

**THE STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

Petition for Approval of Lease Agreement Between Public Service Company of New Hampshire  
d/b/a Eversource Energy and Northern Pass Transmission LLC

Docket No. DE 15-464

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**  
**D/B/A EVERSOURCE ENERGY'S OBJECTION**  
**TO THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.'S MOTION**  
**FOR A FINDING ON AFFILIATE TRANSACTION COMPLIANCE**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") hereby objects to the "Motion for a Finding on Affiliate Transaction Compliance" (the "Motion") submitted by the New England Power Generators Association, Inc. ("NEPGA") on December 4, 2017. The Motion pleading is legally, procedurally, and factually incorrect and flies in the face of a direct decision made by this Commission at hearing. In support of this objection, Eversource states the following:

1. On October 19, 2015, Eversource filed a petition for approval of a lease transaction between it and Northern Pass Transmission LLC ("NPT") whereby Eversource would lease to NPT certain real estate rights owned by PSNH. Following an extensive process reviewing certain legal issues and other matters, and a full procedural schedule, a hearing on the merits of a proposed settlement agreement relative to the lease was held on November 30, 2017.
2. At the close of that proceeding, which had been pending for more than two years, and after asking no questions, presenting no witnesses, and offering no testimony of any kind on any issue, NEPGA stated that it would be filing a brief in this matter. Following a lengthy exchange

on the record, the Chair of the Commission ruled that NEPGA did not have permission to file a brief. Nonetheless, NEPGA elected to file the Motion to make an untimely filing replete with unfounded, unsupported, and unverified claims regarding affiliate transactions that are incorrect both as matters of law and fact. The Commission should deny NEPGA's motion, and should consider further action in light of NEPGA's willful disregard of the Commission's processes.

3. As a first matter, and putting aside anything of any substance relative to the Motion, NEPGA's filing is nothing more than a continuation of a long and baseless hunt against Eversource and NPT for violations that have repeatedly been found not to exist. In 2014, NEPGA filed a request for rulemaking relative to the Commission's affiliate transaction rules which was little other than an unfocused complaint against Eversource and NPT. *See generally* Docket No. DRM 14-234. This request followed on the heels of a recently completed investigation of Eversource and NPT that revealed no wrongdoing by either. *See generally* Docket No. IR 14-196. NEPGA's continuing pursuit of this issue, in open disregard of the Commission's prior findings, must be rejected.

4. Additionally, though described as a "motion", this filing is in reality a request for findings and rulings, which is made out of time. Pursuant to RSA 541-A:35 "If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding." The Commission's procedural rules contain no provision relating to requests for such findings. Pursuant to RSA 541-A:30-a, V, when an agency's rules or governing statutes do not address a procedure the Model Rules of Practice and Procedure of the Attorney General (N.H. Code of Admin Rules, Jus 800), shall be applied. Jus 812.05(a) provides that "Any party may submit proposed findings of fact and conclusions of law to the presiding officer *prior to or at the hearing*;" (emphasis added) and Jus 812.05(c) provides, "In any case

where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.” In this case, NEPGA’s submission was not “prior to or at the hearing” and is therefore untimely filed and should be rejected.

5. Furthermore, Eversource does not deny, and has never denied, that Eversource and NPT are affiliates. In its original Petition initiating this proceeding over two years ago, Eversource expressly noted, “3. PSNH and NPT are both subsidiaries of a utility holding company, Eversource Energy, a Massachusetts business trust headquartered in Boston, Massachusetts and Hartford, Connecticut.”

6. Nevertheless, NEPGA dedicates multiple pages in its Motion to this issue and relies upon documents that are not part of the record in this proceeding nor entitled to administrative notice, as if it had found some hidden fact, even when it acknowledges that “PSNH has itself expressly affirmed that NPT is an affiliate.” Motion at ¶11. The mere fact of the affiliate status between Eversource and NPT, however, does not mean that Eversource and NPT have violated any law, regulation, or standard of conduct. In fact, both the Commission Staff and the Office of Consumer Advocate (“OCA”) stated on the record of this proceeding that they do not believe any such violation occurred.

7. Moreover, Eversource notes that the discovery responses NEPGA attempts to use to bolster its arguments are not in evidence and thus not part of the record in this proceeding. Pursuant to Puc 203.09(e) data requests and responses are not filed with the Commission, and though a response to a data request may be treated as an admission of a party, such treatment only occurs if that response is offered into evidence. Puc 203.23(i).

