BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

EVERSOURCE ENERGY - PETITION FOR	:	
APPROVAL OF GAS INFRASTRUCTURE	:	DOCKET NO. DE 16-241
CONTRACT WITH ALGONQUIN GAS	:	
TRANSMISSION, LLC	:	

ALGONQUIN GAS TRANSMISSION, LLC'S
MOTION FOR REHEARING AND/OR RECONSIDERATION

Pursuant to RSA 541:3, RSA 365:21 and Rule Puc 203.33, Algonquin Gas Transmission, LLC ("Algonquin") hereby respectfully requests that the New Hampshire Public Utilities Commission ("Commission") reconsider or conduct a rehearing of Order No. 25,950 ("Order").

BACKGROUND

On February 18, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") filed a petition ("Petition") with the New Hampshire Public Utilities Commission ("NH PUC" or the "Commission") for approval of a proposed 20-year contract between Eversource and Algonquin for natural gas capacity on Algonquin's Access Northeast Project (the "Access Northeast Contract"); an Electric Reliability Service Program ("ERSP") to set parameters for the release of capacity and liquefied natural gas ("LNG") to electric generators; and a Long-Term Gas Transportation and Storage Contract tariff ("LGTSC") to provide for the recovery of costs associated with the Access Northeast Contract (collectively, with the ERSP and Access Northeast Contract, the "Access Northeast Program").[1] Several parties, including Algonquin, intervened.[2]

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[1] *See, generally*, Petition.

[2] The Order discusses the two rough groupings of parties, and this Motion maintains those groupings. The "Supporters" include Eversource, Algonquin and the Coalition for Lower Energy Costs ("CLEC"). The "Opponents" include Conservation Law Foundation ("CLF"); Exelon Generation Company, LLC ("ExGen"); ENGIE Gas & LNG LLC ("ENGIE"); Office of Consumer Advocate ("OCA"); New Hampshire Municipal Pipeline Coalition ("Municipal Coalition"); NextEra Energy Resources, LLC ("NEER"); and Pipe Line Action Network for the Northeast ("PLAN"). *See* Order, at 4-5.

On March 24, 2016, the Commission issued an Order of Notice in the above-referenced matter setting forth a two-phase proceeding. In the first phase ("Phase I"), the Commission would consider whether the Access Northeast Program is allowed under New Hampshire law.[3] In the event of an affirmative decision on this issue, the Commission would then open a second phase ("Phase II") "to examine the appropriate economic, engineering, environmental, cost recovery, and other factors presented by Eversource's proposal."[4] Initial Briefs and Reply Briefs regarding Phase I issues were submitted on or about April 28, 2016 and May 12, 2016, respectively. On October 6, 2016, the Commission issued the Order on Phase I issues. In that Order, based primarily on an incorrect interpretation that the "overriding purpose" of the Restructuring Statute was that electric generation be "at least functionally separated from transmission and distribution services" (the "Functional Separation Principle"), the Commission concluded that the Access Northeast Program was not permitted under New Hampshire law and dismissed the Petition.[5]

STANDARD OF REVIEW

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable.[6] A successful motion must establish "good reason" by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision,"[7] or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision…"[8]

[3] Order, at 4.
[4] *Id.*
[5] *Id.* at 15.
[6] RSA 541:3, RSA 541:4; *see also* Order No. 25,291 (Nov. 21, 2011), at 9.
[7] *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted).
[8] Order No. 25,088 (Apr. 2, 2010), at 14.

MOTION

For the reasons discussed herein, good cause exists for the Commission to reconsider or rehear the Order. In particular, the Commission's conclusions concerning the overall goals and relationship between the principles of the Restructuring Statute (RSA Chapter 374-F) and interpretation of other statutes in light of its reading of the Restructuring Statute, are incorrect, unlawful and unreasonable.

