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 TO MOTIONS FOR REHEARING AND/OR RECONSIDERATION OF ORDER NO. 25,950

NOW COMES NextEra Energy Resources, LLC ("NEER"), and respectfully submits its Objection to the November 7, 2016 Motion for Reconsideration filed by Eversource Energy ("Eversource") and the Motion for Rehearing and/or Reconsideration filed by Algonquin Gas Transmission, LLC ("Algonquin") (together, "the Motions" or "the Movants"). At the core of the Movants' protestations is a refusal to accept the Commission's determination that the Restructuring Statute requires the separation of generation and distribution services, and the associated unbundling of the respective costs. However, the arguments presented in the Motions were previously presented to the Commission, and, in Order No. 25,950, the Commission correctly rejected the contentions as inconsistent with the rules of statutory construction and interpretation. Accordingly, as established below, the Motions fail to meet the standard of review for rehearing and reconsideration, and, further, the Motions are incorrect on the law. Therefore, NEER requests that the Commission deny the Motions.

I. Introduction

On February 18, 2016, Eversource filed a Petition for the approval of a proposed 20-year contract with Algonquin for natural gas capacity on Algonquin's Access Northeast Pipeline Project ("ANE Contract") and recovery of associated costs through a new distribution rate tariff that would be applied to all Eversource customers. On March 24, 2016, the Commission issued

an Order of Notice that requested briefs from Eversource, Staff and other parties on the legality of the ANE Contract under New Hampshire law. Briefs were filed on April 12, 2016 and Reply Briefs on May 12, 2016. With consideration of these legal briefs, the Commission on October 6, 2016, dismissed Eversource's Petition as impermissible under New Hampshire law.[1]

In Order No. 25,950, based on a thorough review of the Electric Utility Restructuring statute, RSA Chapter 374-F ("Restructuring Statute"), the Commission found that the overriding purpose of the Restructuring Statue was to introduce competition into the generation of electricity.[2] This conclusion was well-supported by the Statute:[3]

> 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. . . . Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services.
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> II. A transition to competitive markets for electricity is consistent with the directives of part II, article 83 of the New Hampshire constitution which reads in part: 'Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it.' Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.

The Commission further concluded that the statute intentionally shifted the risks

[1] *Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC, Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery*, DE 16-241, Order Dismissing Petition, Order No. 25,950 (October 6, 2016) ("Order No. 25,950").

[2] *Id.* at 8.

[3] RSA 374-F:1.

associated with generation investments away from customers and toward private investors in the competitive market.[4] To effectuate the purpose of the Restructuring Statute, RSA 374-F:3, III requires the separation of generation services from transmission/distribution activities and services, and the unbundling of rates among these services.[5] The Commission supported this conclusion explaining that:[6]

> This purpose is underscored by the Legislature's recent strong encouragement, through the passage of HB 1602 and SB 221, to approve the 2015 Settlement Agreement that will accomplish the functional separation of Eversource's generation activities from its distribution activities.

With the above discernment on the purpose and directives of the Restructuring Statute, the Commission determined that the ANE Contract was "fundamentally inconsistent" with the statute, as it was a generation service under RSA 374-F:3, III seeking recovery of its net costs from electric distribution customers. Specifically, the Commission concluded that:[7]

> . . . the Capacity Contract is a component of 'generation services' under RSA 374-F:3, III, which *requires unbundled, clear price information for the cost components of generation, transmission, and distribution*. The acquisition of the gas capacity is clearly related to an effort to serve New England gas-fired electric generators with less expensive, more reliable fuel supplies. *Including such a generation-related cost in distribution rates would combine an element of generation costs with distribution rates and conflict with the functional separation principal.* (emphasis added).

With the determination that the "basic premise" of Eversource's ANE Contract proposal "runs afoul of the Restructuring Statute's functional separation requirement," the Commission

[4] Order No. 25,950 at 8-9.

[5] *Id.* at 9.

[6] *Id.*

[7] *Id*.

could have concluded its analysis and dismissed the Petition as inconsistent with New Hampshire law. Nonetheless, the Commission further analyzed whether there was another statute that standing alone would support the Eversource proposal, and, if so, how the statute(s) would be affected by the subsequent enactment of the Restructuring Statute, or otherwise not applicable or supportive of the proposal.[8] The Commission's additional legal analysis found no New Hampshire law supported the ANE Contract. Thus, the Commission dismissed the Eversource Petition as impermissible under New Hampshire law.

