

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

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

Docket No. DE 16-693

Petition for Approval of a Power Purchase Agreement with Hydro Renewable Energy Inc.

MOTION FOR REHEARING

Pursuant to Puc 203.05, Puc 203.07 and RSA 541:3, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) hereby moves the New Hampshire Public Utilities Commission for rehearing of Order No. 26,000 issued March 27, 2017 (the “Order”) in the instant proceeding relating to approval of a proposed 20-year Power Purchase Agreement between Eversource and Hydro Renewable Energy Inc., (the “PPA”). Specifically, under the authority of RSA 541:5, Eversource respectfully requests that the Commission suspend Order No. 26,000 pending the outcome of legislation being considered by the General Court or the Supreme Court’s decision regarding the appeal of Commission Order No. 25,950. In the alternative, Eversource requests that the Commission grant rehearing of Order No. 26,000 based on the grounds set forth herein.

1. Pursuant to RSA 541:3, the Commission may grant rehearing when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were

overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

2. Upon the filing of a motion for rehearing, RSA 541:5 gives the Commission authority to grant, deny, or suspend the order or decision complained of pending further consideration.

3. In the Order, the Commission concluded that under existing laws, it lacked authority to approve the proposed PPA. Order at 7. The Commission based its determination nearly entirely upon its ruling in Order No. 25,950 – an order which the Commission noted has been accepted for appeal by the New Hampshire Supreme Court. Order at 2.

4. Eversource submits that for the reasons set out below, the Commission should suspend Order No. 26,000.

5. First, the Order should be suspended to await the result of legislative action that is pending in the General Court. On March 30, 2017 – three days after the issuance of Order No. 26,000 -- the New Hampshire Senate voted 17-6 in favor of Senate Bill 128, as amended by a Floor Amendment (such amended legislation is attached hereto as Attachment 1). Senate Bill 128 makes changes to the Electric Utility Restructuring Statute, RSA Chapter 374-F, which is the law upon which the Commission’s decision in the Order is based. Order at 1; 6-7. As passed by the Senate, Senate Bill 128 finds: “It is in the best interests of all citizens of New Hampshire that the public utilities commission be directed and granted authority to consider and implement measures that are expected to mitigate the cost of electric service in the state... .” (SB 128, 1,V).

SB 128 at 2, I would amend the overall public policy goal of restructuring in RSA 374-F:1 to be “to reduce the cost of electricity without negatively impacting the reliable supply and delivery thereof with minimum adverse impacts on the environment.”

SB 128 at 3, I would amend RSA 374-F:3, I by inserting the principle that, “The commission and electric utilities should pursue measures that are expected to mitigate the cost of electric service in the state, reduce the price volatility of that service, and reduce the potential for disruptions in electricity supply due to inadequate wholesale generating capacity in the New England marketplace, or that harness the power of competitive markets, subject to the commission's determination that such measures are in the public interest.”

If Senate Bill 128 is ultimately approved and signed into law, it would fundamentally change the law upon which the Commission relied when it issued Order No. 26,000, dismissing Eversource’s PPA Petition.

6. Second, suspension of Order No. 26,000 is warranted due to that Order’s reliance upon the Commission’s decision in Order No. 25,950. As noted earlier, the New Hampshire Supreme Court, in its Docket No. 2017-0007, has accepted two appeals (one by Eversource) of Order No. 25,950. In Order No. 26,000, the Commission stated, “the analysis in Order No. 25,950 regarding the question of functional separation under RSA 374-F applies equally to the proposal before us in this docket.” Order at 6. The Commission also cited to Order No. 25,950 as to why it “cannot approve such an arrangement under existing laws, and accordingly dismiss[ed] Eversource’s petition.” Order at 7.

If the Supreme Court decides that Order No. 25,950 cannot stand, such a decision would fundamentally change the underpinnings of Order No. 26,000.

7. For these reasons, suspension of Order No. 26,000 is warranted as a matter of both administrative and judicial economy. Suspension of Order No. 26,000 pending actions by the General Court and/or the Supreme Court would eliminate potentially unnecessary administrative and judicial processes. Included in this motion, *infra*, Eversource alternatively

seeks an order granting rehearing of Order No. 26,000 on grounds that are substantially identical to those included in its challenge to Order No. 25,950. Requiring another rehearing and appeals process on such grounds leading to repetitive litigation could potentially be avoided if Order No. 26,000 was suspended per Eversource's request.

