

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

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

Docket No. DE 18-_____

2019 ENERGY SERVICE SOLICITATION

**PETITION FOR COMMISSION REVIEW OF RESPONSES RECEIVED BY
EVERSOURCE PURSUANT TO RSA CHAPTER 362-H AS ENACTED BY
SENATE BILL 365**

Pursuant to RSA 362-H:2, IV, Puc 202.01(a) and Puc 203.06, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “the Company”) hereby petitions the New Hampshire Public Utilities Commission (“Commission”) for a proceeding to adjust its Energy Service (“ES”) rate for effect on February 1, 2019. The Company will file its normal ES rate adjustment materials in a subsequent filing. At this time, Eversource is filing only materials related to RSA Chapter 362-H, “The Preservation and Use of Renewable Generation to Provide Fuel Diversity” enacted by the passage of 2018 N.H. Laws Ch. 379 (Senate Bill 365). This filing is being made in this Energy Service rate proceeding to effectuate RSA 362-H:2, IV, which states, “All such eligible facility agreements shall be subject to review by the commission for conformity with this chapter in the same proceeding in which it undertakes the review of the electric distribution company’s periodic default service solicitation and resulting rates.”

In support of its Petition, Eversource says the following:

1. On September 13, 2018 the General Court voted to override the veto of Governor Sununu and 2018 N.H. Laws Ch. 379 (Senate Bill 365) took effect. SB 365 created RSA Chapter 362-H, “The Preservation and Use of Renewable Generation to Provide Fuel Diversity.”
2. In the fiscal note to SB 365, the Commission informed the Legislature that:

Based on discussions with suppliers currently bidding in the default service market, and years of experience with default service procurements for Liberty and Unitil, the PUC has determined that purchase of this additional renewable electric supply would likely increase residential customer default service prices for several reasons:

- The added supply would not be load-following or scheduled, and therefore suppliers would not know ahead of time when the power would be available. The electric distribution utility would not know ahead of time how much power would participate in the default service solicitation process and the amount and type of renewable power could vary dramatically from one solicitation to another. The uncertainty would be a risk factor that would be incorporated into rates paid by default service customers.
- The power inserted into the market by this bill, which would be priced at 80% of retail electric service rates, could be difficult for some suppliers to hedge or incorporate into their supply portfolios. It would also be 3-4 cents per kWh higher than average wholesale rates in the New England region. Adding costs and reducing the suppliers' ability to hedge increases the risk of higher cost supplies. That uncertainty would likely result in higher default service bid prices.
- Analyzing the renewable offerings and including them in the default service bids would add days to the bidding process. Delay adds risk and cost to bidding suppliers.
- Increasing the actual bid price for residential default service would increase the risk of customer migration, which adds additional load risk and costs.
- Fifth, the risk factors outlined above may cause some suppliers not to bid on default service supply making the bidding less competitive which, in the worst case, could result in a failed solicitation.

3. RSA 362-H:2 creates certain requirements for electric distribution companies including Eversource to purchase the net energy output of any “eligible facility” located in its service territory. “Eligible facility” is defined by RSA 362-H:1,V. Based upon Eversource’s understanding of that definition, there are six such “eligible facilities” located within its service territory:

Eligible Facility Generator Name	Location	Net Generation (MW)	Asset ID #	Lead Participant	Price Node	Proposal at Attachment B
PINETREE POWER (BETHLEHEM)	Bethlehem, NH	15.9	337	Engie Energy Marketing NA, Inc	UN.WHITEFLD34.5BETH	I
BRIDGEWATER	Bridgewater, NH	16.0	357	Bridgewater Power Company, L.P	UN.ASHLAND 34.5BRID	II
HEMPHILL 1 (SPRINGFIELD POWER)	Springfield, NH	17.7	436	Springfield Power, LLC	UN.NORTH_RD34.5HEMP	III
PINETREE POWER-TAMWORTH	Tamworth, NH	21.5	592	Engie Energy Marketing NA, Inc	UN.TAMWORTH115 TAMW	IV
DG WHITEFIELD, LLC	Whitefield, NH	17.7	618	Springfield Power, LLC	UN.WHITEFLD34.5WFPL	V
INDECK ALEXANDRIA	Alexandria, NH	15.0	14211	Indeck Energy-Alexandria, L.L.	UN.PEMIGWAS34.5ALEX	Did not respond to solicitation

4. RSA 362-H:2, I (a) requires that:

Prior to each of its next 6 sequential solicitations of its default service supply after the effective date of this chapter, each such electric distribution company shall solicit proposals, in one solicitation or multiple solicitations, from eligible facilities. The electric distribution company's solicitation to eligible facilities shall inform eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation. The solicitation shall provide that the electric distribution company's purchases of energy from the eligible facility shall be priced at the adjusted energy rate derived from the default service rates approved by the commission in each applicable default service supply solicitation and resulting rates proceeding.

