

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

EnerNoc, Inc.

DOCKET NO. DE 18-142

Motion to Amend Scope of Docket

Pursuant to N.H. Code Admin. Rules Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby moves for the Commission to amend the scope of the instant proceeding and issue a new order of notice to provide for additional relevant participation. In support of its motion, Eversource states the following:

1. On September 10, 2018, Enel X North America, Inc. (“Enel X”)¹ filed a petition with the Commission requesting that the Commission order Eversource to implement a live, online reverse auction process, administered by Enel X, for procuring default service for its customers. As stated in Enel X’s petition, among other things Enel X “believes that its live, online reverse auction platform also allows regulated electric utilities to better achieve the State’s policy objective of reducing ‘costs to consumers while maintaining safe and reliable electric service.’” Enel X Petition at 4. Enel X requested that its process and platform be used for at least three procurement cycles to provide “Eversource and the Commission with an adequate sample size for determining the best method for future procurement.” Enel X petition at 5-6. Enel X did not allege or prove that Eversource’s current process, which is the same as that used extensively across New England and which has been upheld through contested proceedings in multiple jurisdictions multiple times

¹ At the time of its filing, the petitioner was known as EnerNoc, Inc., but subsequently changed its corporate name. Eversource will use Enel X’s current name for purposes of this motion.

(including before this Commission), and which has successfully resulted in billions of dollars of service procurement for close to 20 years, was flawed or improper. The parties to this proceeding have engaged in some initial discovery and other than alleging there will be lower prices for consumers through “technology-enabled” services, Enel X provides no evidence or support for its requested change. As described in this motion, Eversource contends that there should be a demonstrated case by Enel X that quantifies the purported lower costs against the cost and risks to implement a new procurement method and that any decisions in this case should be made with the input of major stakeholders namely, customers, wholesale suppliers, retail suppliers, and other service providers.

2. On November 8, 2018, a prehearing conference was held at which Eversource appeared and agreed to participate in the proceeding consistent with its commitment in Docket No. DE 17-113. During that prehearing conference, the Commission ruled that Eversource would be made a full party, rather than some other kind of participant. *See* Transcript of November 8, 2018 Prehearing Conference (“Tr.”) at 25-26. Presently, the only parties to the docket are the Commission Staff, the Office of Consumer Advocate (“OCA”), Eversource, and Enel X.

3. Relative to the instant motion, during the prehearing conference, the Commission Staff offered its perspective that the docket should not proceed as an adjudication. Tr. at 17-18. Rather, the Staff recommended that the Commission undertake an investigation involving all New Hampshire utilities, competitive electric power suppliers, other vendors of services similar to that offered by Enel X, and other interested stakeholders. Tr. at 18. In response, the Chair questioned whether the Staff was making a motion to amend the docket and stated that the Commission would not be ruling upon an oral motion during that session. Tr. at 23. A formal motion was not made. For many of the reasons raised by the Staff, and for the additional reasons set out below,

Eversource now moves for the Commission to amend the docket to expand the scope to assure that all relevant parties and perspectives are represented.

4. In submitting its petition, Enel X has sought to experiment with Eversource's power supply procurement process, using Enel X's proprietary platform, though Eversource had only transitioned to its existing process approximately one year ago. The sealed bid RFP process currently used by Eversource is consistent with that used by the state's other utilities for many years, as well as with the process used by utilities throughout New England for nearly twenty years. Absent any indication that Eversource's process is flawed, inadequate, or materially different from the process of other utilities, there appears to be little, if any, cause to require Eversource alone to change. If, however, the Commission believes there may be merit in reviewing potential changes, Eversource respectfully contends that there are other, more appropriate means for such a review without an experiment being run on and by a single utility, particularly since any impact of that experiment (good or bad) would affect a substantial majority of the default service customers in New Hampshire.

5. As a first matter, Enel X has argued that there is meaningful public policy in lowering electric rates for New Hampshire's electric customers that supports its request. Taking that contention at face value, Enel X's argument would underscore the position that any solution supporting that policy ought to be delivered on a state-wide basis so that all customers may benefit from any potential change. Interestingly, though, Enel X insists that the shift to its platform be undertaken exclusively through Eversource. Rather than confine this review to Eversource, it would be more useful and productive to include all utilities and would actually serve the public policy Enel X promotes as supporting its request. Moreover, including other utilities would be

particularly important if, assuming some objective benchmark for such service can be agreed, the Commission determines that such procurement methods should be applied to all utilities.

