

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 16-693

**PETITION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR APPROVAL OF A POWER PURCHASE AGREEMENT**

**REPLY BRIEF
OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.**

Pursuant to New Hampshire Public Utilities Commission (“Commission”) Code Admin. Puc Rule 203.32 and the October 25, 2016 Order of Notice, the New England Power Generators Association, Inc., (“NEPGA”)¹ hereby submits its Reply Brief in this matter.

I. INTRODUCTION

The brief filed by Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”) fails to support its conclusion that its proposed power purchase agreement (“PPA”) for approximately 100 megawatts of energy from Hydro Renewable Energy Inc. is authorized by the New Hampshire restructuring statute, RSA Chapter 374-F, (“Restructuring Statute”), or any other statutes.

NEPGA’s Phase I Brief addressed, and refuted, the majority of the arguments raised by PSNH in its brief (“PSNH Brief”). NEPGA specifically demonstrated how PSNH’s proposal to procure generation violates the Restructuring Statute, does not comport with other significant policy related statutes in New Hampshire, and is inconsistent with affiliate rules. *See* NEPGA Phase I Brief at 3-17.

¹ The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

In this Reply Brief, NEPGA addresses only three issues: (1) PSNH's incorrect reliance on Docket No. DE 11-184 as precedent; (2) its admission that its proposal will increase the risks to ratepayers; and (3) its erroneous conclusion that the PPA is consistent with federal law.

A. DE 11-184 Is Not Applicable to This Proceeding.

PSNH asserts that RSA 374:57² allows it to purchase energy through the PPA as long as the contract is reasonable and in the public interest. PSNH Brief at 5-6. In further support for this proposition, PSNH cites to the Commission's approval of PPAs between PSNH and small wood-fired electric generators in DE 11-184. PSNH Brief at 12; *see generally* Order 25,305 in Docket No. DE 11-184 (December 20, 2011). The Company's reliance on DE 11-184 is misplaced.

First, the Commission unequivocally qualified its decision in that docket as non-precedential,³ and therefore, contrary to PSNH's erroneous reliance, DE 11-184 cannot and should not be regarded as dispositive of the PPA's legality here. Second, unlike the 20-year PPA at issue in the instant docket, the PPAs in DE 11-184 were for a term of less than two years. Moreover, the Commission in DE 11-184 did not explicitly address whether the contemplated PPAs would violate the Restructuring Statute.⁴ Given the Commission's inquiry in the Order of Notice, as to whether the PPA violates the Restructuring Act, and its specific

² NEPGA refuted PSNH's argument relating to RSA 374:57 in its brief. NEPGA Phase I Brief at 10-11.

³ *See* Order 25,305 at 43-44 (The Commission qualified its evaluation of the case as *sui generis*, stating that its "*findings and rulings in this case are not to be taken as any kind of precedent or general policy statement regarding how the Commission would analyze a request for approval of above-market power purchase agreements in the future or, more generally, for approval of other cost recovery methods.*") (emphasis added).

⁴ Rather, when approving the PPAs and the associated cost recovery, the Commission focused on examining "the public benefits asserted by the [petitioners] in relation to the projected over market costs [of the PPAs]." Order 25,305 at 33.

reference to Docket No. DE 16-241 regarding the Restructuring Statute, PSNH's reliance on DE 11-184 is completely unwarranted.

Likewise, the Company mischaracterizes its post-divestiture obligations and the record in Docket No. DE 14-238 to justify its proposed PPA. PSNH misconstrues and misstates the Commission's analysis related to the 2015 Settlement Agreement, suggesting that the Commission had tacitly acknowledged "assurances" that the PPA that would not serve default customers or otherwise not adversely impact the overall competitive marketplace. PSNH Brief at 22 (citing to the Commission's quotation of "PSNH's assurances" in Order No. 25,830 in DE 14-238 (October 23, 2015)). This disingenuous conclusion is directly contradicted by the Commission's own language. *See* Order No. 25,830 at 5 (Addressing PSNH's contention that a discussion about the PPA was premature, the Commission stated, "We accept [PSNH's] representation that 'no PPA has been finalized.' **If and when [PSNH] files [a PPA] with Hydro-Quebec, parties [NEPGA] will be free to argue whether, and the extent to which, that agreement affects the Settlement Agreement**") (emphasis added). Accordingly, there is no basis to conclude, notwithstanding PSNH's statement to the contrary, that the PPA is in any way "consistent with the 2015 Settlement Agreement and the assurances PSNH made relative to it." PSNH Brief at 22-23.

