id.*

As we interpret the 2016 Litigation Settlement to be a vehicle for the implementation of the 2015 Settlement Agreement referred to in SB 221, we will also apply this public interest standard to our concurrent review of the 2016 Litigation Settlement terms. We also take due notice of the Legislature’s finding that the divestiture of Eversource’s generation assets and securitization of any resulting stranded costs is in the public interest.

In addition to the standard of review applied by SB 221, we incorporate the general Restructuring Principles of RSA Chapter 374-F, which indicate the Legislature’s policy direction in favor of the divestiture of Eversource’s generation assets over the last 20 years. The Commission views the enactment of SB 221 to be the culmination of the process begun by RSA Chapter 374-F in 1996 (albeit with some interruption in the mid-2000s). As such, we consider RSA Chapter 374-F to still outline the terms by which Eversource and the other electric utilities of New Hampshire shall provide service to their customers, in a general framework that goes beyond the specifics of the 2015 Settlement Agreement and the 2016 Litigation Settlement.

Within this framework, we must also give consideration as to whether the rates to be assessed by Eversource will be just and reasonable, pursuant to RSA Chapter 378.

The process leading up to a settlement is one relevant factor in determining whether we should approve the 2015 Settlement Agreement and the 2016 Litigation Settlement. *EnergyNorth Natural Gas*, Order No. 24,972 (May 29, 2009) at 48. That parties involved in a settlement represent a diversity of interests demonstrates that the issues were diligently explored and negotiated at length. Such a demonstration provides a basis for concluding that the results of the settlement are reasonable and in the public interest. *See Public Service Company of New Hampshire*, Order No. 25,123 at 29 (June 28, 2010). The development of the 2015 Settlement Agreement united a broad array of parties including Eversource, State agencies, IBEW Local 1837, private-sector market participants, and various advocacy organizations and was accomplished in an inclusive fashion. The imprimatur of the Legislature in enacting SB 221, and the Legislative finding that divestiture is in the public interest at this time, is further evidence of the expansiveness of the process through which the 2015 Settlement Agreement was brought to our attention. The Legislature had ample opportunity for debate, and members of the public made their viewpoints known regarding SB 221 and the public-interest finding. Furthermore, we note that the development of the 2016 Litigation Settlement was accomplished through a collaborative process among many of the parties, including Non-Advocate Staff, and was subject to inspection by non-signatories during the Settlement hearings as well. These two Agreements involved a balanced compromise among parties with a great diversity of interests, and represent a compelling effort to resolve various technically-complex issues related to the practicalities of divestiture of Eversource's generation assets.

Within the terms of the 2015 Settlement Agreement and 2016 Litigation Settlement, all signatory parties agreed that the terms of the Agreements represented a fair resolution of the matters considered within the Scrubber and Asset Dockets, and also met the statutory standards of SB 221, RSA Chapter 374-F, and allied statutes. *See* Exh. A at 4 and Exh. C at 3-4.

We have independently analyzed the record evidence and the relevant statutes, and we have arrived at this same conclusion. We find that approval and implementation of the 2015 Settlement Agreement and 2016 Litigation Settlement serve the public interest as defined by the Legislature in SB 221, Chapter 374-F, and related statutes. First, the record before us supports a finding that divestiture and securitization should have an overall positive impact on all customer classes. In this regard, we note that the BIA supported SB 221 and was a party to the 2015 Settlement Agreement. The BIA represents hundreds of businesses across the State, including businesses that use Eversource energy service, those that have migrated to competitive suppliers, and those that migrate back-and-forth. BIA Closing Statement (2/4/16). While those customers who do not take energy service from Eversource will pay stranded cost charges related to generation, they should benefit from a more fully competitive market for the generation of power. In addition, for Eversource energy service customers, Dr. Murphy's customer savings analysis indicated a base-case customer savings figure of approximately \$165 million over the initial 5 years, based on a full sale of divestiture assets effective January 2017. Exh. C at 3; Tr. 2/2/16 P.M. at 23-152. Dr. Murphy's analysis was developed by Non-Advocate Staff, in collaboration with Eversource and the oversight of the various parties to the 2016 Litigation Settlement, using actual data points regarding Eversource's generation fleet. While this analysis is not a guarantee that divestiture of Eversource's assets will provide economic savings to

Eversource energy customers, it nonetheless provides a directional indication from economic experts that such savings are likely. Tr. 2/2/16 P.M. at 128-29.

Second, the evidence in the record indicates that there will be potential positive economic impact for the New Hampshire economy, and by necessity, within Eversource's service territory. Lower Eversource rates will tend to benefit economic activity in the Eversource service territory, and, in turn, stimulate the State's ability to attract and retain jobs, as testified to by Messrs. Leung and Frantz. Tr. 2/3/16 P.M. at 37-87. Mr. Leung's analysis showed that over a 5-year period from 2017 through 2021 there would likely be a total employment gain of 1,658 man years of employment. Population may increase by 2,759 people while the labor force would grow by 1,733 people. According to Mr. Leung's analysis, an additional \$188 million of personal income should be added to the New Hampshire economy, and the commercial and industrial sectors should grow. Tr. 2/3/16 P.M. at 40-42.

Third, the rate design contemplated by the 2015 Settlement Agreement, as incorporated by the terms of SB 221, represents a careful balancing of the interests of various rate classes, including the various employers of our State. The rate design proposed in the 2015 Settlement Agreement is fair, and will aid in economic development. We received evidence of this fairness from State representatives, representatives of industry, and Staff. *See* Tr. 2/3/16 A.M. at 69-71 (Senator Feltes) and BIA Closing Statement (2/4/16); Exh D at 7-8; Exh. S at 12-21; Tr. 2/3/16 P.M. at 10, 13, 35 and 36. Accordingly, we find the rate design to be a just and reasonable settlement outcome, and in keeping with the purposes of SB 221, RSA Chapter 374-F, and RSA Chapter 378.

