**THE STATE OF NEW HAMPSHIRE**
**before the**
**PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire

**Determination Regarding PSNH's Generation Assets**

**Docket No. DE 14-238**

# REPLY SCOPING DOCUMENT OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

## I. INTRODUCTION

As discussed in the December 5, 2014 initial scoping document[1] of Public Service Company of New Hampshire ("PSNH"), in 2014, the New Hampshire Legislature passed, and the governor signed, HB 1602 (Laws 2014, Chapter 310). That law, among other things, required "the public utilities commission to determine if divestiture of Public Service Company of New Hampshire's (PSNH) remaining generation assets is in the economic interests of PSNH's retail customers," Laws 2014, 310:1, and the Commission to open a docket to "commence and expedite" a proceeding to begin making the necessary determinations regarding PSNH's continued ownership and operation of its generating assets. Laws 2014, 310:2.

On September 16, 2014, the Commission issued an order of notice opening the instant docket and identifying certain "preliminary issues" potentially affecting its review. By Order No. 25,733 (Nov. 6, 2014) the Commission granted petitions to intervene of the New Hampshire Office of Energy and Planning; the City of Manchester; the City of Berlin; the International Brotherhood of Electrical Workers, Local #1837; the Business and Industry Association of New Hampshire ("BIA"); TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc.

[1] For ease of reference, citations to the initial scoping documents filed by the various parties will refer to "briefs," irrespective of the title of any individual document.

(collectively, "TransCanada"); the New England Power Generators Association, Inc. ("NEPGA"); the Retail Energy Supply Association ("RESA"); Granite State Hydropower Association ("GSHA"); the Conservation Law Foundation, Inc. ("CLF"); the Sierra Club; the New Hampshire Sustainable Energy Association d/b/a NH Clean Tech Council; and Pentti J. Aalto. The Office of Consumer Advocate ("OCA") is also a participant in the docket.

Initial scoping memoranda on the issues in the docket were to be filed on December 5, 2014 by all parties, with replies to be submitted on January 7, 2015. Initial scoping briefs were filed by PSNH; the City of Berlin; the OCA; the Commission Staff; NEPGA, RESA and TransCanada jointly[2]; GSHA; CLF; the Sierra Club; the IBEW; and Mr. Aalto. The OEP filed a letter stating only that it reserved its rights to respond later.[3]

On December 26, 2014, PSNH filed a Motion to Stay requesting that the Commission stay further proceedings in the instant docket, as well as in Docket No. DE 11-250, in order to allow collaborative discussions that may resolve many, if not all, of the issues related to the two dockets. Notwithstanding the pendency of the Company's Motion to Stay, these reply comments are being filed by PSNH per the outstanding procedural schedule. Substantive collaborative discussions are awaiting Commission action on PSNH's Motion.

By this submission, PSNH both responds to issues in the initial filings in the docket, and attempts to identify areas where there appears to be agreement or disagreement, or where additional clarity is needed. For areas of disagreement, PSNH proposes potential means for addressing those issues. As with its initial submission, PSNH will roughly follow the structure set out in the text of HB 1602.

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[2] For convenience, PSNH will refer to this submission as the NEPGA brief. Such reference is intended to encompass all parties to the submission.

[3] Submissions were not received from the City of Manchester, the BIA, or the NH Clean Tech Council. In light of this, PSNH renews its prior objections to the participation of the BIA and the NH Clean Tech Council as stated in its October 2, 2014 objection in this docket.

## II. Generation Assets

All parties addressing the issue of which assets of PSNH are, or should be, encompassed within this review agreed that PSNH's physical generating facilities should be incorporated within the Commission's determinations.[4] Parties diverged, however, on whether PSNH's power purchase agreements ("PPAs") should also be included. For the reasons set out in its initial memorandum, PSNH believes its PPAs are rightly excluded from the Commission's review – a view shared by the City of Berlin. To the contrary, the Staff, NEPGA, and CLF, contend that the PPAs should be included. The arguments presented for inclusion of the PPAs, however, are not convincing, and should be rejected.

