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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

December 18, 2018 - 11:22 a.m.
Concord, New Hampshire

NHPUC 9JAN19AM9:29

RE: DE 18-002
EVERSOURCE ENERGY:
2018 Energy Service Solicitation.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: **Reptg. Eversource Energy:**
Robert A. Bersak, Esq.
Matthew J. Fossum, Esq.

Reptg. Springfield Power LLC,
Whitefield Power LLC, Bridgewater
Power Company LP, Pinetree Power
Tamworth, LLC, and Pinetree Power:
Timothy J. McLaughlin, Esq.
Steven Gordon, Esq.
David Schwartz

Reptg. New England Ratepayers Assn.:
Marc Brown
Michael Sununu

Court Reporter: Steven E. Patnaude, LCR No. 52

CERTIFIED
ORIGINAL TRANSCRIPT

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:

D. Maurice Kreis, Esq., Consumer Adv.
Brian D. Buckley, Esq.
James Brennan, Finance Director
Office of Consumer Advocate

Reptg. PUC Staff:

Suzanne G. Amidon, Esq.
Thomas Frantz, Director/Electric Div.
Richard Chagnon, Electric Division

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: We are here this
3 morning in Docket DE 18-002, but in a different
4 aspect of it than we were earlier today. We
5 issued a Supplemental Order of Notice in
6 response to a filing from Eversource, and a
7 bunch of other people now as well.

8 Before we do anything else, let's
9 take appearances, first, from Eversource, the
10 Consumer Advocate, and Staff, and then we'll go
11 to intervenors.

12 MR. BERSAK: Good morning still,
13 Commissioners. I'm Robert Bersak. I'm the
14 Chief Regulatory Counsel for Eversource Energy.
15 And I am accompanied by Matthew Fossum, my able
16 colleague.

17 MR. KREIS: Good morning, Mr.
18 Chairman. I am D. Maurice Kreis, the Consumer
19 Advocate, pursuant to RSA 363:28. We are here
20 representing the residential utility customers
21 of Eversource.

22 MS. AMIDON: Good morning. Suzanne
23 Amidon, for Commission Staff.

24 CHAIRMAN HONIGBERG: All right. Now,

1 let's take the intervenors. I know that the
2 Woods, the Wood Group filed a bunch of
3 different things. They're intervention was
4 granted. Who's here going to speak?

5 MR. McLAUGHLIN: Good morning,
6 Commission. My name is Tim McLaughlin. I work
7 at Shaheen & Gordon. With me is David Schwartz
8 and Steve Gordon.

9 CHAIRMAN HONIGBERG: Off the record.

10 *[Brief off-the-record discussion*
11 *ensued.]*

12 CHAIRMAN HONIGBERG: All right. Who
13 else? Mr. Brown?

14 MR. BROWN: Yes.

15 CHAIRMAN HONIGBERG: Or, Mr. Sununu?
16 Who's -- you filed a Petition to Intervene on
17 behalf of New England Ratepayers Association,
18 right?

19 MR. BROWN: Yes.

20 CHAIRMAN HONIGBERG: Has everyone
21 seen that motion?

22 *[Non-verbal responses given.]*

23 CHAIRMAN HONIGBERG: Does anybody
24 have a position on the intervention by New

1 England Ratepayers?

2 Hold on, Mr. McLaughlin. Mr. Bersak
3 first.

4 MR. BERSAK: We have no objection.

5 CHAIRMAN HONIGBERG: Mr. McLaughlin.

6 MR. McLAUGHLIN: I would have an
7 objection to the extent that I do not know who
8 the businesses or members of the group are
9 within Eversource's territory. I know there's
10 an assertion that there are members within
11 Eversource's territory. But there is no
12 representation of who those members are.

13 CHAIRMAN HONIGBERG: Mr. Kreis, do
14 you have a position?

15 MR. KREIS: I do not object to the
16 request for intervention from the New England
17 Ratepayers Association.

18 CHAIRMAN HONIGBERG: Ms. Amidon.

19 MS. AMIDON: We don't have a
20 position. Thank you.

21 CHAIRMAN HONIGBERG: Mr. Brown, do
22 you want to say anything in response to Mr.
23 McLaughlin?

24 MR. BROWN: I mean, it's our position

1 we don't disclose our members. So, that's
2 our -- that's our response.