Against the Commission's well-reasoned decision, Eversource and Algonquin repeat their arguments that the ANE Contract is permissible under New Hampshire law, and that the Commission based its dismissal of the Petition on a narrow interpretation of the Restructuring Statute.[9] For the reasons set forth in this Objection, however, it is clear that the arguments of Eversource and Algonquin have failed to establish that the Commission erred in its interpretation of the Restructuring Statute, and, therefore, their Motions should be denied.

II. Standard of Review

The Commission's standard for granting or denying a rehearing or reconsideration request is well established. According to RSA 541:3, the Commission may grant rehearing or

[8] *Id.* at 9-10.

[9] Eversource Motion at 2 states that:

> The Commission based its determination nearly entirely upon an unreasonably narrow interpretation of the New Hampshire Electricity Restructuring statute, RSA chapter 374-F… by finding that the overriding purpose of the Restructuring Law was to remove regulated utilities from the generation business.

Also, the Algonquin Motion at 3 states that:

> . . . [T]he 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.

reconsideration when a motion states a "good reason for the rehearing."[10] To show good reason, the movant must demonstrate that the Commission erred through presenting "new evidence that was unavailable at the original hearing, or by identifying specific matters that were either 'overlooked or mistakenly conceived.'"[11] Additionally, in doing so, the movant cannot "merely reassert prior arguments and request a different outcome."[12] Application of the standard of review to the Motions show that they repeat past arguments,[13] present incorrect legal theories, and provide no new evidence or persuasive argument that the Commission overlooked or mistakenly conceived any conclusion in Order No. 25,950. Thus, the Motions should be dismissed as meritless.

III. The Commission Correctly Applied the Principles of Statutory Construction

a. The Commission applied the correct rules of statutory construction and interpretation in dismissing Eversource's Petition

The Commission carefully and correctly applied the rules of statutory construction and interpretation established by the New Hampshire Supreme Court. The Commission outlined its approach to statutory construction and interpretation as follows:[14]

> . . . we apply traditional New Hampshire principles of statutory interpretation. The New Hampshire Supreme Court first looks to the language of the statute itself, and, if possible, construes that language

[10] RSA 541:3.

[11] *Verizon New Hampshire Wire Center Investigation*, Docket No. DT 05-083, DT 06-012, Order No. 24,629 at 7 (June 1, 2006), *quoting Dumais v. State*, 118 N.H. 309, 311 (1978).

[12] *See Verizon New Hampshire Wire Center Investigation*, Docket No. DT 05-083, DT 06-012, Order No. 24,629 at 7 (June 1, 2006).

[13] For example, Eversource in its Motion concedes that it is repeating past arguments considered and rejected by the Commission. Eversource Motion at 7, 9, note 11.

[14] Order No. 25,950 at 7.

> according to its plain and ordinary meaning. The Court interprets statutes in the context of the overall regulatory scheme and not in isolation. The goal is to determine the Legislature's intent. Further, the Court construes statutes, where reasonably possible, so that they lead to reasonable results and do not contradict each other. When interpreting a statute, the Court gives effect to all words in the statute and presumes that the legislature did not enact superfluous or redundant words. *See Appeal of Old Dutch Mustard Co., Inc*., 166 N.H. 501 (2014); *State v. Collyns*, 166 N.H. 514 (2014). When a conflict exists between two statutes, the later statute will control, especially when the later statute deals with the subject in a specific way and the earlier enactment treats that subject in a general fashion. *Board of Selectmen v. Planning Bd*., 118 N.H. 150, 152 (1978); see also *Appeal of Pennichuck Water Works*, 160 N.H. 18, 34 (2010) (quoting *Appeal of Plantier*, 126 N.H. 500 (1985)).

The Commission applied these fundamental rules of statutory construction and interpretation throughout its consideration of the Restructuring Statute and other statutes. In contrast to the Commission's application of the rules of statutory construction, the Movants fundamentally misapply the rules in a misguided attempt to seek a different result that, if adopted, would be in violation of New Hampshire law.

b. The Commission correctly concluded that the plain language of RSA 374-F:3, III shows that the Petition is fatally flawed

The Commission properly applied the plain language doctrine to RSA 374-F:3, III, which, in pertinent part, reads:

> When customer choice is introduced, services and rates should be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges. Generation services should be subject to market competition and minimal economic regulation and at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future.