The Commission acknowledged in its Order "that the increased dependence on natural gas-fueled generation plants within the region and the constraints on gas capacity during peak periods of demand have resulted in electric price volatility."[9] The Commission further acknowledged that Eversource's proposal has "the potential to reduce that volatility."[10] Despite these acknowledgments and record evidence that the Access Northeast Program would lower costs, the Commission ignored the plain language and legislative history of the Restructuring Statute, which had the ***primary*** purpose:

- "to reduce costs for all consumers of electricity";[11]
- "to provide electric service at lower and more competitive rates";[12]
- "to achieve lower rates for all customer classes";[13] and
- to free "residents and businesses from exorbitantly high electric rates."[14]

The Commission instead focused on only a single one of fifteen stated Restructuring Policy Principles in finding that the Access Northeast Program is inconsistent with New Hampshire law. Even if, despite the plain language and legislative history of the Restructuring Statute to the contrary, the "overriding purpose" of the Restructuring Statute was the functional

[9] Order, at 15.

[10] *Id.*

[11] RSA 374-F:1, I.

[12] HB 1392, sec. 129:1.

[13] House Science, Technology and Energy Committee, Public Hearing on HB 1392 (Jan. 9, 1996), at 2.

[14] *Id.* at 23; *see also* Senate Executive Departments and Administration Committee Hearing (Feb. 14, 1996), at 27 (Sen. Cohen making similar remarks).

separation of generation activities from transmission and distribution activities, the Access Northeast Program would not abrogate that separation as it would simply provide a mechanism by which natural gas capacity would be made available to the generators.

Further, if all of the Restructuring Policy Principles are considered, there is no inconsistency between the Restructuring Statute and other New Hampshire energy statutes. As a consequence, there is no basis to artificially limit an electric distribution company's ("EDC") authority to acquire "transmission capacity" under RSA 374:57 to electric transmission capacity only despite the absence of any such limitation in the language of the statute itself. Similarly, since, when all of the Restructuring Policy Principles are considered, RSA Chapter 374-A is consistent with the Restructuring Statute, there is no basis to implicitly repeal RSA Chapter 374-A's grant of authority for EDCs to "participate" in electric power generation facilities. Finally, costs associated with the Access Northeast Program should be recoverable in Eversource's rates as permissible under New Hampshire law and in furtherance of the Restructuring Policy Principles.

I. THE COMMISSION MISCONCEIVED THE OVERRIDING PURPOSE OF THE RESTRUCTURING STATUTE.

In the Order, the Commission found that "the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity."[15] However, this directly contravenes the plain language of the Restructuring Statute, is inconsistent with its legislative history, and confuses the goals of the Restructuring Statute with the methods by which to achieve those goals.

As the Order itself recognizes, the plain language of the Restructuring Statute explicitly provides that "[t]he ***most compelling reason*** to restructure the New Hampshire electric utility

[15] Order, at 8.

industry ***is to reduce costs for all consumers*** of electricity . . . ."[16] The legislative findings of the Restructuring Statute also specifically state that "New Hampshire must aggressively pursue restructuring and increased customer choice in order to provide electric service at ***lower and more competitive rates***."[17] The legislative history of the Restructuring Statute as stated by Rep. Jeb Bradley, sponsor of HB 1392 (which became the Restructuring Statute), affirms: "[The bill's] goals are simple but profound. ***Most importantly***, it hopes to achieve ***lower rates*** for all customer classes, all residents in the state of New Hampshire. Number two: It will allow customers to choose who their supplier of electricity is."[18] Further, Senator Burton J. Cohen, expressing his support for the bill, said that "[t]he issue of ***freeing*** New Hampshire residents and businesses ***from exorbitantly high electric rates*** is the ***most important*** to our constituents from a long range."[19] As Eversource noted in the record before the Commission, the Access Northeast Program would achieve this purpose by reducing the cost of electricity in New Hampshire to the benefit of all ratepayers.[20]

Yet, the Commission found that "the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity."[21] Both the plain language of the Restructuring Statute and its legislative history specifically provide that the most compelling and most important goal of the statute is to "reduce costs" and "lower rates." In fact, the Commission itself recognized in the Order that the "purpose" of the Restructuring Statute was to

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[16] Order, at 7-8 (emphasis added); *see also* RSA 374-F:1, I.

[17] HB 1392, sec. 129:1 (emphasis added); New Hampshire Laws 1996, 129:1, IV.

[18] House Science, Technology and Energy Committee, Public Hearing on HB 1392 (Jan. 9, 1996), at 2 (emphasis added).

[19] *Id.* at 23; *see also* Senate Executive Departments and Administration Committee Hearing (Feb. 14, 1996), at 27 (Sen. Cohen making similar remarks).

[20] Petition, at 5-6.

