

THE STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

**GSHA's Objection to Motion of PSNH to Compel
GSHA to Respond to Data Requests**

NOW COMES Granite State Hydropower Association, Inc. ("GSHA"), an intervenor in the above-captioned docket, and pursuant to Puc 203.07(e), objects to the Motion to Compel ("Motion") filed November 3, 2015 by Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH" or "Eversource"). In support of this Objection, GSHA states as follows:

1. In the instant proceeding, the Commission is "called upon to determine whether the terms of the Settlement Agreement¹ are in the public interest." Order on Motion to Compel Discovery and Associated Waiver Request, Order No. 25, 829 (Oct. 22, 2015), p. 4.

2. GSHA has asserted the provisions of the Settlement Agreement relating to PSNH's power purchase payments to independent power producers ("IPPs") are not consistent with New Hampshire or federal law. More specifically, GSHA asserts that the definition of avoided cost contained in paragraph III.C. of the Settlement Agreement (*i.e.*, "avoided cost rates for purchases of IPP power pursuant to PURPA² and LEEPA³ shall be equal to the market price for sales into the ISO-NE power exchange, adjusted for line losses, wheeling costs, and administrative costs")

¹ "Settlement Agreement" refers to the "2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement" dated June 10, 2015.

² Public Utilities Regulatory Policies Act of 1978 – 16 U.S.C. §2601.

³ Limited Electrical Energy Producers Act – N.H. RSA 362-A.

is improper. GSHA argues that the proper avoided cost rate PSNH should pay to IPPs until PSNH divests its generation assets is a rate that reflects PSNH's cost of producing energy and any additional energy purchases to serve PSNH's default service load. Post divestiture, assuming that PSNH procures all of its default service energy through a competitive bid process similar to the manner employed by other New Hampshire distribution companies, PSNH's avoided cost rate paid to IPPs will be based upon the cost PSNH incurs to purchase energy to meet its default service obligations. Inasmuch as the provisions of the 2015 Settlement Agreement provide otherwise, GSHA opposes those provisions.

3. The Commission has indicated that the scope of the instant docket is focused on PSNH's avoided costs and not those of other New Hampshire electric utilities. *See Eversource Energy*, DRM 15-340, Order No. 25,814 (Sept. 18, 2015), p. 4. In its order denying PSNH's request for a rulemaking to establish avoided cost rates under PURPA for all New Hampshire electric utilities, the Commission found it is premature to address in a generic fashion the issue of PURPA avoided costs for all New Hampshire electric distribution companies. *Id.* The Commission recognized that "Eversource and New Hampshire's other electric utilities are not necessarily similarly situated" and if "there remains an interest in revising PURPA obligations following the completion of the [instant] Proceeding, we will open a generic avoided cost docket" in which "parties will be permitted to litigate generally applicable requirements and the avoided cost rate methodology or methodologies for utility purchases of QF power pursuant to PURPA." *Id.*

4. Discovery in a Commission proceeding extends to information that "is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence." *Public Service Company of New Hampshire, Investigation of Merrimack Station Scrubber Project and*

Cost Recovery, DE 11-250, Order No. 25, 398 (Aug. 7, 2012) p. 2 (citations omitted).

“Discovery is not the time to argue policy or advocate for the final result, but to merely seek and respond to factual matters that may lead to admissible evidence.” *City of Nashua*, DW 04-048, Order No. 24,485 (July 8, 2005), p. 4. The Commission will deny discovery requests only when it “can perceive of no circumstance in which the requested data would be relevant.” *Re Lower Bartlett Water Precinct*, 85 NH PUC 371, 372 (2000).

