

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**  
**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY**  
**PETITION FOR APPROVAL ENERGY SUPPLY PROPOSAL**

**Docket No. DE 17-113**

**Brief of the Office of the Consumer Advocate**

NOW COMES the Office of the Consumer Advocate (“OCA”), a party in this docket, and, in response to the directive in the August 16, 2017 Secretarial Letter, inviting briefs by September 1, 2017 regarding the legality of the relief requested in this docket, the OCA states as follows:

**1. Introduction**

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) filed a petition with the New Hampshire Public Utilities Commission (“the Commission”) on June 28, 2017 seeking the Commission’s approval of a proposal to provide energy service in light of the planned divestiture of Eversource’s generating facilities in the near future. As part of Eversource’s proposal, it intends to procure electric supply for its default service customers through an RFP-based competitive procurement, transitioning away from its current combination of company-owned generation and short-term power purchase agreements.

The petition proposes that the new procurement process begin in the fall of 2017 for service provided on and after January 1, 2018, in anticipation of divestiture occurring in close proximity to that date. It further suggests that if divestiture were to occur after the company moves to competitive procurement, prudently incurred costs associated with the soon-to-be

divested generation portfolio be recovered (net of revenues from selling energy and capacity through ISO New England) through the non-bypassable Stranded Cost Recovery Charge (“SCRC”) coincident with the January 1, 2018 shift to competitive procurement of supply.

On August 16, 2016, the Commission issued a procedural schedule requesting briefs on whether “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.” Procedural Schedule at 2. As explained more fully below, the proposed arrangement would comply with New Hampshire statutory framework for divestiture as embodied in RSA 374-F:2, IV(d), as well as the 2015 Settlement Agreement (“the Agreement”).

## **2. The Definition of Stranded Costs Under RSA 374-F:2, IV**

New Hampshire’s suite of restructuring statutes provides both a general description of Stranded Costs and an explicit definition of what shall be considered Stranded Costs. New Hampshire’s statutory framework describes Stranded Costs generally as:

[C]osts, 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.

RSA 374-F:2, IV.

Providing a more specific definition of what qualifies as Stranded Costs, the statute continues that “stranded costs may include ... costs approved for recovery by the commission *in connection with* the divestiture or retirement of Public Service Company of New Hampshire generation assets.” RSA 374-F:2, IV(d) (emphasis added).

While the language cited above does not give the Commission unlimited authority regarding the types of costs which can be recovered through the SCRC, it does clearly provide the Commission with broad authority to determine that certain costs approved for recovery in connection with divestiture can be recovered via the SCRC. Cost recovery of an extremely limited duration, associated with a generation portfolio that is progressing toward divestiture on an approved and clear timeline, can be reasonably understood as meeting the “in connection with divestiture” standard. Therefore, since the Commission has broad statutory authority to approve recovery of costs incurred in connection with divestiture through the SCRC, costs associated with Eversource’s plan for transition to competitive procurement likely fall within this category of costs.

### **3. The 2015 Settlement Agreement**

Negotiated over a period of several months and enabled by accompanying legislation, no fewer than 16 parties signed the Agreement outlining the process for Eversource to divest its generating assets. For the purposes of determining whether Eversource’s proposed procurement plan is authorized by the Agreement, below we review key components of the Agreement, including its (a) definition of Stranded Costs; (b) defined path for acquisition of Default Service; (c) treatment of costs related to the mercury scrubber installed by PSNH at Merrimack Station in Bow; and (d) the prudent operation requirement.

#### **a. Stranded Costs Under the 2015 Settlement Agreement**

Supplementing the statutory definition of Stranded Costs provided by RSA 374-F:2, IV the Agreement also contains an explicit definition of the SCRC:

The portion of the unbundled retail delivery service bill that is a non-bypassable charge as provided in RSA Chapter 374-F:3, XII to recover the portion of PSNH’s Part 1 and Part 2 Stranded Costs that are allowed by this Agreement. The SCRC includes the RRB Charge, over-market or under-market IPP and Power Purchase

Agreement costs, Non-Securitized Stranded Costs, and other costs and expenses allowed by this Agreement or as otherwise authorized by the Commission.

2015 Settlement Agreement, at 8. “RRB Charge” refers to costs associated with the rate reduction bonds Eversource will issue to securitize and thereby reduce certain recoverable stranded costs; “IPP” refers to independent power producers in the Eversource service territory whose output the utility is obliged to purchase.

The above-referenced definition of the SCRC describes both the structure of the charge and what it may be used to recover. While highlighting certain specific costs and benefits to be recovered through the SCRC, the final clause of this definition provides the Commission with broad latitude to include within the SCRC “other costs and expenses allowed by this Agreement or as otherwise authorized by the Commission.” *Id.*

After setting forth relevant definitions, the Agreement turns to substantive discussion of individual rate components, starting with the SCRC. It describes the SCRC as divided into two parts: Part 1, which provides the revenue stream for the RRBs; and Part 2, which provides recovery of “ongoing IPP costs, PPA [power purchase agreement] costs, and all other Non-Securitized Stranded Costs as determined by the Commission.” *Id.* at 11. In the context of the present question, it is important to note that Part 2 provides broad authority to the Commission to approve recovery of additional non-securitized stranded costs through Part 2 of the SCRC that were not specifically enumerated or quantified at the time of the Agreement but that might arise in light of particular divestiture-related exigencies. Indeed, the Agreement contemplates exactly that when describing the treatment of stranded generation-related costs in the context of a failed auction, noting that “[u]ntil such asset is divested or retired, PSNH shall retain the assets, entitlements, or obligation, operate them prudently, and bid the output into the market with the net costs and revenues included in Part 2 of the SCRC.” *Id.* at 22.