3 CHAIRMAN HONIGBERG: You are
4 representing that you do have members who are
5 Eversource ratepayers?

6 MR. BROWN: Yes.

7 CHAIRMAN HONIGBERG: Are you an
8 Eversource ratepayer?

9 MR. BROWN: Yes.

10 CHAIRMAN HONIGBERG: Is Mr. Sununu an
11 Eversource ratepayer?

12 MR. BROWN: Yes.

13 CHAIRMAN HONIGBERG: All right.
14 We're going to grant the intervention by New
15 England Ratepayers.

16 Is there anyone else here who feels
17 like they want to intervene? I don't see
18 anybody else.

19 *[No verbal response.]*

20 CHAIRMAN HONIGBERG: All right. The
21 purpose of the prehearing conference typically
22 is to hear the parties' preliminary positions,
23 and then leave so you all can do a technical
24 session.

1 There's all kinds of filings that
2 have happened here. There's issues people want
3 to queue up. I'm looking for information from
4 the parties on how they feel we should proceed
5 here. Mr. Bersak, I'm going to let you go
6 first.

7 MR. BERSAK: Thank you, Mr. Chairman.

8 CHAIRMAN HONIGBERG: Just make sure
9 you speak into the microphone, so people in the
10 back can hear you.

11 MR. BERSAK: Yes, I will do that.

12 The Company's position was set forth
13 in our Petition of December 4th. And the
14 reason why we are here can probably be summed
15 in one word: Prudence. You know, we just have
16 finally closed out a chapter in the Company's
17 history where the Company complied with a law
18 of this state that said "you shall build a
19 scrubber". Notwithstanding the fact that the
20 law mandated that we do that, there was a
21 multiyear prudence investigation following
22 that.

23 Here we have a law which is being
24 challenged at the Federal Energy Regulatory

1 Commission, as to whether it's preempted,
2 whether it is actually something that needs to
3 be followed, whether it's legal. For us to
4 just go ahead and comply with Senate Bill 365,
5 while the law is under attack, could lead to a
6 second prudence determination where the Company
7 is left in the middle. We comply with the law,
8 yet others say "you shouldn't have done it".

9 CHAIRMAN HONIGBERG: Have you
10 challenged the law anywhere?

11 MR. BERSAK: We have not challenged
12 the law.

13 CHAIRMAN HONIGBERG: Why not?

14 MR. BERSAK: Why not? Because we are
15 trying to do what the Legislature wants, but in
16 a way that protects both customers and
17 shareholders at the same time.

18 CHAIRMAN HONIGBERG: You can
19 continue. Go ahead.

20 MR. BERSAK: Okay. So, we've
21 basically submitted the issues to this
22 Commission for this Commission to tell us what
23 to do. You know the old proverb, "Fool me
24 once, shame on you". We're not going to be

1 fooled a second time, by just following a law,
2 when there's a question about that law, and
3 then be left holding the prudence bag at the
4 end.

5 Thank you.

6 CHAIRMAN HONIGBERG: Mr. McLaughlin,
7 what should we be doing here? You filed a big
8 document here.

9 MR. McLAUGHLIN: You should be --

10 *[Court reporter interruption.]*

11 CHAIRMAN HONIGBERG: Let's go off the
12 record.

13 *[Brief off-the-record discussion*
14 *ensued.]*

15 CHAIRMAN HONIGBERG: Okay. We're
16 back on the record.

17 MR. McLAUGHLIN: The Commission
18 should be reviewing the agreements for
19 conformity with RSA 362-H, because that's what
20 RSA 362-H requires. The Commission should not
21 be reviewing other aspects that Eversource has
22 put in front of it, like jurisdictional
23 questions at FERC, and it should not be
24 mandating the power purchase agreement, because

1 that's what the law does.

2 So, the Commission should review the
3 agreements. It should find that they are in
4 conformity with the law. And it should order
5 Eversource to follow the law.

6 CHAIRMAN HONIGBERG: Mr. Brown.

7 MR. BROWN: We just want to make sure
8 the ratepayers are protected should FERC find
9 that SB 365 is in violation of the law. You
10 know, we want to make sure that something is in
11 place so you're not trying to get the, I guess,
12 genie back out of the bottle.

13 CHAIRMAN HONIGBERG: Mr. Kreis.

14 MR. KREIS: Mr. Chairman, in the view
15 of the Office of the Consumer Advocate, the
16 Commission should be essentially doing nothing
17 at this time pending the outcome of the FERC
18 proceedings.

19 CHAIRMAN HONIGBERG: Can we do that,
20 Mr. Kreis? I mean, I've got a law on the books
21 that tells certain entities to do things and
22 tells us to do something. If there's no
23 injunction stopping us, how do we not act?
24 Wouldn't we be subject to a pretty good

1 petition for writ of *mandamus* if we did
2 nothing?