In its brief, the Staff contends that the PPAs should be included because similar agreements were treated as generation assets in the restructuring of other New Hampshire utilities in the 1990s. Staff Brief at 1. Likewise, NEPGA notes only that "We see no reason or basis in the law or as a matter of public policy to exclude any of those [PPAs] as they all represent PSNH's generation supply." NEPGA Brief at 5-6.[5] CLF also contends that because the scope of a prior Commission review, and the prior restructuring process, included the PPAs, they should be included here. CLF Brief at 2-3. In essence, these arguments amount to little other than contentions that the PPAs should be included because they have been reviewed before

[4] In its initial brief, PSNH omitted reference to the minority interest it has in the oil-fired Wyman Station Unit 4. Presumably, this review would encompass that ownership status, as well as that relating to PSNH's other physical generating facilities.

[5] Notably, NEPGA goes on to state that "We see no reason for departing from the Commission's order directing New Hampshire distribution companies to divest all of their generating assets, aggregation/marketing services and any rights to obtain power under existing purchase power agreements." NEPGA Brief at 6. In support of this argument, NEPGA references a 1997 Commission order which was signed and issued by the attorneys presently representing the parties to the NEPGA brief, when they served on the Commission. The fact that counsel to all parties on the NEPGA brief support a particular reading of an order issued by those same individuals should cause significant concern on the part of the Commission and raises questions about what weight, if any, could rightly be applied to the arguments in its brief.

or that it "makes sense" to include them now. There are no meaningful legal bases for including the PPAs in this review.

The City of Berlin states clearly that the Commission opened this PSNH-specific proceeding pursuant to the requirements of HB 1602, which does not in its language, or its history, include the PPAs. Berlin Brief at 2-4. Similarly, PSNH points out in its initial brief that both HB 1602 and the Restructuring Settlement Agreement distinguish between the concepts of "generation assets" and "commitments or obligations" or "entitlements." PSNH Brief at 5-6. To give meaning to the words used in the statute and the Agreement, there must be a differentiation between what the Legislature meant when it used the term "generation assets" and the terms "commitments," "obligations," and "entitlements." Moreover, as PSNH noted in its initial comments, the existing PPAs with Lempster Wind and Burgess BioPower involve the rights of Qualifying Facilities ("QFs") under PURPA which allows QFs to "put" the output of their facilities to the utility of their choice. Accordingly, PSNH contends that the PPAs are beyond the scope of this review and the Commission should confine its analysis to the physical generating assets owned by PSNH.[6]

Beyond just the specific assets, various parties raise arguments about the means and manner of valuing any assets incorporated in the review. Sierra Club and CLF, for example, contend that the Commission should begin with the March 31, 2014 report of La Capra Associates filed in Docket No. IR 13-020, and that the data and assumptions underlying that report should be disclosed. CLF Brief at 7-8; Sierra Club Brief at 7-8. The City of Berlin contends that there are various valid valuation methods that could be employed and that the

[6] PSNH continues to note, however, that the rate treatment of these PPAs may need to be addressed in the future depending upon the ultimate conclusions reached in this docket, or in related proceedings. At that time, consideration must be given to potential restrictions on the disposition of these agreements in state and federal law, as well as in the PPAs themselves. For purposes of this filing, however, PSNH observes only that the PPAs should be excluded from the scope of the review here. *See also*, Section V of this memorandum.

Commission should not restrict the scope of available methods. Berlin Brief at 4-6. PSNH does not, at this time, take a position on the precise method of valuation to be used, but does note that before any valuation method is used, the scope of which assets to include must be determined.

