

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

ELECTRIC DISTRIBUTION UTILITIES

Investigation into Potential Approaches to Ameliorate Adverse Wholesale Electricity Market
Conditions in New Hampshire

Docket No. IR 15-124

COMMENTS OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
RE: STAFF'S JULY 10, 2015 MEMORANDUM

A. INTRODUCTION

On April 17, 2015, the New Hampshire Public Utilities Commission (“Commission”) issued an Order of Notice opening an investigation surrounding “significant transitions in New Hampshire’s wholesale and retail electricity markets” and, in particular, the “increasing dependence on natural gas-fueled generation plants within the region over the past two decades as aging coal, oil, and nuclear plants have been retired.” Order of Notice at 2. This increased dependence, the Commission noted, coupled with “significant constraints” on the natural gas supply to the New England region, has resulted in extreme price volatility in gas markets, which in turn has resulted in sharply higher wholesale and retail electricity prices. *Id.* Accordingly, the Commission directed Staff to investigate “the gas-resource constraint problem that is affecting New Hampshire’s [electric distribution companies] EDCs and electricity consumers,” and to determine whether there are reasonably available and economically effective alternatives that the EDCs could use to address the supply and demand imbalance. *Id.* at 4.

On May 14, 2015, the Staff issued a letter setting out its initial questions and considerations and requested that stakeholders offer comments on the matters in the letter. On

June 2, 2015, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), and others, submitted comments on the issues as requested by Staff. In its comments, Eversource explained how New Hampshire customers are bearing the direct impact of high and volatile retail electricity prices provoked by the wholesale market imbalance of supply and demand for natural gas. Initial Comments of Eversource Energy at 3. Eversource also stated that given the significant role of natural gas in New England’s electric generation portfolio, reliability concerns and high retail electricity prices will not be alleviated until existing constraints on natural gas pipeline capacity are eliminated. *Id.* In that regard, Eversource supports the Commission’s effort to identify a supply solution that: (1) will most directly and surely moderate retail electricity prices on an economically efficient basis while ensuring reliability of supply; and (2) can be implemented in the shortest possible timeframe balancing considerations of reliability and cost. *Id.* at 4. As stated by Eversource in its initial comments, the solution most likely to address the identified constraints and the supply and demand imbalance in the wholesale gas and electricity markets in the most reasonable time and at the most reasonable cost is the construction of incremental pipeline capacity resources into New England. *Id.* at 3.

As one potential vehicle for pursuing the development of new gas capacity in the region, Eversource, and other commenters,¹ identified the use of contracts with credit-worthy EDCs for the purchase of incremental gas pipeline capacity and associated liquefied natural gas (“LNG”) storage, albeit with some variations. Such contracts would provide the credit and other financial support necessary to build the needed incremental pipeline and gas storage capacity in New

¹*See, e.g.*, Initial Comments of Eversource Energy at 10-11; Initial Comments of Liberty Utilities at 2-3; Initial Comments of New Hampshire Electric Cooperative at 1-2; Initial Comments of PNGTS at 2-3; Initial Comments of Spectra Energy at 2; Initial Comments of National Grid at 8-9; Initial Comments of the Coalition to Lower Energy Costs at 12-17.

England, which would help alleviate the existing price volatility and reliability concerns. *Id.* Eversource's comments also described some of the details that would likely attend such a transaction.

On July 10, 2015, the Staff submitted a memorandum intended to discuss the issues of the EDCs' legal authority to enter into such arrangements and the scope of the Commission's authority to review or approve EDC contracts for pipeline capacity and associated storage. More specifically, in its memorandum, the Staff sought to describe its understanding of a potential proposed acquisition of natural gas capacity by New Hampshire's EDCs and the existing legal authority in New Hampshire relating to such an acquisition. By this submission, Eversource provides its comments on both the nature of the underlying proposal it had previously described, and the legal authority of the EDCs and the Commission relative to such a proposal. As with the Staff's comments, this is not intended to be a final or complete discussion of the matter, but an aid to understanding the issues in the event a proposal is eventually brought before the Commission.

