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August 21, 2015

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301

RE: Request for Rulemaking Pursuant to Puc 205.01 and 205.03

Dear Ms. Howland:

This request for rulemaking is submitted by Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) pursuant to Puc 205.01(b) and 205.03 of the rules of the New Hampshire Public Utilities Commission (“Commission”). PSNH and the state’s other utilities are obligated to purchase the electric energy and capacity produced from certain qualified facilities (“QFs”) that are eligible small power producers and cogenerators under the Public Utility Regulatory Policies Act of 1978 (“PURPA”)¹. Pursuant to Puc 205.03(e), PSNH submits as an Attachment the approximate text of a draft proposed rule establishing the requirements for PURPA jurisdictional utilities in New Hampshire to purchase the output generated from QFs.

The person requesting the rulemaking on behalf of PSNH is:

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¹ 16 U.S.C. § 824a-3 and 18 C.F.R. § 292.303(a).

A. Interest of PSNH

PSNH requests the Commission to convene a generic rulemaking to address the appropriate methodology for determining the avoided cost rates that should be paid to QFs when those QFs assert their right under PURPA to put their output to one of the state's utilities. PURPA mandates that public utilities like PSNH, in certain circumstances, purchase the entire output of electric power produced by eligible small energy producers at avoided cost rates set by the Commission.² The rates utilities are required to pay under the PURPA mandatory purchase obligation must be based on and *cannot exceed* that utility's avoided costs.³ Section 210(f) of PURPA requires state regulatory authorities to implement the FERC's rules, including procedures for making avoided cost determinations under PURPA.

PSNH makes this rulemaking request because as explained in Section B, *infra*, the Granite State Hydropower Association ("GSHA") has challenged the currently authorized process for determining PSNH's avoided costs in the ongoing proceeding in Docket No. DE 14-238 ("Divestiture Proceeding"). PSNH believes that consideration of any new avoided cost standard is a generic issue affecting all PURPA-jurisdictional utilities in the State, as all the State's utilities should be operating similarly going forward. GSHA's challenge is perplexing given the Commission's prior approval of an avoided cost methodology based on energy and capacity prices derived from ISO New England, Inc. ("ISO-NE") competitive wholesale power markets for PSNH and the other New Hampshire public utilities. PSNH's rulemaking request, therefore, is made in the interest of administrative efficiency and to avoid any potential discriminatory effect from a Commission determination of PSNH's avoided costs under a different methodology than the methodology approved for the other New Hampshire electric utilities, when going forward, all the state's utilities will be using substantially similar methodologies for obtaining default service energy from the same New England market.

² Under PURPA, the Federal Energy Regulatory Commission ("FERC") has prescribed rules to encourage small power production, including rules requiring electric utilities to purchase power from small power production facilities designated as QFs under PURPA Section 210 and its regulations implementing Section 210. *Appeal of Granite State Elec. Co.*, 121 N.H. 787, 789, 435, A.2d 119, 119-20 (1981).

³ 18 C.F.R. § 292.304(d)(1).

B. The Reasons for the Proposed Regulations

PSNH believes that convening a rulemaking proceeding would be the most administratively efficient and fair process to address the issue of establishing an avoided cost methodology at this time. In the Divestiture Proceeding, the Commission is reviewing the *2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement* (the “2015 Agreement”) that PSNH, joined by a number of other parties, filed on June 10, 2015. The 2015 Agreement resolves a variety of complex issues in response to the New Hampshire Legislature’s mandate to the Commission to study the potential divestiture of PSNH’s generation facilities.⁴ The Agreement also retains the Commission’s previously-approved standard stating that the avoided cost rates for purchases of IPP power under PURPA will be based on the market price for sales into the ISO-NE power exchange.⁵

The avoided cost provisions in the 2015 Agreement are substantially the same as were included in the *1999 PSNH Restructuring Agreement* in Docket No. DE 99-099, a docket in which GSHA participated as a party-intervenor. In that proceeding, the Commission approved the 1999 Restructuring Settlement Agreement to implement the requirements of RSA Chapter 374-F and pave the way for PSNH to exit the business of owning and operating electric generating facilities. The 1999 Restructuring Settlement Agreement included a methodology for determining avoided cost rates for short term purchases from IPPs under PURPA. This avoided cost methodology uses the price PSNH receives for bidding IPP generation output into the ISO-NE regional wholesale spot market. The 1999 Restructuring Agreement was not intended, however, to impair existing rate orders and contracts setting avoided cost rates for IPPs.⁶

The purpose of including a similar avoided cost methodology in the 2015 Settlement Agreement was to continue the status quo until the Commission determines that some other methodology should be implemented. PSNH’s view that a rulemaking proceeding is the proper forum for making an avoided cost determination has support among the Settling Parties to the

⁴Laws 2014, Chapter 310.