Divestiture may unlock the potential of market cost-discipline arising from competitive dynamics in the New England energy markets. Furthermore, divestiture will remove the

operational risks, including the risks of future upswings in capital-expenditure requirements for Eversource's generation fleet. We find that this should, in the long run, protect ratepayers from costly rate shocks related to environmental-compliance requirements and the ongoing need to replace or upgrade obsolescent equipment. *See* Tr. 2/2/16 P.M. at 23-151; Tr. 2/3/16 A.M. at 67-145.

We have reviewed the technical aspects of the 2015 Settlement Agreement and 2016 Litigation Settlement and find that their provisions properly address the need to manage the divestiture process in an efficient and reasonable manner. We believe that it is wise to defer the questions related to the auction design to a separate proceeding, as informed by the advice to be provided by the Auction Advisor. In particular, we find that it is prudent to defer questions related to the Schiller plant issues to the considered judgment of the Auction Advisor.

Furthermore, we find that the manner of retaining an Auction Advisor contemplated by the 2016 Litigation Settlement will ensure a fair, transparent, and effective process. We expect that the securitization of stranded costs, and the management of the Rate Reduction Bonds, will be properly handled according to industry best practices in keeping with the provisions delineated in the 2015 Settlement Agreement and SB 221. Furthermore, we expect that these Rate Reduction Bonds, in the current low-interest rate environment, will serve to ameliorate the long-term burden of stranded costs, as indicated by various parties supporting this approach, including Mr. Lembo and Ms. O'Neil. Tr. 2/4/16 A.M. at 87-112. In particular, we focus on the fact that the Rate Reduction Bonds will finance the stranded cost balance at a debt-based interest rate that is expected to be much lower than the return on equity that Eversource would receive if its generation assets were to remain in rate base.

The 2015 Settlement Agreement provides for the \$5 million clean energy fund, and foregoing recovery of \$25 million of previously deferred equity related to the Merrimack Station Scrubber. Those contributions by Eversource shareholders represent additional support for a finding that the Settlement Agreements are in the public interest, insofar as such contributions would not necessarily be required by applicable law, and in the case of the \$25 million, will serve to reduce stranded costs. The \$5 million Clean Energy Fund will serve a valuable purpose in providing seed money for further demand-side initiatives throughout the State.

Other elements of the 2015 Settlement Agreement militating in favor of a public interest finding include the employee protection clauses, as required by SB 221, the property tax protection provisions for municipalities, and the provisions governing the handling of a so-called “failed auction” for any of Eversource’s assets. Those provisions will protect the interests of Eversource ratepayers, employees, and host municipalities in a balanced fashion, and also provide ancillary economic benefits to Eversource ratepayers, and to the economy of the State.

## **IX. POSITIONS OF THE PARTIES – QUALIFYING FACILITIES**

### **A. Granite State Hydropower Association**

GSHA argued that Sections III.C. and VI.B. of the 2015 Settlement Agreement describing “avoided costs” with reference to ISO-NE market prices are inconsistent with the Public Utility Regulatory Policies Act (PURPA) and the FERC’s regulations adopted under PURPA, which require that the rates paid to Qualifying Facilities (QFs) for mandatory power purchases must not discriminate against QFs or exceed “the incremental cost to the electric utility of alternative electric energy.” GSHA Memorandum of Law at 2 (citing 16 U.S.C. §824a-3(b)). GSHA President Richard Norman testified that the “[i]ncremental cost of alternative electric energy” is defined as “the cost to the electric utility of the electric energy

which, but for the purchase from such . . . small power producer, such utility would generate or purchase from another source.” Exh. K at 5 (citing 16 U.S.C. §824a-3(d)). According to Mr. Norman, FERC’s regulations provide that payments for QF power purchases will satisfy federal regulatory rate requirements if they are equal to the purchasing utility’s avoided costs determined after consideration of enumerated factors, including, among other things, the expected or demonstrated reliability of the QF, and the savings resulting from variations in line losses from those that would have existed in the absence of purchases from the QF. *Id.* (citing 18 C.F.R. §292.304(a)(2) and (e)).

In his prefiled testimony, Mr. Norman argued that because Eversource uses QF power purchases to serve its default service load, rather than reselling that power into the ISO-NE energy markets, the value of QF power used in that manner should reflect Eversource’s actual avoided costs, determined based on its actual costs of producing energy and any additional energy purchases needed to serve default service load. *Id.* at 12. Mr. Norman asserted that Eversource has not provided information regarding its costs incurred in producing energy and purchasing additional energy, yet these costs would determine its avoided costs and establish the prices it should pay for QF power purchases to meet its PURPA obligations during the period of time before assets are divested, referred to by Mr. Norman as the “hybrid period.” *Id.* at 12-13.

GSHA further argued that Eversource’s contention that the ISO-NE real-time energy market price should be used as the “market price” for avoided costs, payable to QFs and IPPs under the 1999 Settlement Agreement, “is unpersuasive because the real time market did not even exist in 1999.” GSHA Memorandum of Law at 3-4. According to Mr. Norman, because real-time market prices did not exist in 1999, the parties to the 1999 Settlement Agreement could not have intended that those prices would be used to determine Eversource’s payments to QFs.

Exh. K at 8. At that time, ISO-NE administered the New England electricity market using a single financial settlement procedure, and IPPs selling energy were paid that single price. *Id.* at 8-9. Mr. Norman testified that, beginning in 2001, ISO-NE adopted and began to implement its “Standard Market Design,” that used a multi-settlement system that included both a day-ahead and a real-time energy market price. *Id.* at 9. Mr. Norman stated his belief that, because of these developments in market design since approval of the 1999 Settlement Agreement, there does not currently exist a single, commonly-accepted definition of “market price.” *Id.*

Mr. Norman proposed, however, that in the absence of information to determine a precise avoided cost rate, and as a reasonable compromise to be effective during the hybrid period only, Eversource’s avoided cost rates for QF power purchases under PURPA should be based on the ISO-NE day-ahead prices for New Hampshire. *Id.* at 17. Because Eversource, like the vast majority of market participants, relies on the day-ahead market approximately 90 percent of the time to make energy purchases, GSHA asserted it is the day-ahead and not the real-time price that Eversource avoids by purchasing QF power, and it is therefore the day-ahead market price that constitutes its avoided costs when it purchases power produced by QFs. Exh. L at 3; GSHA Memorandum of Law at 3-4.