In its July 10, 2015 memorandum, the Staff specifically stated that its "memorandum will focus on New Hampshire law, leaving aside the question of federal preemption (under the Federal Power Act, Natural Gas Act, and allied statutes) for now." Staff Memorandum at 2. Similarly, Eversource's comments will also focus on state law issues at this time. Recently however, and as discussed below, Eversource's affiliated companies in Massachusetts had the opportunity to provide written comments in a similar investigation being conducted by the Massachusetts Department of Public Utilities,² which included discussion of the applicability to EDC gas pipeline capacity contracts of the Federal Power Act and the Natural Gas Act, and the

² Investigation by the Department of Public Utilities Upon its Own Motion into New Natural Gas Delivery Capacity, Including Actions to be Taken by the Electric Distribution Companies, D.P.U. 15-37.

Supremacy Clause and the dormant Commerce Clause of the United States Constitution. *See* July 6, 2015 Reply Comments of Eversource Energy, D.P.U. 15-37 (“Reply Comments”), at 17-24 (provided herewith as Attachment A). In those comments, the Eversource affiliates explained that the proposal is consistent with federal law, does not infringe upon the jurisdiction of Federal Energy Regulatory Commission, nor would it cause a violation of the dormant Commerce Clause. Reply Comments, at 17. Eversource incorporates those Reply Comments in this submission and submits that they are equally applicable in this proceeding, and should be considered as part of the Staff’s ongoing analysis.

B. EVERSOURCE’S PROPOSED SOLUTION AND LEGAL IMPLICATIONS

1. Background

As discussed in Eversource’s initial comments, the electricity price and reliability concerns in New England stem from electric generators possessing only a small fraction of the mainline pipeline capacity to meet their needs and generally purchasing gas in the less reliable and more volatile secondary markets. Initial Comments of Eversource Energy at 6. The limited availability of gas on the secondary markets during periods when pipeline capacity is being fully utilized by primary firm customers results in substantial volatility in secondary market prices. *Id.* Further, the interplay of the gas and electric markets contributes to these issues as the marginal electric generation fuel has been natural gas, which is reliant upon these volatile secondary markets. *Id.* The degree to which the region is dependent on natural gas is critical to both price and reliability with over 50 percent of the electricity generation fueled by natural gas in 2015 and dependence growing with scheduled retirements of coal and oil units. Therefore, the planning and provisioning of natural gas through increased transportation capacity is directly related to the reliable supply of electricity to New Hampshire customers.

As noted above, Eversource believes that the most effective means for addressing the issues of reliability and cost of electricity created by this market phenomenon is to develop incremental pipeline capacity and associated services that are capable of reliably meeting the volatility of generation loads by delivering gas supplies from the nearby abundant shale gas production areas. *Id.* at 9. The addition of this new gas delivery capacity would be supported by the region's EDCs, as that appears to be the solution most consistent with prevailing business models for gas pipeline development, and the one most likely to succeed in supporting new delivery capacity for the benefit of customers. *Id.* at 10-11. The direct cost paid by EDCs, and ultimately recovered from customers, for the associated gas capacity (and any associated market area storage) will be subject to binding agreements and FERC-approved tariffs. *Id.* at 11. The cost of capacity recovered through rates will be reduced by revenues received for release of capacity to generators first and foremost as needed to reliably and economically meet demand, and secondarily to third-parties. *Id.* Customers are expected to benefit from an overall reduction in electricity prices that will result from power generation having increased access to a less volatile and more reliable fuel supply.

2. EDC Resource Supply Planning

With the above framework as a background, for purposes of this submission the relevant considerations concern the ability of the EDCs to participate in a solution of the type described, and the Commission's authority to review or approve the aspects of the EDCs' participation. In Eversource's assessment there is ample authority in New Hampshire for the EDCs to support the gas delivery capacity as described and to ensure appropriate Commission oversight.