⁵2015 Agreement at Section II.C., line 303

⁶ After enactment of PURPA, before implementation of retail competition, the Commission performed its duty under the statute by (1) issuing asset- and company-specific rate orders setting avoided cost rates and (2) approving PSNH’s bilateral contracts for long-term purchases from small power producers. See e.g., *Re Public Service Company of New Hampshire*, 73 PUC 117 (1988); *Appeal of Public Service Company of New Hampshire*, 130 N.H. 285 (1988).

2015 Agreement, where they have agreed that “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.”⁷ Moreover, GHSA, a non-settling party, has indicated that it is neutral as to whether this issue should be addressed in the DE14-238 Divestiture proceeding or in a separate docket.⁸ Nevertheless, GHSA is challenging the avoided cost methodology stipulated in the 2015 Agreement in the Divestiture proceeding and has propounded detailed discovery requests to PSNH, Commission Staff, and the Office of Consumer Advocate to support its position under the procedural schedule established for this proceeding.⁹

PSNH recognizes that states are allowed wide latitude in establishing an implementation plan under PURPA Section 210 and FERC’s associated regulations. PSNH, however, believes its request for a rulemaking proceeding to determine the appropriate avoided costs for its IPP purchases is justified on procedural efficiency and substantive grounds, as well as to meet the statutory requirements of RSA Chapter 541-A.

First, the New Hampshire Legislature has mandated that Docket No. DE 14-238 be undertaken expeditiously. That docket was opened pursuant to two laws: 2014 N.H. Laws, Chapter 310 (HB 1602), “an act relative to the divestiture of PSNH assets and relative to the siting of wind turbines” (Order of Notice, September 16, 2014); and, 2015 N.H. Laws, Chapter 221 (SB 221), “an act relative to electric rate reduction financing” (Supplemental Order of Notice, June 26, 2015). Both of these laws deal with the subject of PSNH’s ownership of generating assets and both require that Docket No. DE 14-238 be conducted expeditiously. “Before January 1, 2015, the commission shall commence and expedite a proceeding... .” 2014 N.H. Laws 310:2, amending RSA 369-B:3-a, I. “As part of an expedited proceeding, the commission shall review the 2015 settlement proposal... .” 2015 N.H. Laws 221:10, amending RSA 369-B:3-a, II. PSNH fears that unless a separate rulemaking docket is opened, it will be extremely challenging for the Commission to conduct an expedited, administratively efficient, and focused examination of the central issue in the Divestiture proceeding -- PSNH’s ownership

⁷ 2015 Agreement at line 309.

⁸ Granite State Hydropower Association’s Opening Scoping Memorandum, Docket DE 14-238 (December 5, 2014).

⁹ August 12, 2015 Motion to Compel Public Service Company of New Hampshire to Respond to Data Requests in Docket No. DE 14-238(GHSA Motion to Compel).

and disposition of generating assets. The type of information and analysis needed by the Commission to make an avoided cost determination is fairly attenuated from the multiple issues surrounding this core inquiry.

Another reason to conduct a separate proceeding is the need to ensure uniformity in establishing avoided costs for all New Hampshire utilities subject to mandatory purchase obligations under PURPA and for all QFs desiring to sell their output under PURPA. GSHA challenges the 2015 Agreement, asserting that PSNH's avoided costs should be based on the procurement costs PSNH will incur to obtain electricity supply for default service:

GSHA asserts that the proper avoided cost rate PSNH should pay to IPPs until PSNH divests its generation PSNH's cost of producing energy and any additional energy purchases to serve PSNH's default service load. Post divestiture, assuming that PSNH procures all of its default service energy through a competitive bid process similar to the manner employed by other New Hampshire distribution companies, PSNH's avoided cost rate paid to IPPs will be based upon the cost PSNH incurs to purchase energy to meet its default service obligations.¹⁰