[21] Order, at 8.

lower prices and create a more productive economy. [22] However, the Commission confused that purpose with the method of achieving it and, as a result, incorrectly found that the Functional Separation Principle was the primary goal of the Restructuring Statute.[23] Based on this erroneous finding, the Commission then incorrectly concluded that the Access Northeast Program is inconsistent with New Hampshire law. Because the Commission has mistakenly conceived the overriding purpose of the Restructuring Act, the Commission should reconsider or conduct a rehearing of the Order.[24]

II. THE COMMISSION IGNORED FOURTEEN OUT OF FIFTEEN RESTRUCTURING PRINCIPLES.

According to the Order, the Commission weighed the restructuring policy principles at RSA 374-F ("Restructuring Policy Principles")[25] and concluded that "the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity."[26] In support of this conclusion, the Commission stated that RSA 374-F:3, III "directs the restructuring of the industry, separating generation activities from transmission and distribution activities, and unbundling the rates associated with each of the separate services."[27] The Order does not cite or discuss any of the myriad of other Restructuring Policy Principles.

The Restructuring Statute sets forth the following fifteen (15) Restructuring Policy Principles:

1. System Reliability. "Reliable electricity service must be maintained while ensuring public health, safety, and quality of life."[28]

[22] Order, at 9-10.
[23] *Id.* at 8-9.
[24] *Dumais*, 118 N.H. at 311.
[25] RSA 374-F:3.
[26] Order, at 8-9.
[27] *Id.* at 9.
[28] RSA 374-F:3, I.

2. Customer Choice. "Customers should be able to choose among options such as levels of service reliability, real time pricing, and generation sources, including interconnected self generation" and should "expect to be responsible for the consequences of their choices."[29]

3. Regulation and Unbundling of Services and Rates/Functional Separation Principle. Electric services and rates "should be unbundled to provide customers clear price information" and generation services should be "at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future."[30]

4. Open Access to Transmission and Distribution Facilities. Non-discriminatory open access to the electric system for wholesale and retail transactions should be promoted.[31]

5. Universal Service. Universal electric service should be provided, and default service options should be available as a "safety net" to assure universal access to electricity.[32]

6. Benefits for All Consumers. Restructuring should benefit all customer classes, without benefitting one class over another, and a public benefits charge may be used to fund public benefits.[33]

7. Full and Fair Competition. "Choice for retail customers cannot exist without a range of viable suppliers. The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market."[34]

8. Environmental Improvement. "Continued environmental protection and long term environmental sustainability should be encouraged" through both market approaches and air pollution controls.[35]

9. Renewable Energy Resources. Development of renewable energy resources should be encouraged, and should be balanced against impact on generation prices.[36]

10. Energy Efficiency. Incentives should be provided for energy efficiency and demand-side resource conservation.[37]

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[29] RSA 374-F:3, II.

[30] RSA 374-F:3, III.

[31] RSA 374-F:3, IV.

[32] RSA 374-F:3, V.

[33] RSA 374-F:3, VI.

[34] RSA 374-F:3, VII.

[35] RSA 374-F:3, VIII.

[36] RSA 374-F:3, IX.

11. Near Term Rate Relief. Effort should be made to quickly reduce electric rates during the transition to a restructured market.[38]

12. Recovery of Stranded Costs. Recovery for stranded costs should be allowed in a manner that balances "the interests of ratepayers and utilities during and after the restructuring process."[39]

13. Regionalism. New Hampshire should work in cooperation with the other New England states.[40]

14. Administrative Processes. The Commission should adapt its administrative processes to enable market participants to quickly adapt to the changes caused by restructuring.[41]

15. Timetable. "The commission should seek to implement full customer choice among electricity suppliers in the most expeditious manner possible."[42]

While these Restructuring Principles are "intended to guide" the Commission in its implementation of electric market restructuring,[43] the Restructuring Statute does not prioritize any one of the Restructuring Policy Principles over any of the others. Had the General Court intended, as the Commission concludes, that the Functional Separation Principle take primacy, it would have said so—the Commission may not read the Restructuring Statute to include a directive that is not there.[44]

While the Restructuring Statute provides for the functional separation of the generation function and the transmission and distribution function, this principle is just one of ***fifteen (15)*** Restructuring Policy Principles articulated with equal weight by the legislature. Many if not all of the other fourteen Restructuring Policy Principles would be advanced by the Access Northeast

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[37] RSA 374-F:3, X.

