

# Orr&Reno

Susan S. Geiger  
sgeiger@orr-reno.com  
Direct Dial: 603.223.9154  
Direct Fax: 603.223.9054  
Admitted in NH and MA

October 12, 2015

**Via Electronic Mail**

Robert A. Bersak, Esq.  
Chief Regulatory Counsel  
Eversource Energy  
780 N. Commercial Street  
Manchester, NH 03105-0330

**Re: NH PUC Docket No. DE 14-238  
GSHA's Objections to Eversource's Data Requests**

Dear Attorney Bersak:

Pursuant to 203.09(g), Granite State Hydropower Association ("GSHA") objects to Eversource's data requests propounded on October 2, 2015 to GSHA in the above-captioned docket. At the outset, GSHA notes that it is participating in the above-captioned docket because it objects to provisions of the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement ("2015 Settlement Agreement") that describe avoided costs for purposes of PSNH's<sup>1</sup> purchases from independent power producers ("IPPs") under PURPA. The issue of whether the 2015 Settlement Agreement comports with the definition of avoided costs under PURPA is question of law. Accordingly, the factual information sought by the data requests is irrelevant to a determination of this legal issue. Moreover, to the extent that factual information

---

<sup>1</sup> References to "PSNH" herein shall include "Eversource" and *vice versa*.

is needed to the answer the question of what amount of money or the cents per kWh rate that Eversource must pay for its purchases under PURPA, that information must, necessarily, be provided by Eversource, not GSHA or its members. It is information about Eversource's avoided costs that governs the amount Eversource pays for power purchases under PURPA. Accordingly, the detailed factual information about GSHA members sought by the data requests is irrelevant to the issue of Eversource's PURPA obligations.

### **General Objections**

1. GSHA objects to data requests on the basis that they are overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.
2. GSHA objects to the data requests to the extent that they seek discovery that is unrelated to the testimony of Mr. Norman and from entities that are not parties to this proceeding. This general objection is based on the grounds that (a) other entities are not under Mr. Norman's or GSHA's control; (b) the data requests seek information which neither Mr. Norman nor GSHA possesses or has access to; (c) the data requests are unduly burdensome; and (d) the data requests seek irrelevant or immaterial information.
3. GSHA objects to requests for information or production of documents that is or are subject to the attorney-client privilege, constitute work product, is or are proprietary, is or are protected under state or federal law, constitute draft and/or non-final documents and/or constitute communications concerning any of the above.
4. GSHA objects to data requests that are overly broad or unduly burdensome to extent they: (a) are cumulative or duplicative; (b) call for the production of documents or information not in the possession, custody or control of GSHA or Mr. Norman; (c) call for the review, compilation or production of publicly available documents or information that could be obtained by Eversource in a less burdensome manner including from a public website; (d) call for the review, compilation and/or production of documents or information already in Eversource's possession, custody or control; (e) unnecessarily call for the review, compilation and/or production of a voluminous number of documents that are either irrelevant or of questionable relevance and that would require a significant amount of

resources at a significant expense to compile and produce; and (f) purport to require GSHA to perform custom analysis of data for the benefit of Eversource.

5. GSHA objects to data requests on the basis that they: (a) call for information that is beyond the scope of this proceeding; (b) are not related to Mr. Norman's prefiled testimony; (c) call for information that neither Mr. Norman nor GSHA possesses; and (d) call for information that would require significant time and expense to compile and produce, and are therefore unduly burdensome.
6. GSHA objects to data requests on the basis that they seek confidential and proprietary information from entities that are not parties to this docket.
7. GSHA objects to data requests on the basis that they are seeking admissions relative to a contested legal issue in this docket.
8. Each of these General Objections is incorporated by reference into the specific objections and responses set forth below as if expressly restated therein. GSHA does not waive any objections and expressly reserves the right to later raise any additional objections.