Reading the plain language of this statute, the Commission found it "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."[15] Thereafter, in a straightforward application of this plain language reading of RSA 374-F:3, III to the undisputed facts of the Eversource Petition, the Commission correctly concluded:[16]

> . . . the Capacity Contract is a component of 'generation services' under RSA 374-F:3, III, which requires unbundled, clear price information for the cost components of generation, transmission, and distribution. The acquisition of the gas capacity is clearly related to an effort to serve New England gas-fired electric generators with less expensive, more reliable fuel supplies. *Including such a generation-related cost in distribution rates would combine an element of generation costs with distribution rates and conflict with the functional separation principal*. . . .
>
> . . . the basic premise of Eversource's proposal – having an [electric distribution company] EDC purchase long-term gas capacity to be used by electric generators – runs afoul of the Restructuring Statute's functional separation requirement . . . . (emphasis added).

In reaction to this clear and well-reasoned ruling, the Movants repeat that an EDC is authorized to contract for capacity under RSA 374:57 and participate in generation power facilities under RSA 374-A.[17] The Movants also reiterate an "in the alternative" contention that the ANE Contract is not a generation activity, as it would "simply provide a mechanism by which natural gas capacity would be made available."[18] They further argue that the Commission erred in not accepting that RSA 374-A:2 and RSA 374-A:1, II and IV authorize Eversource to

[15] *Id.* at 8.

[16] *Id*. at 9.

[17] *Compare* Eversource Motion at 4, 10 *with* Algonquin Initial Brief at 7-8 and Eversource Initial Brief at 13-14.

[18] Algonquin Motion at 9-10.

purchase gas capacity "regardless of restructuring."[19] All of these arguments were rejected by the Commission and are incorrect as a matter of law.

In large part, the Movants' reiterated disagreement turns on its view that RSA 374-A:2 and RSA 374-A:1 II and RSA 374-A:1, IV provide it with the statutory authority to engage in generation-related services, such as the ANE Contract.[20] These statutes do nothing of the sort.[21] Instead, the Movants have an elemental misunderstanding of the import of RSA 374-F, III on these statutes. As the Commission correctly determined:[22]

> The 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. Given the centrality of the separation of functions between distribution and generation in the Restructuring Statute, allowing an EDC to 'participate in electric power facilities' under RSA 374-A in the manner proposed by Eversource would make little sense in light of RSA 374-F.

Enacted in 1975, RSA 374-A:1, IV sets forth a definition of what constitutes an electric utility, while RSA 374-A:2 adds that a domestic electric utility can "participate in electric power facilities." However, these general provisions do not provide specificity on how the electric utility will be regulated in a restructured environment – instead, the particulars of how an electric utility is regulated in a restructured environment, post 1996, is in the Restructuring Statue, and, specifically the separation requirements of RSA 374-F, III. That statute sets forth the specific regulatory conditions that services and rates be unbundled, and that generation be functionally separate from transmission and distribution. These separation requirements are the

[19] Eversource Motion at 9.

[20] *Id.* at 4-12.

[21] RSA 374-A:1 simply states: "'A Domestic electric utility' means an electric utility resident in, or organized under the laws of this state." Thus, the analysis focuses on RSA 374-A:2 and RSA 374-A:1, IV.

[22] Order No. 25,950 at 14.

quintessential elements of the Restructuring Statute such that without the Commission enforcing them there would be no restructuring. Further, the tenets of statutory construction mandate that the later statute controls, particularly when the earlier statute addresses the subject in a general manner, and the later statute in a specific manner.[23] Thus, RSA 374-F:3, III controls; which, in turn, requires that, over the Movants' objections, [24] the mandatory *sine qua non* of RSA 374-F:3, III must be enforced: no Eversource generation service can be bundled with distribution and no generation service cost can be passed through Eversource's distribution customer rates. Therefore, not only have the Movants not presented any new argument, their repeated disagreement with the lack of applicability of the later-in-time statutes is not supported, and should be rejected.

c. The Commission correctly identified the overriding purpose of the Restructuring Statute

In Order No. 25,950, the Commission concluded that the "overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity."[25] The Commission further correctly identified that the separation requirements of RSA 374-F, III must be enforced to effectuate this overriding purpose, as well as the other provisions of the Restructuring Statute. The Movants argue, however, that the overriding purpose is to reduce electric rates, and, thus RSA 374-F, III cannot be construed in a manner that does not promote

[23] *In the Matter of Kathaleen A. Dufton and Terry L. Shepard, Jr.*, 158 N.H. 784, 789 (2009), *quoting Bel Air Assocs. v. N.H. Dep't of Health & Human Services*, 154 N.H. 228, 233 (2006) (The Court ruled the later grandmother visitation statute controlled over the earlier enacted general adoption law); *Petition of Public Service New Hampshire*, 130 N.H. 265, 281-284 (1988) (The Court ruled that the later in time prohibitions in the anti-CWIP statute controlled over the earlier in time general ratemaking statute).