Though not discussed in detail in the Staff's memorandum, the structure described above fits squarely within the EDCs' general obligation to ensure that they are capable of providing

safe and reliable service at just and reasonable rates. *See* RSA 374:1, :2. More particularly, in meeting this general obligation, EDCs are required to plan for adequate resources to meet the expected demands of their customers. *See, e.g.*, RSA 378:37, :38. Securing rights to an adequate gas supply, in light of the region's dependence upon gas supply for electric generation, is squarely within the scope of that obligation. Also, as recently as 2014 the Legislature amended the statutes relating to the planning obligations of the State's electric and gas utilities and maintained that utility resource plans were to include, for example, assessments of: the energy supply options for the region (RSA 378:38, III); the plan's long- and short-term environmental, economic, and energy price and supply impact on the state (RSA 378:38, VI); and the plan's integration and consistency with the state energy strategy (RSA 378:38, VII). Further, and with respect to this final item, Eversource notes that the recently produced state energy strategy stated that while New Hampshire has limited influence over natural gas transmission and pipeline expansion, the State was engaged in regional efforts to explore ways to encourage additional pipeline capacity in the region. *See New Hampshire 10-Year State Energy Strategy*, New Hampshire Office of Energy and Planning, September 2014, at 46.³ The strategy encouraged the State to continue those coordination efforts, so as to ensure that New Hampshire's interests were represented in larger decision-making forums, while exploring other opportunities such as reducing usage through efficiency and conservation. *Id.*

In Eversource's assessment, having EDCs participate in gas capacity contracts would provide a means for EDCs to meet their obligations to ensure adequate electrical supply by ensuring that there is adequate natural gas capacity to serve the electrical generation needs in the region. Moreover, it would provide a means for the State to reap the benefits of expanded natural gas supply through a regional effort, which would dovetail appropriately with the state

³Available at: <http://www.nh.gov/oep/energy/programs/documents/energy-strategy.pdf>.

energy strategy. Therefore, it is Eversource's position that the planning obligations for the State's EDCs contemplate transactions such as has been described by Eversource.

3. RSA chapter 374-F

At the outset of its analysis, the Staff's memorandum posits that "[t]he threshold question regarding any potential proposal for gas capacity acquisition by a New Hampshire EDC is whether the Electric Utility Restructuring statute, which was originally enacted in 1996 with subsequent amendments, categorically prohibits such activity." Staff Memorandum at 2.

According to Staff, this is the threshold question because the Commission could conclude that the "acquisition of gas capacity for the use of gas-fired generators and, by extension, the benefit of EDC customers, would violate the principle of separation of distribution and generation functions, and is therefore prohibited." *Id.* The solution favored by Eversource does nothing to disturb or upset the restructuring principles in RSA chapter 374-F, and is consistent with them.

By way of setting a framework for this analysis, and as noted above, there is a substantially similar inquiry being undertaken in Massachusetts contemporaneous with the one in New Hampshire and, as part of that inquiry, the precise issue of the interplay EDCs' contracts for natural gas capacity and that state's restructuring statutes was also raised. Relative to that concern, Eversource's affiliated companies explained that:

an EDC pipeline-capacity contract would simply put a resource into the marketplace without imposing any obligation on any wholesale market participant. Nothing would or could be required of electric generators. Wholesale generators would be free to purchase capacity made available from this process or from the marketplace and would have no obligations imposed upon them as a result of a process to have EDCs enter into contracts to support the development of pipeline capacity. There is no intervention in the wholesale market contemplated in any degree. The exercise would simply enable the availability of resources used in the marketplace to relieve supply constraints.

Similarly, approval of EDC contracts would not allow EDCs to "reengage in the generation sector." No aspect of the contracts will cause the EDCs to

become engaged in producing, manufacturing, or generating electricity for sale at wholesale Rather, the EDCs would be proposing to purchase gas capacity using their creditworthiness to support the construction of additional pipeline capacity, which would simply put new resources into the marketplace with the use of those resources purely a matter of discretion to electric generators and other possible shippers.

Reply Comments at 10.