5. Under the foregoing discovery standards, PSNH’s Motion to Compel must be denied. As the Commission has properly noted, PSNH is not situated similarly to other New Hampshire electric utilities in terms of the manner in which they meet default service obligations. Therefore, the avoided cost and other information PSNH seeks regarding other New Hampshire utilities is irrelevant to the issue of whether the definition of PSNH’s avoided costs under the Settlement Agreement is correct. The Commission has indicated that the “generic” issue of how avoided costs should be defined for all other New Hampshire utilities that do not own generation resources is not within the scope of this proceeding. Thus, it is improper for PSNH to seek information from GSHA regarding other New Hampshire electric utilities, as that information is beyond the scope of the instant proceeding and is therefore irrelevant.

6. In addition to the scope/relevance argument set forth above, GSHA expressly incorporates by reference the arguments contained in its letter of October 12, 2015 (“Objection Letter”) objecting to PSNH’s data requests. A copy of the Objection Letter is attached hereto for the Commission’s convenience.

7. The undersigned counsel has made a good faith effort to resolve these discovery issues informally with PSNH as required by Puc 203.09(i)(4) but was unable to do so prior to the time PSNH filed its Motion.

8. Without waiving any of its objections to PSNH's data requests, GSHA responds to the data requests that are the subject of PSNH's Motion as follows:

Q- PSNH-8. If PSNH is always in the ISO-NE real time market for its marginal energy transactions, please explain why that real time market price would not be the appropriate PURPA avoided cost to PSNH.

Original Objection: GSHA objects to this question because it is argumentative and seeks a legal opinion. In addition, GSHA objects to the premise of the question, (i.e. that Eversource is always in the ISO-NE real time market for its marginal energy transactions). Notwithstanding and without waiving this or any other objections, GSHA responds as follows: Because Eversource has not responded to GSHA's data requests seeking operating information that is necessary for determining how Eversource's marginal energy transactions are obtained, GSHA is unable to respond.

Supplemental Objection and Response: The question attempts to argue policy and/or advocate for the final result on the merits. As such the question is improper under the *City of Nashua* discovery standard noted above. Without waiving this objection, GSHA notes that in response to GSHA 1-025, PSNH has indicated that 90% of its energy purchases occurred in the day ahead market. Thus, GSHA disagrees that the real time market price is the appropriate avoided cost. Further, per the ISO-NE website, New England's wholesale electricity marketplace includes two electric energy markets [day ahead and real time] that work together in what's called a "multi-settlement" system. The marketplace requires both markets in order to work; thus, not factoring in the pricing of the day ahead market when considering the question of avoided cost would not reflect the true workings of the market.

Q- PSNH-10. On page 8, lines 12-14, Mr. Norman testifies, "Absent a supplemental power purchase, PSNH's avoided cost in the hybrid period must be based on its own generation costs." In making this statement, does Mr. Norman necessarily assume that the output from PSNH's own generating units precisely equals the energy needs of customers taking retail default energy service from PSNH? If not, please explain.

Original Objection: Eversource has not responded to several GSHA data requests (i.e. GSHA 1-3, 1-6, 1-7, 1-8 and 1-9) that would permit GSHA to respond to this question with certainty;

however, GSHA assumes that operating conditions will vary such that at any given time, in order to meet its default service load, Eversource may have to rely upon not only IPP generation, but also its own generation and purchases from ISO-NE.

Supplemental Response: No. GSHA recognizes that the amount of PSNH's owned generation output can vary from PSNH's default service load for several reasons, e.g. outages, migration of default service customers, etc.

Q-PSNH-13. On page 10, lines 14-15, Mr. Norman testifies, "The DA energy market lets market participants commit to buy or sell energy one day before the operating day in which the energy is to be used." What are the impacts of a market participant failing to meet any such commitment made in the DA market?

Original Objection: GSHA objects based upon relevance and materiality. The impact of a market participant failing to meet any such commitment in the DA market has no relevance to the proper avoided cost standard under FERC's PURPA regulations at 18 CFR Part 292.

Supplemental Response: The market participant will be responsible for any variation in load and the difference between the day ahead and real time market prices.

