

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-113

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Petition for Approval of Energy Service Supply Proposal

Order on Cost Recovery Prior to Divestiture

ORDER NO. 26,056

September 21, 2017

In this Order, the Commission rejects Eversource's proposal to recover the net costs of generation prior to divestiture through the stranded cost recovery charge. As explained further below, the Commission directs Eversource to make its customary filing for an annual energy service and stranded cost recovery charge, pursuant to RSA 369-B:3, IV(1)(A), for effect January 1, 2018.

I. PROCEDURAL HISTORY

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 preparation for Eversource's divestiture of its generation assets. The proposal calls for the new rates to be in effect for January 1, 2018. For a complete procedural schedule and all documents filed in this docket, see <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-113.html>.

Eversource made the proposal in connection with the 2015 Settlement Agreement,¹ approved by the Commission in Order No. 25,920 (July 1, 2016), providing for the divestiture of Eversource's generation assets and the securitization of certain stranded costs. According to the

¹ The 2015 Settlement Agreement can be found at the following link:
http://puc.nh.gov/Regulatory/Docketbk/2014/14-238/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/14-238_2016-02-04_EXH_A.PDF.

2015 Settlement Agreement, Default Service shall be acquired and provided in accordance with RSA Chapter 369-B until divestiture of Eversource's generating assets. No later than six months after the financial closing resulting from divestiture, Eversource will transition to a competitive procurement process for default service. 2015 Settlement Agreement at 11.

Eversource requested approval of a competitive power supply procurement process, to be effective for service rendered on and after January 1, 2018, regardless of whether divestiture of its generation assets is completed. Eversource said that it would continue to operate its plants in a reasonable and prudent manner as required by the 2015 Settlement Agreement and as called upon by the Independent System Operator-New England for the length of time from January 1, 2018, to the closing date. Eversource's proposal would have the costs and revenues from such operations flow through the stranded cost recovery charge, along with the costs relating to purchases from Independent Power Producers and through Power Purchase Agreements.

On August 16, 2017, the Commission issued a Secretarial Letter approving a preliminary procedural schedule. In addition, the Commission requested legal briefs to be filed by September 1, 2017, in response to 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 generation-related costs are categorized as stranded costs, prior to divestiture of its generating assets?

For ease of reference, RSA 374-F:2, IV defines "stranded costs" and reads 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:

(a) Existing commitments or obligations incurred prior to the effective date of this chapter;

(b) Renegotiated commitments approved by the commission;

(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.;

(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

(e) All costs incurred as a result of fulfilling employee protection obligations pursuant to RSA 369-B:3-b.

Eversource, the Office of the Consumer Advocate (OCA), and intervenor Retail Energy Supply Association (RESA) filed briefs in response to the August 16 Secretarial Letter.²

II. POSITIONS OF THE PARTIES AND STAFF

A. Eversource

Eversource argued that while RSA 374-F:2, IV contains some explicit limitations on the type of costs that are eligible for treatment as stranded costs, RSA 374-F:2, IV(d) gives some discretion and flexibility in making such a determination. Eversource Brief at 2.

Eversource pointed out that, as a practical matter, it must plan now to ensure it has an electricity supply source for its energy service customers during the coming winter months, regardless of when the sale of its generation assets occur. Eversource argued that delaying or deferring action now with the resulting need to rely on the spot market could be “economically devastating” to customers if winter prices spike as they did a few years ago. *Id.* at 3. Eversource said its proposal to recover costs and revenues relating to its generation plants through the

² Additional intervenors in this proceeding are NextEra Energy Marketing, LLC, EnerNOC, Inc., Exelon Generation Company, LLC, and the New England Power Generators Association, Inc.

stranded cost rate is part of a rational divestiture transition process. Eversource reasoned that, with the Commission's approval, such costs would become costs "approved for recovery by the commission in connection with divestiture." *Id.* at 3-4.

Eversource noted that RSA 374-F:2, IV(d) references RSA 369-B:3-a, a statute which addresses in part the 2015 Settlement Agreement. Eversource pointed out that RSA 369-B:3-a allowed the Commission to approve or reject the 2015 Settlement provided that "any order to divest provides for recovery of stranded costs and such other costs of divestiture as may be approved by the Commission." Eversource claimed that this language does not require the Commission to permit recovery of those costs by one particular method, or at one particular time. Eversource further argued that RSA 369-B:3-a, (IV)³ provides that divestiture of Eversource's generation plants is not a condition to recovery of generation costs as stranded costs. *Id.* at 4-5.

