THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Docket No. DE 16-241

Petition for Approval of Gas Infrastructure Contract with Algonquin Gas Transmission, LLC

REPLY LEGAL BRIEF OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

I. INTRODUCTION

Consistent with the Commission's requirements in its March 24, 2016 order of notice, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") submitted its initial legal brief in this docket on April 28, 2016. In that brief, Eversource set out the numerous provisions of state law that are consistent with or promoted by Eversource's proposed contract (the "ANE Contract") for natural gas capacity on Access Northeast Pipeline (the "ANE Project") proposed to be built by Algonquin Gas Transmission ("Algonquin"). Eversource also pointed out that the ANE Contract and its accompanying request before the Commission for cost recovery, did not interfere with, and are not preempted by, federal law.

Various other commenters filing briefs (including those with clear financial interests in preventing any development like the ANE Project that would provide relief to New Hampshire electric customers) attempted to argue that the ANE Contract was somehow invalid or impermissible under state or federal law. In so contending, none have raised any meaningful arguments that state or federal law strips from Eversource the legal authority to enter into the ANE Contract, or that the Commission lacks the authority to approve Eversource's request for cost recovery. At most, the opposition commenters could only contend that a contract like the

ANE Contract – a contract where an electric distribution company ("EDC") purchases natural gas transmission capacity – was not expressly and directly covered by existing law. Those commenters would have the Commission conclude, without justification, that unless an act is specifically and directly authorized in the text of a law, it must be illegal. The lack of specific provision does not, however, require or justify concluding that an activity is illegal. Just as the lack of a specific statute governing an Eversource contract for mutual aid with an EDC in some other state would not make such a contract illegal, the lack of a direct statutory provision here does not make the ANE Contract illegal. For the reasons explained below, the ANE Contract and the associated cost recovery is consistent with the law – Eversource has the legal authority to enter the contract, and the Commission has the authority to approve cost recovery.

Prior to addressing some of the more specific arguments, Eversource briefly addresses two items. First, various commenters contended that the ANE Contract (or the request for proposals underlying it) is improper because the ANE Project entity is owned by a corporate affiliate of Eversource, along with Algonquin's parent company, and National Grid. Eversource entirely disputes and rejects any contentions that it did not abide by appropriate measures to ensure proper separation between it and those promoting the ANE Project. More importantly, however, such issues are wholly irrelevant in determining whether Eversource has the authority to enter the contract, or whether the Commission has the legal authority to approve cost recovery. The Commission should not consider such arguments, in any way, in reaching the conclusion that the ANE Contract is a lawful exercise of Eversource's authority under relevant law.

Second, some commenters contended that the ANE Contract, if allowed, and the ANE Project, if built, may create discriminatory or preferential treatment among electric generators in

violation of the regulations of the Federal Energy Regulatory Commission ("FERC").[1] Such issues are, however, outside this Commission's jurisdiction, and are arguments upon which this Commission should not rely in any analysis of the authority under New Hampshire law for the ANE Contract. If an aspect of the ANE Contract, or the ANE Project itself, conflicts in some manner with the regulations of FERC, then it is for FERC to say so. This Commission should not address or rely upon any such arguments in rendering decisions on matters that are within its jurisdiction and scope.

In the end the questions before the Commission are narrow, and on those narrow questions, the answers are clear. Eversource has the legal authority to enter the ANE Contract, and the Commission has the legal authority to approve cost recovery.

II. NEW HAMPSHIRE LAW

A. General Corporate Authority

Some opposition comments infer that Eversource lacks the general authority under New Hampshire law to enter into the ANE Contract because it is a public utility. Those arguments are unsupported in the law. Eversource agrees with some commenters on the scope of its general corporate authority to enter into contracts in furtherance of lawful business objectives.[2] As aptly stated by CLEC "Unless a New Hampshire corporation's charter, articles of incorporation, or the laws under which it is organized and operates impose a specific limitation, a corporation may take any lawful action which it deems necessary and proper to the conduct of its business." CLEC Brief at 5. There is no restriction in Eversource's governing documents or state law that prevents Eversource from entering into the ANE Contract.

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[1] *See, e.g.*, Initial Brief of Exelon at 14-15; Brief of ENGIE at 28-29.
[2] *See* RSA 293-A:3.02; Algonquin Brief at 4-5.