### **Specific Objections**

In addition to the foregoing general objections, GSHA objects to the following questions for the specific reasons set forth for each:

1. **Please provide a listing of members of GSHA including:**
  - a. **Principal point of contact**
  - b. **Address**
  - c. **Phone number**
  - d. **Whether the member is a corporation, LLC, partnership, etc.**
  - e. **Whether that member is a NEPOOL participant and/or an Individual Participant of ISO-NE**
  - f. **If the member is a subsidiary of another entity, identify the ultimate parent company and all companies between that parent and the GSHA member.**

GSHA objects to this question based on relevance and materiality. Information about GSHA members has no bearing on what constitutes PSNH's avoided cost for purposes of its purchases under PURPA. GSHA also objects on the basis that, in order to effectuate PURPA sales, Eversource should already have the information that is requested in data requests 1a, 1b, 1c, and

1d. In addition, GSHA objects on the basis that it does not require or maintain information of its members requested in questions 1d, 1e, and 1f. Notwithstanding and without waiving this or any other objections, GSHA responds as follows: Please see attached table listing the members of GSHA, some of whom are IPPs selling energy to Eversource as of June 30, 2015.

**2. Please provide a list of each generating facility owned by GSHA members including:**

- a. Facility name**
- b. Type of generation**
- c. Generating capacity**
- d. FERC QF number**
- e. Address of facility**
- f. Identify the electric distribution entity in whose service territory the facility is located**
- g. River on which generation is located**
- h. Whether the facility is a QF under PURPA**
- i. Total generation in kWh produced during 2013, 2014, and through September 30 of 2015**
- j. Buyers of the generation output of the facility from January 1, 2013 to present**
- k. Identify whether the generation output from January 1, 2013 to present was sold via bilateral contract; per a specific rate order issued pursuant to PURPA; using a generic PURPA avoided cost rate; or otherwise.**
- l. Is the facility connected to the grid at transmission or distribution level?**
- m. Does the facility have an interconnection agreement ("IA")? If so, who is the interconnecting utility and what is the date of the IA?**
- n. Does the facility have nondiscriminatory access to the ISO-NE market? If not, please provide all details why such nondiscriminatory access is not available to the facility.**
- o. Has the facility at any time from 2005 to present sold energy or capacity into the ISO-NE market?**
- p. Does the facility have nondiscriminatory access to day ahead and real time wholesale markets for the sale of electric energy? If not, please provide all reasons why the facility does not have such access.**
- q. Does the facility have nondiscriminatory access to wholesale markets for long-term sales of capacity and electric energy? If not, please provide all reasons why the facility does not have such access.**
- r. Does the facility face any administrative burdens that would prevent it from accessing the wholesale market? If so, please list all such administrative burdens and the estimated cost thereof.**

GSHA objects to this question based on relevance and materiality. Information about GSHA members has no bearing on what constitutes PSNH's avoided cost for purposes of its purchases under PURPA. In addition, GSHA objects because it does not require, collect or maintain the requested information from its members, and because it would be unduly burdensome to compile this irrelevant information.

- 3. If any member of GSHA is neither a member of NEPOOL or an Individual Participant in ISO-NE, please state the reason(s), if any, for such lack of membership status for each such member.**

GSHA objects to this question based on relevance and materiality. Information about GSHA members has no bearing on what constitutes PSNH's avoided cost for purposes of its purchases under PURPA. In addition, GSHA objects because it does not require or maintain the specific member information requested in this data request.

- 4. Do any GSHA members or affiliates thereof offer administrative services to generators that facilitate the sale of generating output to either the wholesale market, to utilities, to competitive suppliers, or to retail customers? If so, please identify those members and describe the services that are offered.**

GSHA objects to this question based on relevance and materiality. Information about GSHA members has no bearing on what constitutes PSNH's avoided cost for purposes of its purchases under PURPA. In addition, GSHA objects because it does not require, collect or maintain the specific member information requested in this data request.

- 5. Do any GSHA member have to pay so-called "pancaked delivery rates" (as that term is used by FERC) in order to get their output to the market? If so, please identify all such situations where pancaked rates exist and provide details describing all components of those pancaked rates.**

GSHA objects to this question based on relevance and materiality. Information about GSHA members has no bearing on what constitutes PSNH's avoided cost for purposes of its purchases under PURPA. GSHA does not require, collect or maintain the specific member information requested in this data request.