[38] RSA 374-F:3, XI.

[39] RSA 374-F:3, XII.

[40] RSA 374-F:3, XIII.

[41] RSA 374-F:3, XIV.

[42] RSA 374-F:3, XV.

[43] RSA 374-F:1, III.

[44] *Appeal of Old Dutch Mustard Co., Inc.*, 166 N.H. 501, 506 (2014) (holding that a tribunal may "neither consider what the legislature or commissioner might have said nor add words that they did not see fit to include.")

Program. As numerous regulators and stakeholders have recognized, New England's increasing reliance on natural gas for electric generation, without a corresponding expansion of natural gas infrastructure, threatens reliability.[45] For instance, the Restructuring Policy Principles provide that "[r]eliable electricity service must be maintained while ensuring public health, safety, and quality of life"[46] and the Access Northeast Program would enhance reliability by providing a critical upgrade to natural gas infrastructure. By displacing wintertime use of legacy fuels, like coal and oil, and providing a backstop for intermittent renewable generation, the Access Northeast Program also furthers the goals of environmental improvement[47] and encouraging renewable energy.[48] The Access Northeast Program is a regional solution, consistent with the goal of regionalism.[49] Consequently, the Order's focus on the Functional Separation Principle, to the exclusion of all the other Restructuring Policy Principles, was incorrect, unlawful and unreasonable and should be reconsidered.

III. THE ACCESS NORTHEAST PROJECT DOES NOT CONTRAVENE THE FUNCTIONAL SEPARATION PRINCIPLE.

Even if the separation of the generation function from transmission and distribution functions were the "overriding purpose" of the Restructuring Statute (which Algonquin disputes), the Access Northeast Program would not abrogate that separation. The Access Northeast Program would simply provide a mechanism by which natural gas capacity would be

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[45] *See, e.g.*, ISO-New England, Regional Electricity Outlook (March 2016) (available at: https://www.iso-ne.com/static-assets/documents/2016/03/2016_reo.pdf), at 11 ("Inadequate natural gas pipeline infrastructure is at times limiting the availability of gas-fired resources or causing them to switch to oil, which is creating reliability concerns and price volatility, and contributing to air emission increases in winter."); New Hampshire Office of Energy & Planning, New Hampshire 10-Year State Energy Strategy (September 2014) (available at: https://www.nh.gov/oep/energy/programs/documents/energy-strategy.pdf), at 46 ("In the winter of 2013-2014, the region did not have enough [natural gas] supply for both heating and electrical generation needs. This resulted in higher prices and volatility, especially on the coldest days.").

[46] RSA 374-F:3, I.

[47] RSA 374-F:3, VIII.

[48] RSA 374-F:3, X.

[49] RSA 374-F:3, XIII.

made available. While Eversource will make additional primary firm pipeline capacity available in New England, that capacity will be auctioned by a capacity manager in an arms-length process consistent with Federal Energy Regulatory Commission ("FERC") rules on capacity release. Generators, acting in their own economic interests in a fully competitive market, will either utilize it or not as they see appropriate. Thus, the decision of whether to procure and/or use the natural gas capacity made available by Eversource will rest firmly with generators. Eversource's sole and critical role will be making primary firm natural gas capacity available—Eversource will not be providing or engaged in generation.[50] Thus, the Access Northeast Program does not run afoul of the Functional Separation Principle.

As Rep. Bradley noted in 1996, the legislature sought to encourage "full and fair competition" by which it meant "a viable range of suppliers."[51] The Access Northeast Program would maintain "a viable range of suppliers" and would not pick winners and losers between suppliers.[52] In fact, the Access Northeast Program would enhance the "viable range of suppliers" by making natural gas generators that were previously unavailable to operate when dispatched available, even on the coldest winter days, and by providing a backstop to support additional intermittent renewable generation resources. Additionally, all of the many layers of competition in the electric generation supply chain would remain: generators will still competitively secure the natural gas commodity and pipeline capacity; generators will still compete in the wholesale electric marketplace; and retail electric suppliers will still competitively procure energy and

[50] *Cf.* Staff Legal Memorandum, at 3 ("provision of gas capacity to unaffiliated merchant generators does not violate the functional separation principle of RSA 374-F:3, III in the first instance, in that New Hampshire EDCs would not actually acquire the gas capacity for their own use, but rather, would make such capacity available for the use of merchant generators in a bilateral transaction.").

