

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

**Public Service Company of New Hampshire d/b/a Eversource Energy
Determination Regarding Generation Assets**

Docket No. DE 14-238

**NON-ADVOCATE STAFF'S OBJECTION TO ADVOCATE STAFF'S MOTION FOR
LEAVE TO CONTRACT WITH LACAPRA ASSOCIATES, INC. TO PROVIDE
REBUTTAL TESTIMONY**

NOW comes the Non-Advocate Staff of the Public Utilities Commission (Staff), and files this timely objection to the above-captioned motion filed by Advocate Staff in Docket No. DE 14-238, pursuant to N.H. Admin. Rules Puc 203.07(e), as follows:

1. Electric Division Director Thomas C. Frantz and General Counsel F. Anne Ross, in their role as Advocate Staff and co-signatories of the "2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement" (Settlement Agreement) filed the subject motion with the Commission on October 1, 2015, styled as a "Motion for Leave To Contract with LaCapra Associates, Inc. to Provide Rebuttal Testimony and Request for Expedited Decision" (Advocate Staff Motion).

2. In the Advocate Staff Motion, Advocate Staff asserts that Staff witness Michael D. Cannata, Jr., P.E. "makes two adjustments to change the results of the underlying 2014 LaCapra Report that add \$789.3 million in projected customer costs based upon changing assumptions in the LaCapra Report, without a separate analysis to replace or update the LaCapra Report."¹ Advocate Staff Motion at 2. Advocate Staff further claims that "Mr. Cannata's

¹ The "LaCapra Report" in question is the report produced by LaCapra Associates, Inc. (LaCapra), of Boston, Massachusetts, and filed together with a Commission Staff independent analysis, styled as a "Preliminary Status Report Addressing the Economic Interest of PSNH Customers as it Relates to the Potential Divestiture of PSNH's Generation Plants," and an additional report on environmental matters by ESS Group, Inc., on April 1, 2014, in Docket No. IR 13-020.

assertions are material to the economic impact analysis performed by LaCapra and relied upon by [Advocate] Staff, and we believe that they require review and analysis by LaCapra to present a full record to the Commission in this proceeding...” and that “...it will be necessary to examine, through testimony by LaCapra, the underlying analysis and assumptions in order to rebut the testimony filed by Mr. Cannata.” Advocate Staff Motion at 2-3.

3. As a threshold matter, Advocate Staff is overbroad in its description of the role of the LaCapra Report in the testimonial presentation of Advocate Staff, and the other parties to the Settlement Agreement, relating to purported “customer savings” resulting from a divestiture of Public Service Company of New Hampshire d/b/a/ Eversource Energy (Company) generation assets. Staff notes that the LaCapra Report makes no such predictions of “customer savings” in its presentation; rather, LaCapra presented a quantitative analysis of the expected market valuation of the Company’s assets, and the Commission Staff independent report, co-filed with the LaCapra Report on April 1, 2014 in Docket No. IR 13-020, presented a qualitative recommendation in favor of the Company’s divestiture, without any specific calculations for expected “customer savings” following divestiture.

4. Instead, the “customer savings” calculations were presented by Company’s witness Eric H. Chung in his testimony filed on July 6, 2015, in support of the Settlement Agreement. Mr. Chung was the source of the quantitative calculations, with supporting schedules, purporting to demonstrate \$379 million in expected savings through 2021 after divestiture, and \$1.2 billion in expected savings through 2031. Chung Testimony at Bates Page 63. It would appear to Staff, on the basis of Mr. Chung’s testimony and through discovery, that Mr. Chung based his calculations for expected customer savings on a blend of data points from both the LaCapra Report and the Commission Staff independent report of April 1, 2014, together

with other sources. Mr. Chung's testimonial presentation is cited frequently in the testimonial presentations of other parties to the Settlement Agreement.

5. In summary, Staff believes that Mr. Chung and the other parties to the Settlement Agreement, including Advocate Staff, utilized data points that the LaCapra Report generated for one purpose- that is, to derive an expected market value for the Company's generation assets at sale- for their own purpose, namely, to develop a purported value of "customer savings" of the Company's customers going forward. There is no evidence that Mr. Chung, or Advocate Staff, made inquiries of LaCapra in their development of testimony following the filing of the Settlement Agreement, but rather, Mr. Chung simply repurposed figures published in the LaCapra Report and other sources in developing his calculations. Also, LaCapra did not present any testimony together with the Settlement Agreement in support of Mr. Chung's conclusions.

6. Furthermore, Staff's consultant and witness, Mr. Cannata, in his testimony filed on September 18, 2015, together with Staff's other witnesses, was actually engaged in a forensic analysis of Mr. Chung's testimony and schedules, and the conclusions and assumptions embedded therein. Insofar as Mr. Cannata's analysis implicated the LaCapra Report, it was in demonstrating the infirmities of Mr. Chung's reliance on the borrowed LaCapra data points (or Commission Staff independent April 1, 2014 report data points, etc.) in making his conclusions. Mr. Cannata, therefore, was challenging Mr. Chung's analysis in the first instance, with the LaCapra Report being involved wholly on the basis of Mr. Chung's reliance on its repurposed data points.