8. NEPGA's primary interest in this docket has been Eversource's compliance with applicable affiliate transaction requirements and when the Commission granted NEPGA's motion to intervene, it did so with restrictions:

We will grant limited intervention to NEPGA. Specifically, we impose the following conditions to ensure "the orderly and prompt conduct" of this docket: NEPGA shall be limited to litigating issues regarding compliance with our affiliate transaction rules and the fair market value of the Lease.

Order No. 25,882 at p. 5.

9. Despite the Commission's admonition that NEPGA's participation as an intervenor should not impair "the orderly and prompt conduct" of this docket, NEPGA effectively took no part in the proceeding. It did not seek to offer anything into evidence in this proceeding. It filed no testimony; it asked no questions; it provided no witnesses or documents; it did not contest any testimony; and, it did not challenge the settlement agreement – in short, NEPGA did nothing at all of substance, and is now attempting to enter documents into the record through the back door. Such actions would render superfluous the Commission's discovery and hearing processes, are disruptive to the orderly and prompt conduct of this proceeding, and should not be permitted.

10. Despite the above, should the Commission determine to review the arguments within the Motion, it will find nothing of merit. With respect to the compliance plan, Eversource does have a compliance plan on file with the Commission. The fact that the compliance plan may not read as NEPGA wishes it would does not mean that there is no plan or that the plan is in some way deficient.

11. Furthermore, in electing to untimely provide only some discovery responses relating to the plan in the Motion, NEPGA ignores other responses which provide substantial information on the compliance plan Eversource does have on file with the Commission. In discovery Eversource provided its compliance plan to NEPGA and all other parties. NEPGA is attempting

to create a record, after the close of hearing, by the selective and misleading production of documents, and is doing so in a time and manner that impedes upon Eversource's ability to offer contrary evidence. Eversource should not be required to produce additional evidence, after the close of the hearing, to counter "evidence" that NEPGA has had in its possession for many months. These materials have been improperly and untimely provided by NEPGA.

12. Contrary to NEPGA's allegations, Eversource and NPT have complied with the Commission's Rules and RSA chapter 366. As noted above, the Commission has previously reviewed the relationship of Eversource and NPT and found no violations. Regarding RSA chapter 366, there is no basis to find any violations. With respect to the kinds of contracts covered by RSA 366:3, that statute provides:

The original or a verified copy of any contract or arrangement and of any modification thereof or a verified summary of any unwritten contract or arrangement, the consideration of which exceeds \$500, hereafter entered into between a public utility and an affiliate providing for the furnishing of managerial, supervisory, construction, engineering, accounting, purchasing, financial, or any other services either to or by a public utility or an affiliate shall be filed by the public utility with the commission within 10 days after the date on which the contract is executed or the arrangement entered into. The commission may also require a public utility to file in such form as the commission may require full information with respect to any purchase from or sale to an affiliate, whether or not made in pursuance of a continuing contract or arrangement.

Accordingly, the only kinds of arrangements for which there is an affirmative obligation to file are those relating to "managerial, supervisory, construction, engineering, accounting, purchasing, financial, or any other services." The lease in issue is not any such arrangement. With respect to other transactions, the Commission *may* require filing and *may* require information. That is, the Commission has the discretion to ask for such filing and information. In this case, rather than await a directive by the Commission, Eversource and NPT filed their arrangement as soon as it

was created. Moreover, the Commission, and others, have had ample opportunity to review the arrangement consistent with the law. Eversource and NPT have complied with RSA 366.<sup>1</sup>

13. With respect to the Commission's rules, NEPGA contends that Eversource is required to have a compliance plan in place specifically directed at NPT and the lease in this case. NEPGA is wrong. As noted above, Eversource does have a compliance plan in place. As to the specifics of the plan, with reference to Puc 2106.01(d), NEPGA contends that Eversource has filed to comply, but its argument is based upon a contention that the plan requires some specific provision relative to NPT. The regulation requires no such provision. Eversource has disclosed its affiliates and arrangements and has complied with the regulations.

14. Lastly, NEPGA attempts to argue that the compensation under the lease is inappropriate because Eversource did not engage in some sort of competitive solicitation for the lease rights in issue. NEPGA attempts to contend that a solicitation was, in some way, required, and that without it the lease is infirm. NEPGA, again, is wrong.