The same analysis and description provided relative to the concerns in Massachusetts is applicable here. Eversource is not proposing that a contract for additional gas pipeline capacity will act as a means to engage in “generation services” as described in RSA chapter 374-F, or to combine any generation and distribution functions in contravention of RSA 374-F:3, III. Instead, and consistent with RSA 374-F:3, I, Eversource is seeking to ensure long term electric system reliability by supporting the delivery of adequate natural gas to the region. Moreover, arrangements to bring additional gas resources to the region would be consistent with, at minimum, the policies described in: RSA 374-F:3, V (ensuring the availability of universal electric service); RSA 374-F:3, VIII (encouragement of environmental improvement); RSA 374-F:3, XI (ensuring that New Hampshire’s electric rates are competitive with other regional rates); and RSA 374-F:3, XIII (encouraging regional solutions to issues relating to electric restructuring). A capacity contract of the type contemplated by Eversource would not contravene RSA chapter 374-F or its principles. As noted in the Reply Comments in Massachusetts, such a gas capacity contract would result in the addition of new resources into the marketplace, but would not otherwise amend the operations of those markets and would not convert New Hampshire’s EDCs into generation providers.

4. RSA chapter 374-A

Staff's memorandum engages in an analysis of the requirements and restrictions of RSA chapter 374-A, relating to the participation of the State's "domestic electric utilities" in the development of and support for "electric power facilities." As described above, however, Eversource's preferred potential solution is not one that involves any investment in an "electric power facility" as defined in the statute. Therefore, while Eversource appreciates that the statute (and Staff's analysis) supports actions similar to those described above, Eversource does not believe that the statute is directly applicable to the situation where an EDC contracts for natural gas capacity.

Eversource does not dispute that it is a "domestic electric utility" as defined in RSA 374-A:1, II. As the Staff memorandum notes, pursuant to RSA 374-A:2:

Notwithstanding any contrary provision of any general or special law relating to the powers and authorities of domestic electric utilities or any limitation imposed by a corporate or municipal charter, but subject to the conditions set forth in this chapter, a domestic electric utility shall have the following additional powers:

I. To jointly or separately plan, finance, construct, purchase, operate, maintain, use, share costs of, own, mortgage, lease, sell, dispose of or otherwise participate in electric power facilities or portions thereof within or without the state or the product or service therefrom or securities issued in connection with the financing of electric power facilities or portions thereof; and

II. To enter into and perform contracts and agreements for such joint or separate planning, financing, construction, purchase, operation, maintenance, use, sharing costs of, ownership, mortgaging, leasing, sale, disposal of or other participation in electric power facilities, or portions thereof, or the product or service therefrom, or securities issued in connection with the financing of electric power facilities or portions thereof, including, without limitation, contracts and agreements for the payment of obligations imposed without regard to the operational status of a facility or facilities and contracts and agreements with domestic or foreign electric utilities for the sale or purchase of electricity from an electric power facility or facilities for long or short periods of time or for the life of a specific electric generating unit or units. Such contracts and agreements may contain provisions for arbitration, delegation, non-unanimous amendment and any other matters deemed necessary or desirable to carry out their purposes.

Nothing in this section shall be construed to authorize a domestic electric utility to sell electricity at wholesale or retail within or without this state except:

(a) As otherwise authorized by or under its charter or the general or special laws of this state other than by this chapter;

(b) In connection with sales of economy, backup and other energy; and

(c) For any sale or sales of capacity and related energy from a specifically identified generating unit which is an electric power facility.

“Electric power facilities,” as defined, means generating units greater than 25 megawatts, or transmission facilities of 69 kilovolts or larger, and placed in service after June 24, 1975. RSA 374-A:1, III.

In the Staff’s description, “Arguably, the contracting for gas capacity from pipeline and/or LNG enterprises, on behalf of electric generators of at least 25 MW, would constitute permissible contracting under RSA 374-A:2, II for the sharing of costs of, and a form of other participation in, such electric power facilities.” Staff Memorandum at 4. Eversource agrees that should pipeline capacity or LNG be procured on behalf of an electric generator, such capacity procurement may qualify as a form of contract for “other participation” in an electric power facility. Eversource is not, however, proposing that any EDC would contract for pipeline or LNG capacity on behalf of one or more electric generators. Instead, and as clarified above, the EDCs would be contracting for capacity that would be made available generally to electric generators, but no generator would be compelled to take or use it. It could be, for example, that any available pipeline or LNG capacity that is not taken by the electric generators will be released and sold to other market participants. The capacity would be made available first and foremost to electric generators, and secondarily to the general market to the extent generators do not need the capacity, such as during low demand periods. As noted in the Reply Comments in Massachusetts, generators would be free to purchase the capacity, but there would be no

obligation for them to do so. Accordingly, RSA chapter 374-A is not directly applicable to the potential solution described by Eversource.

