

**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 TO VACATE

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) hereby moves that the New Hampshire Public Utilities Commission (“Commission”) vacate Order No. 26,000, “Order Dismissing Petition,” dated March 27, 2017 (the “Order”). The Order should be vacated as a result of the recent decision of the New Hampshire Supreme Court in *Appeal of Algonquin Gas Transmission, LLC*, No. 2017-0007, 2018 WL 2307061 (N.H. May 22, 2018) reversing Commission Order No. 25,950.

1. In this docket, Eversource sought the Commission’s review and approval of a proposed 20-year Power Purchase Agreement (“PPA”) between Eversource and Hydro Renewable Energy Inc. On March 27, 2017, the Commission dismissed Eversource’s Petition when it issued Order No. 26,000, “Order Dismissing Petition”

2. The Commission dismissed Eversource’s Petition without considering the merits of the PPA.

3. The basis for the Commission’s dismissal relies, almost entirely, upon this Commission’s Order No. 25,950 dated October 6, 2016, issued in Docket No. DE 16-241, Eversource’s “Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC.” The Commission’s reliance on Order No. 25,950 is expressly set forth in the Order:

- a. “In general terms, our analysis of this petition mirrors that presented by the Commission in Order No. 25,950 (October 6, 2016), with some minor differences. 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, so 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, “Commission Analysis,” at 6.
- b. “That proposal [the PPA], however, goes against the overriding principle of restructuring, which is to harness the power of competitive markets to reduce costs to consumers by separating the functions of generation, transmission, and distribution.” Order, “Conclusion,” at 7.
- c. “As the Commission ruled in Order No. 25,950, we cannot approve such an arrangement under existing laws, and accordingly dismiss Eversource’s petition.” *Id.*

4. The Commission’s decision in Order No. 25,950 was appealed to the New Hampshire Supreme Court by Algonquin Gas Transmission, LLC and by Eversource; the Court accepted and docketed that appeal as Docket No. 2017-007. On May 22, 2018, the Court issued its decision in that appeal, reversing the Commission’s decision in Order No. 25,950.

5. In its decision, the Supreme Court said:

In denying Eversource’s petition, the PUC first ruled “that the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity” with the “long-term results [to] be lower prices and a more productive economy.” The PUC then further ruled that “[t]o achieve that purpose, RSA 374-F:3, III directs the restructuring of the industry, separating generation activities from transmission and distribution activities, and unbundling the rates associated with each of the separate services.” (Emphasis added.) Given these rulings, the PUC concluded that “the basic premise of Eversource’s proposal — having an EDC purchase long-term gas capacity to be used by electric generators — runs afoul of the Restructuring Statute’s functional separation requirement.” We disagree.

Algonquin, slip op. at 8.

6. Ultimately, the Court held “that the PUC erred in dismissing Eversource’s petition as a matter of law.” *Id.* at 12.

7. As a result of the Court’s interpretation of the Restructuring law and its reversal of Order No. 25,950, the legal bases relied upon by the Commission in Order No. 26,000 have been invalidated. Therefore, the Commission should vacate its decision in that Order.

8. In a previous situation like this, the Commission found vacation of its decision to be proper. In Order No. 22,986 dated July 22, 1998 issued in Docket No. DR 96-150, “Statewide Electricity Restructuring Plan,” the Commission vacated directives it had issued to three electric utilities because a subsequent decision rendered by the Federal Energy Regulatory Commission changed the underlying law from that considered by this Commission.

9. Also, the New Hampshire Supreme Court has held that a Commission order must be vacated when such order is based upon an “erroneous standard” or an “error of law.” *New England Household Moving & Storage, Inc. v. Pub. Utilities Comm'n*, 117 N.H. 1038, 1042 (1977); *Appeal of Northern Utilities, Inc.*, 136 N.H. 449, 456 (1992). In that the Commission’s decision in this case was premised upon Order No. 25,950 and that the decision in Order No. 25,950 was based upon an error of law, this decision suffers the same infirmity as Order No. 25,950 and should be vacated.

10. Failure to vacate Order No. 25,950 would create a cloud over the legality of potential future arrangements that may advance the primary purpose of the Restructuring Statute, i.e., “to reduce electricity costs to customers” (*Algonquin*, slip op. at 12), or that are consistent with other public policies.

WHEREFORE, Eversource moves that the Commission vacate Order No. 26,000.

Respectfully submitted this 11th day of June, 2018

**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 this Motion to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

June 11, 2018
Date



Robert A. Bersak