

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. 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.**

**OBJECTION OF NEW ENGLAND POWER GENERATORS ASSOCIATION TO
PUBLIC SERVICE CO. OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY'S
MOTION FOR REHEARING**

Pursuant to N.H. Code of Admin. Rule Puc 203.07(f), the New England Power Generator's Association, Inc. (NEPGA) respectfully objects to the Motion for Rehearing filed on April 3, 2017, by Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"). In support of its Objection, NEPGA states as follows¹:

1. On March 27, 2017, the New Hampshire Public Utilities Commission (Commission or PUC) issued Order No. 26,000 (Order) dismissing Eversource's petition seeking approval of a 20-year power purchase agreement (PPA) for 100 MW of power to be delivered over the yet-to-be approved Northern Pass Transmission Line. At the initial hearing in this docket, the Commission bifurcated the proceeding and indicated that it would first address the legal issues of whether, in light of the Restructuring Act, RSA 374-F, and other statutes, the Commission had the authority to approve the PPA. If and only if it determined that it had such authority, the Commission would turn to the evidentiary phase of the proceeding. The parties filed Initial Briefs on November 21, 2016, and Reply Briefs on December 5, 2016 addressing the legal issues identified by the Commission.

2. Following the issuance of the Order rejecting the PPA, on April 3, 2017, Eversource filed a Motion for Rehearing of the proceeding. While styled as a Motion for Rehearing, the pleading is actually one requesting that the Commission

¹ The comments expressed herein represent those of NEPGA, but not necessarily those of any particular member.

suspend the proceeding, or in the alternative, grant rehearing. Both of Petitioner's requests for relief, regardless of how styled, must be denied.

3. As the Commission recently stated in *PNE Energy Supply, LLC v. PSNH d/b/a/ Eversource Energy*, DE 15- 491, Order No. 25,693 (Nov. 9, 2016), it may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. See RSA 541:3, RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011). The Commission further noted that a successful motion must establish "good reason" by showing that there are matters the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118. N.H. 309, 311 (1978) (quotations 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. 25,676 at 3 (June 12, 2014); see also *Freedom Energy Logistics*, Order No. 25,810 (September 8, 2015).

4. With respect to its motion for rehearing, the Petitioner rehashes the arguments it made in its Motion for Rehearing in Docket DE 16-241, where the Petitioner unsuccessfully attempted to convince the Commission that the Restructuring Act and related statutes permitted the financing of additional gas pipeline infrastructure by its affiliate, at the expense of the state's electric customers was permissible under the Restructuring Act. See *Petitioner's Motion for Rehearing*, DE 16-241, filed November 7, 2016.

5. The thrust of the Petitioners argument for rehearing is that the Commission reached an incorrect conclusion in dismissing Eversource's petition due to an erroneous reading of the Restructuring Act. For the same reasons the Commission denied Eversource's motion for rehearing in DE 16-241, it must deny its motion for rehearing here. In particular, the motion fails to establish that the Commission overlooked or mistakenly conceived matters that it should now address. Nor does

the Petitioner's motion present any new evidence or previously unavailable information that would require a different result. Absent such a showing, the Petitioner's motion simply reasserts arguments that have been the subject of extensive briefing in this and other dockets, which have been soundly rejected by the Commission, and asserts that despite this precedent, a different result is warranted. Such a position cannot be supported.

6. The Petitioner's request for suspension is similarly unsupportable. The crux of the Petitioner's argument in support of suspension is that the Commission should not follow the express mandates of the Restructuring Act and the nearly 20 years of precedent that has developed since its adoption, and instead, should hang its hat on a single piece of legislation that the legislature *might* pass this session, whose language is still underdetermined, but that *might* permit the Commission to consider the PPA. Such a request flies in the face of well-established judicial doctrine, including that developed and followed by the Commission, of basing its decisions on the law in effect at the time. *See, e.g., Order No. 25,571 (September 13, 2013) DT 12-308.*

