

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

DE 14-238

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
DETERMINATION REGARDING PSNH'S GENERATION ASSETS
NEPGA'S AND RESA'S SCOPING MEMORANDUM**

I. Procedural Background

The New Hampshire Public Utilities Commission (“the Commission” or “PUC”) opened this docket pursuant to legislative changes to RSA 369-B:3-a which became effective on September 30, 2014. *See* N.H. Laws of 2014, Ch. 310:2 (HB 1602). In Order No. 25, 733 (Nov. 15, 2014), the Commission granted the intervention requests of the New England Power Generators Association (“NEPGA”) and Retail Energy Supply Association (“RESA”)¹. At the duly noticed prehearing conference held October 2, 2014, the Commission directed parties to submit memoranda by December 5, 2014 identifying the issues that the Commission should consider in this docket. NEPGA and RESA jointly offer the following comments regarding threshold issues that should be addressed in this proceeding. TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc., to which the Commission also granted intervention status, join in this Memorandum.

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

II. Statutory Provisions

The Legislature's most recent pronouncement of the Commission's authority to compel divestiture of PSNH's generation assets is found in RSA 369-B:3-a which provides as follows:

I. Before January 1, 2015, the commission shall commence and expedite a proceeding **to determine whether all or some of PSNH's generation assets should be divested.** On or before March 31, 2015, the commission shall submit a progress report to the legislative oversight committee on electric utility restructuring established under RSA 374-F:5. Notwithstanding RSA 374:30, **the commission may order PSNH to divest all or some of its 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 divestiture.** (Emphasis added.)

NEPGA and RESA submit that the starting point for determining the issues that are within the scope of this proceeding is the foregoing statutory language. The first sentence of the statute directs the Commission to open and expedite a proceeding to determine whether PSNH's generation assets "should" be divested. The word "should" implies a policy-based inquiry, i.e., are PSNH's customers better served by a fully competitive electricity supply market or by PSNH's continued ownership of generation assets? The second sentence of the statute contains the following undefined terms: "generation assets;" "economic interest;" "retail customers;" and "cost recovery." NEPGA and RESA believe that the Commission must consider and define the meaning of those terms in the scoping phase of this docket.

III. Issues for Briefing

A. *Should divestiture occur?*

1. **Staff's and LaCapra's Reports in Docket IR 13-020.** NEPGA and RESA begin from the premise that asset divestiture simply represents the monetization of those

assets at a particular point in time. In a well-functioning market, assets will yield proceeds equal to their value, and ratepayers will benefit whether they see that value (net of capital recovery) as a reduction to their energy rates (pre-divestiture) or as a reduction to stranded costs (post-divestiture). Under this premise, therefore, examination of which assets should or should not be divested, the market value of the assets, and the future market price of electricity are all not central to the question of whether divestiture should occur, or whether it is in the economic interest of ratepayers.

Before embarking upon the very difficult and time consuming task of developing a record and making findings of fact on asset values and future market prices, and consistent with the structure and wording of RSA 369-B:3-a, NEPGA and RESA submit that it would be more efficient and productive to examine the threshold policy question of whether customers' economic interests are best served by a regulated utility that offers retail choice in a restructured electricity market but continues to own generation assets² that are subject to cost of service rates. Commission Staff's and LaCapra's reports in Docket IR 13-020 have examined numerous issues related to whether divestiture is in the economic interests of PSNH's retail customers. Accordingly, NEPGA and RESA submit that as an initial step in this docket the Commission should request responses to those reports. If parties do not agree with information and/or conclusions contained in the reports, parties should indicate why and provide information to support their positions. If they agree with Staff's and La Capra's findings, they should so indicate and discuss why.

2. Is divestiture consistent with the electric industry restructuring principles articulated in RSA 374-F:3? "Harnessing the power of competitive markets" is one of

² Upon information and belief, PSNH is the only U.S. utility that both owns generation assets and offers retail choice.

the reasons for electric industry restructuring articulated by the Legislature in the purpose section of New Hampshire's electric industry restructuring statute. RSA 374-F:1, I. The Legislature has also stated that "[i]ncreased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services." *Id.* Given that generation asset divestiture is an integral part of restructuring, the Commission should examine whether the divestiture of PSNH's generation assets is consistent with the restructuring principles of: customer choice (RSA 374-F:3, II); benefits for all consumers (RSA 374-F:3, VI); full and fair competition (RSA 374-F:3, VII); near term rate relief (RSA 374-F:3, XI); and stranded cost recovery (RSA 374-F:3, XII).