For further support that avoided costs should be based on the day-ahead market, Mr. Norman testified that the majority of ISO-NE power transactions settle in the day-ahead market, while the real-time market represents a very small percentage of overall ISO-NE energy transactions and therefore does not truly reflect the “market price” of energy. Exh. K at 11. He maintained that the real-time market merely reflects a settling price to account for the minor differences between generation that is bid into the day-ahead market and that which actually serves load in real-time. *Id.* According to Mr. Norman, that Eversource is always in the real-time

energy market for some portion of its daily energy transactions does not mean that real-time market prices constitute its avoided costs for purposes of PURPA purchases. Exh. L at 3. Mr. Norman testified that at a minimum, because QF purchases are being used to offset Eversource's default service load, 90 percent of the market price should be set at the day-ahead price and 10 percent at the real-time price. Exh. At 4. See also Tr. 2/3/6 A.M. at 28-29.

At hearing, Mr. Norman testified that for the full calendar year 2015, the average ISO-NE real-time energy prices were 4.51 percent less than the average day-ahead energy prices. Tr. 2/3/16 A.M. at 13-14; Exh. YY. He also supplemented his testimony, pointing out that “[Eversource’s] average generating costs in 2015 were 6.71 cents/kWh, while the average [real-time New Hampshire] energy price for the same period was 4.02 cents/kWh.” *Id.* at 14-16; Exh. YY. Under cross-examination, Mr. Norman admitted that the 6.71 cents/kWh 2015 average generating costs for Eversource represents the arithmetic average of the values shown on Exh. II for Eversource’s “Total Self Generating Costs” during the first and second six-month periods of the year, as opposed to the arithmetic average of its “Fossil Energy Costs” for those periods, which would be 2.775 cents/kWh. *Id.* at 36-38.

Mr. Norman also drew a distinction between two different time periods, both of which would be covered by the relevant 2015 Settlement Agreement sections, the hybrid period and the period following divestiture which he referred to as the “generic period.” Exh. K at 5-6. Mr. Norman maintained that Section III.C. of the 2015 Settlement Agreement does not limit the use of ISO-NE market prices as Eversource’s avoided costs to just the hybrid period, but would apply to both time periods and result in QF power purchases made at ISO-NE market prices during the generic period as well. *Id.* at 13. Mr. Norman noted that Section III.B. of the 2015 Settlement Agreement specifies that Eversource will acquire power to meet its default service

load using periodic requests for proposals (RFPs) or similar competitive bidding processes to procure electricity from the market to meet default service needs during the generic period, making avoided costs known. *Id.* at 6. Mr. Norman asserted that, during the generic period, avoided cost payments should be based on the default service rates approved by the Commission resulting from Eversource's competitive procurement process. *Id.* at 13 and 17.

In his supplemental testimony, Mr. Norman stated his interpretation of the Commission's Order No. 25,814 as meaning that avoided cost payments for QF power purchases during the generic period will be the subject of a separate, generic, avoided cost docket. Exh. L at 7-8. As such, Mr. Norman argued that Section III.C. should be amended to provide for QF payments based on ISO-NE day-ahead energy market prices during the hybrid period *and* during the generic period "until rates are established in a generic avoided cost docket." *Id.* at 8-9.

GSHA argued that FERC's decision in *Exelon Wind 1, LLC, et al.*, 140 FERC ¶61,152 (2012) (*Exelon Wind*) establishes that the use of a locational imbalance market price or settling price is not properly considered a utility's avoided cost for purposes of rates paid to QFs under PURPA. GSHA Memorandum of Law at 4-5. In *Exelon Wind*, according to GSHA, FERC rejected a proposed avoided cost rate methodology because it was based on the price a QF would have been paid had it sold its energy directly into the energy balancing market, rather than calculating what the costs to the purchasing utility would have been for self-supplied or purchased energy "but for" the presence of the QF or QFs in the markets. *Id.* (citing *Exelon Wind* at ¶52). FERC found that the utility's payment of locational imbalance market prices unreasonably assumed full access by the QFs to third-party buyers in the energy imbalance market when such access was not possible. *Id.*

GSHA asserted that, under *Exelon Wind*, a state commission may not adopt an energy imbalance market settlement price, such as the ISO-NE real-time energy market price, as a purchasing utility's avoided cost rate under PURPA. *Id.* at 5. GSHA argued that this position is further supported by the fact that Eversource uses its QF power purchases to meet its own load obligations. *Id.* GSHA dismissed as a "red herring" Eversource's attempt at hearing to discount the *Exelon Wind* decision by citing dicta in the subsequent FERC decision in *Council of the City of New Orleans, et al.*, 145 FERC ¶61,057 (2013) (*City of New Orleans*). *Id.* at 6.

GSHA concluded by urging the Commission to issue an order directing Eversource to pay QFs day-ahead energy market prices for so long as the 1999 Settlement Agreement is in effect, and to reject Section III.C. of the 2015 Settlement Agreement as written and either order the Settling Parties to modify the language of this section as suggested by Mr. Norman or condition approval of the 2015 Settlement Agreement on the inclusion of his suggested language. *Id.*

## **B. Eversource**

Eversource submitted the testimony of James R. Shuckerow, the Director of Energy Supply for Eversource Energy Services Co., to address the QF avoided cost payment issues raised by GSHA. *See* Exh. J. Mr. Shuckerow testified that the proper avoided cost payments that QFs are entitled to receive under PURPA should be based on the price currently paid by Eversource, which is the ISO-NE real-time energy market price, consisting of the ISO-NE real-time price with three components: energy, losses, and congestion. *Id.* at 1-2.

