

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-693

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

Petition for Approval of a Power Purchase Agreement with Hydro Renewable Energy Inc.

Order Denying Motion for Reconsideration

ORDER NO. 26,008

April 20, 2017

The Commission denies the motion for reconsideration of Order No. 26,000, which dismissed Eversource's petition in this docket.

I. PROCEDURAL BACKGROUND

On June 28, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), a New Hampshire electric distribution company (EDC), filed a petition, pursuant to RSA 374:57, for approval of a proposed 20-year Power Purchase Agreement (PPA) between Eversource and Hydro Renewable Energy Inc. (HRE), an indirect wholly-owned subsidiary of Hydro-Quebec. Under the terms of the PPA, HRE would sell, and Eversource would buy, approximately 100 megawatts (MW) of firm, on-peak electric energy delivered to Eversource's Deerfield Substation over the proposed Northern Pass Transmission (NPT) transmission line. Under the terms of Eversource's proposal, net gains or losses from the purchase and subsequent resale of the energy would be accounted for through the Stranded Cost Recovery Charge (SCRC) rate established by the 2015 Restructuring Settlement Agreement and approved by the Commission in Order No. 25,920 (July 1, 2016) in Docket Nos. DE 11-250 and DE 14-238.

Following the submission of legal briefs by interested persons regarding the Eversource proposal, the Commission dismissed the petition. *See* Order No. 26,000 (March 27, 2017). In

that order, the Commission concluded as a matter of law that Eversource's proposal conflicted with the principles and requirements of the Electric Restructuring Statute, RSA Chapter 374-F. For a more extensive description of the procedural history of this matter, together with the Commission's legal analysis regarding its decision to dismiss the petition, see Order No. 26,000.

On April 3, 2017, Eversource filed a timely motion for reconsideration of the Commission's decision to dismiss its petition. On April 10, 2017, NextEra Energy Resources, LLC (NextEra), the New England Power Generators Association, Inc. (NEPGA), and the Conservation Law Foundation (CLF), each filed objections. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-693.html>.

II. POSITIONS OF THE PARTIES

A. Eversource

In its motion for reconsideration, Eversource made reference to the advisability of the Commission suspending Order No. 26,000 issued in this instant proceeding in light of recent legislative developments in the General Court and Eversource's pending appeal of Order No. 25,950 (October 6, 2016), issued in Docket No. DE 16-241, *appeal docketed*, No. 2017-0007 (N.H. Sup. Ct. February 15, 2017). In that ruling, the Commission dismissed an Eversource petition to acquire gas capacity for resale to electric generators based on a determination that it violated the Restructuring Principles of RSA Chapter 374-F.

Specifically, Eversource pointed to the recent passage of Senate Bill 128 through the New Hampshire Senate on March 30, 2017, as offering the potential, if enacted, for fundamentally changing the law (RSA Chapter 374-F) on which the Commission relied when it

issued Order No. 26,000 in this proceeding. Eversource Motion at 2-3. Eversource also pointed to the ongoing appeal process for Order No. 25,950 at the Supreme Court as militating in favor of suspension of Order No. 26,000 as "...warranted as a matter of both administrative and judicial economy." Eversource Motion at 3-4.

Regarding the merits of its petition and its motion for reconsideration, Eversource reiterated the core arguments it made in its previously filed legal briefs. Those arguments centered around Eversource's position that the Commission erred in failing to adopt the position that the objective of "lower energy costs" presented by the Legislature within the terms of RSA Chapter 374-F enabled the Commission to approve this PPA proposal; Eversource claimed that there is no prohibition against New Hampshire EDCs like Eversource owning generation facilities under the terms of the Restructuring Statute. Eversource Motion at 5-9.

Eversource also presented an alternative line of argument disagreeing with the Commission's conclusion that the PPA would serve as an Eversource ownership position in a "generation facility" prohibited by RSA 374-F. Eversource Motion at 9-10. Eversource defended its use of the SCRC for its proposed ratemaking treatment of the PPA, as avoiding adverse impacts on Eversource's retail electricity supply competitors. Eversource Motion at 10.

B. NextEra, NEPGA, and CLF

NextEra supported the Commission's legal conclusions presented in Order No. 26,000, arguing in opposition to Eversource's motion for reconsideration (while not opposing a suspension of Order No. 26,000 pending the outcome of Senate Bill 128). NEPGA opposed the request for reconsideration, stating that there was no basis for the Commission to reconsider its decision, even in light of the developments surrounding Senate Bill 128. CLF expressed its

opposition to the Eversource motion for reconsideration, and opposed the concept of a “stay” presented by Eversource in its motion.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. RSA 541:3, RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4-5 (December 7, 2016), *appeal docketed*, No. 2017-0007 (N.H. Sup. Ct. February 15, 2017). A successful motion must establish “good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5, (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014), and *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

Eversource’s motion for reconsideration does not present any new information regarding the merits of the Commission’s decision, nor does it establish that the Commission overlooked or misunderstood issues in connection with its dismissal of Eversource’s petition. Eversource has simply reiterated its arguments that the goals of RSA 374-F, including lower energy costs, override the requirement to maintain functional separation of distribution from other EDC activities. Restating prior arguments and requesting a different outcome is not grounds for rehearing.


In light of our precedent (admittedly under appeal by Eversource before the New Hampshire Supreme Court) established by Order No. 25,950, we have concluded that RSA Chapter 374-F prohibits Eversource from entering into the proposed PPA, and we affirm our conclusions that the proposal “goes against the overriding principle of restructuring, which is to harness the power of competitive markets to reduce costs to consumers by separating the functions of generation, transmission, and distribution. Allowing Eversource to use the SCRC mechanism as a ratepayer financed ‘backstop’ for its proposed 20-year PPA would serve as an impermissible intermingling of a generation activity with distribution rates.” *See* Order No. 26,000 at 7. We have no more authority to approve such an agreement today than we did when we issued the initial order. Therefore, Eversource’s motion for reconsideration is denied.

Furthermore, we do not find reference to an unenacted bill in the legislature, or a pending appeal of a prior order, grounds for a stay in this proceeding or for not ruling on Eversource’s motion. Our decisions in this order and in Order 26,000 are consistent with existing law. No party has demonstrated that a stay or suspension would promote efficiency. A decision in the appeal to the New Hampshire Supreme Court of our Order No. 25,950 (October 6, 2016) denying Eversource’s proposed purchase of natural gas capacity, will not necessarily be dispositive of legal issues in this docket. Therefore, we deny Eversource’s request to stay this proceeding.

Based upon the foregoing, it is hereby

ORDERED, that the petition by Eversource for reconsideration is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this twentieth day of
April, 2017.

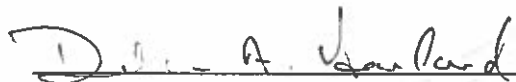


Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