Eversource supports the underlying logic and policy of RSA chapter 374-A, that is, to provide flexibility to EDCs to seek solutions to electric supply issues by giving them relatively broad authority to pursue support for electric power facilities so as to ensure a stable, adequate, and reliable supply of electric power at a reasonable cost. In this instance, however, Eversource is not proposing a solution fitting the descriptions in RSA chapter 374-A. In Eversource's view a project directed toward, or on behalf of, one or only a few generating facilities would not meet the criteria Eversource believes are important to find a resolution to the region's supply and demand concerns, namely a solution that: (1) will most directly and surely moderate retail electricity prices on an economically efficient and reliable basis; and (2) can be implemented in the shortest possible timeframe balancing considerations of reliability and cost. *See* Eversource Initial Comments at 11.

5. RSA 374:57

Given the nature of the solution Eversource believes is most appropriate and likely to be most effective in relieving the natural gas supply issues that have led to high and volatile electric prices, the more relevant authority resides in RSA 374:57. RSA 374:57 reads, in its entirety:

374:57 Purchase of Capacity. – Each electric utility which enters into an agreement with a term of more than one year for the purchase of generating capacity, transmission capacity or energy shall furnish a copy of the agreement to the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission pursuant to the Federal Power Act or, if no such filing is required, at the time such agreement is executed. The commission may disallow, in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.

Eversource is an “electric utility” as the term is used in the statute and any potential agreement for natural gas capacity would be a long-term contract of greater than one year. Accordingly, the remaining question is whether a capacity contract would be a contract for “generating capacity, transmission capacity or energy” that must be submitted to the Commission at the time of its execution. If so, then the Commission would have the authority to review the contract and disallow any costs the Commission concluded were unreasonable and not in the public interest.

Notably, there is no requirement that the EDC seek preapproval to enter into the contract, only that the Commission would have the authority to review it when it is filed. The implication of this authority is that any costs not disallowed by the Commission would be allowed for recovery and, in fact, the Commission has previously analyzed and applied RSA 374:57 as a means of determining, in advance, whether certain contracting activities were reasonable and in the public interest for purposes of cost recovery.⁴ Accordingly, it must be determined whether a contract of the type described by Eversource for the purchase of natural gas pipeline capacity by an EDC is covered by the statute.

The law refers to the purchase of “transmission capacity,” which is not necessarily limited to electric transmission capacity. As concerns utility services, there are few uses of the term “transmission” in the New Hampshire statutes; however, what references there are do not strictly limit the term to electric transmission. For example, RSA 378:38, which concerns the content of utilities’ least cost integrated resource plans, requires every “electric and natural gas utility” to include “an assessment of distribution and transmission requirements” in the plan.

⁴See *Public Service Company of New Hampshire, et al.*, Order No. 25,305 (December 20, 2011) at 28-29 “RSA 374:57 contemplates the possibility of the Commission’s disallowance of costs. We will treat the petition as a request, made in advance of costs being incurred under the PPAs, that the Commission not disallow the costs and instead find that PSNH’s entry into the PPAs is reasonable and in the public interest. Because a decision on whether PSNH’s entry into the PPAs is reasonable and in the public interest does not depend on future events or information only available in the future, we conclude that it may properly be made now based on the record before us, consistent with RSA 374:57.” See also *EnergyNorth Natural Gas, Inc.*, Order No. 24,825 (February 29, 2008).

RSA 378:38, IV. The statute’s language indicates that the “transmission” analysis applies to both natural gas and electric “transmission” and supports the conclusion that the Legislature views the term as applicable to both.