Mr. Shuckerow summarized provisions of PURPA that relate to the requirement that utilities purchase QF electrical output at avoided cost rates established by the appropriate state regulatory agency. *Id.* at 2. He noted in particular the requirement under PURPA Section 210(b)

that the rates established for purchase of QF power by a utility must be “just and reasonable to the electric consumers of the electric utility and in the public interest.” *Id.*

Mr. Shuckerow testified that Section III.C. of the 2015 Settlement Agreement defines Eversource’s avoided costs for PURPA purposes as “the market price for sales into the ISO-New England power exchange adjusted for line losses, wheeling costs and administrative costs.” Tr. 2/2/16 A.M. at 67. He maintained that the avoided cost standard in effect for Eversource was approved by the Commission as part of its approval of the 1999 Settlement Agreement. Exh. J at 8-9. He recounted that since this standard has been in effect, Eversource has paid the real-time energy market price for energy as the applicable PURPA avoided cost. *Id.* at 9; *see also* Eversource Legal Memorandum at 1. He noted that Eversource has not imposed any administrative fee for dealing with the dozens of small generators that have put their output to Eversource pursuant to PURPA, even though it is authorized to do so. Exh. J at 9.

Mr. Shuckerow asserted that the 2015 Settlement Agreement does not change the existing avoided cost methodology. *Id.* He claimed that the standard is exactly the same as the avoided cost standard that has been authorized for Eversource for the past 15 years, and is identical to the avoided cost methodology used by the other New Hampshire electric distribution companies. *Id.* Mr. Shuckerow pointed out that the Commission itself has implemented a similar PURPA avoided cost rate in its Net Metering Rules in Puc 903.02(i), which states that the ISO-NE hourly real-time price is intended to set “the rates for utility avoided costs for energy and capacity consistent with the requirements of [PURPA].” Exh. J at 5.

Mr. Shuckerow further noted that QFs are not bound by state electric franchise boundaries, but instead have the right to sell their output to any utility to which they can transmit their output. *Id.* at 10. He cautioned that, if Eversource had to pay QFs an avoided cost rate

higher than other utilities in the region, then QFs throughout the region would be incented to put their output to Eversource, and its customers ultimately would pay the resulting higher costs. *Id.*

Mr. Shuckerow expressed his opinion that the real-time energy market price is the appropriate measure of avoided costs for a supplier, such as Eversource, that must provide full-requirements, load-following service. *Id.* He stated that any such supplier, whether it is Eversource, another utility, or a merchant supplier responding to an RFP, is always in the ISO-NE real-time energy market at the margin, because, no such supplier has exactly the precise amount of energy through owned generation and energy purchases to meet demand at every instant. *Id.* At the margin, according to Mr. Shuckerow, load-following suppliers must rely upon the real-time energy market “to take up the slack or surplus.” *Id.*

Mr. Shuckerow indicated his disagreement with Mr. Norman’s suggestion that an appropriate avoided cost rate should be weighted based upon a utility’s relative participation in the day-ahead and real-time energy markets. *Id.* at 11. He maintained that, in today’s ISO-NE markets, the marginal price is always set by the real-time energy market because all load imbalances are resolved in that market. *Id.* He asserted that, because GSHA members’ resources only participate in the real-time energy market, they do not and cannot allow Eversource to avoid day-ahead energy market purchases. *Id.* According to Mr. Shuckerow, Mr. Norman’s suggestion that a weighted average of day-ahead and real-time energy market prices is an appropriate avoided cost rate is unprecedented. *Id.*

Mr. Shuckerow asserted that setting an avoided cost rate for all QFs based on day-ahead rather than real-time energy market prices is inappropriate for many types of QFs. *Id.* at 12. He maintained that not all generators can or want to participate in the day-ahead energy market, noting that small QFs such as the GSHA members, would likely find participation in the day-

ahead energy market to be very burdensome. *Id.* According to Mr. Shuckerow, every generator must offer its output into the day-ahead energy market every day of the year, and if a plant is not timely offered into the day-ahead energy market, then it is not entitled to receive day-ahead energy market prices from ISO-NE. *Id.*

Mr. Shuckerow also testified that a full-requirements, load-following retail RFP price is not what PURPA intends that a utility, and ultimately its customers, must pay to a QF. *Id.* at 16. He asserted that the energy output from QFs does not have the same value as the energy obtained from an RFP process to serve customers, because QFs are wholesale generators that are only able to provide specific electricity products such as energy and capacity and not the complete range of products necessary to provide full-requirements, load-following service. *Id.* Mr. Shuckerow testified that QFs do not fully avoid the costs of a full-requirements, load-following power supply, but rather they offset the need to purchase a portion of some discrete components of such supply. *Id.* at 17. He asserted that the phrase “market price for sale into the ISO-NE power exchange,” as used in both the 1999 Settlement Agreement and the 2015 Settlement Agreement, refers to the costs avoided by purchasing discrete power supply products from the QF rather than buying these products through the ISO-NE power exchange. *Id.*

Mr. Shuckerow asserted that any entity providing full-requirements, load-following service, including Eversource prior to divestiture or a wholesale supplier responding to an RFP following divestiture, is always transacting in the ISO-NE real-time energy market at the margin, and therefore the real-time price is the appropriate avoided energy cost for purposes of QF power purchases under PURPA. *Id.* at 19.

Mr. Shuckerow recommended that, during the periods both before and after divestiture, and until a uniform avoided cost methodology is adopted for all of New Hampshire’s PURPA-

jurisdictional utilities, the proper avoided cost rate to which QFs are entitled should remain the price at the margin, *i.e.*, the real-time price for energy and whatever the capacity market provides such QFs. *Id.* at 23. He maintained that any other energy price would be inconsistent with a competitive marketplace and would hurt customers, both outcomes that are contrary to the express findings of the Legislature in the Restructuring Law. *Id.* at 23-24.

