

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

Docket No. DE 18-002

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY
2018 Energy Service Solicitation and Senate Bill 365

NEW ENGLAND RATEPAYERS ASSOCIATION

**OBJECTION TO MOTION FOR CLARIFICATION AND, IN THE ALTERNATIVE,
REHEARING OF ORDER NO. 26,208 OF SPRINGFIELD POWER LLC, DG WHITEFIELD
LLC, BRIDGEWATER POWER COMPANY L.P., PINETREE POWER TAMWORTH, LLC
AND PINETREE POWER, LLC**

NOW COMES the New England Ratepayers Association (“NERA”) and respectfully submits its objection to the February 8th, 2019 Motion for Clarification, and in the Alternative, Rehearing of Order 26,208 (“Motion”) filed by Springfield Power LLC, DG Whitefield LLC, Bridgewater Power Company LP, Pinetree Power Tamworth LLC and Pinetree Power LLC (“Woods”). In its Motion, the Woods request that the Commission:

- A. Clarify that the January 31, 2019 Proposals conform to the requirements of RSA 362-H;
- B. Clarify that Eversource is required to select an eligible facility proposal that contains all the terms required by and conforms with RSA 362-H;
- C. Clarify that Eversource is required to submit an eligible facility agreement to the Commission, "whether signed or unsigned," when the eligible facility proposal contains all the terms required under RSA 362-H and conforms with RSA 362-H;
- D. Clarify that if the January 31, 2019 Proposals had been selected by Eversource

and submitted to the Commission as the mandated agreements, then it would have determined that they conform with the provisions of RSA 362-H;

E. Clarify that the January 31, 2019 Proposals conform to RSA 362-H, "whether signed or unsigned," and must be implemented by Eversource as the agreements required by RSA 362-H;

F. Clarify that no "roadblock" exists to the implementation of RSA 362-H including because, where rate recovery is already provided for by RSA 362-H:2, V and incorporated directly into the proposals, Eversource does not need a separate order on recovery from the Commission;

G. Clarify, as a matter of giving effect to the plain meaning of RSA 362-H, that Eversource cannot refuse to select otherwise conforming proposals simply because they do not include the security provision demanded by Eversource, including in particular where that provision is contrary to RSA 362-H;

H. Clarify, as a matter of giving effect to the plain meaning of RSA 362-H, that Eversource cannot refuse to select otherwise conforming proposals simply because the Commission might not separately order rate recovery;

I. Clarify that the failure to select and submit conforming proposals (including now the January 31, 2019 Proposals) to the Commission leaves Eversource in violation of RSA 362-H; and

J. Clarify that if the Commission is or becomes of the opinion that Eversource is failing to comply with RSA 362-H, then it may direct the New Hampshire Attorney General to begin an action in the name of the State praying for appropriate relief by mandamus, injunction or otherwise;

AND, IN THE ALTERNATIVE, with regard to the Motion for Rehearing, the Wood Plants respectfully request that the Commission:

K. Grant rehearing to determine that the proposals (including now the January 31, 2019 Proposals) conform with the requirements of RSA 362-H;

L. Grant rehearing to determine that an electric distribution company is required to select an eligible facility proposal that contains all the terms required under RSA 362-H and conforms with RSA 362-H;

M. Grant rehearing to determine that an electric distribution company is required to submit an eligible facility agreement to the Commission, "whether signed or unsigned," when the eligible facility proposal contains all the terms required under RSA 362-H and conforms with RSA 362-H;

N. Grant rehearing to determine that Eversource is required to comply with RSA 362-H by selecting conforming proposals and submitting them as the mandated agreements to the Commission for its review, in order to avoid the unreasonable,

unlawful and unjust result created, in derogation of the requirements, language, purpose and policy of RSA 362-H, by Eversource's refusal to comply with the requirements of RSA 362-H;

O. Grant rehearing to determine that the Commission has the authority and obligation to order Eversource to comply with RSA 362-H by selecting the January 31, 2019 Proposals and submitting them "whether signed or unsigned" as the mandated power purchase agreements for its RSA 362-H conformity review;

P. Grant rehearing to determine that the failure to submit conforming proposals (including now the January 31, 2019 Proposals) to the Commission leaves Eversource in violation of RSA 362-H; and

Q. Grant rehearing to determine that the Order does not constitute a "roadblock" to the implementation of RSA 362-H and that the Commission does not lack authority to give rate recovery to Eversource where RSA 362-H:2, V already provides such recovery, and those statutory terms are incorporated directly into the Wood Plants' proposals including the January 31, 2019 Proposals;

AND,

R. Grant such further relief as is just and necessary.

Based on the Woods filing it is clear that the Woods and Eversource continue to discuss possible agreements and resolve outstanding issues. These issues include identifying how best to ensure rate recovery and protect ratepayers under any proposed agreement. NERA objects to sections A through J of the Woods request for the Commission to clarify on the grounds that fact that the Woods are essentially asking the Commission to intercede in the ongoing negotiations between the Woods and Eversource to settle a request that the Commission made in its order 26,208 on January 11th, 2019 where the Commission "encourage[s] the parties to consider voluntary inclusion of appropriate customer protections against the possibility of constitutional invalidation of the statute in any eligible facility agreement that is submitted to the Commission for review."

Additionally, as the Office of Consumer Advocate (“OCA”) stated in its December 27th filing in this docket “Thus the inexorable reality is that under SB 365 the PURPA QFs may not submit their own proposed agreements for Commission approval. **The only terms**

and conditions that are pending before the Commission for its approval are those

proposed by Eversource.” (emphasis added). This is supported by the Commission’s finding in its order 26,280: “We find no express authority in RSA 362-H for the Commission to order Eversource to sign agreements with eligible facilities, or to order Eversource to purchase power from the eligible facilities in the absence of any agreement.”

The Commission was clear in its order and since no agreement has been presented to the Commission by Eversource there is nothing for the PUC to clarify.

NERA also objects to the Woods Request K through R because the Woods have no legal grounds for a rehearing. RSA 541:3 stipulates that “the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.” There is no “good reason” for a hearing as the mover hasn’t provided any new evidence to support its Motion. The Woods do nothing more than restate arguments they have already been made in prior filings with the Commission. In its December 7th, 2016 Order No. 25,970 *Denying Motions for Reconsideration Petition* (Docket DE 16-241) the Commission stated: “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” The Woods motion doesn’t meet that criteria and should be rejected.

CONCLUSION

For the aforementioned reasons, NERA respectfully requests the Commission deny the Woods Motion.

Respectfully Submitted,

THE NEW ENGLAND RATEPAYERS ASSOCIATION

A handwritten signature in black ink, appearing to read 'M. Brown', is written over a horizontal line.

Date: February 15th, 2019

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New England Ratepayers Association

Certificate of Service

I hereby certify that on February 15th, 2019 seven hard copies of the foregoing Objection to the February 8th, 2019 Motion for Clarification, and in the Alternative, Rehearing of Order 26,208 ("Motion") filed by Springfield Power LLC, DG Whitefield LLC, Bridgewater Power Company LP, Pinetree Power Tamworth LLC and Pinetree Power LLC were sent to the Public Utilities Commission, one hard copy was sent to the Office of the Consumer Advocate, and an electronic copy was sent to all parties on the Service List of DE 18-002.

Marc I. Brown
President, New England Ratepayers Association