Further, Eversource regularly and routinely enters into numerous contracts that, while not directly related to the delivery of electrons over distribution wires, are nonetheless essential to the continued safe and reliable provision of service to customers. The myopic view that Eversource should be restricted to certain types of contracts for what others might deem to be within the scope of its authority[3] is to deliberately misunderstand Eversource's business and its rights under the law. As one example, historically an EDC may not have sought to use remote sensing equipment to detect and report, via wireless signals, information about the status of its electric system. There was, therefore, no need for an EDC to seek or obtain contracts with vendors for remote sensing equipment, wireless telephonic communications, or information technology systems to enable other equipment. Now, however, such contracts are common. The business needs of an EDC change over time and EDCs in New Hampshire have, as they must, the authority to enter into contracts for products and services that enable them to fulfill their missions of providing safe and reliable electric service at a reasonable cost. Eversource has the ability to contract for products and services incidental to its business, and that ability includes entering into contracts intended to ensure that there will be electric energy to actually deliver, so as to fulfill its obligations to provide safe, reliable, and reasonably priced electric service.

B. Utility Specific Law

As pointed out in Eversource's initial brief, Eversource's proposal for the ANE Contract is consistent with utility-related laws in New Hampshire, including those in RSA chapter 374-F and RSA 374:57, the resource planning statutes in RSA 378:37 and following, as well as with Eversource's general obligations as a public utility. None of the briefs filed in this docket have shown anything to the contrary.

[3] *See, e.g.*, Brief of OCA at 11 (contending that the resource planning statutes do not "expand[] the scope of what a utility may do" or authorize utility activity beyond that "covered by their utility franchises" without defining what is, in the opinion of the OCA, within or without the scope of a utility's duties or franchise.)

Some opposition submissions contended that the ANE Contract, or something like it, is not covered by RSA 374:57 because at the time of the passage of that law, there was no legislative discussion about EDCs purchasing gas transmission. Whether such actions were, or were not, discussed is irrelevant to the issues before the Commission. Moreover, this contention is little other than a reframing of the above argument that the lack of explicit authorization in RSA 374:57 for the ANE Contract is somehow equivalent to implicit rejection of it. Such a contention is meritless and should be rejected.

RSA 374:57 is not ambiguous, and so review of its legislative history is not necessary.[4] To justify review of the legislative history on the ground that the statute is ambiguous, the law must be susceptible of multiple *reasonable* and conflicting interpretations. *See Boviard v. N.H. Dep't of Admin. Svcs.*, 166 N.H. 755, 761 (2014). For the reasons set out in Eversource's brief at pages 16 to 18, the Legislature and the Commission have regularly and repeatedly used the term "transmission" as referring to electric and gas transmission. Thus the statute, on its face, may reasonably be read to include natural gas transmission capacity.

Those arguing that RSA 374:57 does not include natural gas transmission capacity, but only electric transmission capacity, base those contentions on what the statute does not say.[5] That is, they argue that if the law was intended to cover items such as the ANE Contract, it would have been written differently, and that since it is not written in the manner they believe appropriate, it cannot be read as Eversource contends.[6] Quite obviously, such an argument relies

[4] Even if resort to legislative history could be justified, Eversource questions the value of any legislative history here in light of the fact that RSA 374:57 was enacted as part of bill that was discussed and passed in a one-day special session of the Legislature where the discussion was almost exclusively focused on RSA 362-C, and the bankruptcy and reorganization of Public Service Company of New Hampshire.

[5] *See, e.g.*, Brief of OCA at 11 (stating that if the provision was intended to cover natural gas capacity the Legislature would added a reference to the Natural Gas Act in the law); and Brief of Exelon at 13 (likewise contending that law must include a reference to the Natural Gas Act to apply here).

[6] ENGIE goes even further and suggests that RSA 374:57 must be read in a particular way because of what is contained in a different statute. *See* Brief of ENGIE at 10-11.

upon a deviation from the words of the statute as it exists, a tenet of statutory construction the New Hampshire Supreme Court rejects. *Boviard*, 166 N.H. at 759 ("We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include." (internal quotation omitted)); *see also Hutchins v. Peabody*, 151 N.H. 82, 84 (2004). There is no cause for the Commission to attempt to assume what the statute might mean or what items it might have covered had it been worded another way.[7] Basing an interpretation of the statute on language that is not, but might have been, included, is not a reasonable reading of the law. The statute, on its face, includes transmission capacity without limitation and the frequent and repeated use of that term by the Legislature and the Commission indicates that the term includes natural gas transmission capacity.