Q-PSNH-16. Is Mr. Norman aware of any PURPA-jurisdictional utility in New Hampshire that has an avoided cost rate established in the manner that he testifies is required by PURPA? If so, please identify all such utilities.

Original Objection: GSHA objects based upon relevance and materiality. Because Eversource is the only New Hampshire utility owning generating assets, an examination of other New Hampshire PURPA-jurisdictional utilities' avoided cost rates is irrelevant to this docket.

Supplemental Objection: The Commission has indicated that avoided cost rates of other New Hampshire electric utilities is beyond the scope of this docket.

Q-PSNH-17. When a QF sells its output to a utility under PURPA's mandatory buy provisions, does Mr. Norman view that transaction to be a wholesale or retail transaction? Please explain his response.

Original Objection: GSHA objects to this question on the basis of relevance and materiality and because it seeks a legal opinion and not facts within the possession or control of GSHA. Notwithstanding and without waiving this or any other objections, GSHA responds as follows:

GSHA believes when a QF sells its output to Eversource under PURPA's mandatory buy provisions, the sale is to Eversource, not to an end user.

Supplemental Response: GSHA believes the transaction could be considered a wholesale transaction, as the power is purchased by a utility not a retail/end-use customer.

Q-PSNH-18. Do any of the GSHA's QFs provide any ancillary services? If yes, please identify each resource, which services they provide, and how much did they provide in each year from 2012 through 2014.

Original Objection: GSHA objects based upon relevance and materiality. Whether a QF provides any ancillary service has absolutely no bearing on the determination of the correct avoided cost definition in this docket. GSHA also objects because it does not require, maintain or collect the specific member information requested in this data request.

Supplemental response: Mr. Norman is unaware of QFs providing ancillary services.

Q-PSNH-19. Does Mr. Norman agree that default energy obtained by the other utilities in New Hampshire pursuant to competitive solicitations is a fully-bundled service that includes all of the power supply and ancillary services that are or may be necessary to serve electrical load under the ISO-NE Tariff, including Energy, Installed Capability, Operable Capability, Operating Reserves, Automatic Generation Control, electrical losses, congestion charges, charges of the ISO associated with NEPOOL membership and with serving the Contract Load Quantity, and any future additions, deletions or changes to the seven NEPOOL products (Energy, Installed Capability, Operable Capability, 30-minute Non-Spinning Operating Reserves, and Automatic Generation Control) that are required for entities serving electrical load in NEPOOL, and such transmission and distribution delivery services as may be required for the Seller to deliver power to the Delivery Point(s)? If Mr. Norman does not agree, please explain in detail the bases for any such disagreement and provide an explanation of what Mr. Norman believes utilities are buying under such competitive solicitations.

Original Objection: GSHA objects based upon relevance and materiality. Information concerning default service procured by other New Hampshire utilities is irrelevant to the avoided cost issue in the instant proceeding. GSHA also objects on the basis that this question calls for a request for admission, not data.

Supplemental Objection: The Commission has indicated that with respect to default service procurement, PSNH is not situated similarly to other New Hampshire electric utilities. Thus, questions about other utilities' default service are beyond the scope of/irrelevant to the instant proceeding.

Q-PSNH-21. On page 17, lines 16-18, Mr. Norman Testifies, “With respect to the generic period, GSHA suggests that PSNH's avoided cost rates be based upon the Commission approved default service rates resulting from PSNH' s competitive procurement process, as thereafter adjusted by subsequent Commission determination.”

- a. Is Mr. Norman aware of any PURPA-jurisdictional utility in New Hampshire that has an avoided cost rate based upon its Commission approved default service rate resulting from a competitive procurement process? If so, please identify all such utilities.
- b. Is Mr. Norman aware of any jurisdiction that has set its avoided cost rate under PURPA using the methodology suggested by GSHA? If so, please identify all such jurisdictions, the laws, regulations or regulatory commission orders setting such pricing where such pricing exists and the utilities to which such pricing applies.
- c. Mr. Norman testifies at page 1, lines 15-17 that his, “duties include representing GSHA's interests before the New Hampshire legislature and regulatory bodies and the Federal Energy Regulatory Commission ("FERC"),” and at page 2, lines 18-19 that, “As the result of my business experience with small hydroelectric power projects, I am familiar with some of the federal and state laws and rules that apply to that sector of the electric industry.” Based upon Mr. Norman’s expertise, is he aware of any FERC or state regulatory decision supporting the avoided cost methodology he suggests for the “generic period”? If so, please identify all such decisions.

