

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

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

Petition for Approval of a Power Purchase Agreement with Hydro Renewable Energy Inc.

Docket No. DE 16-693

**JOINT RESPONSE OF THE SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FORESTS, THE NEW ENGLAND POWER GENERATORS
ASSOCIATION, INC, AND CONSERVATION LAW FOUNDATION TO PUBLIC
SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY'S
MOTION TO VACATE**

The Society for the Protection of New Hampshire Forests, the New England Power Generators Association, Inc. (“NEPGA”)¹, and Conservation Law Foundation (collectively, “Intervenors”) file the following joint response to the Public Service Company of New Hampshire d/b/a Eversource Energy’s (“Eversource”) Motion to Vacate Order No. 26,000 (“Order Dismissing Opinion”) (“Motion”), stating as follows:

1. In *Appeal of Algonquin Gas Transmission, LLC*, the Supreme Court held the Public Utilities Commission (“PUC”) erred in Docket No. DE 16-241 in its legal interpretation of New Hampshire’s Electric Utility Restructuring Act, RSA Chapter 374-F, relative to Eversource’s petition for approval to acquire natural gas capacity related to the Access Northeast natural gas pipeline project. *Appeal of Algonquin Gas Transmission, LLC, Appeal of Public Service Company of New Hampshire d/b/a Eversource Energy*, No. 2017-0007, 2018 N.H. LEXIS 42, at * 24 (May 22, 2018).

2. Based on this decision, Eversource now asks the PUC to vacate this docket’s Order No. 26,000, “Order Dismissing Petition,” asserting that the Order relies almost entirely on

¹ The New England Power Generators Association joins in this legal memorandum with respect to the issues that are relevant to its intervention request. The comments expressed herein represent those of NEPGA as an organization, but not necessarily those of any particular member.

the same interpretation of the Restructuring Act that the Court disagreed with in *Appeal of Algonquin Gas Transmission, LLC*. Motion to Vacate, ¶¶ 3, 7.

3. The PUC should deny the Motion to Vacate because the Motion is procedurally invalid, moot, and otherwise flawed.

I. The Motion to Vacate is Procedurally Invalid and Pertains to a Docket that is Closed

4. Eversource's Motion to Vacate is not authorized by the statute or rules governing the PUC, nor supported by case law cited in the Motion. It also pertains to a docket that has fully run its course. As such, it is procedurally invalid and should be denied.

5. The PUC rules do not authorize a motion to vacate a decision. The appropriate and authorized procedural mechanism for addressing a final order is a motion for rehearing in accordance with RSA 541. *See N.H. CODE ADMIN RULES PUC 203.33*. RSA 541 provides that motions for rehearing must be filed within 30 days of the PUC's decision. RSA 541:3. If the motion for rehearing is denied, only then may the movant appeal the PUC's decision to the Supreme Court. RSA 541:6. Further, RSA 541:22 makes clear that this two-step process is the exclusive remedy: "No proceeding other than the appeal herein provided for shall be maintained in any court of this state to set aside, enjoin the enforcement of, or otherwise review or impeach any order of the commission, except as otherwise specifically provided." RSA 541:22.

6. Eversource already exhausted this exclusive procedural avenue when its motion for rehearing and motion for clarification were denied and Eversource declined to appeal to the New Hampshire Supreme Court, effectively bringing the docket to conclusion.

7. Further, neither the prior PUC decision that Eversource cites in its Motion, nor the two New Hampshire Supreme Court cases upon which it relies, provide authority for the proposition that a party can file a motion to vacate a final decision that has not been appealed.

8. Eversource cites PUC Order No. 22,986, Docket No. DR 96-150, in support of its motion. Contrary to Eversource's argument, however, Docket No. DR 96-150 and DE 16-693 are not like situations. In Docket No. DR 96-150, the PUC issued an original order on February 28, 1997, as directed by RSA 374-F:4, adopting a final plan to restructure the electric utility industry and implement retail choice for all electric customers. Over a year later, the PUC issued Order No. 22,986. That order vacated several directives to certain utilities to notify their affiliated wholesale suppliers of their intent to terminate certain contracts. The PUC determined that a decision by the Federal Energy Regulatory Commission had obvious implications for the previously issued directives. Its action was not prompted by a motion to vacate. Also, in the time between the two orders, and at the time of the PUC's second order, the DE 96-150 docket remained active.

