STATE OF NEW HAMPSHIRE

before the

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.

OFFICE OF ENERGY AND PLANNING'S REPLY BRIEF

NOW COMES the Office of Energy and Planning (OEP), through its counsel the Office of the Attorney General, and pursuant to the October 25, 2016 Order of Notice, respectfully submits this reply brief addressing the legality of Eversource's proposal.

Argument

As set out in OEP's initial Legal Brief, OEP asserts that Eversource's proposal that the costs and benefits of the PPA be passed through to all Eversource distribution customers via the Stranded Cost Recovery Charge ("SCRC") is legally impermissible. Specifically, OEP contends that any costs associated with the PPA do not qualify as "stranded costs" and are not legally eligible for inclusion in the SCRC. In this reply brief, OEP clarifies the distinction between PPA costs, which are not eligible for inclusion in the SCRC, and PPA benefits, which could permissibly be applied to the SCRC to mitigate stranded costs.

In its legal brief, Eversource provides two grounds for the proposition that passing the costs and benefits of the PPA to all customers through the SCRC "will be consistent with New Hampshire law and principles:"

> First, . . . it will not distort the market for energy service and will not intrude upon the offerings of any competitive energy suppliers or on the competitive energy market generally. Second, it will help to mitigate stranded costs consistent with the mandates in RSA 374-F:3 and the 2015 Settlement Agreement.

Eversource Legal Brief (hereinafter the "Brief") at 20. The first ground – avoiding distortion of energy service markets – alleges no harm, but does not provide any legal authority for Eversource to pass PPA costs to customers through the SCRC. The second ground – mitigating stranded costs – offers a desired outcome, but again does not provide legal authority to pass PPA costs through the SCRC, and further fails to express the full impact of Eversource's rate proposal.

Throughout its brief Eversource stresses that mitigating stranded costs is both a legal obligation and a direct benefit to ratepayers. Yet, Eversource's statements regarding mitigation speak only to the ***benefits*** of the PPA, with no mention of the ***costs*** of the PPA:

- "the ***benefits*** of the PPA would flow through the Stranded Cost Recovery Charge ("SCRC") which will [] meet the statutory mandate to mitigate the costs included in that charge to the benefit of all of PSNH's customer" Brief at 19 (emphasis added).

- "The PPA is designed to provide economic benefits to PSNH's customers, by providing below-market pricing that PSNH will monetize and include in rates ***as a credit*** to stranded costs." Brief at 20 (emphasis added).

- "[T]he ***benefits*** of the PPA are 'mitigation measures' as discussed in RSA 374-F:3, XII(c)." Brief at 20 (emphasis added).

- "[The PPA will] be monetized by selling the entitlement back into the market with the ***monetary benefits*** flowing to customers to mitigate stranded costs." Brief at 22 (quoting Order No. 25,830 (October 23, 2015))(emphasis added).

While the monetary benefits of the PPA, if applied to the SCRC, would certainly mitigate stranded costs in compliance with RSA 374-F:3, XII(c), the same cannot be said for applying the ***costs*** of the PPA to the SCRC. Critically, Eversource proposes to pass both the costs and benefits of the PPA to the SCRC, with no guarantee that the result will be a net positive for customers. <u>See</u> Brief at 24 (Referencing Mr. Daly's analysis which included one scenario where the net economic effect of the PPA was negative).

The Commission's analysis in Docket DE 14-048 considering how excess RGGI auction proceeds should be rebated to ratepayers is particularly instructive. In Order No. 25,644 (May 9, 2014), the Commission discussed the key distinction between a charge and a credit when it comes to use of the SCRC for non-restructuring related transactions:

> Because the RGGI rebate would not fall within the definition of an allowable SCRC charge in that it is not related to restructuring, PSNH had not advocated for its use. The RGGI rebate, however, is not a charge but a credit and we find that there is no barrier to requiring PSNH to use the SCRC as a mechanism for crediting the RGGI rebate to all customers.

Order No. 25,644 (May 9, 2014) at 4-5. Applying the same analysis here, a ***credit*** from the PPA through the SCRC would be permissible, but a ***charge*** of PPA costs would not.[1] Eversource's proposal "to include the ***costs and benefits*** of the PPA in the SCRC," Brief at 20 (emphasis added), even on a net annual basis, includes the possibility of an ***increase*** in stranded costs (*i.e.* a charge) and therefore is not legally permissible. Additionally, as pointed out by Eversource, "[o]ne of the primary objectives of the 2015 Settlement Agreement is to minimize stranded costs that must be borne by customers." Brief at 21. Because Eversource's proposal lacks safeguards to prevent an increase in stranded costs, it violates this primary objective of the 2015 Settlement Agreement.

For these reasons, and the reasons set forth in OEP's opening legal brief, OEP submits that Eversource's rate proposal to include the costs and benefits of the PPA in the SCRC, without a guarantee that the costs will never exceed the benefits, is violative of New Hampshire law and the 2015 Settlement Agreement and should be rejected by the Commission as legally impermissible.

[1] The PPA is not related to restructuring. See OEP Legal Brief at 3-4.

Respectfully submitted,

OFFICE OF ENERGY AND PLANNING

by its attorney,

Joseph A. Foster
Attorney General

Dated: December 5, 2016

Christopher G. Aslin (NH Bar # 18285)
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3679
Christopher.aslin@doj.nh.gov

Certificate of Service

I hereby certify that a copy of the foregoing Reply Brief has been sent by e-mail this day to the members listed on the service list in DE 16-693.

Dated: December 5, 2016

Christopher G. Aslin, Esq.