GSHA's avoided cost proposal is a radical departure from the methodology the Commission has approved for IPP purchases by PSNH and the other New Hampshire electric distribution utilities. Similar to the avoided cost provision in the 2015 Agreement, the Commission has approved tariff provisions for Liberty Utilities ("Liberty"), Unitil Energy Systems, Inc. ("Unitil"), and the New Hampshire Electric Cooperative, Inc. ("NHEC") which set avoided costs for their QF purchases based on the hourly prices these utilities receive for sales of IPP output into the ISO-NE Real Time market.¹¹ Liberty, Unitil, and NHEC own no generation and must obtain all power supplies for default service through competitive procurement, yet neither the Commission nor any other party has advocated using the cost of procuring default service supply in lieu of ISO-NE settled prices for these utilities' avoided cost determinations. Further, use of ISO-NE real time market prices for energy and capacity also is incorporated into the Commission's Net Metering rules for New Hampshire electric distribution companies.¹²

¹⁰ See GSHA Motion to Compel at pp. 2-3.

¹¹ N.H.P.U.C. No. 19 Electricity, Liberty Utilities (Granite State Electric) Corp. D/B/A/ Liberty Utilities, Original Page 9; N.H.P.U.C. No. 3 Electricity Delivery, Unitil Energy Systems, Inc., Original Page 76; N.H.P.U.C. No. 21 Electricity, New Hampshire Electric Cooperative, Inc., Original Page 18.

¹² Statutory and Other Requirements, Puc 903.02(h)(i).

Moreover, the practice of using locational marginal prices (“LMPs”) set in the ISO-NE markets to determine avoided costs is followed fairly uniformly throughout New England as shown in a recent survey of the various PURPA compliance methods used in the New England states conducted by La Capra Associates, Inc.¹³ The La Capra PURPA Survey shows that with the exception of Vermont, a state that has not embraced retail competition, all the New England states use ISO-NE prices to set the avoided cost for energy for QF purchases under PURPA.¹⁴ In addition, most New England states pay capacity value to QFs based on prices established in the ISO-NE Forward Capacity Market (FCM) and, like New Hampshire, try to have some connection between their QF rates based on ISO-NE pricing and net metering rate design.¹⁵

Many states outside of New England also use LMPs to calculate avoided costs. *See e.g.*, *Central Illinois Light Co.*, No. 06-0071, 2006 WL 3863623 (Ill. C.C. Nov. 21, 2006) (*Illinois*); *U.S. Steel Corp. v. N. Ind. Pub Serv. Comm’n*, No. 43674, 2010 WL 1502637 (Ind. U.R.C. Apr. 7, 2010) (*Indiana*); *in the Matter of Application of Detroit Edison Co.*, No. U-16797 2011, Mich PSC LEXIS 143 (Mich. P.S.C. Jun. 16, 2011) (*Michigan*); *Joint Application of Wis. Elec. Power Co. and Wis. Gas LLC*, No. 5-UR-106, 2012 WL 6707032 (Wis. P.S.C. Dec. 21, 2012) (*Wisconsin*); *In the Matter of the Petition of Atl. City Elec Co.*, No. EE03110943, 2005 WL 3541022 (N.J. B.P.U. Dec 14, 2005) (*New Jersey*); *In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities-2008*, No. E-100, Sub 117, 2009 N.C. PUC LEXIS 732 (N.C. P.U.C. May 13, 2009 Mar 21, 2007) (*Virginia*); *Appalachian Power Co.*, No. PUE-2008-00035, 2008 WL 4829162 (Va. S.C.C. Oct 31, 2008) (*Virginia*); *Niagara Mohawk Power Corp.*, Nos. 94-E-0098 & 94-E—0099, 1999 N.Y. PUC LEXIS 689 (N.Y. P.S.C. Nov 17, 1999) (*New York*); *In the Matter of Consol. Edison of N.Y.*, No. 96-E-0897, 2000 N.Y. PUC LEXIS 703 (N.Y. P.S.C. Aug 7, 2000) (*New York*); *Re Entergy Louisiana LLC*, No U-32638, 2014 WL 1373714 (La. P.S.C. Jan 9, 2014).

Although these state methodologies differ in several respects—e.g. some use “zonal” LMP methodologies and others use “nodal” LMP methodologies—the FERC deems states to

¹³ *Public Utility Regulatory Policies Act (PURPA) Compliance Methods*, LaCapra Associates, Inc., February 19, 2015 (PURPA Survey). Available at http://psb.vermont.gov/sites/psb/files/rules/proposed/Rule4100/GMP_PURPA_Presentation_2_19_2015.pdf

¹⁴ PURPA Survey Slide 13.

