

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-693

**Petition for Approval of a Power Purchase Agreement between Public Service Company of
New Hampshire d/b/a Eversource Energy and Hydro Renewable Energy Inc.**

**MEMORANDUM OF LAW OF THE
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

The Society for the Protection of New Hampshire Forests (the “Forest Society”), by and through its attorneys, BCM Environmental & Land Law, PLLC, submits this Memorandum of Law in response to the Public Utilities Commission’s (the “Commission”) question whether the Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) Power Purchase Agreement (PPA) with Hydro Renewable Energy Inc. (“HRE”) is allowed under New Hampshire law. Specifically, whether Eversource entering into the PPA “would violate the Restructuring Principles of RSA Chapter 374-F, or any other New Hampshire, or any federal law including the Federal Power Act, especially in light of the Commission’s recent ruling in Docket No. DE 16-241, Order No. 25,950... in which the Commission dismissed the petition as violating the Restructuring Principles of RSA Chapter 374-F.” DE 16-693, Order of Notice dated October 25, 2016. The following legal memorandum sets forth the legal basis for the same conclusion reached by the Commission in DE 16-241: Eversource entering into the PPA would violate the Restructuring Principles of RSA 374-F and this petition should therefore be dismissed.

The Forest Society also joins in the Legal Memorandum filed by New England Power Generators Association.

I. BACKGROUND

On or about June 28, 2016, Eversource filed a petition for approval of a 20-year Power Purchase Agreement with HRE. Eversource filed this petition contingent upon the New Hampshire Site Evaluation Committee (“SEC”) granting a Certificate of Site and Facility for the Northern Pass Transmission Line (“Northern Pass”) project¹, a 192-mile high voltage transmission line proposed by Northern Pass Transmission, LLC (“NPT”), from the Canadian border at Pittsburg to a substation located in Deerfield, which is currently before the SEC in Docket No. SEC 2015-06 with a scheduled decision date of September 30, 2017.

Additionally, as part of the SEC application, NPT and Eversource also filed various petitions with the PUC including but not limited to petitions to construct and maintain electric lines across public waters and lands, and a petition to lease between Eversource and NPT. The public crossing petitions are being heard by the Commission under Dockets DE 15-460, DE 15-462, and the lease under DE 15-464.

Eversource Energy, “one of the largest utility systems in the country and the largest in New England,”² is the parent company of all entities related to the Northern Pass project including Public Service Company of New Hampshire d/b/a Eversource Energy, a “wholly-owned subsidiary of Eversource Energy” and “New Hampshire’s largest electric utility.” Eversource Energy Transmission Ventures, Inc. is a wholly owned subsidiary of Eversource Energy and is the “holding company for certain entities including Northern Pass Transmission, LLC,” which “will construct, own and operate The Northern Pass transmission project with Hydro Quebec.”

¹ The intention clauses found on Page 1 of the PPA include specific reference to the delivery method via the Northern Pass Transmission Line.

² This quotation and the following affiliate information are taken from Eversource’s website List of Affiliates page.

The inter-relationship of the petitions before the Commission and the underlying application before the SEC is undeniable but it bears noting for the purposes of the following analysis, as is the inter-relationship of the various entities which calls into question whether this petition, like the lease petition (DE 15-646), violates the Commission's Affiliate Transaction Rules.

II. ANALYSIS

A. Eversource's Entering Into the PPA Violates New Hampshire Law by Giving Preference for Regulated Utility Services to Its Competitive Energy Affiliate.

With New Hampshire's Electric Restructuring Act of 1996, the legislature expressly recognized that achieving the key elements of restructuring—increasing customer choice and developing competitive markets for wholesale and retail electricity services—“. . . a restructured industry . . . will require . . . at least functional separation of centralized generation services from transmission and distribution services.” RSA 372-F:1, I. As we articulated in our Legal Memorandum jointly filed with NEPGA and the City of Concord in DE 15-464, the Restructuring Policy Principles govern and direct the Commission to “monitor companies providing transmission of distribution services and take necessary precautions to ensure that no supplier has an unfair advantage.” RSA 372-F:3, V. The legislative intent and purpose of “non-discriminatory, open access to the electric system for wholesale and retail transactions” is meant to further the competitive benefit for the New Hampshire consumer. *Id.* at IV. The regulatory strictures and structures subsequently adopted by the Commission in the New Hampshire Code of Administrative Rules 2100 *et seq.* were intended to further the legislative goals to dissipate vertical market power that might nevertheless prevail and thus unfairly affect the level playing field that restructuring, at its core, sought to create.

On its face, the PPA exhibits the type of unfair practice the legislature sought to prohibit with adoption of the Electric Restructuring Act. Eversource, a closely related entity to NPT has proffered an agreement with HRE, the entity equivalent of Hydro Quebec to deliver energy via a transmission line to be constructed by an Eversource entity and owned by an Eversource entity. The companies involved are intricately entwined and deserve much closer scrutiny than what has thus far been submitted in support of this petition to determine whether the Affiliate Transaction Rules have been breached. For example, has NPT as the owner of the yet to be permitted and built transmission line provided access to distribution system information to its non-affiliated competitors in a non-discriminatory manner as required by N.H. Admin. R. PUC 2103.02? The answer as indicated by NEPGA's filing is a resounding, "No."

The Affiliate Transaction Rules also specifically state:

If a utility offers supply, capacity, regulated utilities services, or distribution system information to its competitive energy affiliates, it shall contemporaneously make the offering available to non-affiliated energy competitors in a non-discriminatory manner.

N.H. Admin. R. PUC 2103.05.

The delivery of the power via the Northern Pass Transmission line, to be built by NPT, a wholly-owned subsidiary of Eversource and a project featured and described on Eversource's website, for the purpose of delivering Hydro-Quebec power to its Connecticut and Massachusetts markets, and now also to PSNH d/b/a Eversource, another wholly-owned subsidiary of Eversource and using the name Eversource, clearly raises the specter for potential customer confusion, an important element the Affiliate Transaction Rules are intended to protect against. Perhaps equally important and also in question is whether the shared corporate support that likely exists created the "opportunity for preferential treatment, unfair competitive advantage, or cross-subsidization of competitive affiliates." N.H. Admin. R. PUC 2105.04.

Full and Fair Competition is a hallmark of the Rules and embodied within the Electric Utility Restructuring Act, “Choice for retail customers cannot exist without a range of viable suppliers. The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.” RSA 374-F:3 VII. Nothing in Eversource’s petition of the 20-year PPA shows that other suppliers were afforded an opportunity to submit bids. All indicators are that this petition fails to meet the standards established under RSA 374-F and as promulgated under PUC Rules 1200.

III. CONCLUSION

The petition for approval of Eversource’s 20-year PPA should be dismissed for all of the reasons set forth above; it would violate RSA 374-F and the PUC’s Affiliate Transaction Rules and for all other reasons articulated in NEPGA’s legal brief.

Respectfully Submitted,

**SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS**

By its Attorneys,

Date: November 21, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this day, November 21, 2016, a copy of the foregoing Memorandum of Law was sent by electronic mail to persons named on the Service List of this docket.

A handwritten signature in black ink, appearing to read 'Elizabeth A. Boepple', written over a horizontal line.

By: _____
Elizabeth A. Boepple, Esq.