Other New Hampshire statutes support this same conclusion. RSA chapter 162-H, which governs the Site Evaluation Committee (“SEC”), provides that the SEC has jurisdiction over proposed “energy facilities.” RSA 162-H:2, VII. Among the “energy facilities” are “energy transmission pipelines that are not considered part of a local distribution network.” RSA 162-H:2, VII(a). In light of the text surrounding this portion of the definition, the term “energy transmission pipelines” refers to “transmission pipelines” for natural gas or oil or related products, rather than electricity. Also subsumed within the definition of “energy facility” are “electric transmission lines” of varying types and sizes. *See* RSA 162-H:2, VII(c), (d) and (e). Thus, the term “transmission” as used in that statute includes both electric and gas transmission. Similar usage is found in the statutes relating to the taxation of utility property where the term “utility,” is defined, in part, as a company “engaged in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas,” and “utility property” is defined as property “employed in the generation, production, supply, distribution, transmission, or transportation of electric power or natural gas.” RSA 83-F:1, IV, V. Here, both “transmission” and “transportation” are used to refer to both electricity and natural gas.⁵

Returning to RSA 374:57, it provides that an EDC must file, and that the Commission has authority to disallow the costs of, contracts for “generating capacity, transmission capacity or

⁵ The Commission’s rules likewise use “transmission” in referring to both electric and natural gas facilities. The Commission’s rules relating to electric service (PART Puc 300) and those relating to natural gas service (PART Puc 500) each use the term “transmission” throughout and, in fact, the rules on gas service define the term “utility” as applying to entities “engaged in the manufacture, distribution, sale, *transmission* or transportation of gas in the state.” Puc 502.25 (emphasis added).

energy.” RSA 374:57. In light of the Legislature’s, and the Commission’s, use of the term “transmission” to refer to both electric and gas transmission, it is reasonable to conclude that the “transmission capacity” referred to in RSA 374:57 encompasses natural gas transmission capacity procured by an EDC. Additionally, such a conclusion is reasonable because it ensures that the Commission’s authority over such issues as long-term resource contracting, and the resulting rate impacts to customers, are preserved.⁶ Read in that reasonable manner, the statute provides that the EDC has the authority to enter a contract for natural gas transmission capacity, and that the Commission has the authority to approve, in advance, whether the costs of that contract would be allowed, if the costs are shown to be reasonable and in the public interest.

C. COST RECOVERY

Concluding that the EDC and the Commission have the relevant necessary authority relative to a gas capacity contracting leaves open the matter of how the costs of such a contract, if not disallowed, would be recovered. Ultimately, the ability of an EDC to recover any costs created by a capacity contract would rest on the EDC’s ability to effectively demonstrate that the costs are reasonable and that the contract and its terms are consistent with the public interest – the standard set out in RSA 374:57. An inability to make such a showing would not necessarily imperil the contract itself, but may deny recovery of some or all of the associated costs.⁷ The

⁶ In reviewing the factors relevant in determining whether and how the costs of a PPA would be recovered pursuant to RSA 374:57, the Commission has concluded “The legislative scheme developed over time as evidenced throughout RSA Title XXXIV sets forth a variety of purposes and factors, which expresses recurring themes favoring fuel diversity and renewables, economic development, environmental and health impacts, and energy security, and which grants substantial discretion to the Commission relative to rate setting.” *Public Service Company of New Hampshire, et al.*, Order No. 25,305 (December 20, 2011) at 32-33.

⁷See, e.g., *Public Service Company of New Hampshire*, Order No. 24,965 (May 1, 2009) at 17-18 “We agree with Staff that the reason the statute requires our approval of these multi-year agreements is to allow the petitioning utility to recover the prudently incurred costs of such agreements in its energy service rates. If PSNH had intended to use the agreements “below the line,” the Company would not have had to seek the Commission’s approval. Therefore, we disagree that PSNH was required to seek approval from the Commission before it could enter into the subject agreements. If

Staff memorandum addresses whether and under what circumstances such a contract would or could be included in the rate base of an EDC. In the proposal described in Eversource's initial comments, the contract would be for pipeline capacity and associated LNG, products that would not actually appear in the EDC's rate base. Similar to the manner in which power purchase agreements ("PPAs") have been handled in New Hampshire, the expenses of the contract would be reduced by the revenues generated when the capacity was released and sold, and the resulting amounts would either be credited to, or recovered from, customers through their rates. It would not be an item in the EDC's rate base subject to traditional cost-of-service ratemaking.