Original Objection: GSHA objects to this question based on relevance and materiality. Information concerning default service procured by other New Hampshire utilities and avoided cost rates set by other Commissions or regulatory authorities is irrelevant to the avoided cost issue in the instant proceeding.

Supplemental Objection: Because these questions seek generic information about avoided costs or those of New Hampshire electric utilities other than PSNH, they are outside the scope of this docket and therefore irrelevant. The Commission has indicated that this docket is focused on PSNH’s avoided costs, not those of other utilities.

Q-PSNH-22. On page 15, lines 2-4, Mr. Norman testifies, “Regarding the generic period, there is a no assurance such a generic, adjudicative avoided cost docket would, in fact, be opened nor any assurance of the time by which an order establishing PSNH's avoided costs would be issued in that proposed docket.”

- a. Does Mr. Norman agree that all other PURPA-jurisdictional utilities in New Hampshire are already in such a “generic period”? If not, please explain.
- b. Does PURPA allow GSHA’s members to “put” their output to the other PURPA-jurisdictional utilities in New Hampshire?
- c. Has GSHA made any attempts to require that the other PURPA-jurisdictional utilities in New Hampshire purchase power from QFs put to them under PURPA at such utility’s retail default service rate? If so, please provide details of all such attempts. If not, why not?
- d. Is there any reason why a generic avoided cost proceeding could not or should not be established for the other PURPA-jurisdictional utilities in New Hampshire in the near term? If so, please explain all such reasons.
- e. Based upon the energy service price rates of Unitil, Liberty Utilities, and NHEC during 2013 and 2014, if GSHA’s view of the proper avoided cost post-divestiture were applied to those utilities, please provide an estimate of the additional annual revenues that GSHA members could have received during each of those two years. (If an actual value cannot be provided, a percentage increase over the real-time market price would be acceptable.)
- f. If GSHA feels its members are entitled to the amount(s) stated in response to subquestion e, above, why has GSHA failed to take action to change those companies’ avoided cost rates under PURPA?

Original Objection: GSHA objects to all of these questions based on relevance and materiality. GSHA objects to data request 22a because it is a request for admission, not a data request. GSHA objects to data request 22b because it calls for a legal conclusion. GSHA objects to data request 22c because GSHA’s interactions with other New Hampshire utilities is irrelevant to the issue of PSNH’s avoided costs for purposes of PURPA purchases. GSHA objects to data requests 22d and 22f because they are argumentative. GSHA objects to data request 22e because GSHA does not maintain, require or collect the requested information.

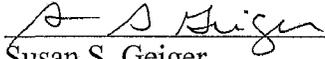
Supplemental Objection: Because these questions seek generic information about avoided costs and information about other utilities, they are outside the scope of this docket and therefore irrelevant. The Commission has indicated that this docket is focused only on PSNH’s avoided costs, and that if parties are interested, a generic avoided cost proceeding would be opened after the conclusion of the instant divestiture docket.

WHEREFORE, for the all of the reasons stated above, GSHA respectfully requests that this honorable Commission:

- A. Deny PSNH's Motion to Compel and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

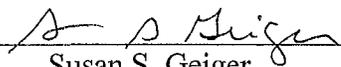
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November 12, 2015

Certificate of Service

I hereby certify that on this 12th day of November, 2015 a copy of the foregoing Objection was sent by electronic mail to the Service List in this docket.


Susan S. Geiger

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