- 6. Is Mr. Norman aware of any other PURPA-jurisdictional utility in New Hampshire that buys or sells energy or capacity directly into the ISO-NE wholesale market (i.e.,**

**not through a third-party) in order to meet its retail default service needs? If so, please identify all such utilities.**

GSHA objects to this question based on relevance and materiality. The instant docket focuses on Eversource and not other PURPA-jurisdictional utilities. Notwithstanding and without waiving this or any other objections, GSHA provides the following response. With respect to all New England Utilities other than Eversource, Mr. Norman is not familiar with any such purchases or sales. With respect to Eversource, Mr. Norman is also unable to respond because Eversource has not provided responses to GSHA's data requests in this docket relative to this issue.

**7. For the "generic" period as described in Mr. Norman's testimony, please identify all reasons why a generic avoided cost methodology that would apply to all of New Hampshire's PURPA-jurisdictional utilities would be inappropriate.**

GSHA objects to this question based on relevance and materiality, and because it is argumentative and calls for a legal conclusion. Notwithstanding and without waiving this or any other objections, GSHA responds as follows: A response to this question is premature. In its order denying Eversource's request for a rulemaking, the Commission found that it was premature to conclude that, post-divestiture (i.e. the "generic period"), Eversource and New Hampshire's other electric utilities would necessarily be similarly situated. *See Eversource Energy*, DRM 15-340, Order No. 25,814 (Sept. 18, 2015), p. 4.

**8. If EVERSOURCE is always in the ISO-NE real time market for its marginal energy transactions, please explain why that real time market price would not be the appropriate PURPA avoided cost to EVERSOURCE.**

GSHA objects to this question because it is argumentative and seeks a legal opinion. In addition, GSHA objects to the premise of the question, (i.e. that Eversource is always in the ISO-NE real time market for its marginal energy transactions). Notwithstanding and without waiving this or any other objections, GSHA responds as follows: Because Eversource has not responded to GSHA's data requests seeking operating information that is necessary for determining how Eversource's marginal energy transactions are obtained, GSHA is unable to respond.

**9. On page 2 of your testimony, you state that Essex Hydro has hydroelectric projects in Maine. Has the Maine PUC established PURPA avoided cost rates? If so, please**

**describe the avoided cost rates that your Maine projects can receive under PURPA if their output is “put” to a Maine utility.**

GSHA objects based upon relevance and materiality. The fact that Essex Hydro has projects located in Maine is irrelevant to the instant proceeding, as is the question of whether the Maine PUC has established PURPA avoided cost rates. Notwithstanding and without waiving this and any other objections, GSHA responds as follows: GSHA is unaware of whether the Maine PUC has established PURPA avoided cost rates.

**10. On page 8, lines 12-14, Mr. Norman testifies, “Absent a supplemental power purchase, EVERSOURCE's avoided cost in the hybrid period must be based on its own generation costs.” In making this statement, does Mr. Norman necessarily assume that the output from EVERSOURCE’s own generating units precisely equals the energy needs of customers taking retail default energy service from EVERSOURCE? If not, please explain.**

Eversource has not responded to several GSHA data requests (i.e. GSHA 1-3, 1-6, 1-7, 1-8 and 1-9) that would permit GSHA to respond to this question with certainty; however, GSHA assumes that operating conditions will vary such that at any given time, in order to meet its default service load, Eversource may have to rely upon not only IPP generation, but also its own generation and purchases from ISO-NE.

**11. Does Mr. Norman agree that a properly established avoided cost rate should produce a result that causes neither costs nor benefits to the purchasing utility’s retail customers? If not, please explain why.**

GSHA objects to this question because it is argumentative and seeks a legal opinion on the intent of avoided cost rate setting. Notwithstanding and without waiving this or any other objection, GSHA provides the following response: Mr. Norman agrees that, assuming Eversource operates its system so that PURPA purchases are made and compensated at a rate that reflects Eversource’s actual avoided costs, including those of its own generating units, no additional costs or benefits to the purchasing utility’s retail customers should be incurred.