In light of the broad authority granted to the Commission by the Agreement, particularly under the definition and substantive discussion of stranded costs, the Commission should view the Eversource proposal as consistent with the spirit and letter of the Agreement.

**b. Default Energy Service Under the 2015 Settlement Agreement**

The Agreement describes a process for Eversource's transition to competitive procurement of default service, requiring that "[n]o 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." *Id.* at 11. (Emphasis added) If the settling parties had intended to prevent Eversource from transitioning to competitive procurement of default service prior to any issuance of the rate reduction bonds, they could easily have forbidden such a transition within the default energy service section of the settlement agreement, yet they opted not to do so.

Since no explicit language exists in the Agreement requiring Eversource to fully divest its generating assets prior to transitioning to competitive procurement of default service, the Commission should view the Eversource proposal as consistent with the spirit and letter of the Agreement.

**c. Scrubber Recovery Under the 2015 Settlement Agreement**

Supplementing its treatment of stranded costs flowing from Eversource's generation portfolio and recovered via SCRC Part 1, the Agreement provides specific discussion of the Scrubber cost recovery, stating that "[u]pon approval of this Agreement by the Commission, [scrubber costs] shall be placed into PSNH's Default Energy Service rate for recovery as a permanent rate pursuant to RSA 378:28 and :29 until closing on the RRBs." *Id.* at 12. The

Agreement also states that “[u]pon closing of the RRBs, all costs of the scrubber will be removed from Default Service.” *Id.*

Although one could plausibly interpret this language as precluding Eversource’s recovery of scrubber costs from non-default service customers prior to divestiture, reading the Agreement in its totality suggests otherwise. Each reference to the transition of scrubber cost recovery away from the Default Service rate explicitly references the RRBs. As discussed above, the Agreement provides for two separate components of the SCRC: Part 1, which is tied explicitly to the issuance of the RRBs; and Part 2, which is in fact an amalgamation of “all other Non-Securitized Stranded Costs as determined by the Commission.” *Id.* at 11. This language, particularly when viewed in light of the utility’s ability to recover scrubber-related and other generator-related costs under Part 2 if the auction fails, provides the Commission with the flexibility, if in the public interest, to authorize recovery of non-securitized stranded costs—including net costs associated with the scrubber— within Part 2 of the SCRC until their securitization.

**d. The “Prudent Operation” Requirement**

Section VI of the Agreement holds Eversource responsible for prudently operating its generation portfolio prior to whatever sales or asset retirements ultimately occur. Consistent with traditional principles of utility service and cost recovery, the Agreement provides that in light of the obligation to conduct prudent operations and participate in regional wholesale markets, “[t]he costs incurred or revenues received in compliance with these requirements will be recovered by [Eversource] as part of its default service rate or as a stranded cost, *as timing dictates.*” *Id.* at 25. (emphasis added) This reference to “timing” as dictating how, as between the default service charge and the stranded cost charge, Eversource will recover generation-

related costs, can be understood as an acknowledgement by the parties to the Agreement that there is considerable flexibility here as long as no evidence of imprudence surfaces as Eversource finally clears the finish line of its 21-year restructuring marathon.

#### **4. Conclusion**

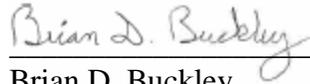
The OCA takes no substantive position at this time on the merits of Eversource's proposal. Whether it is in the interests of Eversource's residential customers, and consistent with the public good generally, for Eversource to transition to competitively procured default service on January 1, 2018 is a question that turns in significant part on the unfolding outcome of the asset divestiture process. Our analysis here is limited to the question of whether it is permissible for such a transition to occur prior to asset divestiture and securitization, in light of RSA 374-F:2, IV(d) and the 2015 Settlement Agreement as approved by the Commission. Ultimately, it will be necessary to for the Commission to make a reasoned determination based on a factual record in light of such imperatives as near-term rate relief and the desirability of rate stability.

As explained above, Eversource's proposal to shift costs and benefits associated with divestiture into the stranded cost charge prior to the date of divestiture falls squarely within the broad authority reserved to the Commission over Part 2 of the SCRC and is precluded by neither the language of the Agreement nor the statutory framework for divestiture in New Hampshire.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Find that Eversource's energy procurement proposal complies with the 2015 Settlement Agreement, as well as the statutory framework for divestiture provided under RSA 374-F:2; and
- B. Grant any other relief consistent with such a finding as it deems appropriate

Respectfully submitted,



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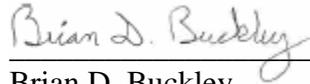
Brian D. Buckley  
Staff Attorney

Office of the Consumer Advocate  
21 South Fruit Street, Suite 18  
Concord, New Hampshire 03301  
(603) 271-1173  
[brian.buckley@oca.nh.gov](mailto:brian.buckley@oca.nh.gov)

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Certificate of Service

I hereby certify that a copy of this Brief was provided via electronic mail to the individuals included on the Commission's service list for this docket.



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Brian D. Buckley