3 MR. KREIS: I can't really speak to
4 that, because I don't know who might file that
5 writ, or where, or what standing they might
6 have, or what court that might happen in.

7 CHAIRMAN HONIGBERG: I think I'm
8 looking at 72 pages that got filed yesterday
9 that might give us a clue.

10 MR. KREIS: Okay. Well, you know, I
11 think it's really -- you should ask those
12 parties what they intend to do in the event
13 that you do nothing.

14 What I know is that there is a
15 serious proceeding pending before a federal
16 decision-making body of competent jurisdiction
17 that argues persuasively that this statute is
18 unconstitutional, inconsistent with the United
19 States Constitution. That is a serious
20 question.

21 I do not think it's a question this
22 Commission should get involved with addressing.
23 And I don't know how you can move forward with
24 implementing RSA 162-H [362-H?] without wading

1 into that question somehow.

2 CHAIRMAN HONIGBERG: Ms. Amidon.

3 MS. AMIDON: Staff has looked at the
4 statute. And I think the Commission has to
5 address a couple of questions. One of which
6 was raised by the motion that you received late
7 yesterday from the Woods, for lack of a better
8 term, I'll call them the "Woods". And that is
9 whether that what you received from Eversource
10 complies with the statute.

11 And in addition, I think you need to
12 determine -- give me a moment, I lost my
13 thought. Wouldn't you know that. Well, I
14 think you need to determine the rate that would
15 apply to these, to these bids.

16 And also, I think, finally, determine
17 whether some of the other relief requested in
18 both the motion and the initial filing by
19 Eversource are things that you have authority
20 to grant.

21 CHAIRMAN HONIGBERG: I mean, I think
22 the statute does leave a lot of things open.

23 MS. AMIDON: I would agree.

24 CHAIRMAN HONIGBERG: It only

1 specifies a few terms, but they're pretty
2 important terms. I think it does specify the
3 rate. But I think there is a question about
4 whether that includes capacity. I mean, I know
5 that the Woods' motion raises the issue. I'm
6 not sure it's as clear as they think it is.

7 I'm inclined to ask, Mr. Bersak, you
8 and anyone else who wants to, to respond to the
9 motion. The motion asks us to do a number of
10 things in this proceeding, without a response,
11 and trying to do it orally is both not fair and
12 not going to be effective, I think it would be
13 better for you to file a written response, and
14 let others as well.

15 MR. BERSAK: It would be very much
16 better, since I have not read the motion. I
17 was not on the service list for this docket,
18 because, as you may recall, originally, this
19 docketed as a new docket. When it got pushed
20 backed into this one, somehow my name didn't
21 get added to the service list, so I was not
22 aware of that motion until I sat down at this
23 table an hour ago.

24 CHAIRMAN HONIGBERG: We apologize for

1 that, Mr. Bersak. In the course of
2 transferring from what was opened as a new
3 docket, back into this docket, where we felt it
4 belonged, that was probably an oversight on our
5 end. We apologize for that.

6 MR. BERSAK: No problem.

7 CHAIRMAN HONIGBERG: When can you
8 respond? By the rules, you would be required
9 to respond by next Thursday, I think, the 27th.

10 MR. BERSAK: Well, the way you're
11 describing this motion, it's rather daunting.

12 CHAIRMAN HONIGBERG: It is a big
13 motion.

14 MR. BERSAK: So, I'm not going to
15 concede anything beyond, you know, the
16 statutory time that we're allowed, because I
17 don't know what I'm facing. So, we'll do our
18 best, is all I can say.

19 CHAIRMAN HONIGBERG: And anybody else
20 who wants to respond can respond to that
21 motion.

22 You have a technical session
23 scheduled, right, Ms. Amidon?

24 MS. AMIDON: There is one suggested

1 in the Supplemental Order of Notice after this
2 prehearing conference. Of course, with the --
3 you know, the motion that was filed yesterday,
4 it makes it kind of hard to do anything other
5 than schedule, as you've suggested, replies,
6 written replies to the motion, and perhaps the
7 timing necessary to effect any Commission
8 decision, given the fact that the procurement
9 is supposed to be coterminous with the default
10 service period, which begins February 1. So,
11 beyond that, I'm not quite sure how much we can
12 get done.