With respect to the restructuring law, RSA chapter 374-F, as noted previously by Eversource (and as is apparent from the ANE Contract itself) the ANE Contract is a contract for natural gas capacity, capacity that may ultimately be taken and used by anyone, though with a preference for use by electric generators. It is not for a generation service and does not engage Eversource in the generation business.[8] Eversource is not purchasing capacity for sale to, or use by, any particular generator or generating facility, and it does not, and will not, require that the capacity be used by a generator in any particular way, or even at all, when and if purchased. Eversource is not directing that any generator participate in any wholesale or retail electric

[7] Moreover, as noted above at footnote 5, at least some of the arguments assume that the statute might apply to the ANE Contract only if it contained language making specific reference to the Natural Gas Act. As Eversource pointed out in its initial brief, and reiterates later in this submission, the NGA does not apply to the request before the Commission. Eversource Brief at 19-21. Accordingly, amending the statute as suggested would not change the outcome and RSA 374:57 would apply in the same way that it does as written today.

[8] ENGIE attempts to bridge this divide by contending that the ANE Contract is a "generation-related service." Brief of ENGIE at 20-24. ENGIE, however, makes no attempt to define what is "generation-related" and what is not, and RSA chapter 374-F does not speak to "generation-related" services. There is no justification for the contention that anything a party could conceive of as "generation-related" is somehow directly related to the generation of electricity. *See Federal Energy Regulatory Commission v. Electric Power Supply Association et al.*, 577 U.S. ___ (2015), slip op. at 14-15.

market, is not requiring that a generator provide electric energy to Eversource in exchange for the capacity,[9] or doing anything else that would indicate that Eversource is engaging in the generation of electricity through the ANE Contract.

What Eversource *is* doing is proposing the ANE Contract as a means to ensure that a robust supply of natural gas is available so that those who do generate electricity from natural gas will have a stable, adequate, and reliable supply of fuel, which will allow New Hampshire customers to have assurance that those generators can produce power when called upon. Ensuring that there will be a stable and reliable source of reasonably priced fuel, will assist Eversource in meeting its obligations to provide safe, reliable, and reasonably priced electric service to its customers. The ANE Contract does not put Eversource in the generating business and it is consistent with the restructuring goals.

NEER argues that restructuring in New Hampshire was premised upon the assurance that New Hampshire would rely upon competition and competitive markets as the means for determining what services would be supplied and by what entities. NEER Brief at 17-21. This is true, to a point. Whatever else may be said about it, New Hampshire law certainly does not contemplate or require reliance upon competition to solve any and all issues, and it does not require allegiance to competitive markets without regard to the realities facing New Hampshire electric customers. RSA 374-F:1, I states that while New Hampshire desires to "harness" competitive markets, "The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy ***by reducing costs to consumers while maintaining safe and reliable electric service with***

[9] In fact, in the settlement agreement presently before the Commission in Docket No. DE 14-238 relating to Eversource's divestiture, Eversource has agreed that if the settlement is approved it would transition to fully competitive procurement of its default power obligations. In that case, Eversource would only be a conduit for electric power supplied by whichever entity is successful in a given RFP for default service power, and nothing about the ANE Contract would change Eversource's posture there.

minimum adverse impacts on the environment." (emphasis added). Underlying any desire for using competitive markets to bolster the provision of electricity is the acknowledgement that doing so is intended to reduce costs and maintain safe and reliable service. If the competitive market fails to maintain safe and reliable service, then there is no justification in RSA chapter 374-F, or elsewhere, to continue relying upon it.

