

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

**Order Denying NEPGA's and RESA's Motion to Allow Additional Discovery
and for Leave to File Supplemental Testimony**

ORDER NO. 25,830

October 23, 2015

In this order, we deny the motion of NEPGA and RESA to allow additional discovery and for leave to file supplemental or amended testimony relating to Eversource's recently announced power purchase agreement with Hydro-Quebec.

I. PROCEDURAL HISTORY

On June 10, 2015, Public Service Company of New Hampshire, d/b/a Eversource Energy (Eversource), filed with the Commission a "Restructuring and Rate Stabilization Agreement" (Settlement Agreement). Eversource and the other parties to the Settlement Agreement (together, the Settling Parties) assert that it resolves the issues in this docket and in DE 11-250, and have asked for Commission approval of its terms. In July 2015, the Governor signed SB 221 into law, which amended RSA 369-B:3-a, II, and which directs the Commission to "review the 2015 settlement proposal and determine whether its terms and conditions are in the public interest." The Settling Parties filed testimony in support of the Settlement Agreement in June and July. The discovery on that testimony concluded in September. Non-Advocate Staff and intervenors filed testimony in September, and the discovery on that testimony is ongoing. Rebuttal testimony is due in November.

The New England Power Generators Association (NEPGA) and the Retail Energy Supply Association (RESA) are two of the Settling Parties. On October 1, 2015, NEPGA and RESA filed a joint motion (Motion) “to allow additional discovery” from Eversource and “for leave to file supplemental or amended testimony.” Eversource objected.

II. POSITIONS OF THE PARTIES

A. NEPGA and RESA

The basis for the Motion is Eversource’s August 15, 2015 announcement that Eversource “had entered into a 20-year firm power purchase agreement (‘PPA’) with HydroQuebec.” Motion at 2. The Motion claims that “an additional PPA outside of a competitive procurement for default service” was “not considered during the settlement negotiations” and “has the potential to impact whether the Settlement Agreement is in the public interest.” *Id.* The Motion quotes language from the Settlement Agreement that “‘completing the transition to a competitive procurement process for default service’ was a ‘key component of this agreement.’” *Id.* at 2-3; *see* Settlement Agreement at 2, line 30, *and* at 3, line 66. NEPGA and RESA argue that they need to conduct additional discovery to determine whether the PPA violates or impacts the Settlement Agreement, and possibly supplement or amend their testimony. *Id.* at 3.

Through their October 14, 2015, reply to Eversource’s objection, NEPGA and RESA also argue that Eversource has no duty to update the parties to this docket regarding the status of the PPA unless NEPGA and RESA are allowed to conduct discovery. Only formal discovery requests, according to NEPGA and RESA, trigger a duty for Eversource to update the status of the PPA. *See* Puc 203.09(k) (“the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time

the party served the response”). NEPGA and RESA argue the parties will never learn the terms of the PPA without a continuing discovery obligation and fear they will be unable to evaluate its appropriateness within the context of the Settlement Agreement. Settlement Agreement.

Reply at 2.

B. Eversource

Eversource argues that NEPGA’s and RESA’s claims are premature because the PPA is “still a work-in-progress.” Eversource states that “no PPA has been finalized” and any signed PPA will be filed with the Commission for review and approval through a proceeding governed by RSA 374:57. Objection at 2. According to Eversource, any PPA “would NOT be used to supply default energy service but would be monetized by selling the entitlement back into the market with the monetary benefits flowing to customers to mitigate stranded costs,” and that “the methodology set forth in the Settlement for obtaining default energy service post-divestiture would NOT be impacted by any PPA with Hydro-Quebec.” *Id.* (emphasis in original). Eversource states that any new PPA will therefore not violate the Settlement Agreement.

Eversource also argues against the Commission’s involvement with a “disagreement between Settling Parties,” and suggests NEPGA and RESA should withdraw from the Settlement Agreement if they “are unhappy with the continued participation.” *Id.* at 3. Finally, Eversource argues that granting the Motion would create an undue burden on the parties and would likely cause delay. If NEPGA and RESA are permitted to file supplemental testimony, Eversource argues that other parties may wish to conduct discovery on that new testimony and then file supplemental testimony themselves. Objection at 4.

C. Other Parties

No other parties took a position related to the Motion.


III. COMMISSION ANALYSIS

We accept Eversource’s representation that “no PPA has been finalized.” If and when Eversource files an agreement with Hydro-Quebec, parties will be free to argue whether, and the extent to which, that agreement affects the Settlement Agreement. Any impact that a PPA between Eversource and Hydro-Quebec may have on this docket is speculative. It is thus premature for us to address a hypothetical PPA’s effect on the Settlement Agreement. *Eversource Energy*, Order No. 25,814 (Sept. 18, 2015) (denying a request for rulemaking as premature).

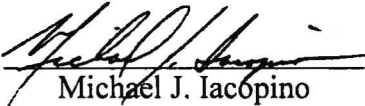
Based upon the foregoing, it is hereby

ORDERED, that NEPGA’s and RESA’s motion to allow additional discovery and for leave to file supplemental testimony is DENIED.

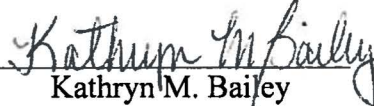
By order of the Public Utilities Commission of New Hampshire this twenty-third day of October, 2015.



Martin P. Honigberg
Chairman

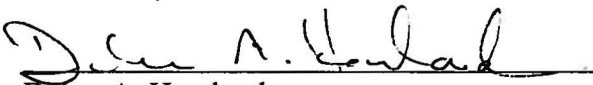


Michael J. Iacopino
Special Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director