

**BEFORE THE STATE OF NEW HAMPSHIRE**

**PUBLIC UTILITIES COMMISSION**

Eversource Petition for Approval of Energy Service Supply Proposal	) ) ) )	DE 17-113
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**BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION ON AUTHORITY FOR  
EVERSOURCE TO IMPLEMENT NEW PROCUREMENT PLAN PRE-DIVESTITURE**

**Introduction and Short Answer**

Pursuant to the August 16, 2017 procedural order by the Public Utilities Commission (“Commission”) in this proceeding, the Retail Energy Supply Association (“RESA”)<sup>1</sup> respectfully responds to the Commission’s request for a brief on the following question: “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 the generation costs are categorized as stranded costs, prior to divestiture of its generating assets?” For the legal and policy reasons discussed below, the answer is no, especially when accounting for mandatory directives set forth in additional restructuring statutes.

**Argument**

**I. RSA 369-B and the 2015 Settlement Agreement Preclude Implementation of an Alternative Procurement Plan Until After Completion of Divestiture.**

The statutory scheme governing acquisition of default service/energy service by Public Service Company of New Hampshire, d/b/a Eversource Energy (“Eversource”) for customers not choosing competitive supply, at the same time as it retains ownership of generation assets, is

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

straightforward, and has been applied by the Commission for many years, with the most recent being determined in Docket DE 16-822. See Order No. 25,974, Eversource Petition for Adjustment of Energy Service Rate, Docket DE 16-822 (December 23, 2016) (hereinafter “2016 Energy Rate Order”); see also Order No. 26,033, Order Approving Request for Adjustment to Energy Service Rates, Docket DE 16-822 (June 28, 2017). As stated in the opening two sentences of the Procedural History section of the 2016 Energy Rate Order (at pp. 1-2):

“Pursuant to RSA 369-B:3, IV(b)(1)(A), customers taking default energy service from Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) are billed an energy service rate equal to Eversource’s actual, prudent, and reasonable costs of providing power, as approved by the Commission. Eversource’s energy service rate is a fixed rate that is in effect for a calendar year, although Eversource may request a mid-year adjustment.”

The statute cited in the above excerpt, RSA 369-B:3, IV(b)(1)(A), provides in pertinent part that “any” Commission order authorizing issuance of rate reduction bonds “shall” contain a finding that such order is:

“...consistent with the following conditions...until the completion of the sale of PSNH’s ownership interests in fossil and hydro generation assets located in New Hampshire, PSNH shall supply all...transition and default service offered in its retail electric service territory from its generation assets and, if necessary, through supplemental power purchases in a manner approved by the commission. The price of such default service shall be PSNH’s actual, prudent, and reasonable costs of providing such power, as approved by the commission.

Id. (emphasis added). Thus, the statutory scheme plainly provides that Eversource (1) “shall supply all” default service, at a price based on Eversource’s generation costs plus any necessary supplemental power purchases, (2) “until the completion of the sale” of Eversource’s generation assets located in New Hampshire. Consequently, any implementation of a default service plan not based on Eversource’s generation assets, prior to divestiture, would violate RSA 369-B:3, IV.

This legal scheme requiring continuation of default service based on generation assets plus supplemental power purchases until divestiture is completed is precisely reflected in the June 10, 2015 Settlement Agreement (the “Settlement”) addressing restructuring and rate stabilization proposals in Docket DE 14-238; see also Order No. 25,920, Dockets DE 11-250 and DE 14-238 Order Approving Settlement Agreements (July 1, 2016), p. 38 (confirming default service provisions in Settlement) (hereinafter “Settlement Approval Order”). In describing the treatment of “Default Service,” the Settlement unambiguously states that “Default Service shall be acquired and provided in accordance with RSA Chapter 369-B until divestiture of PSNH’s generating assets.” Settlement, p. 11 (emphasis supplied). It then states that PSNH will “transition to a competitive procurement process for default service” no later than “six months after the final financial closing resulting from the divestiture of PSNH’s generating assets....” Id., p. 11 (emphasis added). The express reference to RSA Chapter 369-B – which requires rates based on Eversource generation plants and supplement procurements until the completion of the sale of Eversource generating assets – and the express reference in the text of the Settlement to such asset-based rate process remaining in effect “until divestiture of PSNH’s generating assets” make clear that the settling parties acknowledged that Eversource lacked authority to adopt a new procurement plan, such as proposed in this docket, prior to completion of divestiture. This conclusion was expressly confirmed by Eversource’s Treasurer (Philip Lembo), and Eversource’s Director of Corporate Finance and Cash Management (Emilie O’Neil) during hearings to address the Settlement Agreement. See Settlement Approval Order, p. 51 (quoting testimony from Mr. Lembo that “New Hampshire law states that securitization must not occur until after divestiture when standard costs are determined” and testimony of Ms. O’Neil that

“once the assets are divested as standard costs are known, the Company may move forward on securitization”) (emphasis added).

**II. RSA 374-F:2, IV(d) Fully Supports the Preclusion of a Replacement Procurement Plan Prior to Completion of Divestiture.**

The Commission’s August 16, 2017 procedural order question specifically requests comment on the role of RESA 374:2, IV(d) in the timing of implementation of a replacement energy rate procurement plan by Eversource. Section 374-F:2, IV(d) is fully consistent with the prohibition on implementation of a replacement procurement plan until after completion of divestiture, as discussed in Section I supra.

Section 374-F:2 establishes definitions applicable to electric utility restructuring. Subsection IV of Section 374-F:2 addresses the definition of “stranded costs,” and specifically provides that “stranded costs may only include costs of .... (d) Costs approved for recovery by the commission in connection with the divestiture or retirement of [PSNH] generation assets pursuant to RSA 369-B:3-b....” This definition makes clear that in order to merit treatment as a stranded cost of an Eversource divested or retired generation asset, the Commission must approve such costs pursuant to requirements established in RSA 369-B:3. As discussed in Section I, Section 369-B:3, in turn, requires that Eversource may not implement a replacement purchasing model, and stranded cost treatment of generating assets, “until the completion of the sale of PSNH’s ownership interests in” its New Hampshire generation assets. Accordingly, by cross-referencing the process established in RSA 369-B:3, RSA 374-F:2, IV(d) fully supports the preclusion of a replacement procurement plan prior to completion of divestiture by Eversource.

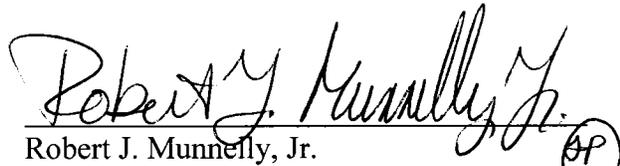
**Conclusion**

For the reasons discussed above, Eversource may not legally implement a replacement energy procurement plan until after completion of divestiture, pursuant to RSA 369-B:3, RSA 374-F:2, IV(d), and the 2015 Settlement Agreement. Moreover, RESA believes that Eversource's proposal to seek recovery of generation-related costs through the stranded cost recovery charge that is applied to all electric distribution customers, including those on competitive supply who do not have a cost-causative relationship with Eversource generation supply, would unfairly penalize those customers on competitive generation supply. RESA is concerned this incremental and unwarranted charge would have a chilling effect on the New Hampshire competitive retail electricity market.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By its attorneys,



Robert J. Munnelly, Jr.  
Davis Malm & D'Agostine, P.C.  
One Boston Place – 37<sup>th</sup> Floor  
Boston, MA 02108  
Telephone: (617) 589-3822  
Email: [rmunnelly@davismalm.com](mailto:rmunnelly@davismalm.com)

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