NEPGA and RESA submit that divestiture would be consistent with the principles articulated in and underlying RSA 374-F. It would also be consistent with the Commission's order implementing that statute which directed New Hampshire distribution companies to sell their generation assets, aggregation/marketing services and any rights to obtain power under existing power purchase contracts. *See Re Statewide Electric Utility Restructuring Plan*, 82 NH PUC 122, 137 (Feb. 28, 1997). Divestiture of PSNH's remaining generation assets would complete restructuring that began in 1997, create uniformity within New Hampshire and contribute to a more level playing field in the regional generation market. The state's other regulated electric companies, Unitil Energy Systems, Inc. and Liberty Utilities, divested all their generation assets many years ago and are successfully operating. In addition, PSNH's distribution company affiliates

in Massachusetts and Connecticut have divested their generation assets. NEPGA and RESA submit that competition in the region's energy markets will be enhanced if PSNH's generation assets are owned by merchant companies and their shareholders rather than a regulated utility that has guaranteed cost recovery with the financial risks borne by ratepayers.

3. To what extent, if any does PSNH's 1999 Restructuring Settlement Agreement in DE 99-099 affect the issue of whether divestiture should occur?

At this point, NEPGA and RESA are unaware of anything in this Agreement that prevents the Commission from conducting the divestiture inquiry required and, if the Commission deems it appropriate, from ordering PSNH to divest, under the above-referenced statute. We expressly reserve our right to respond to any arguments to the contrary put forth by other parties.

4. If after examining the issues above, the Commission determines that divestiture should occur, then the Commission must examine the questions below before it can order PSNH to divest.

NEPGA and RESA submit that they believe that none of the issues noted above should prevent the Commission from proceeding with a full evaluation of the merits of divestiture and full exploration of the issues outlined below.

B. What does the term "generation assets" mean? Which assets should be divested?

NEPGA and RESA believe that all of PSNH's generating assets, including the purchase power agreements, should be included in the divestiture. We see no reason or basis in the law or as a matter of public policy to exclude any of those assets as they all

represent PSNH's generation supply. We also see no reason for departing from the Commission's order directing New Hampshire distribution companies to divest all of their generating assets, aggregation/marketing services and any rights to obtain power under existing purchase power agreements. *Id.*

C. Does the term "retail customers" mean all of PSNH's distribution customers, or only those who are default service customers?

NEPGA and RESA believe that the Commission should consider the interests of all PSNH retail customers when evaluating divestiture in this docket. The interests of customers who currently purchase PSNH's Energy Service (default service), as well as the interests of those customers who receive distribution service from PSNH but obtain their energy from a competitive supplier or who self-generate, should be taken into consideration. Other than specifying "retail customers," the statute does not further distinguish which customers' interests must be considered. Accordingly, a plain reading of the statute supports the conclusion that the Commission must consider the economic interests of the full universe of PSNH's retail customers.

Although the Commission must consider the economic interests of both customer sub-groups described above, the economic impacts on each group should be examined separately, as divestiture may impact each group differently. For example, Staff has concluded that "PSNH's default service customers would be better off under a divestiture of the PSNH assets if the stranded costs were recovered from all customers. Customers who do not receive default service from PSNH, however, would see rate increases through the imposition of a stranded cost charge." *Preliminary Status Report Addressing*

the Economic Interest of PSNH's Retail Customers as it Relates to the Potential Divestiture of PSNH's Generating Plants, IR 13-020 (Apr. 1, 2014) at 10.

D. What does “economic interest” mean?

1. Economic vs. Public Interest. We submit that by choosing the words “economic interest” the Legislature elected a standard of review that is narrower than “public interest.” This review should focus primarily on rate and other economic impacts to PSNH customers, short and long term, not on broader impacts on the economy of the state, such as the impact on jobs or the more general impacts on the state’s the economy. By choosing the words “economic interest” we submit that the Legislature made a conscious choice to limit the scope of this review to the economic interests of the PSNH customers as consumers of electricity. However, while retail rates are clearly a primary consideration, economic interests should not simply be limited to rate impacts. Rather, other important economic impacts on retail customers that derive from divestiture should also be taken into account. In a fully divested market, those impacts will lead to expanded competitive options by new market entrants, and to new and innovative products and services. In jurisdictions with well-designed market structures where the incumbent electric utility no longer owns generation assets, competitive retail suppliers have been able to offer customers high value products, including dynamic pricing products that encourage conservation, energy efficiency and renewable energy solutions. For instance, in Texas and Pennsylvania, competitive providers are now offering a plethora of competitive supply products enabled by smart meters that encourage customers to move their consumption away from peak price periods, such as free power during the evenings or on the weekends. Additionally, retail suppliers in Connecticut and

Massachusetts offer “bundled” products that include energy saving supply rate plans along with smart thermostat devices like the Nest[™] Learning Thermostat designed to help users conserve energy and reduce their energy bills.