5. On November 6, 2018, prior to its solicitation for default service supply for the period February 1, 2019 through July 31, 2019, Eversource solicited proposals from the six eligible facilities located in its service territory. A copy of that solicitation is attached to this Petition as Attachment A. In its solicitation, Eversource required each generator to respond to the following questions:

- i. Confirmation in writing representing that your facility is indeed an “eligible facility” under RSA Chapter 362-H.
- ii. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”), please provide a copy of the facility’s QF certification.
- iii. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.
- iv. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource’s next default energy solicitation.
- v. A completed “Draft Confirmation” to express Seller’s preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

6. Five of the six eligible facilities located in Eversource’s service territory responded to the Company’s solicitation. Indeck Alexandria did not respond and has indicated they do not intend to participate in this solicitation. Copies of the five proposals received by Eversource are attached to this Petition at Attachment B (I through V). All five responses varied from the terms and conditions contained in Eversource’s solicitation.

7. In the solicitation, Eversource informed the eligible facilities that it was issuing the solicitation pursuant to the statutory mandate contained in SB 365 and not as the Company’s voluntary act. Eversource informed the eligible facilities that it did not intend to enter into formal, bilateral power purchase agreements (“PPA”) with these facilities, but, instead, would make the purchases specified by SB 365 if and to the extent that this Commission orders it to do

so. This process is akin to the “rate orders” issued by this Commission in 1980’s, under the Public Utility Regulatory Policies Act (“PURPA”).

8. Eversource decided not to enter into any formal PPAs under SB 365 in order to preserve rights under the Federal Power Act (“FPA”) and PURPA in the event that the legality of SB 365 was challenged.

9. Each of the eligible facilities have stated that they are certified as “qualifying facilities” by FERC under PURPA. In addition, the Pinetree-Tamworth facility stated it has Market Based Rate authority from FERC under FPA Section 205. The other four facilities stated they are seeking such Market Based Rate authority from FERC.

10. Under PURPA, utilities have the obligation to purchase from QFs at only two rates: an avoided cost rate (18 CFR 292.304 (a)(2)) or a voluntarily negotiated bilateral contract rate (18 CFR 292.301 (b)). The “adjusted energy rate” established by SB 365 is neither of these rates. Thus, there is a high likelihood that the requirements of SB 365 are inconsistent with PURPA.

11. Similarly, under the FPA a State has no authority outside of PURPA to set QF rates at wholesale. “[B]oth PURPA and the Commission’s regulations bar the prescription of QF rates that exceed avoided cost, and ... this view of the statute and the regulations has been upheld by both the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit.” *Connecticut Light & Power Co.*, 71 FERC ¶ 61,035, 61,150 (Apr. 12, 1995). “We have determined that states cannot, consistent with the express language of PURPA and the Commission’s regulations, require rates that exceed avoided cost for QF sales at wholesale.” *Id.* at 61,151. “PURPA provides a very clear regulatory scheme which requires the Commission to establish rate regulations and the states to implement those regulations. It leaves no room for the states to disregard the requirements on the face of the statute or the Commission’s regulations—which provide clear guidance as to what rates are permissible and what rates are impermissible.” *Id.* at 61,153. In *CL&P* FERC found that a Connecticut statute similar to New Hampshire’s SB 365 requiring Eversource’s Connecticut affiliate to purchase the output from a generating facility at a rate based upon CL&P’s retail energy rate is “among other things, preempted by section 210 of PURPA and the Commission’s regulations promulgated thereunder.” *Id.* at 61,149.

12. In addition to the Company’s determination not to enter into formal PPAs, in its solicitation Eversource also noted that if the legality of SB 365 was being contested before any administrative or judicial body, the purchase price for energy during the pendency of all such challenges would be the avoided cost rate set by this Commission in Order No. 25,920 dated July 1, 2016 as incorporated in Eversource’s retail tariff, “NHPUC No. 9 – Electricity Delivery” at Section 33, “Rates for Purchases from Qualifying Facilities.” The reason for this is to protect customers in the event that such challenges to SB 365 are successful.

13. Moreover, on April 15, 2010 FERC ruled that Eversource “is relieved on a service territory-wide basis of the requirement to enter into new power purchase obligations or contracts with QFs that have a net capacity in excess of 20 MW effective January 7, 2010” *Public Service Co. of New Hampshire*, 131 FERC ¶ 61,027, 61,185 (Apr. 15, 2010) (Appended hereto as Attachment C). This FERC determination was made pursuant to section 210(m) of PURPA and 18 CFR 292.310 of FERC’s regulations. One of the eligible facilities, Pinetree-Tamworth, has a net generating capacity of 21.5 MW. Thus, mandated purchases from Pinetree-Tamworth under SB 365 would be contrary to this FERC determination.

14. On November 2, 2018, the New England Ratepayers Association (NERA) filed a “Petition for Declaratory Order and Request for Expedited Action” under Section 207 of the FPA with FERC challenging the legality of SB 365. A copy of that Petition, docketed by FERC as EL 19-10, is attached hereto as Attachment D.¹ If NERA’s Petition is granted by FERC, Eversource’s retail customers would be harmed if purchases under SB 365 were made at that law’s above-market “adjusted energy rate.”

