THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

Petition for Approval of Energy Service Supply Proposal

Docket No. DE 17-113

LEGAL MEMORANDUM OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

On June 29, 2017, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") filed a petition for approval of a new energy service supply proposal in connection with Eversource's divestiture of its generating assets. On August 16, 2017, the Commission issued a secretarial letter approving a preliminary procedural schedule. Additionally, in that letter the Commission requested legal briefs in response to a question specified in the letter. This memorandum is Eversource's response to that request.

The specific question the Commission identified as requiring briefing is:

> Do RSA 374-F:2, IV(d) and the 2015 Settlement Agreement allow the implementation of an energy procurement plan as proposed by Eversource, where generation-related costs are categorized as stranded costs, prior to divestiture of its generating assets?

August 16, 2017 Secretarial Letter in Docket No. DE 17-113 at 2. The unstated premise in the Commission's question is that there is something in either or both of RSA 374-F:2, IV(d) and the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement (the "2015 Agreement") that might bar Eversource from transitioning to a competitive procurement model and, in the process, reassigning any remaining generation costs or revenues for collection through Eversource's Stranded Cost Recovery Charge ("SCRC") rate. There is no such prohibition, either express or implied, in the law or the 2015 Agreement.

Regarding the law, RSA 374-F:2, IV defines stranded costs as follows:

> IV. "Stranded costs" means costs, liabilities, and investments, such as uneconomic assets, that electric utilities would reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric service continued and that will not be recovered as a result of restructured industry regulation that allows retail choice of electricity suppliers, unless a specific mechanism for such cost recovery is provided. Stranded costs may only include costs of:
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> (a) Existing commitments or obligations incurred prior to the effective date of this chapter;
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> (b) Renegotiated commitments approved by the commission;
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> (c) New mandated commitments approved by the commission, including any specific expenditures authorized for stranded cost recovery pursuant to any commission-approved plan to implement electric utility restructuring in the territory previously serviced by Connecticut Valley Electric Company, Inc.;
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> (d) Costs approved for recovery by the commission in connection with the divestiture or retirement of Public Service Company of New Hampshire generation assets pursuant to RSA 369-B:3-a; and
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> (e) All costs incurred as a result of fulfilling employee protection obligations pursuant to RSA 369-B:3-b.

Under the plain words of the statute, stranded costs include costs for Eversource's generating facilities that Eversource would reasonably expect to recover under the existing regulatory structure, but which it will not recover as a result of restructuring unless a specific mechanism is provided. The statute does contain some explicit limitations on the costs, but importantly, it leaves the Commission a measure of discretion and flexibility. To that specific end, the statute provides that stranded costs may include costs the Commission has approved for recovery generally "in connection with the divestiture or retirement" of Eversource's generating facilities.[1] As the Commission is more than well aware, Eversource is deeply involved in the divestiture of its generating facilities with binding bids for those facilities having already been made, and preparations under way to seek Commission approval of the winning bids. In removing those

[1] It should be noted that RSA 374-F:2, IV(d) was added by the Legislature in 2014 N.H. Laws 310, "An Act relative to the divestiture of PSNH assets." The recent timing of this amendment and its direct applicability to the present divestiture effort evidence the broad nature of this provision.

generating investments and assets from its control, Eversource must make provision for the recovery of costs and implement a rational process for providing energy service to customers that have not chosen competitive suppliers.

Thus, in connection with this impending divestiture, Eversource has delivered its proposal to the Commission for approval of a competitive procurement process to provide default Energy Service ("ES") to customers. This is the ES product that Eversource, like any other electric distribution company, must have for its customers who are not on competitive supply and it is the product that Eversource must assure is available both before and after the sale of its facilities. The precise date that Eversource's assets will transfer to a new owner is presently unknown; such date is likely to be by early 2018. But Eversource must plan now to ensure it has a source of electric energy to supply ES customers during the winter months, regardless of whether the sale occurs in December of this year or January, February, or later in 2018. Delaying or deferring action now with the need to rely upon the spot market for the provision of ES supply could be economically devastating to customers should winter prices spike as they did a handful of years ago.

Recently, the Commission expressly found "that the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity." *Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,050 (October 6, 2016) at 8. To ensure that the ES product it offers will reflect competitive market prices for electricity, Eversource has proposed a start date for transferring to a competitively procured ES product effective January 1, 2018. As part of that proposal, if Eversource continues to own its generating plants beyond the start date for the competitive procurement, the costs and revenues relating to those facilities will be reflected in the SCRC as part of a rational divestiture transition process,

rather than in the ES rate (which will reflect the competitive market price of electricity).[2] Eversource is not aware of any requirement or restriction in the law that dictates the timing of assigning costs and revenues to different rate elements. Thus, with the Commission's approval those costs would become costs "approved for recovery by the commission in connection with the divestiture" of Eversource's generating facilities and applied to the SCRC rate. There is nothing on the face of the law that bars the Commission from making such a finding or allowing such recovery.