Eversource also asserted that nothing in the 2015 Settlement Agreement prevents Eversource from transitioning its energy service and reassigning the costs as proposed. In addition, it claimed that the occurrence of transition to competitive service on the closing date would be mere coincidence. Eversource suggested that if the transition occurred after the closing on divestiture, Eversource energy service customers would be exposed to the vagaries of the energy market without the price hedge provided by the generation assets. *Id.* at 6-7. Similarly, Eversource claimed that the costs associated with the installation of a wet flue desulphurization unit at Merrimack Station, (the scrubber) which is currently being recovered through temporary rates, can also be recovered from stranded costs, pursuant to the 2015 Settlement Agreement. *Id.* at 6.

³ RSA 369-B:3-a, IV provides that "[p]rior 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."

Eversource concluded by saying that whatever reasons may exist to delay a transition to competitive procurement and to reclassify costs and revenues, neither RSA 374-F:2, IV nor the 2015 Settlement Agreement provide such rationale. *Id.* at 9.

B. RESA

RESA said that RSA 369-B and the 2015 Settlement Agreement preclude implementation of an alternative procurement plan for Eversource until after completion of divestiture. RESA argued that the statutory scheme governing Eversource's acquisition of energy service is straightforward and has been applied by the Commission for many years, most recently in Docket No. DE 16-822.⁴ RESA argued that any plan to provide default service prior to divestiture not based on Eversource's generation assets would violate RSA 369-B:3, IV(b)(1)(A). That statute provides that Eversource shall supply all default service, at a price based on Eversource's generation costs plus any necessary supplemental power purchases, until the completion of the sale of Eversource's generation assets located in New Hampshire. RESA Brief at 1-2. RESA said that the statute means that Eversource must use its generation assets to provide electric service to customers in its franchise area until the completion of Eversource's sale of generation assets. *Id.* at 2.

RESA pointed out that the statutory scheme is reflected in the 2015 Settlement Agreement, which states “[d]efault Service shall be acquired and provided in accordance with RSA Chapter 369-B until divestiture of PSNH's generating assets.” *Id.* at 3. RESA asserted that the express reference to RSA 369-B makes clear that the parties to the 2015 Settlement

⁴ RESA pointed out that in Order No. 25,974 in that docket, the Commission said that “[p]ursuant 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.” Order No. 25,974 at 1-2.

Agreement acknowledged that Eversource lacked authority to adopt a new procurement plan, such as that proposed in the instant filing, prior to completion of divestiture. *Id.* at 3.

RESA concluded that 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. *Id.* at 4. RESA said that Eversource's proposal to seek recovery of generation-related costs through the stranded cost recovery charge, which is applied to all electric distribution customers, would unfairly penalize customers taking competitive energy supply and have a chilling effect on the competitive retail electricity market in New Hampshire. *Id.*

C. OCA

The OCA agreed with three arguments made by Eversource. First, the OCA said that RSA 374-F:2, IV provides that the Commission has authority to determine that certain costs approved for recovery in connection with divestiture can be recovered through the SCRC. Second, the OCA said that the Settlement Agreement contains no language requiring Eversource to fully divest its generation assets prior to transitioning to competitive procurement of default service. Finally, there is nothing in the Settlement Agreement that impedes the authority of the Commission to characterize the costs associated with the scrubber as stranded costs for purposes of being recovered from the SCRC. OCA Brief at 2-6.

The OCA said in holding those positions, it takes no substantive position at this time on the merits of Eversource's proposal. *Id.* at 7.

III. COMMISSION ANALYSIS

RSA 374-F:2, IV(d) defines one category of costs that can be included in stranded costs as “[c]osts 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.” Eversource and the OCA argue that this gives the Commission discretion as to what costs can be considered for inclusion in stranded costs and when such a decision can be made. While it may be true that upon divestiture of Eversource’s generation assets, the Commission has some discretion in determining what costs are eligible for inclusion as stranded costs, the subject of RSA 369-B:3-a is divestiture of generation assets; and thus far, Eversource has not divested or retired any of its generation assets.