15. RSA 362-H:2, IV requires the Commission to review “All such eligible facility agreements . . . for conformity with this chapter in the same proceeding in which it undertakes the review of the electric distribution company’s periodic default service solicitation and resulting rates.” Eversource requests the Commission to perform such a review of the proposals

¹ On December 3, 2018, substantive filings in support of the NERA Petition were filed with FERC by the Office of Consumer Advocate and the Electric Power Supply Association. Substantive filings protesting the NERA Petition were filed by the N.H. Department of Justice, the “New Hampshire Generator Group” (Bridgewater Power Company, L.P., DG Whitefield LLC, Pinetree Power – Tamworth LLC, Pinetree Power, Inc., Springfield Power, LLC, and Wheelabrator Concord Company, L.P.), and the “New England Small Hydro Coalition” (Bay State Hydropower Association (MA), the Granite State Hydropower Association, and the Vermont Independent Power Producers Association). All filings in FERC Docket EL19-10 are available from the FERC eLibrary.

submitted by the five eligible facilities for conformity with SB 365 as well as for conformity with federal law as set forth above. Eversource seeks the Commission to consider the general PURPA rate restrictions (i.e., avoided cost or voluntary, bilateral contract), restrictions under the FPA on states setting wholesale prices, and the determination under federal law that Eversource has been relieved from entering into new power purchase obligations or contracts with QFs that have a net capacity in excess of 20 MW effective January 7, 2010, when the Commission determines the nature and extent of purchases Eversource shall be required to make.

16. Eversource is uncertain whether SB 365 only applies to the sale of “energy” and not “capacity” produced by the eligible facilities. The law is ambiguous regarding this distinction. For example, in RSA 362-H:2, I, b, the law states that “the electric distribution company’s purchase would be for 100 percent of the eligible facility’s net electrical output.” In addition to the law’s internal ambiguities, the “adjusted energy rate” is determined based upon an all-requirements, load-following rate – the default energy service rate -- that includes both energy and capacity costs. The Commission is asked to determine whether the obligation of the eligible facilities under SB 365 includes the provision of both energy AND capacity, or energy only. Eversource requests that any Commission order mandating purchases from the eligible facilities decide this issue.

17. Per RSA 362-H:2, V: “The electric distribution company shall recover the difference between its energy purchase costs and the market energy clearing price through a nonbypassable delivery services charge applicable to all customers in the utility’s service territory. The nonbypassable charge may include recovery of reasonable costs incurred by electric distribution companies pursuant to this section. The recovery of the nonbypassable charge shall be allocated among Eversource’s customer classes using the allocation percentages approved by the commission in its docket DE 14-238 order 25,920 approving the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement.” In any Commission order mandating purchases from the eligible facilities, Eversource requests that the Commission also order that the costs of compliance will be recovered as part of Eversource’s stranded cost recovery as additional “Part 2” “non-securitized stranded costs” as described in the “2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement” at and

Order No. 25,920 approving that Agreement. Eversource has made this same request in its recent Stranded Cost Recovery Charge filing.

18. In any Commission order mandating purchases from the eligible facilities, Eversource requests that the Commission dictate the terms and conditions for the transactions, specifically to include the following procedure for “Payment Terms”:

Payment Terms: Notwithstanding anything in the Confirmation or Governing Terms to the contrary, each Transaction required under this Order will be effectuated by designating PSNH, ID 50094, as 100% Asset Owner for ISO-NE billing and settlement purposes. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements. All other revenue net of costs that PSNH receives from ISO-NE attributable to ownership of the unit shall be credited to Seller consistent with the Section 5 of the Governing Terms.

19. Finally, in any Commission order mandating purchases from the eligible facilities, Eversource requests that the Commission also incorporate the following:

The Commission’s order(s) should require executed Confirmation Forms for each eligible facility signed by Sellers and a final version of the Governing Terms document, both which conform to the Commission’s order(s) addressing the various issues discussed herein, be finalized and filed with the Commission prior to the start of deliveries under SB 365. PSNH’s performance hereunder is expressly mandated by this Order and such performance is subject to and conditioned upon the terms set forth in the “Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H” and in the Confirmation as each is approved by this Order.

20. Eversource requests a Commission order determining the nature and extent of the Company’s obligations under SB 365. That Commission determination should mandate such obligations and set forth the terms, conditions, and pricing of any such obligations.

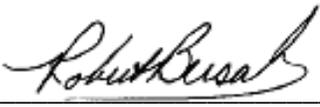
21. Enclosed with this Petition are the pre-filed testimony and attachments of Frederick B. White.

22. Eversource requests that the Commission bifurcate this 2019 energy service proceeding into two parts – one to consider the matters set forth herein related to SB 365 and the second to consider the establishment of the Company’s ES rate effective February 1, 2019.

WHEREFORE, Eversource respectfully requests that the Commission open a proceeding, set a schedule for the conduct of this matter, and order such further relief as may be just and equitable.

Respectfully submitted this 4th day of December, 2018.

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

By:  _____

Robert A. Bersak, Esq.
Chief Regulatory Counsel
Public Service Company of New Hampshire
d/b/a Eversource Energy
780 N. Commercial Street
Manchester, NH 03101

603-634-3355

Robert.Bersak@Eversource.com