8. This Commission has previously suspended an order under RSA 541:5 pending the result of legislation pending before the General Court. In *Comcast Phone of New Hampshire*, Order No. 25,542, July 9, 2013 in Docket No. DT 12-308, the Commission decided that as a matter of judicial economy, it would suspend an order for which rehearing had been sought to await the outcome of pending legislation.

Should HB 542 become law, the Commission believes its consideration of the effects of HB 542 as part of its decision on the merits of Comcast's motion for rehearing would serve the interests of judicial economy and administrative efficiency and would clarify the effect of this recent legislation on the Commission's prior determinations. We believe our consideration of HB 542 in such context falls within the spirit if not the letter of the Court's remand order dated October 12, 2012. The Commission has notified the Court today of its interest in considering the effects of HB 542 in this docket and has informed the Court of its intent to reconsider its prior orders, including Order No. 25,513, in light of the passage of HB 542, should it become law, in connection with its decision on the merits of Comcast's motion for rehearing.

In view of these considerations, we have determined that the Order on Remand should be suspended pending further consideration pursuant to RSA 541:5.

Order No. 25,542 at 3.

9. As noted in *Comcast Phone*, the potential for near-term changes in law has been deemed a valid reason by the Commission to suspend an order pending further consideration pursuant to RSA 541:5. SB 128 and the pending appeal of Order No. 25,950 each encompass the potential for near-term changes in law. In order to "serve the interests of judicial economy and administrative efficiency" (*Id.*), Eversource requests that the Commission suspend Order No. 26,000 pending further consideration.

10. RSA 541:5 provides that “any order of suspension may be upon such terms and conditions as the commission may prescribe.” Upon conclusive action on SB 128, Eversource commits to expeditiously make a filing in this docket to inform the Commission of the result. Similarly, Eversource also commits to expeditiously make a filing in this docket to inform the Commission of the result of the Supreme Court’s action regarding the appeal of Order No. 25,950. Eversource suggest that the Commission consider including such filings as a condition to an order of suspension.

11. In the alternative, Eversource submits that the Commission should grant rehearing because Order No. 26,600 overlooked or mistakenly conceived important legal and policy matters.

12. Order No. 26,000 contains an unreasonably narrow interpretation of the New Hampshire Electricity Restructuring statute, RSA chapter 374-F (the “Restructuring Law”), by finding that the overriding purpose of the Restructuring Law was to remove regulated utilities from the generation business. That view of the Restructuring Law does not comport with the stated purpose of the law, ignores nearly all of the interdependent policy principles enumerated in it, and appears to undermine the broad authority the Commission has been granted relative to the implementation of the Restructuring Law. RSA 374-F:1, :3, :4. Contrary to the Commission’s reliance on Order No. 25,950 where it determined that “the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity,” Order 25,950 at 8, the true “overriding purpose” is to reduce electricity rates.

13. This is not a case where the Commission needed to divine the purpose of the Restructuring Law from vague or ambiguous pronouncements, incomplete language, or through

resort to legislative history.¹ In this case, the Legislature has explicitly stated the purpose of the law and that purpose is not, as the Commission concluded, “to introduce competition to the generation of electricity.” Accordingly, the Commission should reconsider the Order.

14. The very first sentence of the restructuring legislation enacted by the General Court in 1996 is a legislative finding that reads, “New Hampshire has the highest average electric rates in the nation and such rates are unreasonably high.” 1996 N.H. Laws, 129:1, I. And, in that first finding, the General Court stated that high electric rates have “a particularly adverse impact on New Hampshire citizens.” Laws 1996, 129:1.² The findings of the General Court continue:

The general court finds that:

...
II. New Hampshire's extraordinarily high electric rates disadvantage all classes of customers: industries, small businesses, and captive residential and institutional ratepayers and do not reflect an efficient industry structure. The general court further finds that these high rates are causing businesses to consider relocating or expanding out of state and are a significant impediment to economic growth and new job creation in this state.

III. Restructuring of electric utilities to provide greater competition and more efficient regulation is a nationwide phenomenon and New Hampshire must aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates.

IV. Monopoly utility regulation has historically substituted as a proxy for competition in the supply of electricity but recent changes in economic, market and technological forces and national energy policy have increased competition in the electric generation industry and with the introduction of retail customer choice of electricity suppliers as provided by this chapter, market forces can now play the principal role in organizing electricity supply for all customers instead of monopoly regulation.