[51] House Science, Technology and Energy Committee, Public Hearing on HB 1392 (Jan. 9, 1996), at 3.

[52] This is also consistent with the Restructuring Policy Principle encouraging "full and fair competition." *See* RSA 374-F:3, XII.

compete for end-user market share. Thus, the Access Northeast Program does not contravene the Functional Separation Principle.

IV. THE ORDER VIOLATES THE CANONS OF STATUTORY CONSTRUCTION.

The Commission's conclusions regarding the other statutes discussed in the Order violated the canons of statutory construction. As such, the Commission's conclusions with respect to those other statutes are unlawful and unreasonable and should also be reconsidered. Moreover, because the Commission's analysis of the other statutes was inextricably linked to its conclusions regarding the purpose of the Restructuring Statute and whether the Access Northeast Program was consistent that statute, the Commission must also reconsider its conclusions as to the other statutes discussed in the Order.

A. The Commission's Order Impermissibly Altered The Language Of RSA 374:57.

Well-recognized canons of statutory construction provide that a tribunal such as the Commission must interpret statutes consistent with the plain meaning of the language used and without adding or subtracting words. A tribunal must "first look to the language of the statute or regulation itself, and, if possible, construe that language according to its plain and ordinary meaning."[53] A tribunal may "neither consider what the legislature or commissioner might have said nor add words that they did not see fit to include."[54] For example, in interpreting a regulation related to permitting of solid waste management facilities, the Supreme Court of New Hampshire declined to read the word "facility" in a way that included accessory structures not related to solid waste handling.[55]

[53] *Old Dutch Mustard*, 166 N.H. at 506.
[54] *Id.*
[55] *Id*. at 508-509.

RSA 374:57 authorizes EDCs like Eversource to acquire "transmission capacity" and provides:

> Each electric utility which enters into an agreement with a term of more than one year for the purchase of generating capacity, ***transmission capacity or energy*** shall furnish a copy of the agreement to the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission pursuant to the Federal Power Act or, if no such filing is required, at the time such agreement is executed. The commission may disallow, in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.[56]

Contrary to the canons of statutory construction, however, the Commission concluded that "[t]he meaning of 'capacity' in that legislation is limited to electric generating capacity and electric transmission capacity…."[57] However, had the legislature intended to add the word "electric" before the phrase "transmission capacity," it would have done so. Furthermore, the fact that the legislature included "energy" within the types of contracts that EDCs are authorized to enter (with PUC approval) evidences its intent not to limit the types of contracts permissible under 374:57 to just electricity.[58] Thus, the Commission's addition of words that the legislature "did not see fit to include"[59] was incorrect, unlawful and unreasonable and should be reconsidered.

B. The Commission Improperly Repealed RSA 374-A By Implication.

In the Order, the Commission concluded that "[t]he change in the industry through the Restructuring Statute, first passed in 1996, effectively ended a restructured EDC's ability to participate in the generation side of the electric industry."[60] In doing so, the Commission

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[56] RSA 374:57 (emphasis added).

[57] Order, at 13.

[58] For example, "energy" can be used to refer to district hot water distribution systems. RSA 362:4-d. By contrast, the Restructuring Act (RSA Chapter 374-F), which restructured electric utilities in particular, used the words "electricity" and "electric" instead of "energy" unless using specific phrases that typically include the word "energy" such as "energy efficiency," "renewable energy" and the like.

[59] *Old Dutch Mustard*, 166 N.H. at 506.

[60] Order, at 14.

implicitly repealed RSA 374-A's grant of authority for EDCs to "participate" in electric generation facilities in contravention of New Hampshire precedent.