At hearing, Mr. Shuckerow acknowledged that, even though 90 percent of Eversource's ISO-NE market purchases occur in the day-ahead energy market, it pays QFs based on the lower real-time market price. Tr. 2/2/16 A.M. at 72. He agreed that at any given time Eversource's generation and supply purchase costs are not equal to the real-time market prices. *Id.* He confirmed that Eversource has been paying QFs the real-time market price since 1999, although the real-time market did not exist as a separate market until 2003. *Id.* at 74-75. Mr. Shuckerow affirmed that the ISO-NE real-time energy market price is a locational load imbalance market price. *Id.* at 77.

In its Legal Memorandum, Eversource asserted that, if the 2015 Settlement Agreement is approved by the Commission, nothing would change with respect to Eversource's payments to GSHA's members for power purchased under PURPA, as the relevant terms of the Agreement are intended to continue the current method for determining its avoided cost payments. Eversource Legal Memorandum at 1-2. Eversource cited several Commission orders as support for its assertion that a proper PURPA avoided cost must be determined based on a utility's "incremental cost," or the cost at the margin, and must also be "neutral to customers." *Id.* at 5-6.

Eversource cited testimony of both Mr. Shuckerow and Mr. Norman that Eversource is always in the real-time energy market and relies on this market for its marginal energy transactions. *Id.* at 6. Eversource further cited Mr. Norman's testimony to the effect that the

GSHA member QFs' output is an insignificant part of Eversource's overall generating mix, providing only 2 percent of the power to meet its default service load, while Eversource is always in the real-time market for approximately 10 percent of its energy needs. *Id.* at 8.

Eversource argued that GSHA has misinterpreted FERC's decision in *Exelon Wind* to stand for the proposition that FERC has rejected the use of real-time market prices for the establishment of a utility's proper avoided cost, and that this decision precludes Eversource's use of the ISO-NE real-time price as the basis for QF power purchase payments. *Id.* Eversource distinguished this decision on the basis of its particular circumstances, in which there were "pervasive transmission constraints" on the utility's system that "bottle[d] up QF output" thereby preventing QF access to the competitive energy imbalance market. *Id.* at 7-8 (citing *Exelon Wind* at P 20). Eversource asserted there is no factual evidence in this case showing that GSHA's members suffer from "pervasive transmission constraints" that "bottle up" those QF generators from accessing the ISO-NE market, and therefore the circumstances that formed the basis of FERC's decision in *Exelon Wind* are different than exist in New Hampshire for Eversource. Eversource Legal Memorandum at 8.

Eversource further referenced a footnote in FERC's decision in *Southwest Power Pool, Inc.*, 143 FERC ¶61,018 at P 19, fn. 16 (2013), in which FERC expressly noted the use of real-time prices to determine avoided cost rates. Eversource Legal Memorandum at 9-10. Eversource asserted that this FERC precedent supports the conclusion that FERC not only has not rejected the use of real-time pricing for the establishment of a proper avoided cost standard, but has acknowledged use of real-time pricing to establish avoided cost rates throughout the country. *Id.* at 10.

Eversource argued that the GSHA member QFs do not and cannot provide the value to Eversource or its customers that is provided by generators able to bid into the ISO-NE day-ahead energy market, including those owned by Eversource. *Id.* at 10-11. According to Eversource, most of New Hampshire's QFs are "settlement-only generators" that cannot participate in the ISO-NE day-ahead market and are accounted for by ISO-NE only in the real-time energy market. *Id.* at 10. Eversource cited several GSHA filings in which it represented that its members are unable to participate in the ISO-NE day-ahead energy market. *Id.* at 10-11. Eversource maintained that the ISO-NE day-ahead energy market is intended to let market participants commit to buy or sell wholesale electricity one day before the operating day, thereby helping to avoid price volatility and providing value to purchasing utilities and to the marketplace in general. *Id.* at 10. Eversource suggested that this value is reflected in the generally higher clearing prices in the day-ahead as compared to the real-time market. *Id.* According to Eversource, most QFs "cannot provide the value sought by ISO-NE from generators that bid daily into the day-ahead market to reduce price volatility – generators that risk monetary penalties if they fail to live up to the terms of their daily bid." *Id.* Eversource argued that "[p]aying QFs for a service they do not provide would violate PURPA," because under PURPA a proper avoided cost rate "shall be just and reasonable to the electric consumers of the electric utility and in the public interest." *Id.* at 11-12 (citing 16 U.S.C. §824a-3(b)(1)). According to Eversource, requiring customers to pay for value not received is neither "just and reasonable" nor "in the public interest." *Id.* at 12.

Eversource addressed Mr. Norman's testimony that a proper avoided cost rate should be based upon Eversource's costs to generate or purchase power and that Eversource's cost to generate for 2015 was 6.71 cents per kilowatt-hour. *Id.* Eversource asserted that his use of

Eversource's "Total Self Generating Costs" as the basis for his calculation was incorrect, because those totals include costs, such as depreciation, taxes, and return on rate base, that Eversource cannot avoid by way of purchases from QFs. *Id.* According to Eversource, if the correct numbers from Exhibit II are used, being those identified as "Fossil Energy Costs," then the number Mr. Norman should have used is 2.775 cents per kilowatt-hour. *Id.* Eversource argued that, based upon Mr. Norman's testimony, "if an avoided cost standard other than the ISO-NE real-time price is desired, the 2.775 cents/kilowatt-hour figure could be utilized as a self-generation cost that PSNH would avoid as a result of purchases from QFs." *Id.*

## **X. COMMISSION ANALYSIS -- QUALIFYING FACILITIES**

Sections III.C. and VI.B. of the 2015 Settlement Agreement address payments by Eversource to QFs at avoided cost rates for electricity purchases required under PURPA and LEEPA. In particular, Section III.C. provides that:

Unless otherwise found by the Commission or other appropriate authority, PSNH's responsibilities and avoided cost rates for purchases of IPP power pursuant to PURPA and LEEPA shall be equal to the market price for sales into the ISO-NE power exchange, adjusted for line losses, wheeling costs, and administrative costs. This Agreement is not intended to impair existing rate orders or contracts. Nothing in this Agreement shall be construed as limiting the Commission's authority with respect to calculating avoided costs. The Settling Parties agree not to oppose the opening of a generic docket or rulemaking upon petition by any Settling Party to consider the proper calculation of Avoided Costs under PURPA and LEEPA for all electric distribution companies in New Hampshire.