[24] Eversource Motion at 6, note 10, 8-10; Algonquin's Motion at 4, 12-13.

[25] *Id.* at 8.

the reducing of costs and rates.[26] The Movants further maintain that the Commission's focus on competition in generation, and the separation requirements in RSA 374-F, III are at the expense of the other provisions and principles of the Restructuring Statute.[27] These reiterated arguments again fail for the same reason the arguments related to the general definitional statutes fail: without the separation of generation from distribution services/costs, and competition for generation, there is no restructuring.

Taking the Movants arguments to their logical conclusion, they would have the Commission selectively ignore RSA 374-F, III, and the promotion of generation competition throughout the Restructuring Statute, anytime the company predicts that over a 20-year period it can reduce distribution rates by rejoining generation services with distributions services. Movants, thus, are attempting to nullify RSA 374-F, III, and, by doing so, either distort or eliminate the fundamental elements of New Hampshire's electric restructuring. However, nullification of the customer protections intended by the unbundling of generation services/costs from distribution services/costs in RSA 374-F:3, III, is in violation of the established rules of statutory construction.[28] In contrast, the Commission's ruling on the overriding restructuring principle – the introduction of competition to the generation of electricity – does not nullify or eliminate the other principles as there are other means, consistent with restructuring, for the attainment of the other principles.

Further, the Movants' position is flawed because the other restructuring principles are permissible or general pronouncements, which is in clear contrast to RSA 374-F, III that is a

[26] Eversource Motion at 2; Algonquin Motion at 4-5.

[27] *Id.* at 2-3; *Id.* at 6-9.

[28] *Richard Holt& a. v. Gary Keer & a.*, 167 N.H. 232, 242-243 (2015) (Court would not create an exception in one statute that nullified the protections in another statute).

directive requiring the separation of services and costs, and a directive that carries out the overriding principle of introducing competition to generation. First and foremost, the plain language of the Restructuring Statute directs the separation of generation from transmission and distribution, the former subject to market competition and the latter to regulation. Given the RSA 374-F, III separation requirements are plain from the text, the statutory interpretation inquiry ends with no consultation to the legislative history.[29] Second, even if the Commission were to consider legislative history, the selective quotes from the Movants ignore the remaining legislative history, which is replete with passages identifying the importance of the separation and generation competition provisions that are embodied in the plain language of the Restructuring Statute. Finally, interpreting the Restructuring Statute in the manner the Movants suggest would require the Commission to ignore the fundamental separation and competition provisions of Sections II and III of the Restructuring Statute, begging the question of whether the Statute restructured anything at all. The Commission was correct in rejecting these arguments in its Order. Movants have presented nothing new, much less established, that the Commission erred in so holding.

IV. The Commission Correctly Ruled that Eversource's Proposal to Purchase Natural Gas Capacity is a Generation Service that must be separated from Distribution Service and Costs

Algonquin repeats previously rejected arguments that a New Hampshire EDC is allowed to purchase natural gas capacity, as it is not a generation-related service. According to Algonquin, the ANE Contract will only make firm natural gas capacity available to generators,

[29] *See, e.g., Foster v. Town of Henniker,* 167 N.H. 745, 753-754 (2015); *Franklin v. Town of Newport*, 151 N.H. 508, 509-510 (2004).

which is not a generation service.[30] However, in Order No. 25,950, the Commission thoroughly analyzed these arguments and determined that the Restructuring Statute required a finding that the ANE Contract was a generation-related activity.[31] Specifically, the Commission ruled:[32]

> [W]e conclude that the Capacity Contract is a component of 'generation services' under RSA 374-F:3, III, which requires unbundled, clear price information for the cost components of generation, transmission, and distribution. The acquisition of the gas capacity is clearly related to an effort to serve New England gas-fired electric generators with less expensive, more reliable fuel supplies. Including such a generation-related cost in distribution rates would combine an element of generation costs with distribution rates and conflict with the functional separation principal.

