

**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 CLARIFICATION**

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) hereby requests clarification from the New Hampshire Public Utilities Commission of one aspect of the “Order Denying Motion for Reconsideration,” Order No. 26,008 issued April 20, 2017 (the “Reconsideration Order”) in the instant proceeding. The issue for which clarification is sought did not appear in the Commission’s original “Order Dismissing Petition,” Order No. 26,000. Therefore, Eversource could not have included this matter in its April 3, 2017, Motion for Rehearing per RSA 541:3 and :4.

1. In the Reconsideration Order at page 5, the Commission stated, “In light of our precedent (admittedly under appeal by Eversource before the New Hampshire Supreme Court) established by Order No. 25,950, *we have concluded that RSA Chapter 374-F prohibits Eversource from entering into the proposed PPA... .*” (Emphasis added.) Eversource seeks clarification regarding this statement.

2. This statement could be broadly interpreted to hold that the Restructuring Law (RSA Chapter 374-F) prohibits Eversource and the state's other utilities from *entering into* PPAs. Eversource seeks clarification regarding whether this broad prohibition on entering into PPAs is

what the Commission intended to convey, or whether the Reconsideration Order should be interpreted only as pertaining to the ratemaking treatment proposed by Eversource for the PPA entered into between Eversource and Hydro Renewable Energy Inc. (“HRE”).

3. As noted in in Eversource’s “Initial Legal Memorandum” dated November 21, 2016, a broad prohibition preventing the state’s electric utilities from entering into PPAs would not be consistent with current law.

a. The state’s utilities routinely enter into contractual arrangements for energy and capacity to fulfill their obligations to provide default energy service. The Restructuring Law itself, at RSA 374-F:3,V,(c) states that “Default service should be procured through the competitive market... .” A prohibition on electric utilities’ entering into PPAs would be inconsistent with this requirement.

b. RSA 362-F:9, “Purchased Power Agreements,” grants authority for the state’s electric utilities to enter into PPAs in conjunction with the acquisition of RECs.

c. The Public Utility Regulatory Policies Act requires the state’s utilities to purchase energy and capacity from qualifying facilities (16 U.S. Code §824a-3), and FERC regulations allow utilities to satisfy this obligation via contracts (18 CFR 292.301).

4. Further, RSA 374:57, “Purchase of Capacity,” limits the Commission’s authority regarding its review of agreements to purchase energy or capacity to “disallow[ing], in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.” This statute does not provide authority for the Commission to prohibit such an agreement or to declare such an agreement unenforceable. (Compare RSA 374:57 to RSA 366:4; RSA 366:4 expressly

provides that certain affiliate contracts shall be unenforceable if not properly filed and approved by the Commission.)

5. As also noted in Eversource's "Initial Legal Memorandum," in *American Loan Trust Co. v. General Electric Co.*, 71 N.H. 192 (1901), the New Hampshire Supreme Court upheld the general authority of a public utility in New Hampshire to exercise its authority under the business corporation laws of this state. Eversource Initial Memorandum at 4. RSA 293-A:3.02(7) provides Eversource, as a New Hampshire corporation, with the power "to make contracts."

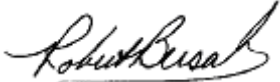
6. Hence, Eversource requests clarification regarding the Reconsideration Order's statement that it is *prohibited from entering* into the proposed PPA. If the Reconsideration Order relates solely to the ratemaking mechanism requested in Eversource's Petition (i.e., via the SCRC), a clarification of the Reconsideration Order would eliminate confusion.

7. The requested clarification is necessary as the legality of the instant PPA between Eversource and HRE has been put into question. Subsequent to the Order Dismissing Petition in this proceeding, both Eversource and Hydro-Québec, HRE's parent, have publically stated their intentions and desires to honor the PPA (Applicants' Supplement to Objection to New England Power Generators Association's Motion to Strike Power Purchase Agreement, SEC Docket No. 2015-06, May 9, 2017 at ¶5 and Attachment A thereto). The clarification of the Reconsideration Order requested herein would enable Eversource and Hydro-Québec to determine the scope of the Commission's decision in this proceeding and the extent to which opportunities remain to deliver the benefits of the PPA to New Hampshire customers.

**WHEREFORE**, Eversource respectfully requests that the Commission clarify Order No. 26,008 as set forth herein.

Respectfully submitted this 19th day of May, 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.

May 19, 2017  
Date

  
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Robert A. Bersak