¹⁵ *Id.* at Slide 12

have “great latitude” in making those choices in the first instance.¹⁶ Should the Commission address that distinction in a rulemaking proceeding, the use of nodal LMPs in PSNH’s proposed regulations adheres to the FERC’s longstanding holding that nodal LMPs send the most accurate price signals to generators and, in doing so, protect consumers from market dysfunction and inefficient dispatch decisions.¹⁷

While PURPA gives states discretion in the process used for determining avoided costs, any determination must be consistent with the statute and the regulations of the FERC. Section 210(b) of PURPA and FERC regulations require that the rates an electric utility pays a QF must be just and reasonable, and in the public interest.¹⁸ If the Commission were to approve GSHA’s suggested methodology for determining avoided costs, it very likely would run afoul of this requirement. This is because the other New Hampshire PURPA-jurisdictional utilities have their avoided costs based on ISO-NE LMPs. Setting PSNH’s avoided costs using another methodology would be unreasonably discriminatory, when going-forward there will be no material differences between how the state’s utilities procure default service energy.

C. Description of the Proposed Regulations

PSNH proposes a uniform set of regulations for determining avoided costs to be paid by the state’s utilities for mandatory purchases under PURPA from all QFs. Attached to this letter per Puc 205.03(e) is the text of the proposed rule: AVOIDED COSTS FOR MANDATORY PURCHASES UNDER PURPA

The draft proposed regulations establish a purchase price for energy products based on the ISO-NE Real Time nodal LMP clearing price at the node where the generator is located. (Sec 3.02). In addition, a QF can optionally elect to sell capacity to the utility based on the net

¹⁶ *So. Cal. Edison*, 70 FERC ¶ 61,215 at 61,677 (1995).

¹⁷ *See Cal. Indep. Sys. Operator, Inc.*, 116 FERC ¶ 61,274 at P 5 (2006) (approving nodal LMP prices because the zonal approach contributed to the California energy crisis and further explaining that nodal LMP prices are superior because they “(1) recognize all transmission bottlenecks so that schedules submitted in the day-ahead time frame can actually fit on the grid in real time, i.e. be feasible; (2) allocate the use of transmission facilities to energy buyers and sellers in a non-discriminatory and efficient manner; (3) make more efficient use of transmission and generation resources to serve load and provide system reserves on a least-cost basis; and (4) provide price incentives for future generation projects to be located in the places where they are most needed”).

¹⁸ 16 U.S.C. §824a-3(b) and 18 C.F.R. § 292.304(a)(1).

revenues received by the utility from the ISO-NE administered Forward Capacity Market. (Sec 3.03).

Payments to QFs under the regulations will be adjusted for a variety of factors: (1) administrative costs charged to the purchasing utility in connection with its mandatory purchase obligation (Sec 3.02 and Part § 4); (2) adjustments for any significant distribution line losses based on a line loss study paid for by the QF (Part § 5); and, (3) wheeling charges for generation transmitted through the purchasing utility's facilities and ultimately sold to ISO-NE or another party (Part § 6).

In connection with their mandatory purchase obligations, utilities like PSNH have voluntarily served as a "Lead Market Participant" to allow the QF owner's facility to interface with the ISO-NE markets and power grid. ISO-NE limits participation in its markets to registered "Market Participants", but will allow another entity to serve as "Lead Market Participant" on behalf of the asset. The small power producers with QF status have routinely asked their purchasing utilities to execute ISO-NE's Market Participant Service Agreements as Lead Market Participant on their behalf. In so doing, the utilities accept all the responsibilities for having the QFs registered and compliant with the ISO's Transmission, Markets, and Services Tariff, the market rules, operating procedures, and reliability requirements. These services save the QF owners time and money by transferring those administrative costs to the utilities (and ultimately onto customers), which are often provided free of charge to the QFs. Proposed Part § 7 merely reflects the voluntary nature of the utility's market interface relationship with the QF by stipulating that entry into this relationship via assuming the Lead Market Participant with ISO-NE cannot be mandated, but may be provided at a Commission-approved price.

D. Conclusion

For the reasons set forth above, pursuant to Puc 205.03(h)(1), PSNH respectfully requests the Commission initiate a rulemaking proceeding to prescribe the agency's policy for implementing the statutory requirements of PURPA's avoided cost rate provisions.

Sincerely,



Robert A. Bersak
Chief Regulatory Counsel

cc: Service List, Docket No. DE 14-238