Further, in Order No. 25,950, Commission referenced the Massachusetts Supreme Judicial Court's conclusion that "such a Capacity Contract would contradict the policy embodied in the Massachusetts restructuring act, which removed electric companies from the business of electric generation." [33] In reaching this conclusion, the Court found:[34]

> . . . the department itself has recognized that fuel procurement and planning is an integral component of the generation business, as evidenced by its exemption of electric distribution companies from § 69I. Indeed, by some estimations, fuel-related costs constitute seventy-five per cent of a natural gas-fired plant's generation costs. 3 World Scientific Handbook of Energy 72 (G.M. Crawley ed., 2013) . . . . We agree with the plaintiffs that if the restructuring act does not allow electric distribution companies to finance investments in electric generation, it cannot be reasonably interpreted to permit those companies to invest in infrastructure unrelated to electric distribution service.

[30] *Compare* Algonquin Motion at 10 *with* Algonquin Initial Brief at 7.

[31] Order No. 25, 950 at 7-9.

[32] *Id.* at 9.

[33] *Id.* at 2, note 1.

[34] *Engie Gas & LNG, LLC v. Department of Public Utilities*, 475 Mass. 191, 209; 56 N.E.3d 740, 754-755 (2016).

Although the Massachusetts Supreme Judicial Court decision is not dispositive of the issue in New Hampshire, it provides additional support for the well-reasoned decision of the Commission that the ANE Contract is a generation service under New Hampshire law. Algonquin's Motion provides no new evidence or argument on this subject, and, therefore, its arguments should be rejected as failing to show good reason for reconsideration or rehearing.

IV. The Commission Properly Ruled on the Import of Other Statutes in Dismissing Eversource's Petition

With regard to several statutes, the Movants set forth no argument that was not previously considered by the Commission, nor do Movants identify specific matters that were overlooked or mistakenly conceived by the Commission. For instance, the Movants repeat that the Commission erred in its statutory analysis, because: (i) the Restructuring Statute should be interpreted to permit EDCs to acquire gas capacity;[35] (ii) the least cost planning statutes, RSA 378:37 and 378:38, support Eversource's Petition;[36] (iii) the 10-Year New Hampshire State Energy Strategy referenced in RSA 378:38, VII, lends support to Eversource's Petition;[37] and (iv) the provisions of RSA 374:57 (purchase of capacity) support Eversource's Petition.[38]

Specifically, Movants reproduce their argument that the Restructuring Statute permits EDCs to acquire gas capacity, again arguing that in the Restructuring Statute "the Legislature did not prohibit utilities from providing electric supply, but gave the Commission the authority to

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[35] *Compare* Eversource Motion at 11 *with* Eversource Initial Brief at 10; *compare* Algonquin Motion at 4 *with* Algonquin Initial Brief at 6.

[36] *Compare* Eversource Motion at 6, note 10 *with* Eversource Reply Brief at 11 and Algonquin Reply Brief at 2.

[37] *Compare* Eversource Motion at 7 *with* Eversource Initial Brief at 9.

[38] *Compare* Algonquin Motion at 4 *with* Algonquin Reply Brief at 12-13.

determine how electricity supply services from a utility may be provided."[39] However, the Commission in Order No. 25,950 found on the basis of these arguments and applying the rules of statutory interpretation, that the Movants' arguments were unpersuasive, stating:[40]

> In weighing the restructuring policy principles of RSA 374-F, we agree with the Opponents and find that the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity. 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. To achieve that purpose, 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.

The Commission's decision on this issue is consistent with NEER's own interpretive analysis. In briefing this issue NEER stated:[41]

> The purpose of restructuring to a competitive supply market was to separate energy supply from transmission and distribution; the former to operate in a competitive market, the latter to remain a regulated natural monopoly. See, e.g., RSA 374-F:2, II (defining 'Electricity suppliers' to facilitate separation) and RSA 374-F:3, III (requiring unbundling of rates for generation and transmission and distribution components); see also RSA 369-B:2, IV & XII ('Electric utility' means a public utility . . . that provides retail electric service. . . . 'Retail electric service' means the delivery of electric power through the provision of transmission and/or distribution service by an electric utility to a retail customer . . . .').

Without presenting any new arguments, the Movants maintain that the Commission should

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[39] Eversource Motion at 12; Algonquin Motion at 3-4.

[40] Order No. 25,950 at 8-9.

[41] NEER Principal Brief at 6.

reconsider its well-reasoned decision that EDCs are not permitted under New Hampshire law to purchase gas capacity. The Movants clearly have failed to establish any good reason for reconsideration or rehearing.