15. As a first matter, the compensation under the lease, as proposed in the settlement agreement before the Commission, is the product of negotiations among various parties including non-affiliated parties. That value, as noted in the settlement agreement itself, took into account the results of multiple independent appraisals.

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<sup>1</sup> Moreover, to the extent there may be some potential remedy for some alleged failure under the requirements of RSA chapter 366, the remedy does not apply in this case. Pursuant to RSA 366:4, any contract not filed with the Commission is not enforceable in any court. In that the lease arrangement in issue was filed, there is no remedy pursuant to that law. The only other remedy that is available by statute is under RSA 366:7, which provides that the Commission "may disallow the inclusion in the accounts of a public utility of any payments or compensation to an affiliate for any services rendered, or property furnished, under existing contracts or arrangements with an affiliate unless such public utility shall establish the reasonableness of such payment or compensation." (*See also* Puc 2106.01 (g): "If a utility fails to provide the information required by Puc 2106 in the manner and time required, it shall be subject to the provisions of RSA 366:7.") Eversource is not making any payments or providing compensation to an affiliate for services or property. Rather the arrangement is the reverse and this remedy is without effect here.

16. Moreover, to the extent the Commission's regulations on pricing between affiliates govern the lease in issue, they provide that the transfer from the utility (Eversource) to its affiliate (NPT) must be at "the highest of the net book value, fully loaded cost, and the current market value of the asset, as applicable," Puc 2105.09(a)(1) and that "For purposes of this section, the market value of any asset sold, leased, or otherwise transferred, shall be determined based on the highest price that the asset could have reasonably realized after an open and competitive sale." Puc 2105.09(a)(7). In that there is no "fully loaded cost" for real estate, and in that the net book value of the assets at issue is low, the market value is the rate for the transfer. That value is to be determined based on the price for which the asset could have sold at a sale. There is no requirement that a sale actually be held, only that there be a determination of the value it could have obtained.<sup>2</sup> The record in this case contains the testimony of an independent, expert appraiser who made that precise determination. *See* Exhibit 1, Testimony of Robert P. LaPorte, Jr. at Bates 169-170 (defining the market value of the leased property subject to the appraisal). NEPGA had years to review this testimony, ask questions about it, hire its own appraiser, or otherwise challenge its conclusions, and it had ample opportunity to raise issues or ask questions before or during the hearing. NEPGA has not done anything other than now claim that the rules require something which they do not, and to argue for an outcome which ignores the unchallenged evidence presented to the Commission.

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<sup>2</sup> More confusing is that if NEPGA's desired process was followed and an open solicitation was held, the lease value would very likely have been much lower, not higher. As Eversource's witnesses testified, the property in issue is a nearly 100-mile long corridor limited to being used for electric transmission and in which existing facilities are already sited. As described by Mr. LaPorte, without challenge or question from NEPGA, due to the limitations on the rights available to be conveyed, there is no demonstrated demand for this corridor beyond that expressed by NPT. *See* Exhibit 1, Testimony of Robert P. LaPorte, Jr. at Bates 176. Thus, there is no evidence that NEPGA's process would, in fact, result in customers realizing the "full value" of the property rights in issue, but there is evidence to the contrary.

17. The Motion is procedurally deficient, factually inaccurate, legally incorrect, made in the face of a direct ruling during the hearing that NEPGA did not have permission to make such a filing, and flies in the face of the Commission's conditional grant of intervenor status in Order No. 25,882.

18. NEPGA is attempting, yet again, to gin up an issue where none exists and it is doing so in open defiance of the Commission's processes. The Motion, both its arguments and "evidence," should be rejected, and nothing in this submission should form any part of the record or any decision in this case.

19. Eversource sought the concurrence of the settling parties to the lease relative to this objection and reports that the Commission Staff and NPT agree with this objection, and the OCA intends to make a separate submission.



WHEREFORE, Eversource respectfully requests that the Commission:

- (1) Deny the Motion, with prejudice;
- (2) Reject any request to include any of the information in the Motion in the record of this proceeding; and
- (3) Order such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire d/b/a  
Eversource Energy**

December 5, 2017

Date

By: 

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#### **CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

December 5, 2017

Date

  
Matthew J. Fossum