7. It is not known if Advocate Staff witness Mr. Frantz engaged in an independent analysis of Mr. Chung's methodology of using certain borrowed data points, including those generated in the LaCapra Report, for the purpose of calculating purported post-divestiture

“customer savings.” However, Mr. Frantz did explicitly analyze one limited element of Mr. Chung’s testimony in his own testimony, that related to the Lempster and Burgess Biomass Purchase Power Agreements (*see* Frantz testimony filed on July 6, 2015, at 10), and made passing mention of Mr. Chung’s customer-savings conclusions (Frantz testimony at 8), without elaboration or independent analysis by Mr. Frantz. Therefore, Advocate Staff, as the moving party of the subject motion, has no standing to request the retention of LaCapra to defend its case in light of Mr. Cannata’s forensic examination of Mr. Chung’s testimony. The Commission should deny Advocate Staff’s motion as not serving any purpose in actually addressing Advocate Staff’s testimonial presentation; any claim by Advocate Staff for the “necessity” of retaining LaCapra is derivative from Mr. Chung’s, and the Company’s, primary role in presenting evidence related to purported customer savings using data points borrowed from the LaCapra Report.

8. In addition, leaving aside Advocate Staff’s lack of standing to use LaCapra to defend its testimonial case, Staff informs the Commission and all parties that Staff retained LaCapra as a consultant during the summer of 2015 to inform its analysis of the Settlement Agreement. This consulting relationship between LaCapra and Staff has been maintained to the present day. It would be inappropriate for the Commission to forcibly reassign LaCapra, through a granting of Advocate Staff’s motion, from its role as Staff’s consultant to a role as Advocate Staff’s consultant, especially in light of the divergent positions taken by these parties.

9. Staff also informs the Commission that LaCapra presented a draft update on the expected asset values for the Company’s generation fleet to Staff in August 2015. Even though this is a draft document not normally subject to discovery, Staff expects to proffer this document, under objection, to parties to the Settlement Agreement (subject to agreements on confidential

treatment of proprietary information) during the upcoming round of discovery propounded to Staff.

10. Staff does recognize, however, the role of the LaCapra Report in providing a source of borrowed data points for Mr. Chung's analysis presented in support of the Settlement Agreement, and concurs with Advocate Staff that the parameters and assumptions of the LaCapra Report feeding into Mr. Chung's analysis are of interest to the Commission, Staff, Advocate Staff, the Company, and other parties to this proceeding. Therefore, in the interest of informing the Commission, Staff proposes that the procedural schedule for this proceeding be modified in the following way, as an alternative to the Advocate Staff prayer for relief:

A. The Commission should schedule a technical session for October 13, 2015, at 10:30 a.m. until 4:30 p.m., at which time LaCapra representative(s) involved in the preparation of the LaCapra report will be available for sworn questioning, before a court reporter, in the following sequence:

- (i) Staff (retaining party of its consultant LaCapra);
- (ii) Advocate Staff (moving party for the subject motion);
- (iii) Company (presenter of the Chung testimony);
- (iv) Other interested parties (time permitting).

B. The Commission should appoint a Hearings Examiner at this proceeding, with a role in mediating disputes, with final rulings on disputes made by the Commission;

C. LaCapra representative(s) providing sworn answers at this technical session will be available at the final hearing for cross-examination on the basis of their transcribed responses;

D. LaCapra's status as a Staff consultant will continue through the pendency of this proceeding.

11. Staff hereby reserves the right, if rebuttal testimony presented by Advocate Staff or other parties presents a new case theory or new primary evidence, to seek leave from the Commission to file surrebuttal testimony. Staff expects that it would certainly seek such leave if the Commission grants Advocate Staff's prayer for relief, and allows Advocate Staff to present written testimony from LaCapra witnesses. Staff expects that this would result in additional time for case presentation, and a likely rescheduling of the hearing dates in this proceeding, at Staff's request.

12. As Advocate Staff sought "expedited" approval of its motion, Staff did not seek concurrence from other parties regarding this objection, due to time constraints.

WHEREFORE, Staff respectfully states and requests:

- A. The Commission DENY the subject motion by Advocate Staff for leave to contract with LaCapra Associates, Inc. to provide rebuttal testimony;
- B. The Commission modify the procedural schedule to accommodate a technical session on October 13, 2015, subject to the parameters outlined herein; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

Staff of the N.H. Public Utilities Commission

Date: October 2, 2015

By:

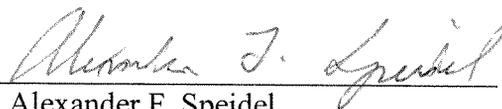


Alexander F. Speidel
Staff Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to all parties on the official service list for Docket No. DE 14-238.

Date: October 2, 2015

By: 
Alexander F. Speidel
Staff Attorney