As the Commission itself recognized in the Order, "the Court construes statutes, where reasonably possible, so that they lead to reasonable results and do not contradict each other."[61] The New Hampshire Supreme Court has specifically held that

> implied repeal of former statutes is a disfavored doctrine in this State. The party arguing a repeal by implication must demonstrate it by evidence of convincing force. If ***any reasonable construction*** of the two statutes taken together can be found, this court will not find that there has been an implied repeal.[62]

The Supreme Court of the United States has also held that "[i]n the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable."[63] While it is true that when a conflict exists between two statutes, the later statute will control, "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, ***regardless of the priority of enactment***."[64]

Although RSA 374-A was passed prior to the Restructuring Statute, RSA 374-A provides EDCs with the authority to undertake specific actions while the Restructuring Act is more general. Thus, RSA 374-A controls. Moreover, in this case, the legislature itself has specifically determined what statute prevails in the event of a conflict. RSA 374-A explicitly provides that "***[n]otwithstanding any contrary provision*** of any general or special law relating to the powers

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[61] Order, at 7.

[62] *Board of Selectmen v. Planning Bd.*, 118 N.H. 150, 152-53 (1978).

[63] *Morton v. Mancari*, 417 U.S. 535, 550 (1974) (holding that the Equal Employment Opportunity Act had not implicitly repealed the statute authorizing the Bureau of Indian Affairs to afford a preference to certain Native American job applicants).

[64] *Id.* at 550-51 (emphasis added).

and authorities of domestic electric utilities or any limitation imposed by a corporate or municipal charter," domestic electric utilities have the power:

> To jointly or separately plan, finance, construct, purchase, operate, maintain, use, share costs of, own, mortgage, lease, sell, dispose of ***or otherwise participate in electric power facilities*** or portions thereof within or without the state…
>
> To enter into and perform contracts and agreements for such joint or separate planning, financing, construction, purchase, operation, maintenance, use, sharing costs of, ownership, mortgaging, leasing, sale, disposal of ***or other participation in electric power facilities***… including, without limitation, contracts and agreements for the payment of obligations imposed without regard to the operational status of a facility or facilities….[65]

Thus, Eversource's authority to enter into contracts related to electric power facilities was not nullified by and still exists "notwithstanding" the Restructuring Statute (RSA 374-F). Further, Eversource still fits the definition of "electric utility" under RSA 374-A, because it is "primarily engaged in the…transmission" of electricity.[66] As a consequence, the Commission's implicit repeal of the EDCs' authority to "participate" in electric generation facilities, and its finding that RSA 374-A is no longer applicable in a restructured market, was unlawful and unreasonable.[67]

Moreover, even if the separation of the generation function from transmission and distribution functions were the "overriding purpose" of the Restructuring Statute (which Algonquin disputes), the two statutes do not contradict each other. While the Access Northeast Program would permit Eversource to make additional transmission capacity available on a primary firm basis to generators in New England, it would not provide Eversource with any ownership or operation rights or other direct interest in electric power facilities. As noted above,

[65] RSA 374-A:2 (emphasis added).

[66] RSA 374-A:1, IV.

[67] *Morton*, 417 U.S. at 550 (holding that repeal by implication is only justified "when the earlier and later statutes are irreconcilable.").

Eversource's sole and critical role will be making primary firm natural gas capacity available. However, generators will continue to own, operate and retain their interests in the electric power facilities. Thus, Eversource will not be participating in electric power facilities. Since, through a reasonable construction of the two statutes taken together, the two statutes are reconcilable, the Commission's implicit repeal of the EDCs' authority to "participate" in electric generation facilities was unlawful and unreasonable[68] and should be reconsidered.

V. COSTS RELATED TO ACCESS NORTHEAST SHOULD BE RECOVERABLE.

The Commission's conclusions regarding the Restructuring Statute led to its further conclusion that Eversource would not be able to recover costs related to the Access Northeast Program.[69] Because the Commission's analysis of the recoverable of these costs was inextricably linked to its conclusions regarding the purpose of the Restructuring Statute and whether the Access Northeast Program was consistent with that statute, the Commission must also reconsider its conclusions as to the recoverability of the costs related to the Access Northeast Program.

CONCLUSION

For all of the foregoing reasons, Algonquin respectfully requests that the Commission grant this motion and reconsider or conduct a rehearing of Order No. 25,950.

[68] *Morton*, 417 U.S. at 550 (holding that repeal by implication is only justified "when the earlier and later statutes are irreconcilable.").

[69] Order, at 14.

Dated: November 7, 2016

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Rehearing and/or Reconsideration has this day been sent via electronic mail to all persons on the service list.

Emilee Mooney Scott

Emilee Mooney Scott

Dated: November 7, 2016