

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 14-238

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

Determination Regarding PSNH's Generation Assets

Order on Motion to Compel Discovery and Associated Waiver Request

ORDER NO. 25,829

October 22, 2015

In this order, we grant a motion to compel filed by Granite State Hydropower Association, Inc., related to certain data requests propounded on Public Service Company of New Hampshire d/b/a Eversource Energy.

I. BACKGROUND

On September 16, 2014, we issued an Order of Notice, opening this proceeding to consider the disposition of the generation assets of Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource). Granite State Hydropower Association, Inc. (GSHA), was granted intervention in this proceeding by Order No. 25,733 (Nov. 6, 2014). Following a series of procedural motions and legislative enactments during late 2014 and early 2015, Eversource, together with various Settling Parties, filed a "Restructuring and Rate Stabilization Agreement" (Settlement Agreement) on June 10, 2015. GSHA was not a signatory to the Settlement Agreement. On June 26, 2015, we issued a Supplemental Order of Notice for this proceeding. Pursuant to the Supplemental Order of Notice, a procedural schedule was approved by secretarial letter on July 14, 2015, which specified that parties to the Settlement Agreement, including Eversource, would be required to provide responses to data requests by other parties by August 12, 2015.

On August 12, 2015, GSHA filed a motion to compel Eversource's responses to the following data requests: GSHA 1-3, 1-4, 1-6, 1-7, 1-8, 1-9, 1-10, 1-12, 1-14, 1-15, 1-16, 1-17, 1-22, 1-25, 1-26, and 1-29 (Motion)¹. Those data requests relate to GSHA's position that paragraph III.C. of the Settlement Agreement seeks to establish a definition, of so-called "avoided cost rates" used to compensate independent power producers (IPPs) for purchases of power made pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. §2601, and the Limited Electrical Energy Producers Act (LEEPA), RSA Chapter 362-A. The definition of avoided cost rates proposed in the Settlement Agreement is not acceptable to GSHA. *See* Motion at 2. In its Motion, GSHA asserted:

the proper avoided cost rate [Eversource] should pay to IPPs until [Eversource] divests its generation assets is a rate that reflects [Eversource's] cost of producing energy and any additional energy purchases to serve [Eversource's] default service load. Post divestiture, assuming that [Eversource] procures all of its default service energy through a competitive bid process similar to the manner employed by other New Hampshire distribution companies, [Eversource's] avoided cost rate paid to IPPs will be based upon the cost [Eversource] 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.

Motion at 2-3.

On August 21, Eversource filed an objection to the Motion (Objection). In its Objection, Eversource incorporated by reference the various objections it had timely raised on August 3,² to the disputed GSHA data requests on the grounds of relevance/materiality (GSHA 1-3, 1-4, 1-6, 1-7, 1-8 A.-C., 1-9 A.-C., 1-10, 1-12, 1-25, and 1-26), that the questions seek publicly-available

¹ The GSHA data requests that are the subject of the Motion may be read here: http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-238/MOTIONS-OBJECTIONS/14-238%202015-08-12%20GSHA%20ATT_MOTION%20COMPEL%20PSNH_DISCOVERY.PDF

² The Eversource objections of August 3, 2015, may be read here: <http://www.puc.nh.gov/Regulatory/Docketbk/2014/14-238/MOTIONS-OBJECTIONS/14-238%202015-08-21%20PSNH%20DBA%20EVERSOURCE%20OBJ%20GSHA%20MOTION%20TO%20COMPEL.PDF>

information (GSHA 1-8 D.-E., and 1-9 D.-E.), and that the questions require speculation on the part of Eversource (GSHA 1-14, 1-15, 1-16, 1-17, 1-22, and 1-29). In general terms, Eversource's Objection takes the position that the avoided cost definition in the 2015 Settlement Agreement was also integrated into the prior 1999 Settlement Agreement, that the definition was considered and approved within Docket No. DE 99-099, and that GSHA's objections are untimely. Objection at 2-3. Eversource's Objection also noted Eversource's pending request for a rulemaking to address the avoided-cost issue in a generic fashion, which was docketed in DRM 15-340 and denied by the Commission as premature in Order No. 25,814 (Sept. 18, 2015). *See* Objection at 4.