13 CHAIRMAN HONIGBERG: No. But the
14 last thing you said is very important, I think.
15 And that is that, as you have a discussion
16 after we leave about the schedule, somebody is
17 going to need to open up a calendar and look at
18 things and see when decisions would need to be
19 made on what, in order for it to be effective
20 for the February 1st rate period that we're
21 talking about, right?

22 MS. AMIDON: Yes. And the other
23 thing that's not clear to me, and I will just
24 say this, it's on the basis of the statute, it

1 says that "be subject to review by the
2 commission for conformity with this chapter",
3 doesn't really say it has to be part of a
4 hearing. So, that suggests to me that the
5 Commission can review the filing, the eligible
6 facility agreement, as the statute says, and
7 determine it conforms with the statute without
8 a hearing. There's nothing that seems to
9 preclude that.

10 I would like to know what other
11 people's opinion of that is as well. Because
12 that would really constrain the Commission, if
13 it had to hold a hearing.

14 CHAIRMAN HONIGBERG: Does anyone want
15 to offer any up, a response to that now, or do
16 you just want to discuss it in the technical
17 session?

18 MR. BERSAK: I think the technical
19 session could potentially resolve a lot of
20 issues. And I think the sooner we can start
21 that, before you have to reconvene at 1:30, the
22 more likely it is we'll come up with something
23 that helps this matter.

24 CHAIRMAN HONIGBERG: I love

1 optimistic people.

2 I guess, for those who are going to
3 pick up the motion, who think that we should do
4 nothing, I think it would be appropriate for
5 you to file and explain why, and what legal
6 authority there is for us to do nothing at this
7 time. And I'm looking at you, Mr. Kreis.

8 MR. KREIS: Understood.

9 CHAIRMAN HONIGBERG: I'm not sure if
10 anybody else is going to share Mr. Kreis's
11 view, but it's possible. So, anybody who takes
12 that view, I think we're expecting to hear from
13 you in writing.

14 I guess I want to -- I'm sorry, Mr.
15 Aslin, I know you didn't enter an appearance.
16 I'm just interested in your presence. And are
17 you just monitoring here today?

18 MR. ASLIN: That's correct. Yes.
19 I'm just monitoring. And this is not working.

20 CHAIRMAN HONIGBERG: No, it is
21 working.

22 Yes. I mean, you did file in federal
23 court, and I have forgotten, I know I looked at
24 the papers, I think they may even be attached

1 to the motion that was filed yesterday. Who is
2 your client in the proceeding at the FERC?

3 MR. ASLIN: In front of the FERC, I
4 filed on behalf of the state in general,
5 through the AG's Office.

6 CHAIRMAN HONIGBERG: Does the state
7 have an opinion about what we should be doing
8 in this docket?

9 MR. ASLIN: Not at this time.

10 CHAIRMAN HONIGBERG: If you formulate
11 one, will you file something by the deadline of
12 December 27th?

13 MR. ASLIN: Yes. If the state
14 decides that it needs to intervene in this
15 docket and take a position on any of the issues
16 that have been raised, we will do that prior to
17 that deadline.

18 CHAIRMAN HONIGBERG: Were you served
19 with the motion? Did you receive it in the
20 normal course? How did you get the motion that
21 was filed yesterday?

22 MR. ASLIN: We were not on the
23 service list for this docket. So, we did not
24 get served on it. But I got a copy from Staff.

1 CHAIRMAN HONIGBERG: Do you want to
2 be on the service list?

3 MR. ASLIN: To be determined.
4 Probably.

5 CHAIRMAN HONIGBERG: But I'll take
6 the "to be determined" answer first and you can
7 think about it.

8 MR. ASLIN: Thank you.

9 MS. AMIDON: And I think, for clarity
10 sake, anybody who hasn't received a copy of the
11 filings, it should probably request the
12 Commission via the Executive Director to be put
13 on the service list, if they haven't already,
14 since it has changed from the prior number, the
15 182 or whatever number, to back to 18-002. I
16 just want to make sure people are aware that
17 they should file a letter with the Executive
18 Director if they want to be on that service
19 list.

20 CHAIRMAN HONIGBERG: Okay.

21 MS. AMIDON: Thank you.

22 CHAIRMAN HONIGBERG: Anything else we
23 can do at this moment, before you do your
24 technical session?

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[No verbal response.]

CHAIRMAN HONIGBERG: All right. With that, we will adjourn the prehearing conference and leave you to the technical session. Thank you all.

(Whereupon the prehearing conference was adjourned at 11:38 a.m., and a technical session was held thereafter.)