The terms of the 2015 Settlement Agreement state that Eversource shall acquire energy service for its customers “in accordance with RSA Chapter 369-B until divestiture” of its generation assets. 2015 Settlement Agreement at 11. We need go no further than the plain reading of the Settlement Agreement to conclude that the terms of the 2015 Settlement contemplate that Eversource can begin providing service through a competitive procurement model after the completion of divestiture. *Id.* (“No later than six months after the final financial closing resulting from the divestiture of PSNH’s generation assets, PSNH will transition to competitive procurement process for default service.”).

Other provisions of the 2015 Settlement Agreement acknowledge that Eversource could continue to own its generation assets beyond the end of 2017. Section VI of the Settlement Agreement requires Eversource to operate prudently its fossil and hydro generation facilities, and to manage prudently its generation-related entitlements and purchase obligations, until such time as the generation units “are sold, or transferred to another entity, retired, or a purchase obligation terminates.” *Id.* at 25. The section goes on to say that the costs incurred or revenues received in compliance with those requirements will be recovered in Eversource’s “default service rate or as

a stranded cost, as timing dictates.” The timing of divestiture is what will dictate whether costs are recovered through the energy service rate or the stranded cost recovery charge.

Reading RSA 374-F:2, IV(d) together with the 2015 Settlement Agreement, we find that no generation-related costs can be included in stranded costs until such time that those costs are recognized in connection with divestiture. Had the parties intended to allow generation-related costs to be a stranded cost prior to divestiture, they could have so stated this in the Settlement Agreement and in the proposed legislation accompanying the Settlement Agreement. Based on the foregoing, we deny Eversource’s proposal to move all generation-related costs and revenues into a stranded cost category prior to divestiture. If a different set of facts are presented to us, for example, generation plants are identified for retirement, or financial closing is achieved for some plants but not others, we may reach a different conclusion as to whether Eversource should structure a competitive solicitation to replace the generation it no longer owns.

As noted above, the relevant section of the statute, RSA 374-F:2, IV(d), references RSA 369-B:3-a. RESA pointed out that a different statutory provision, RSA 369-B:3, IV(b)(1)(A), dictates how Eversource shall first provide default service from its owned generation. RESA is correct that this is the methodology that the Commission has approved in the establishment of default energy service rates each year. Because many of Eversource’s generation units operate on economic reserve during certain months of the year, we also have approved the inclusion in energy service rates the prudent costs associated with bilateral and spot market purchases of power, to mitigate the costs of power for energy service customers. If Eversource used the same methodology to develop an energy service rate for January 1, 2018, customers would receive the benefit of utilizing Eversource’s generation assets when they are less expensive than bilateral or spot market alternatives (and the unit or units are in economic

merit) which in turn can serve as a hedge against the potential of volatile winter month energy prices.

We commend Eversource for being proactive and looking to develop a strategy to manage energy costs for customers in the interim between divestiture of their generating assets and the implementation of a competitive procurement contract. Given the uncertainty of timing, we encourage the Company, the parties and Staff, to work on a plan for power procurement for this time period and we acknowledge the challenges that plan faces given the statutory regime that has developed around these generating assets.

Based on the foregoing, we direct Eversource to prepare a filing to establish an energy service and stranded cost recovery charge in the customary manner for effect with rates on and after January 1, 2018. We emphasize that in so ruling, we are not making any decision regarding the merits of the Eversource proposal for procuring electric service from the competitive market following divestiture, or whether such a proposal is consistent with the restructuring statute.

Based upon the foregoing, it is hereby

ORDERED, that Eversource's proposal to recover the net costs of generation prior to divestiture through the stranded cost recovery charge is rejected; and it is

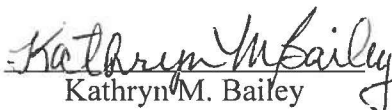
FURTHER ORDERED, that Staff is directed to develop a schedule for this docket that will permit Commission review of the Eversource proposal to acquire power through the competitive market, following a sale of generating assets, as soon as possible; and it is

FURTHER ORDERED, that Eversource shall prepare a filing to set an energy service and stranded cost recovery charge for effect January 1, 2018, in the manner which it has used in prior energy service rate filings.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of
September, 2017.



Martin P. Honigberg
Chairman

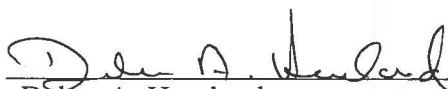


Kathryn M. Bailey
Commissioner



Michael S. Giaino
Commissioner

Attested by:



Debra A. Howland
Executive Director