Eversource also improperly repeats their arguments concerning the least cost planning statutes, specifically RSA 378:38, arguing that the Commission's decision runs counter to the policies of the State.[42] The Commission, however, did not ignore Eversource's earlier arguments on this issue.[43] To the contrary, the Commission addressed Eversource's position in Order No. 25,950, ruling that: [44]

> [W]e do not find that the [least cost planning] statutes permit the re-joining of distribution and generation functions in the manner provided by the Capacity Contract . . . The planning statutes must be read in concert with RSA 374-F and in light of the industries to which they apply.

Thus, Eversource's contentions were considered and rejected, and the company again fails to present new or overlooked argument that would suggest the Commission reconsider its ruling.

Eversource also argues that the 10-Year New Hampshire State Energy Strategy provides encouragement for companies, like Eversource, to increase gas pipeline capacity in New England. Specifically, Eversource contends that the Commission should reconsider Order No. 25,950 in light of the policies set forth in the State Energy Strategy.[45] The Commission,

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[42] Eversource Motion at 6, note 10.

[43] Eversource Initial Brief at 8 ("[T]hough the ANE Contract is not governed by the resource planning statutes, it supports other goals contemplated there. For example, the ANE Contract demonstrates that Eversource has engaged in a meaningful assessment of the energy supply options for the region as contemplated in RSA 378:38, III, and has found that there is a need to protect and enhance the supply.").

[44] Order No. 25,950 at 11.

[45] Eversource Motion at 6-7.

however, rejected earlier contentions stating the same position in Order No. 25,950.[46] In rejecting Eversource's argument, ruling that: [47]

> They [Supporters] claim that the Strategy thus requires EDCs to explore ways to increase gas pipeline capacity. We disagree. As discussed above, RSA 378:38 applies to both electric and gas utilities. Both are required to plan to have an adequate supply to meet their customers' demand. In our view, gas supply under the State Energy Strategy is the responsibility of the gas utilities. While Eversource, an EDC, cannot enter into the Capacity Contract and have it paid for through its distribution rates, natural gas utilities might be appropriate proponents of increased gas pipeline supply under RSA 378:38, VII.

Again, Eversource's Motion presents no new argument on this statute, and must be rejected as failing to present a good reason for reconsideration.

Similarly, Algonquin's Motion reiterates that the provisions of RSA 374:57 support Eversource's Petition. Algonquin claims that the legislature did not intend to limit the types of contracts permissible under RSA 374:57 to just electricity.[48] This same argument, however, was rejected by the Commission in its Order using the appropriate principles of statutory analysis:[49]

> While the Supporters' reading of the statute is plausible, we believe the Opponents have the better argument. The meaning of 'capacity' in that legislation is limited to electric generating capacity and electric transmission capacity. First, the types of agreements listed are commonly associated with electric supply. Second, if gas capacity was to be included, the statute would have included references to the Natural Gas Act in addition to the Federal Power Act. Thus we find that RSA 374:57 concerns long-term contracts for electric supply and does not authorize EDCs to purchase gas capacity under long-term contracts.

[46] Order No. 25,950 at 12.

[47] *Id.*

[48] Algonquin Motion at 12.

[49] Order No. 25,950 at 13.

This ruling was supported by the statutory analysis offered by other parties, including NEER. For example, NEER's brief stated that:[50]

> Suggesting that RSA 374:57 – which was inserted into the General Regulations as part of the larger agreement to end the PSNH bankruptcy through a reorganization agreement intended to establish tight controls on Eversource – should be read as somehow expanding Eversource's contracting ability to the point that it authorizes Eversource to circumvent the Restructuring Statute and allows the twenty-year, multi-billion dollar investment in natural gas pipeline capacity that it cannot use suggested by Eversource is simply unsupportable. The statute's purpose was to constrain, not expand, Eversource's contracting authority.

The Commission's interpretation of RSA 374:57 was well-reasoned, and Algonquin has provided no new argument to establish that the Commission erred in its interpretation of RSA 374:57. Therefore, Algonquin provides no good reason for the reconsideration or rehearing of the ruling.

V. Conclusion

In Order No. 25,950, the Commission correctly applied the rules of statutory construction and interpretation as articulated by the New Hampshire Supreme Court.[51] The Movants raise no new issues or arguments, and, therefore, fail to present a good reason for the Commission to reconsider or rehear its rulings in Order No. 25,950. Thus, for the reasons set forth in this Objection, the Commission should deny the Motions.

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[50] NEER Principal Brief at 30-31.

[51] Order No. 25,950 at 7.

Respectfully submitted,

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Dated November 15, 2016

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.

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Christopher T. Roach