PSNH shares the concern of the City of Berlin, Berlin Brief at 6, about Staff's professed desire to rely exclusively upon the Avoided Energy Supply Cost report for valuation. Staff Brief at 3. That report specifically states that it is intended for use in energy efficiency analyses and that the costs in the report "should **not** be interpreted as projections of, or proxies for, the market prices of natural gas, electricity, or other fuels in New England at any future point in time." Avoided Energy Supply Costs in New England: 2013 Report at 1-1 (available at: http://www.puc.nh.gov/Electric/Monitoring%20and%20Evaluation%20Reports/Monitoring_Evaluation_Report_List.htm) (emphasis in original). That report further notes that its projections "are for a hypothetical future and thus do not reflect the actual market conditions and prices likely to prevail in New England in an actual future with significant amounts of new efficiency measures." *Id.* To rely exclusively on a report for a particular purpose, when that report both cautions against using it for that purpose and notes that its projections do not reflect the prices that are likely to prevail in the future, seems unreasonable[7]. The report may have some limited usefulness as a reference, but by no means should it be the guiding document for valuing PSNH's assets. Use of a more robust assessment that takes into account a broad range of more current variables in the energy markets appears appropriate here.

Lastly, with respect to PSNH's generating assets, NEPGA contends that not only should the Commission begin with the information in the La Capra report, but that, at the outset, it

[7] As an indication of the kind of specific assumptions that constrain its usage outside of its intended purpose, the AESC study acknowledges that it "provides projections of avoided costs of electricity and natural gas in each New England state for a hypothetical future...in which no new energy efficiency programs are implemented in New England from 2014 onward." Avoided Energy Supply Costs in New England: 2013 Report at 1-1.

should require parties to respond to the La Capra report with specific information on why that party does, or does not, support the findings and conclusions in the report. According to NEPGA, such responses would permit the Commission to render a determination on "the threshold policy question of whether customers' economic interests are best served by a regulated utility that offers retail choice in a restructured electricity market but continues to own generation assets that are subject to cost of service rates." NEPGA Brief at 3. It is not clear, however, that any responses that would be made to the La Capra report would, in fact, provide any clarity or direction on the policy question identified by NEPGA. Instead, it appears it would simply distract the Commission from making the findings required by HB 1602. Accordingly, the Commission should reject NEPGA's proposal.

## III. Economic Interests of Retail Customers

### a. Economic Interests

From the initial filings of the various parties, there appear to be numerous, divergent opinions on how the "economic interest" of PSNH's retail customers is to be assessed. Not surprisingly, those opinions are often based upon the specific interests of the party on whose behalf they are made. As such, broad agreement appears unlikely, and, instead, the Commission will be required to define the scope of economic interests.

In its brief, Staff states that the price of power before and after the disposition of any generation assets, and the price of future default service supply, are key to the analysis of economic interests. Staff Brief at 2-3. Somewhat similarly, the OCA contends that the analysis should be confined to customer rate impacts.

Counter to these more narrow constructions, the Sierra Club contends that the analysis should include "impacts on rates, customer migration, bills, environmental compliance costs,

fuel price trends and volatility, and risks of future compliance requirements, as well as a thorough alternatives analysis including such things as demand-side program benefits, among other issues." Sierra Club Brief at 2. The Sierra Club does not, however, elaborate on the "other issues." CLF likewise takes an expansive view and contends that the analysis should include the expected market values of PSNH's assets, the short and long term financial risks to customers of retaining the assets, and the historic and projected over-market energy costs, along with anticipated stranded costs. CLF Brief at 3. CLF, however, rejects the idea that the analysis should include "consideration of the shareholders', employees', or the company's economic interests, or speculation into the ramifications of divestiture for local tax rolls or plant employment." CLF Brief at 4.

NEPGA takes a step farther and contends that while the analysis should relate primarily to rate and economic impacts, it should also incorporate evaluation of "expanded competitive options" and "new and innovative products and services."[8] NEPGA Brief at 7. PSNH, for its part, sets out numerous considerations that could, potentially, fall within customers' economic interests. PSNH Brief at 9-11. Other parties raise still other interests.