9. In contrast, DE 16-693 commenced with the filing of a petition pursuant to RSA 374:57 and Puc 202.01(a) and 203.06. After Order 26,000 was issued and the petition was denied, the docket did not remain active. As such, Order No. 22,986 is not precedent for the PUC to entertain a motion to vacate. This is especially true where Eversource filed motions for rehearing and for clarification, both of which were denied, and made a conscious decision not to appeal to the Supreme Court, allowing the docket to close.

10. The two New Hampshire Supreme Court cases cited by Eversource—New England Household Moving & Storage, Inc. v. PUC, 117 N.H. 1038 (1977) and Appeal of Northern Utilities, Inc., 136 N.H. 449 (1992)—are similarly inapposite. Both cases involved

substantive decisions by the New Hampshire Supreme Court related to PUC decisions appealed through the appropriate process.

11. Again, Eversource made a conscious decision not to appeal the PUC decision it now seeks to vacate, instead allowing the docket to terminate.

II. Eversource’s Motion Should be Denied as Moot

12. A request for relief is non-justiciable per the doctrine of mootness when the issue has become “academic or dead.” *Batchelder v. Town of Plymouth Zoning Board of Adjustment*, 160 N.H. 253, 255 (2010) (quotation marks omitted). Exceptions to the mootness doctrine include issues of “pressing public interest” or where resolution of the otherwise moot issues may avoid future litigation. *Id.* 160 N.H. at 156 (quotation marks omitted).

13. It can hardly be disputed that the primary purpose of the PPA is its relation to the proposed Northern Pass Transmission Project and the purported economic benefits it would provide should the proposed project be approved.

14. However, when it voluntarily withdrew evidence of the PPA from the Site Evaluation Committee’s (“SEC”) consideration, Eversource waived its ability to argue the SEC should have considered evidence of the PPA in rendering its decision on the proposed project.

15. Moreover, the SEC reached its decision on several grounds other than purported economic benefits of the proposed project.² Therefore, even if the PUC were to vacate Order 26,000, there would be no practical point; there is nothing to suggest that vacation of the PUC’s decision would change the SEC’s decision—a decision that is final though potentially subject to an appeal to the Supreme Court.

16. Tellingly, other than arguing Order 26,000 is inconsistent with the *Algonquin* holding and a vague allusion to “a cloud over the legality of potential future arrangements that may advance the primary purpose of the Restructuring Statute,” conspicuously absent from Eversource’s Motion is any articulation as to why vacation of Order 26,000 is necessary. What purpose does the PPA serve now that the SEC has denied the proposed project a certificate for site and facility and declined to rehear that decision?

III. The Motion to Vacate is Otherwise Flawed

17. If the PUC were to ignore the procedural flaws and justiciability issues, it should nonetheless deny the Motion to Vacate because the arguments made therein are without merit. The PUC did not in fact rely exclusively on the rationale overturned in *Algonquin* in reaching its decision in Order No. 26,000. Moreover, it would be unfair and a violation of other parties’ due

² See *Final Order*, SEC Docket No. 2015-06, at 283–84 (Mar. 13, 2018) (“Regarding tourism, we did not find the Applicant’s witness regarding the effects of the Project to be credible”; “Regarding property values, we similarly did not find credible the Applicant’s expert’s opinion that there would be no discernable effect on property value”; “The Applicant’s proposed compensation plan was, quite plainly, inadequate, but because the Applicant’s analysis of the effects was also inadequate, it was impossible for us to even begin to consider what an appropriate compensation plan might require”; “Regarding land use, the Applicant failed to demonstrate by a preponderance of the evidence that the Project would not overburden existing land uses within and surrounding the right-of-way and would not substantially change the impact of the right-of-way on surrounding properties and land use”; “The overwhelming majority of those views and comments were vehemently opposed to the Project.”).

process rights by enabling Eversource to effectively circumvent established appeal mechanisms after having deliberately decided not to appeal the decision.

18. Therefore, the PUC should deny the Motion to Vacate.

WHEREFORE, the Intervenors respectfully request the Public Utilities Commission:

- A. Deny Eversource's Motion to Vacate; and
- B. Grant such other and further relief as may be just.

Respectfully submitted,

SOCIETY FOR THE PROTECTION OF NEW
HAMPSHIRE FORESTS

By its Attorneys,

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June 20, 2018

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June 20, 2018

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June 20, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail or U.S. Mail, postage prepaid, to those parties listed on the Service List of this docket, as well as the Office of Consumer Advocate, pursuant to N.H. Code Admin Rule Puc 203.11.

June 20, 2018

By: 
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