**12. Are the administrative costs and burdens a generator would face for participating in the day ahead market the same, greater, or less than the costs of such generator participating in the real time market? If such costs or burdens differ between the two markets, please identify all such differences.**

GSHA objects based upon relevance and materiality. The cost or burden differences between the two markets has no relevance to the proper avoided cost standard under FERC's PURPA regulations at 18 CFR Part 292. In addition, GSHA objects because it has no information within its control to respond to this question.

**13. On page 10, lines 14-15, Mr. Norman testifies, "The DA energy market lets market participants commit to buy or sell energy one day before the operating day in which the energy is to be used." What are the impacts of a market participant failing to meet any such commitment made in the DA market?**

GSHA objects based upon relevance and materiality. The impact of a market participant failing to meet any such commitment in the DA market has no relevance to the proper avoided cost standard under FERC's PURPA regulations at 18 CFR Part 292.

**14. On page 11, lines 12-14. The testimony notes that approximately 98 percent of energy transactions in May and June 2015 settled in the day ahead market according to ISO-NE.**

- a. Please provide a citation to the source (including the page(s)) of the referenced ISO-NE reports**
- b. Does GSHA believe that the approximately 2 percent of transactions that settled in the real-time market represent the marginal energy transactions in ISO-NE? Why or why not?**
- c. Given the amount of energy transacted in ISO-NE, would the total energy output of all GSHA member QFs equal or exceed the amount of transactions that settle in the real-time market?**
- d. If the total energy output of the GSHA member QFs would not exceed the amount of energy that is transacted in the real-time market, please explain why it is proper to calculate the cost of that energy as though it was settled in the day ahead market as stated on page 17 of the testimony.**

With respect to data request 14a please refer to the August 2015 NEPOOL Participants Meeting Minutes page 3509 at line 1 for July and June 2015, Meeting Minutes page 3469 at line 6 for May.

With respect to data request 14b, GSHA objects because it does not have access to sufficient information to respond. The marginal energy cost of each utility within the ISO-NE system is state and utility specific.

With respect to data request 14c, GSHA objects based upon relevance and materiality. GSHA's member output has no bearing on the correct definition of avoided cost in this docket. In addition, GSHA objects because it does not have access to information necessary to respond to this question.

With respect to data request 14d, GSHA objects based upon relevance and materiality. GSHA's member output has no bearing on the correct definition of avoided cost in this docket. GSHA also objects on the basis that this question is argumentative. Notwithstanding and without waiving this or any other objection, GSHA provides the following response: IPPs selling power at the avoided cost standard under FERC's PURPA regulations at 18 CFR Part 292 should receive Eversource's actual avoided cost, i.e. one that takes into consideration all of PSNH's costs of generating electricity and those associated with Eversource's ISO-NE transactions.

**15. Is there any reason why GSHA members cannot directly access the DA energy market without relying upon PURPA's mandatory buy provisions? If so, please describe all such reasons in detail.**

GSHA objects based upon relevance and materiality. Whether a GSHA member can directly access the DA energy market has no bearing on the correct avoided cost definition in this docket. Eversource has an obligation to purchase energy from qualified GSHA members under FERC's PURPA regulations at 18 CFR Part 292.

**16. Is Mr. Norman aware of any PURPA-jurisdictional utility in New Hampshire that has an avoided cost rate established in the manner that he testifies is required by PURPA? If so, please identify all such utilities.**

GSHA objects based upon relevance and materiality. Because Eversource is the only New Hampshire utility owning generating assets, an examination of other New Hampshire PURPA-jurisdictional utilities' avoided cost rates is irrelevant to this docket.

**17. When a QF sells its output to a utility under PURPA's mandatory buy provisions, does Mr. Norman view that transaction to be a wholesale or retail transaction? Please explain his response.**

GSHA objects to this question on the basis of relevance and materiality and because it seeks a legal opinion and not facts within the possession or control of GSHA. Notwithstanding and without waiving this or any other objections, GSHA responds as follows: GSHA believes when a

QF sells its output to Eversource under PURPA's mandatory buy provisions, the sale is to Eversource, not to an end user.