In that RSA 374-F:2, IV(d) references RSA 369-B:3-a, some review of that statute is likewise appropriate here.[3] The majority of RSA 369-B:3-a is devoted to determinations around the 2015 Agreement under RSA 369-B:3, IV(c),[4] and in those sections the statute notes "The commission may approve or reject the 2015 settlement proposal, or condition its approval on any modification of the terms and conditions that it determines to be necessary to meet the public interest standard, ***so long as any order to divest provides for recovery of stranded costs and***

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[2] Since stranded costs will be refinanced using a securitized financing within weeks of the sale of the generating assets, any impact of including one or two months of such costs into the stranded cost category will result in virtually no impact on customers, considering the 12 to 15 year expected life of the rate reduction bonds and their AAA-rated carrying costs.

[3] To the extent that one might attempt to argue that there is a restriction in RSA 369-B:3, Eversource's proposal is not barred by that law either. RSA 369-B:3, IV(b)(1)(A) is not a self-effectuating law, but rather it is conditioned upon its terms being included in a Finance Order to take effect – something the Commission itself has recognized. *See, e.g. New Hampshire Electric Cooperative*, Order No. 23,667 (March 29, 2001) at 18 ("The Ski Area Intervenors' arguments to the contrary are unconvincing. As they point out, RSA 369-B:3, IV(b)(10) instructs us to order no changes in the rates paid by PSNH's special contract customers under agreements in effect as of May 1, 2000. In fact, this provision does not enshrine such a prescription as a general matter of New Hampshire law, either as to PSNH special contract customers or generally, but as a legislative condition to the implementation of the PSNH Restructuring Settlement Agreement we approved in Docket No. DE 99-099."), *see also Public Service Company of New Hampshire*, Order No. 23,575 (November 1, 2000) at fn 1. This provision did not exist at the time of the finance order on Eversource's initial securitization, and it was not included in the second of Eversource's finance orders. Because the law is not self-effectuating, and because there was no Commission order putting this provision into effect, it is no bar to Eversource's proposal. Even assuming that by implication or otherwise this provision was, hypothetically, included in a finance order, the provision would have expired when the underlying financing had been completely paid off. The financings authorized by the Commission years ago have been paid and closed. There is no continuing order.

[4] Additionally, RSA 369-B:3, IV(b)(1)(A) will not apply to the forthcoming securitization because it is governed by RSA 369-B:3, IV(c), which does not include any of the conditions of RSA 369-B:3, IV(b).

such other costs of divestiture as may be approved by the commission." RSA 369-B:3, II (emphasis added). In that the Commission has approved the 2015 Agreement and ordered divestiture, it must permit recovery of stranded costs and other divestiture costs. What the Commission is not required to do, however, is to only permit recovery of those costs by one particular method, or at one particular time.

Moreover, the standard for divestiture of the Company's generating assets is to further the "economic interests of PSNH's retail customers" and to "minimize risk to PSNH's retail customers." 2014 N.H. Laws, 310:1. Providing for a rational transition to a competitively procured energy service offering is consistent with these statutory purposes.

RSA 369-B:3 also contains the following provision:

> IV. Prior to any divestiture of its generation assets, PSNH may modify or retire such generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so and provides for the cost recovery of such modification or retirement.

As this provision makes clear, the divestiture of Eversource's generating facilities is not a prerequisite to the recovery of generation costs as stranded costs. Should the Commission find it in the economic interest of customers, it could allow Eversource to modify or retire its facilities, and obtain cost recovery, *prior* to divestiture. The timing and specific method of cost recovery is left to the Commission and is neither barred or required by the law.

This position is also supported by the principles in the restructuring law. In RSA 374-F:3, V(d), the Legislature has stated "The commission should establish transition and default service appropriate to the particular circumstances of each jurisdictional utility." The particular circumstances of Eversource include a consideration of the divestiture process and the need to put in place a rational transition from today's vertically-owned utility paradigm to the post-divestiture Eversource in a way that protects the economic interests of retail customers of

Eversource. *See* RSA 369-B:3-a. Leaving ES customers potentially exposed to volatile winter prices is inappropriate and not in the economic interest of customers.

With respect to the 2015 Agreement there is likewise nothing in that document preventing Eversource from transitioning its ES and reassigning the costs and revenues as proposed. With respect to the provision of ES, the Agreement provides:

> Default Service will provide a safety net and assure universal access for customers who do not receive energy from a Competitive Supplier. Default Service shall be acquired and provided in accordance with RSA Chapter 369-B until divestiture of PSNH's generating assets. No later than six months after the final financial closing resulting from the divestiture of PSNH's generating assets, PSNH will transition to a competitive procurement process for default service. The competitive process utilized shall be consistent with the process determined by the Commission in its Docket No. IR 14-338, "Review of Default Service Procurement Processes for Electric Distribution Utilities," as may subsequently be modified by the Commission.