¹ See, e.g., *Forester v. Town of Henniker*, 167 N.H. 745, 749-50 (2015) (restating the common standard that when examining the language of a statute, the New Hampshire Supreme Court ascribes plain and ordinary meaning to the words used, and unless the language is ambiguous, the Court will not examine legislative history, and it will neither consider what the legislature might have said nor add words that it did not see fit to include.).

² Similarly, 21 years later, SB 128 as amended and passed by the Senate, finds at Section 1,IV: “IV. The high cost of electric rates, their volatility, the potential for supply disruption, and increased air emissions has a particularly adverse impact on New Hampshire's citizens and its economy. “

Laws 1996, 129:1. The concern the General Court intended to address is clear and emphasized repeatedly – the goal was to reduce rates – and competition was only a means to achieve that stated end.³

16. Significantly, nothing in the Restructuring Law forbids the state’s electric utilities from owning generation-related assets. To the contrary, in the Restructuring Law the General Court found that “market forces can now play the ***principal*** role in organizing electricity supply” – not the “exclusive” role. Laws 1996, 129:1, IV. It is inconceivable that the Legislature removed from the Commission all authority to deal with the continuing issue of high electricity prices – the very issue that was the purpose of the Restructuring Law – when it determined that market forces could play a role in organizing supply.⁴

17. With reference to the roles of the Commission, utilities, and competitive generators in the new marketplace, the Order found that:

The competitive generation market is expected to produce a more efficient industry structure and regulatory framework, by shifting the risks of generation investments away from customers of regulated EDCs toward private investors in

³ The New England States Committee on Electricity has recently said the same:

Take a moment to consider the purpose of restructuring.

It was never to implement markets or to seek to achieve their benefits at the expense of state energy or environmental policies or to diminish environmental quality.

When generators oppose in- or out-of-market mechanisms to recognize state policies in planning and markets, from use of the DG Forecast, to the Renewable Exemption, to Clean Energy RFPs, it suggests a belief that markets are an end in themselves or paramount to state laws. They are not.

NESCOE Annual Report to the New England Governors 2015 at 18, available at: http://nescoe.com/wp-content/uploads/2016/03/2015AnnualReport_23Mar2016.pdf.

⁴ To do so would mean that the Commission is without real authority to improve upon the availability of a commodity that the Commission has described as a “necessity of modern everyday life.” *Re Lifeline Rates*, 66 NH PUC 166, 172 (1981). See also Section 1,I of SB 128 as passed by the Senate: “The provision of reliable and economic electricity is a necessary service upon which the economy and the welfare of this state rest.”

the competitive market. The long-term results should be lower prices and a more productive economy.

Order No. 25,950 at 8-9. As noted in many places, and again recently by the President and CEO of ISO-New England, the competitive generation market has been incented to build more gas fired generation, but in the last few years the scarcity of pipeline capacity to serve that generation has led to higher and more volatile electric costs in the region and has imperiled reliability.⁵

The purpose statement in RSA 374-F:1, I provides “The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.”⁶ Rejecting a PPA that would provide financial benefits to customers based upon hydro generation that does not depend upon scarce natural gas or other fossil fuels will not, in the long term, result in either lower prices or a more productive economy. Because the Order runs counter to the stated purpose of the Restructuring Law, and because it will lead to the opposite of the result the General Court has expressly stated is to be promoted by the Restructuring Law, the Order should be reconsidered.

18. In the Order, as with Order No. 29,950, the Commission focused on competition; accordingly, matters pertaining to competition under the Restructuring Law were all that it saw. The conclusion relating to the Restructuring Law, and the conclusions that flowed from it, ignore the true purpose of the Restructuring Law and the interdependent policy principles therein. As

⁵ State of the Grid: 2016 Presentation, Slide 22, available at: https://www.iso-ne.com/static-assets/documents/2016/01/20160126_presentation_2016stateofthegrid.pdf; and Comments of Gordon Van Welie, President and CEO of ISO-New England, State of the Grid: 2016 Remarks, at 7, available at: https://www.iso-ne.com/static-assets/documents/2016/01/20160126_remarks_2016stateofthegrid.pdf.

⁶ SB 128 as passed by the Senate would amend a portion of RSA 374-F:1 by including “other methods determined to be in the public interest” as a means of dealing with the law’s directive that “The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity . . .”

that conclusion permeates the analysis and conclusions in the remainder of the Order, the Order should be reconsidered in light of the true purpose of the Restructuring Law, the clear legislative intent, the interdependent policy principles, the State Energy Strategy, and the needs of New Hampshire electric customers.