- 18. Do any of the GSHA's QFs provide any ancillary services? If yes, please identify each resource, which services they provide, and how much did they provide in each year from 2012 through 2014.**

GSHA objects based upon relevance and materiality. Whether a QF provides any ancillary service has absolutely no bearing on the determination of the correct avoided cost definition in this docket. GSHA also objects because it does not require, maintain or collect the specific member information requested in this data request.

- 19. Does Mr. Norman agree that default energy obtained by the other utilities in New Hampshire pursuant to competitive solicitations is a fully-bundled service that includes all of the power supply and ancillary services that are or may be necessary to serve electrical load under the ISO-NE Tariff, including Energy, Installed Capability, Operable Capability, Operating Reserves, Automatic Generation Control, electrical losses, congestion charges, charges of the ISO associated with NEPOOL membership and with serving the Contract Load Quantity, and any future additions, deletions or changes to the seven NEPOOL products (Energy, Installed Capability, Operable Capability, 30-minute Non-Spinning Operating Reserves, and Automatic Generation Control) that are required for entities serving electrical load in NEPOOL, and such transmission and distribution delivery services as may be required for the Seller to deliver power to the Delivery Point(s)? If Mr. Norman does not agree, please explain in detail the bases for any such disagreement and provide an explanation of what Mr. Norman believes utilities are buying under such competitive solicitations.**

GSHA objects based upon relevance and materiality. Information concerning default service procured by other New Hampshire utilities is irrelevant to the avoided cost issue in the instant proceeding. GSHA also objects on the basis that this question calls for a request for admission, not data.

- 20. Does Mr. Norman agree that the default energy obtained by the other utilities in New Hampshire pursuant to competitive solicitations include all costs of complying with New Hampshire's Renewable Portfolio Standard ("RPS")? If not, please explain. If so, is it Mr. Norman's opinion that QFs are entitled to receive payments for such RPS costs at the same time they are able to sell Renewable Energy Certificates into the marketplace for the very same energy they are "putting" to the utility under PURPA?**

GSHA objects based upon relevance and materiality. Information concerning default service procured by other New Hampshire utilities, as well as the implications of New Hampshire's

RPS law is irrelevant to the avoided cost issue in the instant proceeding. GSHA also objects to this question because it seeks a legal opinion and an admission, rather than facts within the possession or control of GSHA.

**21. On page 17, lines 16-18, Mr. Norman Testifies, "With respect to the generic period, GSHA suggests that EVERSOURCE's avoided cost rates be based upon the Commission approved default service rates resulting from EVERSOURCE' s competitive procurement process, as thereafter adjusted by subsequent Commission determination."**

- a. Is Mr. Norman aware of any PURPA-jurisdictional utility in New Hampshire that has an avoided cost rate based upon its Commission approved default service rate resulting from a competitive procurement process? If so, please identify all such utilities.**
- b. Is Mr. Norman aware of any jurisdiction that has set its avoided cost rate under PURPA using the methodology suggested by GSHA? If so, please identify all such jurisdictions, the laws, regulations or regulatory commission orders setting such pricing where such pricing exists and the utilities to which such pricing applies.**
- c. Mr. Norman testifies at page 1, lines 15-17 that his, "duties include representing GSHA's interests before the New Hampshire legislature and regulatory bodies and the Federal Energy Regulatory Commission ("FERC")," and at page 2, lines 18-19 that, "As the result of my business experience with small hydroelectric power projects, I am familiar with some of the federal and state laws and rules that apply to that sector of the electric industry." Based upon Mr. Norman's expertise, is he aware of any FERC or state regulatory decision supporting the avoided cost methodology he suggests for the "generic period"? If so, please identify all such decisions.**

GSHA objects to this question based on relevance and materiality. Information concerning default service procured by other New Hampshire utilities and avoided cost rates set by other Commissions or regulatory authorities is irrelevant to the avoided cost issue in the instant proceeding.