A concrete example of an occasion where blind reliance upon competitive electric markets was not presumed to provide a resolution for New Hampshire may be found in a recent docket before the Commission. In Docket No. DE 11-184, the Commission was called upon to review the merits of a series of above-market Power Purchase Agreements ("PPAs") that had been entered into by Eversource where Eversource would purchase the output of certain wood-fired Independent Power Producers ("IPPs"). These PPAs were not the product of competitive forces and did not exist to further competitive market goals. Rather, these PPAs were developed at the insistence of the governor and other state authorities to support those IPPs, and the jobs they represented, precisely because those entities could not compete successfully in the regional electricity market. August 23, 2011 Testimony of Thomas Frantz in Docket No. DE 11-184 at 5. In other words, the PPAs were requested by the governor and state leaders to counter the injustice they believed would be visited upon to the citizens of New Hampshire through reliance upon competitive markets. The Commission ultimately approved those PPAs despite contentions that they were contrary to competitive principles. *Public Service Company of New Hampshire, et al.*, Order No. 25,305 (December 20, 2011). In New Hampshire, competition is a means to achieve various ends; it is not an end unto itself, and the State has acknowledged that there are limits to what competition can and should be expected to accomplish.

Keeping in mind that unquestioned reliance upon competition among electric generators is not what RSA chapter 374-F requires, the Commission may review the ANE Contract in light of the benefits it provides and in light of the fact that it will, in fact, actually enhance and not undermine the competitive principles supporting RSA chapter 374-F. As stated by CLEC, in its brief:

> Currently constrained natural gas infrastructure obviously benefits certain competitive generators that burn oil, coal, or LNG, or that otherwise enjoy the profits generated by New England's relative economic disadvantage to neighboring regions. The availability of Open Access pipeline capacity to the market may create different winners and losers, but that policy decision should not be held hostage to the entrenched interests of particular competitive providers who find the failure of restructuring to harness competition to be in their financial interest.
>
> The question now is not whether allowing Eversource to purchase pipeline capacity will indirectly adversely affect competition itself, but rather whether allowing Eversource to purchase pipeline capacity is a reasonable or necessary way to correct a known market failure, or "harness competition," to effectuate the Restructuring Act's goal of reducing electric costs.

CLEC Brief at 17. There is no evidence that the wholesale electricity market in New England has facilitated the investment necessary to relieve the pipeline capacity constraints affecting gas-fired electric generators and New Hampshire customers. The Commission itself identified those same troubles when it opened the investigation underlying this docket:

> significant constraints on natural gas resources have emerged in New England, despite abundant natural gas commodity production in the Mid-Atlantic States and elsewhere. These constraints have led to extreme price volatility in gas markets in the winter months in our region, which, in turn have resulted in sharply higher wholesale electricity prices. Correspondingly, rates charged for Default Service to certain EDCs' customers have escalated sharply in New Hampshire for winter period service.

Order of Notice in Docket No. IR 15-124 at 2. Competition among generators, such as it is, has not driven (and does not appear that it will drive) new investments that will alleviate pipeline capacity constraints that have led to high and volatile prices, at least in part because those who

might be inclined to make those investments are the very "entrenched interests" who "find the failure of restructuring to harness competition to be in their financial interest." CLEC Brief at 17.

With the ANE Contract, Eversource is proposing a means to provide relief to New Hampshire customers and to enable more meaningful competition by relieving the repeatedly identified and confirmed natural gas constraints through the addition of incremental capacity to the region. The availability of the incremental capacity provided by the ANE Contract will help unlock an "abundant" natural gas supply for use by generators on a competitive basis. The ANE Contract thus helps to enable generator competition in line with the restructuring act, while, at the same time, providing price relief and reliability benefits to New Hampshire customers. As noted by Eversource in its initial brief, the very first of the restructuring policy principles is that under a restructured system "Reliable electricity service must be maintained while ensuring public health, safety, and quality of life." RSA 374-F:3, I. In proposing the ANE Contract, Eversource is fulfilling its responsibilities under the restructuring act.

Some commenters also argued that the ANE Contract was somehow incompatible with the resource planning statutes in RSA 378:37 and following. Such arguments require only brief response. In New Hampshire, utilities are to develop resource plans in line with the State's energy policy which is:

> to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

RSA 378:37. The ANE Contract is entirely consistent with this stated policy and supports its goals of assuring reliable energy supply at reasonable cost, both now and in the future, while

protecting the safety and health of citizens. Moreover, as Eversource stated in its initial brief, the ANE Contract is likewise consistent with the enumerated planning obligations set out in RSA 378:38 that further refine the State's general policy. Eversource Brief at 8-9. No commenter credibly contends that the ANE Contract is counter to the resource planning obligations in state law, and none provide any basis for the Commission to reject the ANE Contract.