19. In light of the above, and particularly in light of the clearly expressed purpose of the Restructuring Law to reduce the state's high cost of electricity, the Commission should reconsider Order No. 26,000. The Commission's conclusions in the underlying Order leading to its determination that it is barred from considering the PPA as a matter of law run counter to the purposes of the Restructuring Law and will only help to perpetuate the high and volatile electric prices in New Hampshire and New England and will continue the situation that currently imperils the reliability of the regional grid – both of which are results that the Restructuring Law was enacted to avoid.

20. In addition, the Commission's determination that "As a practical matter, the proposal by Eversource to enter into a long-term PPA for power that it would resell into the wholesale market is essentially the same as Eversource owning an electric generating facility," (Order at 6) is incorrect.

21. The power that Eversource would be entitled to receive under the PPA will be sold into the New England wholesale market regardless of whether the PPA is approved and takes effect, or is rejected. It is not a question of whether 100% of the power flowing over the Northern Pass line is delivered and sold, Rather, it is just a question of who will make the sale and benefit from the proceeds. Approval or rejection of the PPA will not impact the competitive electric marketplace in New England or New Hampshire. The PPA is merely a means of

providing benefits directly to New Hampshire electric customers above and beyond what others in New England could receive from the Northern Pass project.⁷

22. Furthermore, approval of the PPA would not be “essentially the same as Eversource owning an electric generating facility.” When Eversource owns generation facilities, it receives cost-of-service based rates with a compensatory return as reviewed and approved by the Commission. Under the PPA, however, Eversource would receive no return.

23. Lastly, Eversource’s recommendation that the PPA receive ratemaking treatment via inclusion in the Stranded Cost Recovery Charge was expressly made to avoid any adverse impact on competitive suppliers’ ability to compete for the provision of retail energy service to Eversource’s customers.⁸ Eversource attempted to structure the PPA to ensure that New Hampshire electric customers would benefit, and, at the same time, there would be no harm to competition. In that the Commission has other means for ensuring the same outcomes through Eversource’s rates, to the extent the Commission rejected the PPA based upon Eversource’s proposed ratemaking treatment, such decision should be reconsidered.

WHEREFORE, Eversource respectfully requests that the Commission:

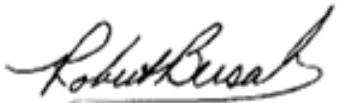
- A. Suspending Order No. 26,000 as requested herein; or in the alternative,
- B. Grant rehearing of Order No. 26,000; and
- C. Order such further relief as may be just and reasonable.

⁷ Note that the PPA is not essential to the Northern Pass project. Electricity will ultimately flow on the transmission line from Canada to New England regardless of whether there is a special PPA entitlement for New Hampshire customers.

⁸ As the Commission has plenary ratemaking authority, the PPA could be placed into an existing rate (such as the SCRC) or a new rate that is akin to or differs from the SCRC, as it deems necessary and proper to support the public interest.

Respectfully submitted this 3rd day of April, 2017

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



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.

April 3, 2017

Date



Robert A. Bersak

ATTACHMENT 1

Senate Bill 128, as amended by Floor Amendment
Passed by the Senate on March 30, 2017

Sen. Bradley, Dist 3
Sen. Feltes, Dist 15
March 28, 2017
2017-1175s
06/03

Floor Amendment to SB 128

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Findings. The general court finds that:

4 I. The provision of reliable and economic electricity is a necessary service upon which the
5 economy and the welfare of this state rest.

6 II. Although retail and wholesale competitive markets for energy have developed since the
7 initial restructuring of the state's electric utilities, there remain problems and limitations that have
8 resulted in price volatility and the potential for inadequate capacity supply.

9 III. ISO-New England, Inc., the independent, nonprofit regional transmission organization
10 (RTO), that oversees the operation of New England's bulk electric power system and transmission
11 lines has stated that infrastructure constraints could pose a challenge to the reliable operation of
12 the regional power grid, create price volatility, and contribute to air emission increases.

13 IV. The high cost of electric rates, their volatility, the potential for supply disruption, and
14 increased air emissions has a particularly adverse impact on New Hampshire's citizens and its
15 economy.

16 V. It is in the best interests of all citizens of New Hampshire that the public utilities
17 commission be directed and granted authority to consider and implement measures that are
18 expected to mitigate the cost of electric service in the state, reduce the price volatility of that
19 service, and/or reduce the potential for disruptions in electricity supply due to inadequate wholesale
20 generating capacity in the New England marketplace.

