



**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 17-124

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

Sale of Generating Facilities

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to RSA 541-A:35, "Decisions and Orders" and N.H. Code of Admin. Rules Jus 812.05, "Proposed Findings of Fact and Conclusions of Law," Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") requests that as part of its decision in this docket the Commission include the findings of fact and conclusions of law set forth below.

RSA 541-A:35 provides in relevant part, "If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding." The Commission's procedural rules at N.H. Code of Admin Rules Puc 200 are silent on the issue of findings of fact. Under RSA 541-A:30-a, V, when an agency's rules or governing statutes do not address a procedure in the attorney general's Model Rules of Practice and Procedure (N.H. Code of Admin Rules, Jus 800), an agency shall apply those Model Rules. Jus 812.05(a) provides that "Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing;" and Jus 812.05(c) provides, "In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals."

Under the authority granted by the statutory and regulatory provisions cited above, PSNH requests that the Commission include the findings set forth below in its decision(s) in this docket.

These findings are necessary to allow the buyers of PSNH's assets to qualify for "exempt wholesale generator" ("EWG") status from the Federal Energy Regulatory Commission ("FERC") under 18 CFR 366.7. That FERC regulation (at subsection (a)) provides that "consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a (c)) any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein."

Section 32(c) of the Public Utility Holding Company Act of 1935 requires that for utility-owned generating facilities such as those being divested by PSNH:

(c) State consent for existing rate-based facilities

If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; Provided, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company.¹

This Commission has made these EWG filings in conjunction with previous utility generation divestiture transactions. *See, In Re Connecticut Light & Power Co.*, 84 N.H.P.U.C. 634 (Nov. 29, 1999); *In Re Western Massachusetts Elec. Co.*, 84 N.H.P.U.C. 369 (July 7, 1999); *In Re North Atlantic Energy Corp.*, 87 N.H.P.U.C. 621 (Sept. 12, 2002); *In Re Public Service Co. of New Hampshire*, 86 N.H.P.U.C. 54 (Jan. 29, 2001).

¹ PSNH has requested these same EWG determinations in Connecticut at the Public Utilities Regulatory Authority ([Docket 17-10-47](#)) and in Massachusetts at the Department of Public Utilities ([Docket 17-167](#)). Those applications are supported by affidavits from Mr. Eric H. Chung. A copy of the affidavit filed at the CT PURA is attached hereto as Attachment 1.)

The factual bases for making these findings are set forth in paragraph 18 of the “Stipulation Agreement” entered and agreed to by PSNH, Commission Staff, the Office of the Consumer Advocate, the Office of Strategic Initiatives, and the Conservation Law Foundation dated and filed in this proceeding on November 8, 2017. See also, the affidavit of Mr. Chung referenced in footnote 1.

The findings of fact necessary under 18 CFR 366.7 and requested by PSNH are that for the generating facilities listed in Schedule 1 of each of the two Purchase and Sale Agreements that are the subjects of this proceeding (Attachments 2 and 3):

- (1) Allowing each of the generating facilities that are being divested by PSNH under the two Purchase and Sales Agreements to qualify as an EWG under 18 CFR 366.7 will benefit consumers.
- (2) Allowing each of the generating facilities that are being divested by PSNH under the two Purchase and Sales Agreements to qualify as an EWG under 18 CFR 366.7 is in the public interest.
- (3) Allowing each of the generating facilities that are being divested by PSNH under the two Purchase and Sales Agreements to qualify as an EWG under 18 CFR 366.7 does not violate State law

Respectfully submitted this

15th day of November, 2017, by:

PUBLIC SERVICE CO. of NEW HAMPSHIRE



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CERTIFICATE OF SERVICE

I certify that on this date I caused this Request for Findings to be served on parties listed on the Commission's service list for this docket.

November 15, 2017



Robert A. Bersak