Lastly, some commenters contended that Eversource, as an EDC, does not require natural gas, and therefore natural gas capacity is not "used and useful" to Eversource and the ANE Contract may not be approved.[10] Reliance upon that concept is misplaced in this case. As stated by the New Hampshire Supreme Court:

> Reduced to its essentials, this revenue requirement may be expressed as a formula: R = O + (B x r), where R is the utility's allowed revenue requirement; O is its allowed operating expense; B is its rate base, defined as cost less depreciation of the utility's property that is used and useful in the public service, *see* RSA 378:27; and r is the rate of return allowed on the rate base.

Appeal of Conservation Law Foundation, 124 N.H. 606, 633-34 (1986); *see also Appeal of Richards*, 134 N.H. 148, 160 (1991) (noting that rate base is only to include property that is used and useful). No party points to any case or statute that relies upon the "used and useful" concept other than in consideration of items to be included in a utility's rate base. The ANE Contract does not exist to satisfy Eversource's revenue requirement, and is not proposed or intended for inclusion in Eversource's rate base. Accordingly, in that there is no intent to include the ANE Contract in rate base, the concept is out of place here.

The OCA contends that the fact that the ANE Contract is a long-term contract, rather than an asset added to rate base is irrelevant to the analysis. OCA Brief at 6. In so contending, the OCA apparently seeks to convert the ANE Contract into something it is not. Similar to the ANE Contract, Eversource has other long term contracts in the form of PPAs. Those PPAs have,

[10] OCA Brief at 4-7; NEER Brief at 33-35.

pursuant to RSA 374:57, and other law, come before the Commission for its review and approval, both as to their terms, and as to the means by which their costs would flow to customers. *See, e.g., Public Service Company of New Hampshire, et al.*, Order No. 25,305 (December 20, 2011). Like the ANE Contract, those PPAs are not rate base items. *See Public Service Company of New Hampshire*, Order No. 25,213 (April 18, 2011) in Docket No. DE 10-195 at 77. ("The used and useful principle acts as a prohibition on what assets are included in rate base . . .. Because we do not decide today whether the facility [underlying the PPA] will or can be included in rate base or what its value in rate base should be, the used and useful principle is not implicated by the decision we make." (internal citation omitted)). To accept the OCA's contention with respect to the ANE Contract would also be to conclude that any PPA entered into by Eversource should be included in Eversource's rate base. Should that be the case, those contracts should then be treated as any other rate base item and Eversource would be entitled to earn a reasonable return on its investment. It is doubtful the OCA intends such an outcome.

Moreover, in making its arguments, the OCA makes note of one scholarly article, Jonathan A. Lesser, *The Used and Useful Test: Implications for a Restructured Electric Industry*, 23 Energy L. J. 349 (2002), in pointing out that the "used and useful" concept historically meant assets physically providing service. OCA Brief at 5. Later in that same article its author also notes that:

> PPAs are far different from owning generating assets. While PPAs obviously introduce contractual performance risks that differ from owned generating assets, the most significant difference is their rate treatment. PPAs are not treated as rate-based regulatory assets, but are instead expense items, on which utilities do not earn a return.

Id. at 365.[11] The used and useful concept as it appears in New Hampshire law is not applicable to the ANE Contract and does not support rejecting the ANE Contract.[12]

III. FEDERAL LAW

Expectedly, some opposition commenters contended that the ANE Contract, or Commission activity related to it, is preempted by federal law by way of FERC's jurisdiction under the Federal Power Act ("FPA") and/or the Natural Gas Act ("NGA"). Such arguments are unavailing.

Various opposition commenters argue that the ANE Contract acts as a kind of subsidy to certain generators with respect to their fuel costs and that therefore Eversource would be "picking winners and losers" or otherwise interfering with the wholesale competitive generation market in violation of the FPA.[13] Eversource is not subsidizing fuel to support one generator or a class or group of generators. It is proposing to pay for incremental capacity that will make natural gas more reliably and predictably available in the region. In much the way that building a gas station near the home office of a trucking company could not be said to be subsidizing the diesel fuel that trucking company might use in its competitive business, the ANE Contract is not subsidizing the fuel for one particular category of electric generators.

Further, while more reliable fuel supplies may, indirectly, have an effect on the costs of one or more generators relative to others, the same is true of tax incentives, land grants, and

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[11] That same article also notes that as of the date of it was written only Vermont had attempted to apply what the author termed an "economic used and useful test" to PPAs and that the results of doing so "have not only been baffling, they have stood the regulatory 'symmetry' principle on its head." Lesser, 23 Energy L.J. at 365.