This provision seems intended to preserve the current methodology for determining avoided cost payments to QFs for power purchases from their small power production facilities, which is based on ISO-NE real-time energy market prices. *See* Eversource Tariff NHPUC No. 8 Section 33; Exh. J at 8-9; Eversource Legal Memorandum at 1-3.

GSHA argues that the current payment calculation methodology is inconsistent with the legal requirements of PURPA and LEEPA because it is not based on Eversource's actual avoided costs incurred to serve its default service load. GSHA's position changed between the filing of Mr. Norman's initial pre-filed direct testimony and the submission of his supplemental testimony. Mr. Norman initially argued that QF payments should be based on the costs Eversource incurs to generate electricity and make supplemental purchases to serve default service load and, following divestiture, on the results of its procurement of default service supply through a competitive RFP process. Exh. K at 12, 17-18. In his supplemental testimony, Mr. Norman instead advocated for the use of ISO-NE day-ahead rather than real-time energy market prices during what he called the "hybrid period" prior to full asset divestiture, while conceding that the question of post-divestiture avoided cost calculation may be deferred until a subsequent proceeding. Exh. L at 8-9.

GSHA argued the latter position in its post-hearing legal memorandum, based on the factual record and legal arguments regarding the interpretation of PURPA. GSHA Memorandum of Law at 6. GSHA urges us to issue an order directing Eversource to pay QFs day-ahead energy market prices for so long as the 1999 Settlement Agreement is in effect, and to condition approval of Section III.C. of the 2015 Settlement Agreement on the inclusion of language requiring such day-ahead energy market pricing, as proposed by Mr. Norman in his supplemental testimony. *Id.* at 6.

Because the relevant sections of the 2015 Settlement Agreement appear intended merely to preserve the status quo in terms of Eversource payments for power purchased from QFs under PURPA and LEEPA, it is GSHA that must carry the burden of demonstrating that the current

means of calculating such payments is inconsistent with these statutes. For the reasons discussed below, we find that GSHA has not carried this burden.

GSHA argues that the use of ISO-NE real-time energy market prices to determine QF payments is not permitted under PURPA and FERC regulations and precedent interpreting PURPA, is not compelled by the terms of the 1999 Settlement Agreement, and does not accurately reflect Eversource's actual costs incurred in serving its default service load through its own generation and supplemental power purchases. GSHA Memorandum of Law at 2-6.

Under PURPA, FERC rules requiring the purchase by electric utilities of electric energy from QFs must be "just and reasonable to the electric consumers of the electric utility and in the public interest," must not discriminate against QFs, and must not exceed "the incremental cost to the electric utility of alternative electric energy." 16 U.S.C. §824a-3(b). "Incremental cost of alternative electric energy" is defined to mean "the cost to the electric utility of the electric energy which, but for the purchase from such . . . [QF], such utility would generate or purchase from another source." 16 U.S.C. §824a-3(d).

The FERC regulations implementing those statutory provisions have established that electric utilities are obligated to purchase power produced by QFs. *See* 18 C.F.R. §292.303(a). The regulations further provide that payments for such purchases will satisfy the requirements of PURPA if such payments are equal to the purchasing utility's avoided costs<sup>14</sup> determined after consideration of factors as set forth in 18 C.F.R. §292.304(e). *See* 18 C.F.R. §292.304(a)(2). The specified factors include, among other things, the availability of capacity or energy from a QF during system daily and seasonal peak periods, the ability of the utility to dispatch the QF, the expected or demonstrated reliability of the QF, the individual and aggregate value of energy

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<sup>14</sup> FERC's PURPA regulations define "avoided costs" as the "incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the [QF or QFs], such utility would generate itself or purchase from another source." 18 C.F.R. §292.101(b)(6).

and capacity from QFs on the utility's system, and the savings resulting from variations in line losses from those that would have existed in the absence of purchases from the QF. *See* 18 C.F.R. §292.304(e)(2)(ii) and (e)(4).

The utility's incremental costs are not to be based on its average system costs but on its marginal costs. *See Appeal of Granite State Elec. Co.*, 121 N.H. 787, 790 (1981). Calculation of the proper avoided cost rate is dependent upon the identification of the utility's generating units operating on the margin. *See Re Industrial Cogenerators Group*, 72 NH PUC 8 (1987). It is therefore the utility's avoided cost of producing or purchasing power at the margin that is the relevant benchmark for determining QF payments required to be made under PURPA.

GSHA argues that Eversource's determination of avoided costs for QF power purchases based on "the market price for sales into the ISO-NE power exchange" conflicts with the requirement under PURPA's and FERC's regulations that utilities must purchase electricity from QFs at rates based upon the utility's costs to generate electricity itself or buy it from another source, with no reference to "market prices" as a basis for determining avoided costs. GSHA Memorandum of Law at 2. GSHA further claims that Eversource's interpretation of "market price" as used in the 1999 Settlement Agreement to mean ISO-NE real-time energy market prices "is unpersuasive because the real time market did not even exist in 1999," but instead only a single financial settlement market was in effect until implementation of the ISO-NE Standard Market Design in 2003. *Id.* at 3-4.

It is unclear why GSHA would claim that market prices cannot be the basis for avoided cost calculations while it asks us to require day-ahead rather than real-time energy market pricing for Eversource payments to QFs. We note also that at the time the 1999 Settlement Agreement was approved by the Commission, the regional wholesale energy market was a "single-

settlement, real-time market.” *See ISO New England, Inc.*, 91 FERC ¶61,311 (2000).

