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December 27, 2018 NHPUC 27DEC18PM4:04

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301

**Re: Docket No. DE 18-002, Public Service Company of New Hampshire
d/b/a Eversource Energy 2019 Energy Service Solicitation
Implementation of Senate Bill 365**

Dear Director Howland:

On December 18, the Commission convened a prehearing conference and technical session in Docket No. DE 18-002 to consider how to implement the requirements of Senate Bill 365. At that time, the Commission directed the Parties to respond to a Motion filed by the “eligible facility” Wood IPPs and to six issues set forth in the Commission’s Supplemental Order of Notice by today. Eversource Energy’s responses are included herewith.

Preliminarily, Eversource notes that it has not ignored the requirements of SB 365 nor has it refused to comply with the requirements of SB 365. The path Eversource has embarked on is one that best implements the intent of the law while protecting customers if the law is found to violate the Supremacy Clause of the U.S. Constitution. In its Petition and accompanying testimony filed on December 4, Eversource estimates that the additional cost to customers of Senate Bill 365 for the six-month period from February 1 through July 31, 2019 will be \$11 million. This cost will be higher going forward if a sixth eligible wood IPP chooses to participate and if Unitil must make purchases from an eligible facility in Concord. Ultimately, over the three-year time span of SB 365, upwards of \$75 million of increased costs to customers could result from SB 365.

As required by SB 365, Eversource solicited proposals from the six wood-fired generating plants in its service territory that met the statutory definition of “eligible facility” under RSA 362-H:1. Five Wood IPPs responded to Eversource’s solicitation but rejected the solicitation and substituted certain terms and conditions to their liking. Hence, no agreements were reached and Eversource submitted both the Company’s original solicitation and the five Wood IPPs’ responses to this Commission for a determination of the proper course to take.

In our attached pleading, Eversource demonstrates that the law itself is vague and ambiguous regarding material issues that must be part of any purchase and sale transaction: What is being bought/sold? What is the price? Our filing requests clarity from the Commission on these issues.

The law at RSA 362-H:2, I,(b),(3) says, “the electric distribution company’s purchase would be for 100 percent of the eligible facility’s net electrical output.” Does this require the purchase/sale of an eligible facility’s energy and capacity output, or just energy output?

Similarly, the law sets the “adjusted energy price” that Eversource must pay for the Wood IPPs’ net electrical output at “80 percent of the rate ... resulting from the default energy rate minus ... the rate component for compliance with the renewable energy portfolio standards law, RSA 362-F.” However, in filings made at the Federal Energy Regulatory Commission (“FERC”), both the Wood IPPs and certain New Hampshire legislators claim that the applicable rate is based upon a FERC-jurisdictional competitive wholesale bid price for energy service Eversource obtains from an RFP process. This puts into question whether the “adjusted energy price” is based solely on the winning bids from Eversource’s RFP process, or includes other adjustments included in the Company’s retail default service price such as “prior period reconciliations” and “administrative and general expenses,” which are retail prices set by this Commission and therefore not subject to FERC jurisdiction.

A valid purchase/sale obligation cannot exist if the Parties do not know what they are buying and selling and what the price to be paid is. As this Commission is the “specialized administrative agency” tasked with reviewing and approving the transactions under SB 365, New Hampshire Supreme Court decisions place initial resolution of these issues with the Commission.

Our filing notes that, notwithstanding the existence of a “statutory mandate” requiring a utility to take certain actions, this Commission has held that “No utility may proceed blindly with the management of its assets or act irrationally with ratepayer funds; PSNH had a duty to its ratepayers to consider the appropriate response ... when facing changing circumstances.”¹ The filing of legal challenges at the FERC by the New England Ratepayers Association, the New Hampshire Office of Consumer Advocate, and the Electric Power Supply Association claiming that Senate Bill 365 is unlawful and violates the Supremacy Clause of the United States Constitution are indeed “changing circumstances.” Hence, as decreed by this Commission, Eversource has a duty to its customers to seek this Commission’s guidance on the appropriate means of implementing SB 365.

Please let me know if you have any questions.

Sincerely,



Robert A. Bersak
Chief Regulatory Counsel

cc via e-mail: Service List

¹ Order No. 25,565, Docket No. DE 11-250, August 27, 2013, at 7 and Order No. 25,714, Docket No. DE 11-250, September 8, 2014, at 6.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

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21 S. FRUIT ST, SUITE 10
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b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.

c) Serve a written copy on each person on the service list not able to receive electronic mail.