B. PSNH Concedes that the PPA Creates Risk for Customers.

The Commission should reject PSNH's claim that the economic impacts of the PPA are not stranded costs but instead are "mitigation measures." *See* PSNH Brief at 20. The explicit requirement that PSNH reduce stranded costs as set forth in RSA 374-F:3, XII, (c) does not and cannot be read to authorize an activity that would otherwise be prohibited to mitigate those costs. Moreover, the types of activities referenced in the statute that relate to stranded costs are all activities that reduce costs associated with existing assets (i.e., expenses, contracts, debt,

uneconomic and surplus assets) that are being divested. *See* Settlement Agreement in DE 14-238 (June 10, 2015) at EXA 8.

Further, PSNH concedes that its PPA, at least under one scenario, creates risk of cost exposure to its customers. PSNH Brief at 24. While the Company considers this a remote possibility, any scenario in which ratepayers will bear the risk of costs associated with the type of PPA proposed by the Company is wholly inconsistent with the core of the Restructuring Statute. *See* NEPGA Phase I Brief at 3-5.

Thus, approving the proposed PPA fundamentally undercuts the goal of restructuring to minimize risks associated with electric distribution company (“EDC”) involvement in generation services. While the Commission has determined that divestiture is in the public interest, and that PSNH can recover stranded costs related to such divestiture,⁵ it has not authorized PSNH to sell energy provided by the PPA, but then recover above market costs through customers who are already paying stranded costs.⁶ Restructuring was designed to address this type of double exposure, as affirmed by the Commission in DE 16-241. *See* NEPGA Phase I Brief at 3-4, 8.

C. The PPA Has Wholesale Market Implications.

PSNH claims that the approval of the PPA does not conflict with federal jurisdiction, is not a product of state action or state requirements, does not directly affect the wholesale market, and therefore “[n]othing about that transaction interferes with or undermines the wholesale rates and markets that are the sole province of the FERC under the FPA.” PSNH Brief at 15-16.

⁵ *See e.g.*, Order No. 25,830 in DE 14-238.

⁶ *See* Order No. 25,920 in DE 14-238 at 67 (July 1, 2016) (“While those customers who do not take energy service from Eversource will pay stranded cost charges related to generation, they should benefit from a more fully competitive market for the generation of power”).

Notwithstanding PSNH's assertions to the contrary, this PPA does in fact impact the wholesale market. Here, PSNH endeavors to sell power secured by the PPA into the wholesale regional market, and transfer the "net economic benefit" to its customers. This arrangement requires suppressing wholesale electricity prices and restricts the type as well as amount of electric generation to be sold into that wholesale regional market. The Commission addressed this issue in DE 16-241, concluding that efforts to mitigate the prices of generation supply belong either in the competitive marketplace in New Hampshire, or with ISO-NE and FERC. *See* Order 25,950 at 10 (October 6, 2016).⁷

II. CONCLUSION

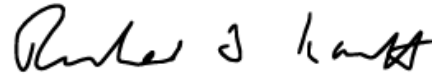
For the reasons set forth in NEPGA's Phase I Brief and those discussed in this Reply Brief, the Commission should dismiss the PSNH proposal because the PPA is: (1) prohibited by existing New Hampshire statutes; (2) is unsupported by Commission precedent; and (3) violates the Restructuring Statute. NEPGA respectfully requests that the Commission rule against the legality of the PPA and dismiss PSNH's petition accordingly.

⁷ "While we agree that...our supervisory statutes govern our regulation of Eversource's provision of distribution services, we do not agree that an EDC is responsible for either the reliability of the generation supply, or the price of such supply. That function has been shifted to the competitive marketplace for retail electric generation service in New Hampshire. For regional wholesale electric markets, the responsibility for regulating reliability and pricing remains with ISO-NE and FERC. *See* Federal Power Act, 16 U.S.C. § 824 (federal jurisdiction over electric transmission and wholesale electric sales)."

Respectfully Submitted,

**New England Power Generators
Association, Inc.**

By its attorneys,

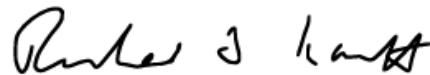


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Certificate of Service

I hereby certify that on December 5, 2016, pursuant to Puc 203.02 & 203.11, I served an electronic copy of this Reply Brief on each person identified on the Commission's service list for this docket and with the Office of the Consumer Advocate, by delivering it to the email address specified on the Commission's service list for the docket.



Richard A. Kanoff