Implementation of the multi-settlement market system through the Standard Market Design effectively added a day-ahead financial market settlement to the existing real-time physical balancing market. It therefore appears that use of real-time energy market pricing was within the contemplation of the parties to the 1999 Settlement Agreement at the time of its approval.

Moreover, it stands to reason that, to the extent a utility’s supplemental purchases of power to meet its default service load occur in the ISO-NE energy market, the prices in that market would best serve as the measure of its avoided costs.

GSHA argues that the use of a locational imbalance market price or settling price is not properly considered a utility’s avoided cost for purposes of rates paid to QFs under PURPA, citing FERC’s decision in *Exelon Wind 1, LLC, et al.*, 140 FERC ¶61,152 (2012) (*Exelon Wind*). FERC’s conclusion in *Exelon Wind* appears to have been based primarily on its determination that the purchasing utility’s payment of locational imbalance market prices unreasonably assumed full access by QFs to third-party buyers in the regional wholesale energy imbalance market, whereas they had previously been found to lack access to purchasers in this market. *Exelon Wind* at P 52. GSHA asserts that, under *Exelon Wind*, a state commission may not adopt an energy imbalance market settlement price, such as the ISO-NE real-time energy market price, as a purchasing utility’s avoided cost rate under PURPA. GSHA Memorandum of Law at 4-5.

We have reviewed the *Exelon Wind* order and find that its conclusion relies heavily on the particular factual circumstances of the utility service territory under consideration, in particular earlier findings that QFs of any size lacked access to third-party buyers in the relevant wholesale electricity markets “because of persistent transmission congestion.” *Exelon Wind* at

P 52. There is no evidence in the record of this proceeding that suggests similar levels of transmission congestion exist in New Hampshire that prevent access by QFs generally to the ISO-NE regional wholesale energy markets. Moreover, we note that FERC apparently has referenced the use of real-time energy pricing to determine QF payments in subsequent decisions. *See, e.g., Council of the City of New Orleans, et al.*, 145 FERC ¶61,057 at P 30, fn. 64 (2013) (various states apparently have opted to use locational marginal market prices in calculating avoided costs); *Southwest Power Pool, Inc.*, 143 FERC ¶61,018 at P 19, fn. 16 (2013) (avoided-cost rates that are determined in real-time adjust to reflect the low, or zero or negative, value of unscheduled QF energy, allowing QFs to make their own curtailment decisions).

The *Exelon Wind* precedent therefore appears to be limited to its specific factual context, and this factual context is distinguishable from that under consideration here. We note as well that FERC recently issued an order denying reconsideration of its decision in *Exelon Wind*. *See Exelon Wind I, LLC, et al.*, 155 FERC ¶61,066 (2016). In that order, FERC stated that “to date [FERC] has not been asked to, and so has not, opined on whether [locational marginal prices (LMPs)] may be used to calculate avoided costs.” *Id.* at P 11, fn. 19 (citing *Council of the City of New Orleans*). This express statement by FERC in a recent order issued in the very same dockets belies any conclusion that the *Exelon Wind* precedent precludes the use of LMPs as the basis for avoided cost payments to QFs.

GSHA asserts it is the day-ahead energy market price and not the real-time energy market price that constitutes Eversource’s avoided cost when it makes supplemental power purchases, citing evidence showing that, when Eversource supplements its own supply for default service, it makes 90 percent of its supplemental power purchases in the ISO-NE day-ahead energy market. GSHA Memorandum of Law at 3 (citing Exh. Z). The record in this proceeding, however,

supports a factual presumption that Eversource's power purchases "at the margin" always rely on the ISO-NE real-time energy market.

Eversource witness Shuckerow testified that electricity suppliers never have the exact amount of energy through owned generation and energy purchases needed to meet demand in every instant; at the margin, therefore, load-following suppliers such as Eversource must rely upon the real-time energy market to reconcile these incremental variances in energy supply and demand. Exh. J at 10. GSHA witness Norman testified that "data from the Operating Period shows that [Eversource] always is in the [real-time] market to settle daily variations between predicted and actual system/market conditions." Exh. L at 3. Mr. Norman recognized that approximately 10 percent of Eversource's energy market transactions occur in the real-time market. *Id.* He further testified that "QF/IPP purchases provided only 2 percent of the power to meet [Eversource's] default service load." *Id.* at 2. Mr. Shuckerow testified at hearing that none of the electricity generated by QF members of GSHA allows Eversource to avoid any day-ahead energy market purchases. Tr. 2/2/16 P.M. at 18.

The evidence adduced in this proceeding therefore suggests that 10 percent of Eversource's supplemental electric energy transactions settle in the real-time market while QFs provide only 2 percent of the power used by Eversource to meet its default service load obligations. Based on this record, we are unable to conclude that it is impermissible to use real-time energy market prices as the measure of Eversource's avoided costs at the margin in determining payments for QF power purchases.

We also find persuasive Eversource's argument that the power produced by QFs does not provide the same value to the Eversource system or its retail customers as power produced by generators that are committed through the day-ahead energy market, including Eversource's

owned generation resources and others that bid into the day-ahead market. *See* Eversource Legal Memorandum at 10-12. The QFs represented by GSHA are not dispatchable by Eversource and provide only unscheduled energy when available during the operating day. *Id.* In fact, QFs smaller than one megawatt in capacity are not even permitted to participate in the day-ahead market, as they are deemed “settlement only generators” that participate only as real-time “price-takers” rather than as bidders in the ISO-NE energy markets. Tr. 2/2/16 P.M. at 14-16; Exh. VV. *See also University of New Hampshire*, 121 FERC ¶61,185 (2007) (settlement-only generators are generally connected to the distribution system of their host utilities and run as price-takers in the real-time energy market; these generators provide energy to the market when available). A “price-taker” is a market participant “whose buying and selling actions do not affect the market price; a generator that has offered into the market at zero or has self-scheduled, is willing to operate at any price, and is not eligible to set clearing prices.”<sup>15</sup>

Generation resources that bid into and are committed to run through the ISO-NE day-ahead energy market incur potential financial exposure if they are unable to produce power in real-time hours to meet their day-ahead commitment for the operating day. Exh. J at 12-13. Such day-ahead market generation commitments help to facilitate system planning and reduce market price volatility. *See* Eversource Legal Memorandum at 10. Small QFs that provide only unscheduled energy when available during real-time hours do not provide this same value to the purchasing utility, for the benefit of its system or its retail customers, nor to the regional market as a whole. *Id.* at 10-12.