On October 22, 2015, Eversource filed a request under N.H. Code Admin. Rules Puc 201.05 to waive the filing requirements in N.H. Code Admin. Rules Puc 203.09 governing motions to compel regarding its own data requests propounded on GSHA, during the pendency of the Commission's deliberations regarding GSHA's Motion. In that request, Eversource asked the Commission to set a filing period of 10 business days from the date that the Commission issues this instant order for any motions to compel regarding its own data requests to GSHA. *See* Letter of Robert A. Bersak, Esq. to Executive Director Debra A. Howland, filed October 22, 2015.

II. COMMISSION ANALYSIS

To prevail on its Motion, GSHA must demonstrate that its data requests seek facts that are admissible or are reasonably calculated to lead to discovery of admissible evidence. *Public Service Co. of N.H.*, Order No. 25,646 (April 8, 2014) (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*, Order No. 24,485 at 4

(July 8, 2005). Data requests as a “vehicle for developing factual information.” *Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 at 2 (June 7, 2007).

In ruling on a motion to compel, we “enjoy broad discretion in the management of discovery.” *Public Service Co. of N.H.*, Order No. 24,342 at 23 (June 29, 2004) (quoting *YYY Corp. v. Gazda*, 145 N.H. 53, 59 (2000)). We weigh “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria.” *Public Service Co. of N.H.*, Order No. 25,595 at 2-3 (Nov. 15, 2013); *City of Nashua*, Order No. 24,485 at 4. If we perceive of no circumstance in which the requested data would be relevant, we will deny a request to compel its production. Based on these standards, we grant GSHA’s Motion to compel.

In this proceeding, we are called upon to determine whether the terms of the Settlement Agreement are in the public interest. GSHA raises objections to the avoided-cost definition agreed to by the parties to the 2015 Settlement Agreement, and seeks to advocate for a different avoided-cost standard. We do not agree with Eversource’s assertion that GSHA is somehow estopped from raising objections to an avoided-cost definition that was included in the 1999 Settlement Agreement, insofar as the 2015 Settlement Agreement purports to govern the relations between Eversource and IPPs going forward. GSHA did not join the current Settlement Agreement. Through discovery, GSHA seeks to develop evidence regarding what GSHA views to be an infirmity in the Settlement Agreement’s terms for the Commission’s consideration.

We have carefully reviewed the GSHA data requests. We have concluded that the data requests are reasonably calculated to lead to the discovery of admissible evidence, are not unduly burdensome, and are properly asked of Eversource in GSHA’s effort to address the avoided-cost issue. This issue may be peripheral to Eversource and some of the other parties to the Settlement

Agreement, but it is nonetheless a term of the 2015 Settlement Agreement and of great importance to GSHA and its membership. Therefore, the balance tips in favor of Eversource producing responses to GSHA's questions. We also grant GSHA leave to file supplemental testimony regarding the matters addressed in those data requests within 14 calendar days after Eversource produces the responses. Furthermore, we grant Eversource's request for a waiver of the filing requirements of Puc 203.09, so that a motion to compel may be filed by Eversource regarding its data requests to GSHA within 10 business days of this Order being issued, as granting this waiver would serve the public interest, and not disrupt the orderly and efficient resolution of matters before the Commission. N.H. Code Admin. Rules Puc 201.05.


Based upon the foregoing, it is hereby

ORDERED, GSHA's motion to compel Eversource's responses to GSHA 1-3, 1-4, 1-6, 1-7, 1-8, 1-9, 1-10, 1-12, 1-14, 1-15, 1-16, 1-17, 1-22, 1-25, 1-26, and 1-29 is GRANTED; and it is

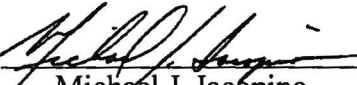
FURTHER ORDERED, that GSHA is granted leave to file supplemental testimony in this proceeding within 14 calendar days of receiving Eversource's responses to those data requests; and it is

FURTHER ORDERED, that Eversource is GRANTED leave to file motions to compel regarding GSHA's outstanding data responses to Eversource's data requests within 10 business days from the date of this Order, by waiver of Puc 203.09.


By order of the Public Utilities Commission of New Hampshire this twenty-second day
of October, 2015.



Martin P. Honigberg
Chairman



Michael J. Iacopino
Special Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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