7. The *Comcast* case cited by the Petitioner to support suspension is readily distinguishable on two grounds. First, the telecommunications statute at issue in the *Comcast* docket was the source of much controversy. Unlike the Restructuring Act, the telecommunications statute had been repeatedly amended, first in 2011, again in 2012 and was before the legislature for a third time in 2013. More important still, the subject of the legislative dispute in the *Comcast* case went to the core of the Commission's jurisdiction and the extent to which it would continue to regulate certain telecommunications providers, if at all. The Commission's suspension in that docket related more to the muddled state of the law regarding its own authority to regulate certain service providers. Such is not the case in this docket.

8. Second, while Petitioner's cited the *Comcast* Order calling for suspension, it failed to reference the subsequent Order in that docket where the Commission

ultimately denied the motion for rehearing. See *Order No. 25,571 (September 13, 2013) DT 12-308*. As noted by the Commission in the *Comcast* case:

The central issues in this proceeding and in Comcast's appeal to the New Hampshire Supreme Court are whether Comcast IP Phone II, LLC offers a telephone service that is subject to public utility regulation under RSA 362:2 and whether Comcast IP Phone, II, LLC is a public utility. A recent change in law has resolved these central issues, making it clear that Comcast IP Phone II, LLC is not a public utility. Under HB 542, effective on July 27, 2013, VoIP services and IP-enabled services are no longer public utility services and providers of such services are no longer public utilities under RSA 362:2. As discussed herein, however, we continue to believe that the Order on Remand and our earlier orders in DT 09-044 were correctly decided *under the law in effect at the time and that it is neither necessary nor advisable to vacate these prior orders. The Commission, therefore, will deny Comcast's motion for rehearing.*" (Emphasis added.) *Id.* at 3.

9. Nor can the Petitioner's arguments regarding administrative and judicial economy be given any weight to support its request for suspension. In bifurcating the docket, the Commission made the conscious procedural decision to prevent the parties from unnecessarily engaging in an expensive and protracted discovery process and from preparing and filing pre-filed testimony. By reaching a decision on the legal issues alone, there is no "waste" of resources by the parties, and thus no need to "suspend" the docket. Succinctly stated, there is nothing left to "suspend;" the docket has concluded.

10. Petitioner also argues that the Commission should suspend the docket because the legislature is considering a bill, SB 128, which would amend the Restructuring Act. Speculating about what the law might be at some future time as a result of pending legislation cannot credibly serve as the basis for Petitioner's suspension request. By statute, the Commission is charged with adjudicating the rights of the parties, and it rightly does so based on the *current law*. If the legislature passes SB 128, and if the bill changes the Restructuring Act to allow the Commission to consider non-competitive, out-of-market power agreements such as the one at issue in this docket, Petitioner is free to refile the PPA with the Commission. Until that such time as legislation is passed and takes effect, however, the Commission is bound to follow current law, and in doing

so, has determined that the PPA contravenes the express statutory provisions of the New Hampshire Restructuring Act, and has appropriately dismissed it.

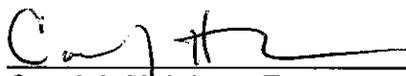
11. Finally, even if SB 128 passes, application of a newly adopted law that affects the substantive rights of the parties to an existing docket would result in the retrospective application of law, contrary to N.H. Constitution Part 1, art. 23. See also *Public Service Co. of N.H., DE 99-099, Order No. 24,351 (July 16, 2004)* (PSNH asserting retrospective application of new law impermissible under state constitution).

Respectfully submitted,

NEW ENGLAND POWER
GENERATORS ASSOCIATION, INC.

Dated: April 10, 2017

By:



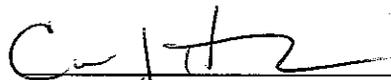
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CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing was hand-delivered to the Commission and sent by electronic mail to persons named on the Service List of this docket.

Dated: April 10, 2017

By:



Carol J. Holahan, Esq.