THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 16-241

Public Service Company of New Hampshire d/b/a Eversource Energy
Petition for Approval of a Gas Capacity Contract with Algonquin Gas Transmission, LLC,
Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery

OBJECTION OF CONSERVATION LAW FOUNDATION TO MOTIONS FOR REHEARING AND/OR RECONSIDERATION

Pursuant to Puc 203.07(f), Conservation Law Foundation ("CLF") respectfully objects to the motions for rehearing and/or reconsideration filed on November 7, 2016 by Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") and Algonquin Gas Transmission, LLC ("Algonquin"), as follows:

1. On October 6, 2016, the Commission issued Order No. 25,950 dismissing Eversource's petition requesting approval of a contract to purchase capacity on the proposed Access Northeast gas pipeline, related program details, and a distribution rate tariff ("Order"). The Order addressed a number of well-defined legal questions triggered by Eversource's unprecedented proposal – issues that had been the subject of extensive briefing (through both initial and reply briefs) by numerous parties, including but not limited to Eversource and Algonquin.

2. On November 7, 2016, Eversource and Algonquin filed separate motions for rehearing and/or reconsideration, arguing that the Commission reached an incorrect conclusion in dismissing Eversource's petition. Eversource's and Algonquin's motions fail to establish that the Commission overlooked or mistakenly conceived of matters in its Order and present no new,

previously unavailable information, effectively re-asserting matters that have been the subject of extensive briefing yet seeking a different result. Accordingly, their motions should be denied.[1]

3. Eversource and Algonquin assert that the Commission erroneously interpreted New Hampshire restructuring law, RSA 374-F, by improperly emphasizing competition and the functional separation of electric generation from electric transmission/distribution, as compared to the objective of reducing electricity rates. *See* Eversource Motion for Reconsideration at 2-3; Algonquin Motion for Rehearing and/or Reconsideration at 4-6. In doing so, Eversource and Algonquin fail to raise anything new[2] and fail to recognize that competition and unbundling the functions of traditional, vertically integrated utilities were the essential means by which the legislature chose to achieve lower rates. *See e.g.*, RSA 374-F:1, I ("The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity *by harnessing the power of competitive markets*.") (emphasis added). More specifically, while it is true that New Hampshire's restructuring law was enacted to reduce rates for consumers, the plain language of the law – entitled "Electric Utility *Restructuring*"[3]– evinces a clear, unambiguous intent[4] to achieve lower rates through a new structure that separates electric

[1] As the Commission recently stated in *PNE Energy Supply, LLC, et al. v. PSNH d/b/a Eversource Energy*, DE 15-491, Order No. 25,693 (Nov. 9, 2016):

> The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. *See* RSA 541:3, RSA 541:4; Rural Telephone Companies, Order No. 25,291 (November 21, 2011). A successful motion must establish "good reason" by showing that there are matters the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118. N.H. 309, 311 (1978) (quotations and citations omitted), or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision," Hollis Telephone Inc. Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. Public Service Co. of N.H., Order No. 25,676 at 3 (June 12, 2014); *see also* Freedom Energy Logistics, Order No. 25,810 (September 8, 2015).

[2] The Commission's Order specifically acknowledges the argument that Eversource and Algonquin now re-assert, stating: "The Supporters' [of Eversource's petition] basic argument is that RSA Chapter 374-F, the electric utility restructuring statute, was intended to lower energy prices and that an EDC's purchase of gas capacity to be used by generators could further that intent." Order at 4.

[3] A statute's title "is a significant indication of the intent of the legislature in enacting a statute." *See Greenland Conservation Comm'n v. N.H. Wetlands Council*, 154 N.H. 529, 534 (2006) (citations omitted).

[4] The Commission properly engaged in an interpretation based on the plain and ordinary meaning of the statutory language, taking into account the overall regulatory scheme. Because the statute is not ambiguous, the Commission

generation from electric transmission/distribution, that fosters competition, and – of critical importance – prevents electric ratepayers from bearing the risks of generation-related investments by utilities. It is particularly noteworthy that in strenuously emphasizing the objective of lower electric rates, neither Eversource nor Algonquin even acknowledge the critically important principle of protecting ratepayers from economic risk – a consideration that the Commission properly considered in its legal analysis. *See* Order at 8-9 ("The competitive generation market is expected to produce a more efficient industry structure and regulatory framework, *by shifting the risks of generation investments away from customers of regulated EDCs toward private investors in the competitive market.* The long-term results should be lower prices and a more productive economy.") (emphasis added); *id.* at 9 ("A more efficient structure involves *placing investment risk on merchant generators who can manage that risk*, and allowing customers to choose suppliers, thus enabling customers to pay market prices *and avoid long-term over market costs*.") (emphasis added).

4. Eversource and Algonquin argue that the Commission somehow erred in assessing the interplay between RSA Chapter 374-F and other statutes, such as RSA 374-A (argued by both Eversource and Algonquin) and RSA 374:57 (argued by Algonquin). Again, they fail to raise issues not previously considered by the Commission and, in re-asserting their arguments, fail to acknowledge the transformative effect of New Hampshire's "Electric Utility *Restructuring*"[5] statute both on its own and with respect to statutes pre-dating a restructured industry.

need not and should not consider legislative history, such as statements made by individual legislators and legislative committees set forth in Algonquin's Motion for Rehearing and/or Reconsideration. *See State v. Spade*, 161 N.H. 248, 251 (2010) (legislative history considered only when statute is ambiguous).

[5] RSA Chapter 374-F (emphasis added).

5. In sum, Eversource and Algonquin – in a last ditch attempt to obtain approval for a scheme that would undermine competition, that would directly contravene the legislature's deliberate restructuring of utilities to separate electric generation from electric transmission/distribution,[6] and that would force Eversource ratepayers to bear an economic risk that belongs with private investors – have provided no basis for the Commission to grant their motions for reconsideration and/or rehearing.

WHEREFORE, Conservation Law Foundation respectfully requests that the Commission deny Eversource's Motion for Reconsideration and Algonquin's Motion for Rehearing and/or Reconsideration.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

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[6] The deliberate nature of the legislature's restructuring of the electric utility industry is reinforced by RSA 374-F:3,III, which addresses the functional separation between generation and transmission/distribution services, but which specifically states: "However, distribution service companies should not be absolutely precluded from owning small scaled distributed generation resources as part of a strategy for minimizing transmission and distribution costs." Had the legislature intended electric distribution companies like Eversource to have the authority to acquire natural gas capacity for electric generation purposes, it would have stated such intent explicitly.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been sent by email to the service list in Docket No. DE 16-241 on this 15th day of November, 2016.

Thomas F. Irwin