

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 22-021

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

2022 Energy Service Solicitation

Interim Order Denying Petition to Modify Solicitation Process

ORDER NO. 26,733

November 22, 2022

This order denies an Eversource petition to modify its default energy service procurement process for the upcoming February 2023–July 2023 six-month period and approves an earlier-proposed procedural schedule for this matter that conforms with past Commission practice.

I. BACKGROUND

On October 5, 2022, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) filed a timeline for requesting approval of its solicitation and procurement of default energy service (ES) on behalf of its large and small customer groups for delivery beginning on February 1, 2023, and ending on July 31, 2023. Eversource made its filing pursuant to a settlement agreement (Settlement Agreement) approved in Order No. 26,092 (December 29, 2017). The Settlement Agreement established the process by which Eversource procures energy service following divestiture of its generation assets.

Eversource’s proposed procedural schedule was as follows:

Issuance of Request for Proposals (RFP) for ES Power Supply	October 27, 2022
Prehearing Conference to Discuss Contingency for a Failed RFP/Alternative Procurement Plan	Week of Nov. 7, 2022
ES Supply Award Group Selected	December 6, 2022
ES Filing Made by Eversource to PUC	December 8, 2022

Commission Hearing	December 13, 2022
Requested Issuance Date for Commission ES Order	December 15, 2022
ES Service Period Begins	February 1, 2023

On October 7, 2022, the Commission issued a procedural order scheduling the Eversource-requested prehearing conference for November 10, 2022, and the hearing regarding the finalized ES petition for December 13, 2022.

The prehearing conference was held on November 10, 2022, as scheduled. Representatives of Eversource, the Office of the Consumer Advocate (OCA), and the New Hampshire Department of Energy (DOE) appeared. At this prehearing conference, Eversource representatives answered queries regarding the current market conditions facing the Company in its ES RFP process for this upcoming winter. In particular, Eversource addressed its contingency plans for acquiring day-ahead spot purchases of power to serve its ES load, through the ISO-New England regional market administrator, in the event that its upcoming RFP process does not succeed in procuring adequate ES supply at reasonable cost. Aside from this, Eversource made a presentation regarding its intended forthcoming petition to modify the ES RFP process to include a novel feature. This feature would involve a noticed, confidential technical session held on the day that ES RFP bids were to be due, December 6, 2022, at which participation by the Commission, the OCA, and the DOE would be invited, for the purposes of soliciting guidance to the Company from these three State entities regarding the acceptance or rejection of the bids submitted.

At the November 10 prehearing conference, the DOE and the OCA expressed their strong opposition to their respective organizations, and the Commission being involved in the pre-selection process for the Eversource ES RFP, as suggested by the Company. The DOE and OCA did signal that, in their view, the Company already possesses the authority to enter into day-ahead spot purchases of power to serve ES

load through the ISO-New England market, when approved by the Commission as part of the general ES petition made by the Company in December, if circumstances supported such Commission approval.

On November 15, 2022, Eversource filed its petition, styled as a “Motion,” for Amendment to Default Energy Service Procurement Process and Procedural Schedule (Petition), with supporting pre-filed testimony of James R. Shuckerow (Director, Electric Supply for Eversource Energy Service Company), and Parker Littlehale (Manager, Wholesale Power Supply in the Electric Supply department of Eversource Energy). In its Petition, the Company advocated in favor of its concept of having the Commission, the DOE, and OCA participate in its bid-evaluation “noticed, confidential technical session...to review bids and bid analysis...” to “...inform consensus guidance...” with the added proviso that “[c]onsensus will not absolve Eversource of prudent management of [the] procurement process.” Petition at Bates Page 7. Eversource stated that, “[u]nder these circumstances, it may be important for the OCA, DOE, and the Commission to weigh in [and] provide input on New Hampshire policy preferences and risk tolerances at the point the [RFP] decision has to be made.” Petition at Bates Page 9. Eversource did acknowledge that “Eversource has the experience and expertise to evaluate the [RFP] bids and will, no matter the circumstances, make a decision using its best business judgement for presentation to the Commission...” *Id.* The Petition also sought the Commission’s pre-approval of the Company’s proposed ISO-New England spot purchases program, in the event of a failed RFP process. Petition at Bates Pages 8–9. As of the date of this Order, no written response to the Company’s petition has been made.

The Petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted

on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-021.html>

II. COMMISSION ANALYSIS

The Public Utilities Commission is a public body, as that term is defined in RSA 91-A:1-a, VI, the "Right-to-Know Law." Pursuant to RSA 91-A:2, I, any "convening of a quorum of the membership of a public body ... for the purpose of acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power" is a "meeting," unless otherwise exempted by statute.¹ The Right-to-Know Law further requires that all meetings of public bodies be open to the public. RSA 91-A:2, II.

RSA 91-A:3, II provides an exhaustive and limited list of the types of matters which may be discussed in a nonpublic session. Eversource's petition does not identify any applicable exemption to the public meeting requirement. Although the request refers broadly to the proposed session as "confidential," merely using the term "confidential" does not render the content of the session confidential. Rather, the confidentiality of information to be discussed must be established in statute, and even then, is subject to a test balancing the private interest in non-disclosure against the public's interest in disclosure. *CaremarkPCS Health, LLC v. N.H. Dep't of Admin. Servs.*, 167 N.H. 583, 586–87 (2015). The Commission is similarly unable to identify any exemption to the Right-to-Know law under which the proposed technical session² could fall.

¹ RSA 363:17-c provides the Commission with several exemptions to the Right-to-Know law, but none of those exemptions applies to a discussion among a quorum of the Commission and the parties to a proceeding before it, such as Eversource, the DOE, and the OCA.

² We further note that Commission involvement in technical sessions is precluded by the Commission's own rules, which define "technical session" to mean "meeting of the parties at which information is shared on an informal basis and at which neither the presiding officer nor any commissioners are present." Puc 102.22 (emphasis added).

Because Eversource's proposed modification to the procedural schedule would unambiguously violate the Right-to-Know Law, the Motion is denied.

Furthermore, given the current market conditions, the pendency of the current RFP solicitation, and the ongoing Investigation regarding ES/Default Service matters in Docket No. IR 22-053, we do not find that it would be appropriate to divert from the current Eversource RFP/ES solicitation process at this time. We have confidence in the Company's risk-analysis process presented at the prehearing conference and within the Petition, and in the Company's expertise in making necessary decisions regarding bid evaluation and selection. We interpret the terms of RSA Chapter 374-F to already enable the Company to go to the ISO-New England market to directly purchase energy to serve its ES customers if conditions warrant. However, we strongly encourage Eversource to engage in a second "lightning" RFP round in the event of a "failed" first RFP process, as consistent with past practice. *See* Order No. 25,763. All ES rates developed, either through a successful first or second RFP contractual process, or through the Company's planned ISO-New England contingency purchases approach, or some combination thereof, will be considered by the Commission in assessing the Company's December ES rate and procurements petition. (If Eversource requires more time to accommodate a second RFP round, it may petition for a modification of the procedural schedule outlined above and approved in this Order in full). If the Company continues to believe that changes should be made to its ES process, we encourage Eversource to seek such changes in the context of the ongoing Investigation of Energy Commodity Procurement, docketed in IR 22-053.

Given the limited time remaining in the Eversource RFP process, and the clear positioning of the DOE and OCA regarding the general terms of the Petition, the

Commission waives the 10-day objection period under Puc 203.07(e). See N.H. Admin. R., Puc 201.05, as in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that Eversource's petition to amend the default energy service solicitation process and procedural schedule is hereby DENIED as discussed herein above; and it is

FURTHER ORDERED, that Eversource's proposed procedural schedule, for the remainder of this default energy service review proceeding, outlined in its letter of October 5, 2022, is hereby APPROVED, as discussed herein above; and it is

FURTHER ORDERED, that the 10-day objection period under Puc 203.07(e) relating to the Eversource Petition is WAIVED pursuant to Puc 201.05.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of November, 2022.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

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