21 2 Electric Utility Restructuring; Purpose. Amend RSA 374-F:1, I to read as follows:

22 I. The most compelling reason to restructure the New Hampshire electric utility industry is
23 to reduce costs for all consumers of electricity by harnessing the power of competitive markets **and**
24 **by other methods determined to be in the public interest.** The overall public policy goal of
25 restructuring is to [develop a more efficient industry structure and regulatory framework that
26 results in a more productive economy by reducing costs to consumers while maintaining safe and
27 reliable electric service] **reduce the cost of electricity without negatively impacting the**
28 **reliable supply and delivery thereof** with minimum adverse impacts on the environment.
29 Increased customer choice and the development of competitive markets for wholesale and retail
30 electricity services are key elements in a restructured industry that will require unbundling of
31 prices and services and at least functional separation of centralized generation services from
32 transmission and distribution services.

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1 3 Electric Utility Restructuring; Restructuring Policy Principles; System Reliability. Amend
2 RSA 374-F:3, I to read as follows:

3 I. System Reliability. Reliable electricity service must be maintained while ensuring public
4 health, safety, and quality of life. *The commission and electric utilities should pursue
5 measures that are expected to mitigate the cost of electric service in the state, reduce the
6 price volatility of that service, and reduce the potential for disruptions in electricity
7 supply due to inadequate wholesale generating capacity in the New England marketplace,
8 or that harness the power of competitive markets, subject to the commission's
9 determination that such measures are in the public interest. In evaluating a proposed
10 measure, the commission shall consider whether such measure is likely to result in near
11 term rate relief and reasonably protects ratepayers from the risk of stranded costs
12 consistent with the principles established in this chapter. Such measures shall:*

13 (a) *Not include any measure that involves the purchase of natural gas supply
14 or capacity, the siting of natural gas infrastructure within New England, or the recovery
15 of the cost of building new infrastructure;*

16 (b) *Not include any measure that results in New Hampshire ratepayers paying
17 an unreasonable share of the costs of any regional projects;*

18 (c) *Be consistent with applicable federal law; and*

19 (d) *To the extent reasonably possible without reducing the cost savings to
20 customers, be implemented in a manner that minimizes their impact on the competitive
21 market.*

22 4 Electric Utility Restructuring; Restructuring Policy Principles; Near Term Relief. Amend
23 RSA 374-F:3, XI to read as follows:

24 XI. Near Term Rate Relief. The goal of restructuring is to create competitive markets that
25 are expected to produce lower prices for all customers than would have been paid under the current
26 regulatory system. Given New Hampshire's higher than average regional prices for electricity,
27 utilities, in the near term, should work to reduce rates for all customers. To the greatest extent
28 practicable, rates should approach competitive regional electric rates. The state should recognize
29 when state policies impose costs that conflict with this principle and should take efforts to mitigate
30 those costs. The unique New [Hampshire] *England* issues contributing to [the highest] *high*
31 prices [~~in New England~~] should be addressed [~~during the transition~~], wherever possible *to mitigate
32 such high prices, price volatility, and the potential for supply disruptions due to
33 deficiencies in electric generating capacity.*

34 5 Electric Utility Restructuring; Restructuring Policy Principles; Regionalism. Amend
35 RSA 374-F:3, XIII to read as follows:

36 XIII. Regionalism. New England Power Pool (NEPOOL) should be reformed and efforts to
37 enhance competition and to complement industry restructuring on a regional basis should be

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1 encouraged. New Hampshire should work with other New England and northeastern states to
2 accomplish the goals of restructuring ***to address the high and volatile price of electricity, and***
3 ***to ensure an adequate supply of electric generating capacity.*** Working with other regional
4 states, New Hampshire should assert maximum state authority over the entire electric industry
5 restructuring process. While it is desirable to design and implement a restructured industry in
6 concert with the other New England and northeastern states, New Hampshire should not
7 unnecessarily delay its timetable. Any pool structure adopted for the restructured industry should
8 not preclude bilateral contracts with pool and non-pool services and should not preclude ancillary
9 pool services from being obtained from non-pool sources.

10 6 Effective Date. This act shall take effect 60 days after its passage.

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2017-1175s

AMENDED ANALYSIS

This bill modifies electric utility restructuring policy principles by permitting the commission and electric utilities to pursue measures to mitigate the cost of electric service, reduce the price volatility of that service, and reduce the potential for disruptions in electricity supply, subject to the commission's determination that such measures are in the public interest.