**22. On page 15, lines 2-4, Mr. Norman testifies, "Regarding the generic period, there is a no assurance such a generic, adjudicative avoided cost docket would, in fact, be opened nor any assurance of the time by which an order establishing EVERSOURCE's avoided costs would be issued in that proposed docket."**

- a. Does Mr. Norman agree that all other PURPA-jurisdictional utilities in New Hampshire are already in such a "generic period"? If not, please explain.**

- b. Does PURPA allow GSHA's members to "put" their output to the other PURPA-jurisdictional utilities in New Hampshire?
- c. Has GSHA made any attempts to require that the other PURPA-jurisdictional utilities in New Hampshire purchase power from QFs put to them under PURPA at such utility's retail default service rate? If so, please provide details of all such attempts. If not, why not?
- d. Is there any reason why a generic avoided cost proceeding could not or should not be established for the other PURPA-jurisdictional utilities in New Hampshire in the near term? If so, please explain all such reasons.
- e. Based upon the energy service price rates of Unitil, Liberty Utilities, and NHEC during 2013 and 2014, if GSHA's view of the proper avoided cost post-divestiture were applied to those utilities, please provide an estimate of the additional annual revenues that GSHA members could have received during each of those two years. (If an actual value cannot be provided, a percentage increase over the real-time market price would be acceptable.)
- f. If GSHA feels its members are entitled to the amount(s) stated in response to subquestion e, above, why has GSHA failed to take action to change those companies' avoided cost rates under PURPA?

GSHA objects to all of these questions based on relevance and materiality. GSHA objects to data request 22a because it is a request for admission, not a data request. GSHA objects to data request 22b because it calls for a legal conclusion. GSHA objects to data request 22c because GSHA's interactions with other New Hampshire utilities is irrelevant to the issue of PSNH's avoided costs for purposes of PURPA purchases. GSHA objects to data requests 22d and 22f because they are argumentative. GSHA objects to data request 22e because GSHA does not maintain, require or collect the requested information.

23. On page 15, lines 20-22, Mr. Norman testifies, "a generic rulemaking proceeding involving other utilities is inappropriate because, as explained previously in this testimony, EVERSOURCE's avoided costs are different than other electric utilities'."
- a. Why isn't a generic avoided cost rulemaking proceeding that would apply to Unitil, Liberty Utilities, and NHEC be appropriate today?
  - b. During the "generic period" identified by Mr. Norman, does GSHA expect the methodology for determining EVERSOURCE's avoided cost to be different than what the state's other electric utilities' avoided cost methodology should be today? If so, please explain all such differences.

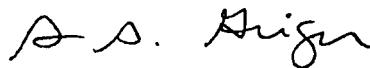
With respect to data request 25a, GSHA objects because it is argumentative. GSHA also objects because the question of whether there should be a generic avoided cost rulemaking proceeding for Unitil, Liberty and NHEC is beyond the scope of this docket and is also irrelevant to the issue of PSNH's avoided costs.

With respect to data request 25b, GSHA objects to this question based on relevance and materiality. Notwithstanding and without waiving this or any other objections, GSHA responds as follows: A response to this question calls for speculation and is premature. In its order denying Eversource's request for a rulemaking, the Commission found that it was premature to conclude that, post-divestiture (i.e. the "generic period"), Eversource and New Hampshire's other electric utilities would necessarily be similarly situated. *See Eversource Energy*, DRM 15-340, Order No. 25,814 (Sept. 18, 2015), p. 4.

**24. What are the total payments that GSHA members have received from EVERSOURCE for the output of their QF generating stations annually for the years 2012, 2013, 2014, and through September 30, 2015?**

GSHA objects based upon relevance and materiality. GSHA also objects on the basis that it does not require from its members or maintain the specific information requested in this data request and is therefore unable to respond to this request. Notwithstanding and without waiving these and any other objections, GSHA responds as follows: Because these expenses are recoverable from ratepayers, GSHA assumes that Eversource tracks the payments it makes to QFs, and therefore would have access to information necessary to respond to this request.

Very truly yours,



Susan S. Geiger

cc: Discovery Service List (electronic mail)

1380166\_1