By providing these innovative programs on a competitive basis, retail suppliers will be able to either reduce the amount of ratepayer dollars needed to fund these types of programs or to offer additional programs that supplement those funded by ratepayers. However, competitive suppliers can only provide these high value offerings when unnecessary barriers to competition are removed and they are placed on a more level playing field with the default service provider. NEPGA and RESA believe these products and services provide genuine benefits to retail customers and are therefore in their economic interest.

2. Risks to customers. The Commission should examine the long and short term risks to customers that continued asset ownership poses. Expenses such as: O&M costs, future capital expenses, environmental compliance, a rate of return, and other costs recovered in regulated rates must be examined. The Commission should examine risks associated with reverse migration back to default service, and whether divestiture eliminates these risks. The Commission should examine whether divestiture creates short and long term risks to customers, both those who remain on default service and those customers who leave default service.

3. Default Service Procurement. The Commission should examine whether asset ownership provides a short and long term hedge to default service customers, and whether there are other more cost effective ways to hedge costs for customers. Parties should discuss the risks and benefits of long term hedging focusing on questions of

whether long term hedging can be accomplished more efficiently through market resources, the risks or benefits to customers associated with keeping default service prices closer to prevailing wholesale markets, and whether there are benefits to having all New Hampshire utilities procure and price default service in the same manner.

E. What does "cost recovery" mean? What level of cost recovery is the Commission required to provide to PSNH if divestiture is ordered?

NEPGA and RESA believe that it is premature to consider the specific amount of cost recovery that should be provided to PSNH as that question involves a number of issues and information that are unknown at this time. The calculation must necessarily include the net proceeds of the sale of any assets, which has not yet occurred. Additional issues such as carrying costs, and the period of recovery and the impact of various options associated with cost recovery on customers and the market must be addressed. We submit that these determinations should be held to a later point in the docket once the other issues noted above have been addressed.

Notwithstanding that it is premature to determine the amount of cost recovery provided to PSNH in connection with its asset divestiture, the Commission should determine at the outset which legal and ratemaking standards govern cost recovery. For example, the Commission should examine the case law, Commission orders, statutes or agreements (if any) that relate to cost recovery in this docket. NEPGA and RESA submit that the definition and recovery of stranded costs set forth in RSAs 374-F: 2, IV and 374-F: 3, XII apply, and that traditional ratemaking principles of just and reasonable rates, and prudently incurred costs should also apply.

IV. Divestiture Process

If after the first phase of the proceeding, the Commission determines that divestiture should occur because it is in the economic interests of PSNH's retail customers, and identifies the assets that should be included in the divestiture as noted above, the Commission must next establish a process for divestiture.

The Commission must examine the following questions: What are the best ways to structure the divestiture process to assure a proper monetization of the assets? Should the Commission consider the use of a floor price? What would be the basis for such a floor? What is the appropriate timing of divestiture? Are there lessons learned from prior divestitures?

V. Opportunities for Settlement.

The Commission's scoping order should also lay out additional matters to be addressed in the evidentiary phase of the proceeding. We believe that the schedule for the evidentiary phase should include opportunities for settlement discussions in an effort to reach agreement upon or to narrow the issues that need to be decided by the Commission.

Respectfully submitted,

New England Power Generators Association, Inc.

and

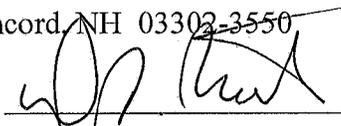
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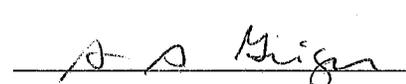
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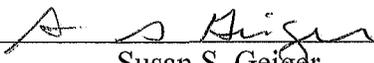
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Dated: December 5, 2014

Certificate of Service

I hereby certify that a copy of the foregoing Memorandum has on this 5th day of December, 2014 been sent by electronic mail to persons identified on the Service List for this docket.



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