Agreement at 11-12. To the extent the Commission is concerned with the timing for implementing a competitive procurement pursuant to this provision, the plain words of the provision state only that the competitive procurement will occur no later than six months after closing. It does not create any restriction on implementing such a process earlier than six months following closing. Further, as discussed above, such a provision of ES is in accordance with RSA Chapter 369-B.

Moreover, it would be mere coincidence if the transition to competitive procurement occurred precisely on the closing date. More likely, as discussed in Eversource's initial testimony, the transition would occur some time before or after closing, but in either event Eversource must have an ES product to serve its customers. Should the transition be ordered to occur after the closing on divestiture, as suggested by the Commission Staff and the Retail Energy Supply Association ("RESA"), not only would it mean that any benefits of the transition for the many thousands of customers on ES would be delayed, but also that during this period

customers would be exposed to the vagaries of the energy markets without the price hedge that the generating assets provided, and would need to accept the impacts of participating in those markets during the months between the closing and the transition. Alternatively, the transition could, as proposed by Eversource, occur before closing, in which case a new (and likely far lower) rate would be implemented for the benefit of ES customers for the short time prior to closing.

As for the classification of costs and revenues under the 2015 Agreement, similar to the law, there is nothing in the 2015 Agreement that prevents a reclassification of generation costs and revenues for recovery through the SCRC prior to the completion of the divestiture. In discussing and defining the elements of the SCRC the 2015 Agreement provides, at page 9, that:

> The net of prudently incurred ongoing expenses and revenue requirements (including, inter alia, decommissioning, retirement, and environmental costs or liabilities) for any generating unit, entitlement or obligation that has not been sold as part of the asset divestiture process and all over-market or under-market costs related to IPPs and the PPAs, employee protection-related costs, and property tax stabilization payments will be treated as stranded costs to be fully recovered through the SCRC.

Thus, the "ongoing expenses" for "any generating unit" are explicitly permitted to be treated as stranded costs and recovered through the SCRC. The 2015 Agreement does not specify a time when such treatment will commence nor does it define a specific triggering event. The Commission is permitted to allow Eversource to begin such treatment when it would be appropriate to do so.

Additionally, there is a practical consideration under the 2015 Agreement that supports instituting a new ES rate and rate treatment prior to divestiture occurring. Pursuant to the 2015 Agreement and the process that has been set out for divestiture, it is possible that there will not be a single sale date that covers all generation assets. Rather, some assets may be sold at one

time and the rest at another. In the period between an initial sale and final sale, there is a possibility that Eversource will have insufficient generation to serve its ES load. Without having a new ES system in place, to ensure continued service to its ES customers Eversource will be required to engage in some degree of self-management of its ES supply before divestiture is complete, including through reliance on the spot market. Making the adjustment to competitive ES procurement and the accompanying accounting changes prior to such an occurrence would ensure a smooth, reasonable and rational transition for customers, the Company, and the Commission.

Ultimately, a transition prior to closing is neither barred nor required by the law or the 2015 Agreement. The decision is one of implementing the better policy for New Hampshire's electric customers, considering the particular circumstances of the divestiture process. Eversource's assessment is that an earlier transition would be beneficial because it would ensure that new rates are available to customers earlier, it would ensure an orderly transition from one type of ES to another, and would avoid having the confusion and uncertainty of spending an unknown amount of time providing ES at a time when divestiture has occurred. To the extent there is concern that an earlier transition period may be elongated by a delay in the time between the transition to competitive procurement and the closing on the sale, whether due to litigation or otherwise, such concerns do not create any restriction or demand that did not already exist. RESA has argued that the Commission should fix a date certain for the transition, but there is no greater assurance of the divestiture occurring on one date or another. Moreover, whether any customer or group of customers may be affected in a particular way by this transition is not a matter covered by the 2015 Agreement.

In short, whatever reasons may exist to delay a transition to competitive procurement and to reclassify costs and revenues, those reasons do not come from RSA 374-F:2, IV, the 2015 Agreement, or any other law. Neither the law nor the 2015 Agreement prevents the transition to competitive procurement prior to the closing date on the sale of Eversource's generating plants and the collection of short-term transition costs through the SCRC. Eversource's proposal is permitted by law and supports the "overriding purpose of the Restructuring Statute" as determined by this Commission.

Respectfully submitted,

Public Service Company of New Hampshire
d/b/a Eversource Energy

September 1, 2017
Date

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

September 1, 2017
Date

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Matthew J. Fossum