The diversity of viewpoints contained above demonstrates that the Commission must, before any meaningful analysis may begin, define the scope of economic interests to be examined. In so doing, the Commission must be mindful of the purposes of its review as set out in HB 1602, namely that any determinations relating to PSNH's generating assets "maximize economic value for PSNH's retail customers, minimize risk to PSNH's retail customers, reduce stranded costs for PSNH's retail customers, promote the settlement of outstanding issues

[8] PSNH renews its argument from its initial brief that impacts on competitive suppliers (such as the expansion of competitive options or new products) are not economic impacts intended to be covered in this review. Their potential, profit-motivated interests in expanding product offerings, or gaining new customers, are not interests at stake here.

involving stranded costs, and, if appropriate, provide for continued operation or possible repowering of PSNH's generation assets." Laws 2014, 310:1.

**b. Retail Customers**

On this matter, the parties' initial filings indicate substantial agreement that any review include both PSNH's distribution customers, as well as the customers availing themselves of PSNH's energy service. The OCA, however, contends that the review should be limited solely to the customers taking PSNH's energy service because it is those customers who have been paying the costs of PSNH's generating facilities. OCA Brief at 4-6. While an understandable position, such a limitation would ignore the potential significant impacts on distribution customers who would be responsible for paying PSNH's stranded costs, should they arise. Moreover, given the highly variable nature of the customer group taking energy service, it is not clear how any analysis could be limited to those customers alone. Any PSNH distribution customer could also be an energy service customer at any point. Recent, pronounced migration back to PSNH's energy service, following a period of migration away, highlights the difficulty of attempting to limit the review. For these reasons, PSNH contends the Commission's review must include all customers, regardless of their energy service status.

## IV. Stranded Costs and PSNH's Restructuring Settlement Agreement

PSNH hereby restates and incorporates its arguments in its initial scoping memorandum that it is entitled to full recovery of its stranded costs under the Restructuring Settlement Agreement and subsequent legislation. PSNH also notes that the Commission Staff shares this view when it states that "Staff believes PSNH has a clearly established right to stranded cost recovery within the context of this proceeding under the provisions of HB 1602 and allied statutes." Staff Brief at 3. No other party appears to have directly addressed this issue, despite it

having been identified specifically in HB 1602. Accordingly, the Commission should conclude that PSNH is entitled to full recovery of its stranded costs, whatever amount those costs may ultimately be.

As to other matters under the Restructuring Settlement Agreement, both PSNH and Staff pointed out that while the Agreement has continuing validity, the passage of time and intervening events may have made fulfillment of some requirements impossible and, therefore, some degree of divergence from the terms of the Agreement may be needed. PSNH Brief at 24; Staff Brief at 4-5. Similarly, the City of Berlin contends that deviations from the auction process set out in the Restructuring Settlement Agreement may be proper. PSNH does not, at this time, argue for any specific amendments to the Agreement, but states that it does not disagree with the auction process issue as framed by the City of Berlin.

Other parties, however, contend that the Agreement does not, itself, have continuing validity, but that it may only be used as a guide or reference. The Sierra Club argues, generally, that the Commission should not preclude consideration of the "many conditions impacting PSNH's generation assets, the broader power market, and the economic risks they pose to ratepayers" by an "overly reductive reliance" on the terms of the Agreement. Sierra Club Brief at 9. The Sierra Club does not, however, argue that any particular provision, or provisions, should be amended nor does it provide any guidance for the Commission on what might constitute an "overly reductive reliance" on the Agreement. In light of the Sierra Club's lack of specificity about the concerns it may have regarding the Agreement, the Commission cannot adopt its position.

CLF, for its part, contends that the Agreement does not bind the Commission, but should "inform" the Commission's analysis. CLF then cites various Commission orders as evidence

that the Agreement has no binding effect upon the Commission in this case. Thereafter, CLF contends that although the Commission is not bound by the Agreement, the Agreement and subsequent legislative activity should help direct the Commission's approach to this proceeding. PSNH disagrees with CLF on the degree to which the Commission is bound by the Agreement,[9] but does share the understanding that the Agreement must be read, interpreted and applied in light of the legislative acts that have influenced its execution. In any event, however, it remains clear that PSNH is entitled to full recovery of its stranded costs under the Agreement and the subsequent legislation.