[12] Furthermore, even if the "used and useful" concept was applicable, its application would not necessarily bar the ANE Contract. *See, e.g.*, William J. Baumol and J. Gregory Sidak, *The Pig in the Python: Is Lumpy Capacity Investment Used and Useful?*, 23 Energy L.J. 383, 388 (2002) (noting that investments in "excess capacity," that is, capacity that is not immediately used to serve customers, is nonetheless used and useful because "In effect, consumers (that is, ratepayers) pay something extra today to avoid having to pay substantially higher prices in the future if a shortage of generation or transmission capacity should eventuate."). In other words, the hedge value of the capacity is, itself, "used and useful" to customers.

[13] OCA Brief at 21-22; ENGIE Brief at 27-29; NEER Brief at 38.

direct subsidies for certain generators. The United States Supreme Court has explicitly stated that such indirect influences are permissible means for the States to encourage development of generation that would not run afoul of the FPA or FERC's regulations, *Hughes v. Talen Energy Marketing LLC et al.*, 578 U.S. ___, slip op. at 15 (2016), and the ANE Contract is no different. By making natural gas capacity available, the ANE Contract may have an indirect impact on wholesale rates, but it will not have the direct influence that might be cause to claim preemption by FERC under the FPA. As the Supreme Court has stated:

> [M]arkets in all electricity's inputs—steel, fuel, and labor most prominent among them—might affect generators' supply of power. And for that matter, markets in just about everything—the whole economy, as it were—might influence LSEs' demand. So if indirect or tangential impacts on wholesale electricity rates sufficed, FERC could regulate now in one industry, now in another, changing a vast array of rules and practices to implement its vision of reasonableness and justice. We cannot imagine that was what Congress had in mind.

Federal Energy Regulatory Commission v. Electric Power Supply Association et al., 577 U.S. ___, 136 S. Ct. 760, 774 (2015) (internal citation omitted). The ANE Contract does not create the direct impacts on wholesale rates that would implicate FERC's jurisdiction.

With respect to the NGA, the preemption argument is even more tenuous. As argued by Eversource in its initial brief, nothing in the ANE Contract results in any regulation of the matters covered by the NGA. Eversource Brief at 20. The ANE Contract simply does not authorize the transportation or sale of natural gas in interstate commerce.

Further, with respect to the claims of at least one commenter that the proposed Electric Reliability Service Program ("ERSP") is preempted by the NGA,[14] and FERC's regulations thereunder, because it would result in preferential releases of capacity, two responses are appropriate. First, as noted above, whether potentially preferential releases would be counter to FERC's regulations is a matter for FERC to decide, not this Commission. In fact, that very issue

[14] OCA Brief at 24.

is presently before FERC for its consideration in its Docket No. RP16-618-000. FERC regulates the capacity release market and FERC, rather than this Commission, should be the regulatory agency to determine whether what is proposed creates a conflict with federal law and FERC's regulations or precedents promulgated thereunder.

Second, Eversource has acknowledged that the preferential release that would be governed by the ERSP would be implemented if permitted by FERC, but that should FERC determine it may not be implemented, the ANE Project would abide by existing capacity release requirements. *See* Eversource Brief at 11, fn. 7. There is simply no issue for the Commission to decide. The question that is appropriately before this Commission is whether the ANE Contract is reasonable such that Eversource should be permitted cost recovery. Nothing in the NGA preempts the Commission from rendering such a decision.

IV. CONCLUSION

There is nothing in state or federal law that prevents Eversource from entering into the ANE Contract and nothing that prevents the Commission from determining whether Eversource's proposed means of cost recovery is appropriate. Those arguing otherwise do so out of a belief either that any activity by Eversource must be explicitly endorsed by the law – which is not the case – or that there is an unbending requirement in New Hampshire that the Commission defer exclusively to the forces of competition to solve known problems – even when there is no evidence that such market solutions are forthcoming. The ANE Contract is fully supported by New Hampshire law, is not preempted by federal law, and entering into it should be found to be a legal and permissible action by Eversource.

Respectfully submitted this 12th day of May, 2016.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

May 12, 2016
Date

_____
Matthew J. Fossum