

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 TO JOINT SUPPLEMENTAL BRIEFING OF CONSERVATION LAW
FOUNDATION, NEXTERA ENERGY RESOURCES, LLC, AND OFFICE OF THE
CONSUMER ADVOCATE REGARDING LEGALITY OF PETITIONER'S PROPOSAL**

On August 22, 2016, the Conservation Law Foundation, NextEra Energy Resources, LLC, and the Office of Consumer Advocate (collectively, the "Joint Submitters"), filed a joint supplement to the legal briefs each had filed in the instant docket. The purported purpose of the submission was to "alert" the Commission to the recent decision of the Massachusetts Supreme Judicial Court ("SJC") in *ENGIE Gas & LNG LLC v. Department of Public Utilities* and *Conservation Law Foundation v. Department of Public Utilities*, slip op. SJC-12051, SJC- 12052 (Aug. 17, 2016) and to argue that the conclusions in that opinion provide some form of authority relative to the issues in this docket. Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") herein provides its brief response to that joint submission.

The Joint Submitters contend that the SJC's opinion is important for two reasons, but neither of those reasons is legally correct or applicable here. First, the Joint Submitters contend that because the Massachusetts and New Hampshire restructuring laws are similar and that because the SJC concluded that an electric distribution company ("EDC") could not contract for natural gas capacity without violating the Massachusetts restructuring act, the SJC's decision bolsters the arguments that the proposed contract in this case is contrary to New Hampshire law.

This contention ignores important differences between Massachusetts and New Hampshire law that are dispositive here.

Although there may be limited similarities between the restructuring laws in Massachusetts and New Hampshire, there are significant differences in the overall statutory scheme and the means by which restructuring has been implemented. As argued by the Joint Submitters, the SJC concluded that approval of customer-backed, long-term contracts by EDCs for gas capacity would contradict the “fundamental policy” embodied in the Massachusetts restructuring act, which removed EDCs from the business of electric generation. Joint Submission at 2. In New Hampshire, this is not the case.¹

As pointed out previously in this proceeding, as well as the underlying investigation in Docket No. IR 15-124, unlike Massachusetts, following the passage of the restructuring law in RSA chapter 374-F, the New Hampshire Legislature left in place RSA chapter 374-A, which explicitly permits EDCs to “plan, finance, construct, purchase, operate, maintain, use, share costs of, own, mortgage, lease, sell, dispose of or otherwise participate in electric power facilities.” RSA 374-A:2, I. Furthermore, this Commission hardly needs reminding that despite the passage of the restructuring act, actually having New Hampshire’s EDCs exit from the electric generation business has been fraught by various delays, including suspensions of restructuring that were specifically required by the Legislature. *See* December 5, 2014 Brief of Eversource in Docket No. DE 14-238 at 14-24 for a history of restructuring in New Hampshire. Given the continued existence of a law permitting EDCs to own or invest in electric generating facilities, as well as

¹ In making this argument, Eversource does not concede that the proposed contract is, in fact, one for electric generation. As Eversource has repeatedly pointed out, the underlying contract is not for the benefit of any generating facility, generator, or group of generators, but may be used by anyone with need of it, and no party making use of the newly-available capacity will be required to participate in any wholesale or retail electric market. Eversource April 28, 2016 Brief in Docket No. DE 16-241 at 14 and May 12, 2016 Reply Brief at 6-7. This argument is intended only to clarify that the logic underlying the SJC’s decision does not apply in New Hampshire as the Joint Submitters wish it might.

New Hampshire's history of repeatedly suspending restructuring, the "fundamental policy" supposedly at work in Massachusetts does not apply in New Hampshire.²

The Joint Submitters also contend that the SJC's decision is "highly relevant" because the project underlying the contract, Access Northeast, was intended as a regionally supported project, and that in light of the SJC's decision and its effect on the contracts proposed in Massachusetts, the regional nature of the project may be hampered and the project itself may be undermined. As a first matter, this concern is irrelevant as to whether the proposed contract is legal under New Hampshire law. Secondly, and perhaps more importantly, there is no evidence or suggestion that regional support for Access Northeast, including the participation of Massachusetts, cannot or will not occur. The SJC's decision did not establish or reveal any alternative to Access Northeast, did not make any finding that natural gas capacity is not needed or will not have a substantial impact on reducing prices for electric customers, and did not speak to or rule upon any other type of potential participation by Massachusetts. Therefore, the proposition that regional participation in the Access Northeast project cannot now be achieved is incorrect, and there is nothing indicating such an outcome.

As noted by the Commission in commencing its initial investigation in Docket No. IR 15-124, there are significant constraints on the region's natural gas pipelines that have led to extreme price volatility in gas markets and which have, in turn, created higher and more volatile wholesale and retail electricity prices in New Hampshire. Order of Notice in Docket No. IR 15-124 at 2. In Eversource's Reply Brief, Eversource noted that "[t]here is no evidence that the wholesale electricity market in New England has facilitated the investment necessary to relieve

² Eversource also notes that the SJC's decision rested, in part, on a review of the extensive legislative history relating to M.G.L. c. 164, § 94A, the Massachusetts statute relating to long-term utility contracts for energy. As pointed out by Eversource, unlike M.G.L. c. 164, § 94A, the similar statute in New Hampshire, RSA 374:57, has no such history, and it should be interpreted by its plain terms to apply to contracts by EDCs for either electric or gas transmission. Eversource Brief at 15-18 and Eversource Reply Brief at 4-6.

the pipeline capacity constraints affecting gas-fired electric generators and New Hampshire customers” and that “[c]ompetition 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.” Eversource Reply Brief at 9-10. Those facts have not changed. New England electric customers are bearing the very real and substantial cost burden and reliability risk of inadequate natural gas infrastructure while market participants, such as NextEra, fight to maintain those burdens and risks to harbor the windfall profits they derive from the high and volatile electric prices caused by inadequate gas infrastructure.

The SJC’s decision may require a modification to the proposals in Massachusetts, but nothing about the decision undercuts the necessity for a project like Access Northeast. The need for additional amounts of low cost, reliable natural gas in New Hampshire and throughout New England to fuel the existing and impending electric generation requirements remains necessary today more than ever. Thus, though the SJC’s decision will change the means by which Massachusetts contributes its share, it does not change the end result – there is no doubt that Massachusetts needs to participate in some manner and that New Hampshire’s share should be unaffected by the SJC ruling. Accordingly, the Commission should not permit the decision of a Massachusetts court to dictate the course for New Hampshire.

Respectfully submitted this 26th day of August, 2016.

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

By:  _____

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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.

August 26, 2016
Date



Matthew J. Fossum