6. Further to this same point, if an experiment is conducted with Eversource, the evident question becomes – against what standard will “success” be measured by Enel X or the Commission? Involving all utilities would potentially create opportunities to have relevant control populations and statistics. Furthermore, because other New Hampshire utilities have a longer history of results of competitive procurements conducted at different times and under different circumstances, they would possess meaningful information against which to judge the success of any change. Conducting an experiment on Eversource in a vacuum will likely provide little useful information. In Eversource’s judgment, this review ought to involve all utility companies and ought to be undertaken on a state-wide basis. If Enel X intends this experiment to establish precedent for future procurements by Eversource, and potentially by other utilities, *see* September 10, 2018 Pre-Filed Testimony of Sean Perry and Greg Geller at 30, the interests of those utilities and their customers are implicated and should be within the scope of the docket. Though Enel X may argue that excluding other utilities and only experimenting with Eversource would create be a valid comparison, without the participation of other utilities the results that might come from an experiment with Eversource would only apply to Eversource. Without the input or participation of other utilities, extending the service to them later could raise issues not determined in this case.

7. Additionally, the existing population of wholesale competitive default service providers operating in New Hampshire is essentially the same population of suppliers operating throughout New England. So far as Eversource is aware, every utility in the region that uses competitive procurement for default service does so through the sealed bid method. Implementing a new system for procuring supply means that all of these suppliers would need to engage with, and find

comfort with, not only a new procurement method, but also the specific requirements of the platform provider, and they must do so for a single utility in a single state. To the extent those suppliers have concern about the integrity of the process, the security of their bids, the protection of their information, or other issues that are created by the introduction of a new and different party into the process, those suppliers may respond by altering the way they bid, or by electing not to participate at all. Without those suppliers in the proceeding, it is difficult, or perhaps impossible, to understand the impact of the shift proposed by Enel X on their activities.

8. Moreover, providing default service comes with risks relating to wholesale market price volatility – particularly in New England which relies upon a constrained natural gas supply to set electric pricing. Additional volatility comes from the ability of customers on default service to migrate to competitive supply at any time leaving the default supplier with excess supply. The need to manage this volatility decreases the pool of sophisticated wholesale suppliers that are able and willing to manage the risk, and it means there are fewer suppliers willing to take on the service. At times of high volatility, as has been seen in recent years, the available pool of wholesale suppliers can diminish further, which means remaining suppliers have the ability to exercise market power and keep prices high if they see no competition for their bids. A reverse auction may have a greater likelihood than a sealed bid approach of allowing potential suppliers to understand whether they are genuinely competing against other suppliers. Without a review of sufficient breadth to include those suppliers, these risks cannot meaningfully be evaluated by the Commission.

9. On the retail level, the issue is much the same. Generally, competitive retail suppliers benchmark their prices against the default service price, sometimes referred to as the “price to compare.” To the extent that this docket may result in a new way of setting that price, the interests

of those suppliers are implicated. In the experience of Eversource's affiliates in Connecticut and Massachusetts where utility services have been investigated thoroughly in contested proceedings, retail suppliers have been very active participants as their business viability is heavily dependent on how they are able to compete with the price to compare. Having them be participants here would serve the same ends.

10. Lastly, and similar to the note of the Commission Staff at the prehearing conference, it may be the case that there are providers of products and services that are similar to that offered by Enel X, or that are designed to achieve the same goals. Restricting the docket to the Commission's review of Enel X's specific request relating to its specific platform and only to Eversource may, even unintentionally, shut out other potential service providers. Even absent the Commission's process, at a minimum, Eversource would need to solicit the market for similar services to determine the scope and cost of such services so as to be assured of cost recovery for the most competitive service consistent with market offerings for such services. This is on the assumption that the Commission would allow recovery of the costs of the services such as Enel X is proposing. Also, Eversource has restrictions on using sole source services that would need to be satisfied to justify any proprietary, sole source service from Enel X. Thus, the direct interests of other service providers are at stake as well.

11. In light of the multiplicity of interests potentially implicated in a docket intended to test, and potentially set precedent for, a new means of procuring electricity relied upon by the majority of New Hampshire's retail electric customers, the scope of this docket is too narrow. In its initial order of notice the Commission stated that one of the issues to be reviewed was "whether it is just and reasonable, in the public interest, and consistent with the principles of restructuring to direct one distribution utility in New Hampshire to use live, online reverse auctions on a pilot

basis to procure default energy service while the remaining two electric distribution utilities use an RFP process to secure supply in the competitive market.” Order of Notice at 2. Eversource submits that without a means of assuring the interests of the entities described above (and perhaps others) this question cannot meaningfully be addressed.

12. Accordingly, in light of the above Eversource recommends that the Commission issue a new order of notice that specifically includes, and is directed at, the above entities. In that notice, the Commission should require the participation of all utilities, specify the nature of the change to default service procurement proposed by Enel X, clarify whether any change resulting from this proceeding may set precedent for default service procurement for other utilities in New Hampshire, and specifically request the input and participation of these other potential parties.

WHEREFORE, Eversource respectfully requests that the Commission:

- A. Amend the scope of the docket;
- B. Issue a new order of notice in line with the above; and
- C. Order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire d/b/a Eversource Energy
By Its Attorneys

Dated: May 31, 2019

By: 

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

May 31, 2019
Date


Matthew J. Fossum