The analysis of the relative value of power sold through the day-ahead and the real-time energy markets is relevant to at least two of the factors taken into account when determining

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<sup>15</sup> *Glossary and Acronyms*, ISO New England, <http://www.iso-ne.com/participate/support/glossary-acronyms> (last visited June 24, 2016).

avoided costs and QF payments under PURPA: (1) the justness and reasonableness to electric utility consumers of QF power purchases, and (2) the individual and aggregate value of energy and capacity from QFs on the utility's system. In addition, the differential in relative value supports a finding that the determination of utility payments for QF power purchases based on real-time energy market prices does not impermissibly discriminate against QFs. Based on these considerations, we are not prepared to conclude that Eversource is prohibited from using real-time energy market prices as the measure of its avoided costs for the calculation of QF power purchase payments.

The foregoing analysis leads us to the conclusion that Sections III.C. and VI.B. of the 2015 Settlement Agreement may be approved without modification as just and reasonable and in the public interest. We note that Section III.C. by its terms does not purport to limit our authority to calculate utility avoided costs, whether in the context of a generic docket, a utility-specific proceeding, or a rulemaking initiative. If warranted, those issues may be revisited in such a future context. However, we find no reason to change the status quo at this time in this proceeding.

## **XI. CONCLUSION**

We conclude that the 2015 Settlement Agreement as amended and the 2016 Litigation Settlement meet the public interest standard expressed by the Legislature and are just and reasonable. Therefore we approve both Agreements.

Our approval of the 2015 Settlement Agreement and 2016 Litigation Settlement does not limit our disposition of similar matters in future cases. Also, to facilitate the efficient administration of the 2015 Settlement Agreement and the 2016 Litigation Settlement, we authorize the parties to modify the 2015 Settlement Agreement and 2016 Litigation Settlement

so long as any modification is mutually agreed upon and non-substantive, such as a clerical or ministerial amendment that involves timing or scheduling. Furthermore, insofar as any language of the 2015 Settlement Agreement or the 2016 Litigation Settlement appears to supersede, or overlook, operative language of the 1999 Settlement Agreement governing ongoing program and/or compliance responsibilities of Eversource, we hereby rule that such ongoing program and/or compliance requirements shall be governed by the terms of the most recent Commission Orders implementing such requirements. *See, e.g., Statewide Low-Income Electric Assistance Program*, Order No. 25,805 (Aug. 31, 2015) and *Statewide Low-Income Electric Assistance Program*, Order No. 23,980 (May 30, 2002).

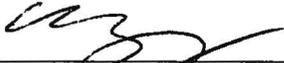
We cannot predict the future, and we cannot guarantee that the projected savings and economic development promised by divestiture and securitization will actually occur. The record before us, however, demonstrates that customers of Eversource and the economy of the State will likely benefit from our approval of the settlement agreements forged by Legislators, Eversource, the Consumer Advocate, the business community, labor representatives, municipalities, environmental groups and our Staff. By approving the divestiture of Eversource's remaining generation assets, we implement the Legislature's long standing policy goal of restructuring the State's electric industry to one of full and fair competition.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the [2015 Settlement Agreement](#) as modified by [Exhibit B](#) is APPROVED; and it is

**FURTHER ORDERED**, that the [2016 Litigation Settlement](#) is APPROVED.

By order of the Public Utilities Commission of New Hampshire this first day of July,  
2016.

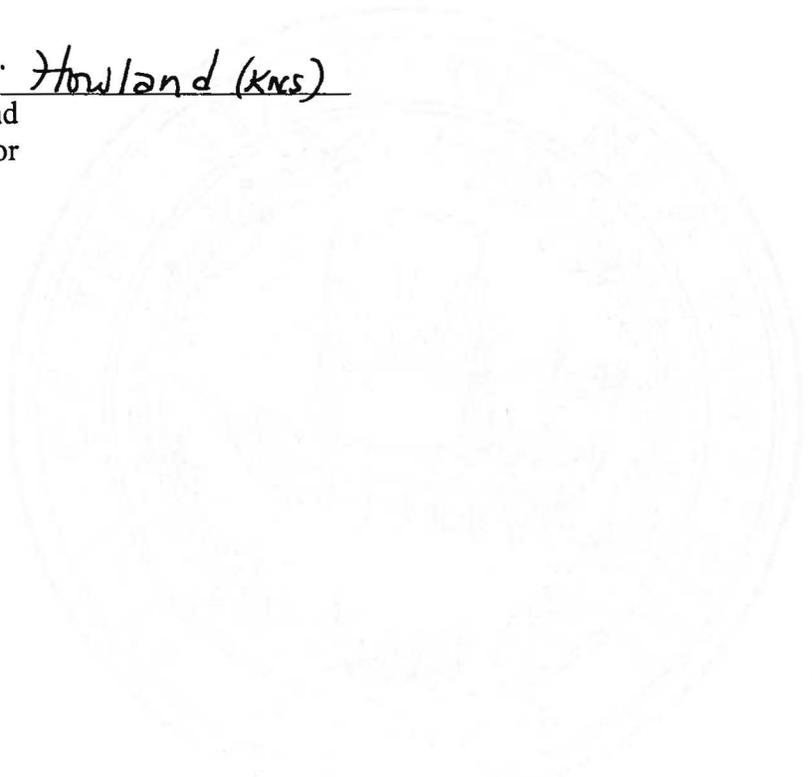
  
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Executive Director



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