NEPGA contends that the Commission has the ability to set the "legal and ratemaking standards" governing PSNH's cost recovery in this case and further contends that in reaching its conclusions "the Commission should examine case law, Commission orders, statutes or agreements (if any) that relate to cost recovery in this docket." NEPGA Brief at 9. PSNH does not agree that the Commission should, or may, act as NEPGA proposes. In the first place, NEPGA is well aware of the Restructuring Settlement Agreement and its provisions on cost recovery[10] and it is, therefore, at least somewhat disingenuous for NEPGA to dismissively state that the Commission should merely review "agreements (*if any*)" on the matter. (Emphasis added). Further, the ultimate rate treatment of the costs is not, and should not, be at issue in this docket (or, at least, not at this phase of the proceeding). PSNH is, under the Agreement and all relevant statutory law, entitled to full recovery of its stranded costs, whatever they may be. The precise manner in which those costs are to be collected, however, should not be the basis upon

[9] The Agreement was signed not only by the Governor and Attorney General of the State of New Hampshire, but also by the then Executive Director and Secretary of the Commission itself. In light of the fact that representatives of the State of New Hampshire generally, and the Commission specifically, are parties to the Agreement, PSNH does not, and could not, agree with any blanket contention that the State, and therefore the Commission, is not bound by the Agreement. Subsequent legislation also expressly noted the viability of the Agreement and the need for the State not to impair that Agreement. *See* 2001 N.H. Laws 29:4,V.

[10] Again, recall that counsel for NEPGA, RESA and TransCanada constituted a quorum of the Commission that reviewed and approved the Restructuring Settlement Agreement.

which the Commission's decisions rest. To engage in such a discussion at this juncture would serve only to mire the Commission in the minutiae of utility ratemaking and defer productive discussion of the broader issues of PSNH's continued ownership and operation of its generating assets. The Commission should reject NEPGA's proposal.

## V. Other Matters

Lastly, PSNH addresses briefly other matters raised by various parties in their initial memoranda. Both NEPGA and Mr. Aalto suggest specific analysis of, or revisions to, the procurement and provision of default service. PSNH believes conducting such a specific review is premature and risks creating conflicting regulatory obligations. PSNH, as noted in its initial brief, understands that revisions to default service provision may be necessary and appropriate. PSNH Brief at 25. To conduct such a review prior to a determination on whether PSNH will retain and continue to operate its generating assets, however, is impractical. It is PSNH's position that the status of PSNH's facilities must be determined prior to a detailed review of default service provision, because to do otherwise risks establishing processes that may be incompatible with the ultimate determination of PSNH's generation ownership.[11]

GSHA raises an unrelated matter that should be excluded from this review. While GSHA states that it "takes no position" on the issues in the docket, it does raise an issue relative to the calculation of avoided costs relating to PURPA QF purchase requirements. GHSA contends that such calculations "*may be* relevant to valuation analysis that the Commission or other parties *may* undertake" in the docket. GSHA Brief at 2 (emphasis added). GSHA's concern, however,

[11] PSNH is aware the Commission is undertaking a generic review of the procurement of default service in New Hampshire by all utilities and intends to cooperate and participate productively in that process. *See* Docket No. IR 14-338. PSNH maintains, however, that any decision in that proceeding may require modification based upon the Commission's determination in this proceeding. It would seem highly inefficient to conduct a PSNH specific review here, and a generic review in another docket, only to be required to make amendments to both later. The question of whether PSNH should retain and continue to operate its generation assets must be answered first.

arises from its review of "the conditions of the current ISO-NE marketplace" and the marketplace decisions made by or at ISO-NE, including its decisions on its winter reliability program. GSHA Brief at 2. To the extent GSHA has concerns about the ISO-NE marketplace, the proper forum for such concerns is ISO-NE, and not the Commission. Accordingly, the Commission should not address those issues in this docket.

Respectfully submitted this 7th day of January, 2015.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By: _____

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## CERTIFICATE OF SERVICE

I certify that on this date I caused this document to be served to parties on the Commission's service list for this docket.

January 7, 2015 _____