As for the actual manner of cost recovery through rates, the ultimate allocation of costs and the potential rate design would best be addressed as part of an overall petition and request relative to a specific project and EDC, rather than in the abstract. For purposes of this filing, however, it is sufficient to note that the specific rate elements and manner of cost recovery may be determined by the Commission through its plenary authority over the rates of EDCs. *See, e.g., Appeal of Northern New England Tele. Operations, LLC*, 165 N.H. 267, 277 (2013) and *State v. New Eng. Tel. & Tel. Co.*, 103 N.H. 394, 397 (1961). In this submission, as in its submission in the related Massachusetts inquiry, Eversource encourages the Commission to use this process to establish a standard for reviewing and potentially approving a potential project, and proposes that to the extent a proposal in line with Eversource's description may be made, the Commission:

should require the EDCs to demonstrate that the proposed acquisition of a pipeline-capacity resource is consistent with the public interest, based on a showing that the acquisition is: (1) consistent with the EDC's "portfolio objectives," which would be electric reliability and lower costs, among other potential objectives, and demonstrating that the proposed contract is consistent

for some reason we were to find that the contracts were not in the public interest, PSNH would still be bound by the contracts, but would not be allowed to recover the associated costs from its customers."

with (and will further) those objectives to the benefit of Basic Service customers; and (2) that the proposed resource contract compares favorably to the alternative options reasonably available to the EDC at the time of the acquisition (to the extent that there are viable alternatives), including evaluation of both price and non-price factors.

Reply Comments, at 25.

Lastly, with respect to the “preliminary criteria” set out by the Staff as forming the basis for any assessment of an EDC’s contract for gas capacity, Eversource notes that while it does not necessarily disagree with the criteria as outlined, Eversource encourages a flexible approach to any review. In line with the criteria set out by Staff, Eversource has previously acknowledged that “as the proponent of the gas capacity contract, [the EDC] would have the burden to establish the economic merits of its proposal, and to show how it considered and analyzed the benefits in comparison to other potential solutions.” *Id.* at 26-27 (internal quotations omitted). Moreover, “Eversource recognizes that it will need to be prepared to demonstrate that the proposal is the product of a fair reasonable procurement solicitation process; that the costs are economic, and that shareholder interests were not placed ahead of ratepayer interests and consistency with affiliated transaction rules.” *Id.* at 27 (internal quotations omitted).

D. CONCLUSION

In the end, the underlying issues relating to the gas and electric supplies in the region are clear and have been extensively studied. In fact, another recent study again reaffirmed that the immediate issue for the New England region relates to the supply and demand imbalances for natural gas due to the lack of adequate pipeline infrastructure in the region and the integration of the available gas supply with the supply of, and demand for, electricity.⁸ There is an established

⁸ Eastern Interconnection Planning Collaborative, *Phase 2 Report: Interregional Transmission Development and Analysis for Three Stakeholder Selected Scenarios And Gas-Electric System Interface Study*, July 2, 2015 at CR-27 “In ISO-NE, the gas infrastructure is constrained in winter 2018 and 2023 under nearly all of the market conditions and resource mixes tested in the scenarios

need for additional gas pipeline capacity to address electric system reliability issues and volatile prices for retail customers. Long-term contracts with the EDCs are the solution that: (1) will most directly moderate retail electricity prices on an economically efficient basis; and (2) can be implemented in the shortest possible timeframe balancing considerations of reliability and cost. Because the construction of incremental pipeline capacity resources will take a number of years, there is an imperative for the Commission to act decisively and expeditiously in this investigation to establish the framework for reviewing potential future EDC contract proposals.

and sensitivities.” The complete report is available at:
[http://www.eipconline.com/Phase II Documents.html](http://www.eipconline.com/Phase_II_Documents.html).