

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 15-124

ELECTRIC DISTRIBUTION UTILITIES

**Investigation into Potential Approaches to Ameliorate Adverse Wholesale Electricity
Market Conditions in New Hampshire**

**Order Accepting Staff Report and Stakeholder Comments, and Outlining Review Process
for Any Petitions for Capacity Acquisitions and Associated Competitive Bidding**

ORDER NO. 25,860

January 19, 2016

I. BACKGROUND

On April 17, 2015, the Commission issued an Order of Notice announcing an investigation, pursuant to RSA 365:5, RSA 374:3 and :4, and RSA 374-F:8, into potential approaches involving New Hampshire's electric distribution utilities (EDCs) to address cost and price volatility issues affecting wholesale electricity markets in New Hampshire. In general terms, the Commission ordered the Commission Staff (Staff) to prepare a report regarding the natural gas resource constraint issues facing the New England electricity market to be filed no later than September 15, 2015. A report by Commission Staff was filed as ordered on September 15, 2015, under the direction of Electric Division Assistant Director George McCluskey (Staff Report).¹ In advance of the Staff Report's filing, Staff engaged in a series of collective stakeholder meetings with interested persons and organizations, including the three New Hampshire EDCs, and also met bilaterally with certain stakeholders to clarify their proposals for resolving gas constraint issues and related data responses. This process resulted in a large volume of written materials, including bilateral data requests and responses between Staff

¹ The Staff Report is available here: <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124/LETTERS-MEMOS-TARIFFS/15-124%202015-09-15%20STAFF%20REPORT.PDF>

and certain stakeholders, which are posted for public inspection on the Commission's website at:

http://www.puc.nh.gov/Electric/Investigation_into_Potential_Approaches_to_Mitigate

[Wholesale Electricity Prices.html](http://www.puc.nh.gov/Electric/Investigation_into_Potential_Approaches_to_Mitigate). Also, the Commission granted leave for interested persons

to file comments directly with the Commission regarding the Staff Report by October 15, 2015.

Those comments are posted at: <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-124.html>

II. ACCEPTANCE OF STAFF REPORT AND STAKEHOLDER COMMENTS

The Staff Report is an overview of the natural-gas capacity constraints in the New England energy market from a multi-disciplinary perspective: economic, legal, financial, engineering, and environmental. Interested persons are urged to read the Staff Report and the other primary-source materials generated by Staff and stakeholders through this investigation to inform themselves of the issues at hand. We will not attempt to condense or summarize the broad scope of material available for public inspection, or distill the many varied perspectives presented by Staff and stakeholders. With one exception (discussed below), the Commission will also not make judgments at this time regarding the factual content and policy positions outlined in the Staff Report, the submissions by the various stakeholders, and the data requests/responses available for inspection. That said, it is clear that Staff engaged in a thorough analysis of the questions presented in the Order of Notice and the factual information at its disposal. The Commission will therefore accept the Staff Report as compliant with the directives set out by the Commission for the investigation in Docket No. IR 15-124, and accept the companion stakeholder comments.

III. FUTURE REVIEW PROCESS FOR GAS CAPACITY-RELATED PETITIONS

The Staff Report indicated that, in Staff's view, there exists a path under New Hampshire law for the approval of acquisitions of natural gas capacity resources by New Hampshire EDCs

for the economic benefit of their customers and the customers of other regional EDCs. *See* Staff Report at 9-13. As indicated by their comments, this position was accepted by certain stakeholders and opposed by others. It is clear to the Commission, from a review of the Staff Report, stakeholder comments, and ancillary materials made publicly available through this investigation, that no consensus exists regarding the potential legality of such an acquisition of gas capacity by a New Hampshire EDC. Furthermore, we expect that such a capacity acquisition would be highly controversial.

The Commission thus intends to rule on the question of whether a New Hampshire EDC has the legal authority to acquire natural gas capacity resources to positively impact electricity market conditions, only within the context of a full adjudicative proceeding conducted pursuant to the New Hampshire Administrative Procedure Act, RSA Chapter 541-A, and only in response to an actual (as opposed to hypothetical) petition. Such a proceeding would be opened if and when a New Hampshire EDC files a petition for a proposed capacity acquisition, and related cost recovery. The Commission would consider the petition in separate phases. In the first phase, the Commission would review briefs submitted by the petitioner EDC, Staff, and other parties regarding whether such capacity procurement is allowed under New Hampshire law. If the Commission were to rule against the legality of such acquisition, the petition would be dismissed. If the Commission were to rule in the affirmative regarding the question of legality, it would then open a second phase of the proceeding to examine the appropriate economic, engineering, environmental, cost recovery, and other factors presented by the actual proposal. This second phase would involve the usual procedural features of discovery, testimony, rebuttal testimony, and cross-examination, provided in any adjudicative proceeding before the Commission.

IV. EXPECTED COMPETITIVE BIDDING FOR CAPACITY

As is clear from the Staff Report and the extensive comments filed in this docket, there is no New Hampshire precedent for EDCs to purchase gas pipeline capacity for electric generators. That is different from the situation with local gas distribution companies (LDCs) which sell gas on the retail market. An essential part of an LDC's business is the procurement of gas supply for its customers. In New Hampshire, our two gas LDCs are required to file Least Cost Integrated Resource Plans under RSA 378:37 *et. seq.* that lay out how they expect to fulfill their obligations to customers. It is not unusual for an LDC to make a firm commitment to purchase capacity on a gas pipeline. The LDCs know they must follow appropriate competitive processes for their gas supply and capacity purchases. Each such procurement is subject to scrutiny to make sure that the decision is consistent with prudent utility practice.

As indicated, the Commission is not going to rule on substantive questions at the present time regarding the legality or specific attributes of a natural gas capacity related procurement. Nonetheless, due to the practicalities of private-sector contracting for such capacity taking place in advance of petitions for regulatory approval, the Commission will outline one policy directive to EDCs and stakeholders related to the terms under which such acquisitions would be made. Under the Commission's Affiliate Transactions Rules, N.H. Code Admin. Rules, Chapter Puc 2100, there exists a strong policy preference against self-dealing in relations between New Hampshire EDCs and their unregulated affiliates.

Functionally, this would tend to militate against the use of a sole-source acquisition approach by a New Hampshire EDC seeking to only acquire a gas capacity product from its competitive, unregulated affiliate. Also, there is a recognition in private industry and regulatory bodies throughout the United States that competitive bidding acquisition processes provide

powerful benefits for ensuring prudence in utility expenditure and, by extension, cost savings for utility customers, through the introduction of cost discipline, open participation by competitors, and choices in product acquisition. Those benefits were identified in the Staff Report, which strongly advocated in favor of requiring that any gas capacity acquisition program by a New Hampshire EDC be predicated on competitive evaluation and selection processes undertaken by entities unaffiliated with the project sponsors. Staff Report at 11-12, and 46-47. We agree. The Commission expects that any acquisition of gas capacity by a New Hampshire EDC for the ultimate benefit of electric customers would be undertaken through an open, transparent, and competitive bidding/Request for Proposals (RFP)-type process, in which competitors of the New Hampshire EDC's corporate affiliates or business partners would also be able to participate. Furthermore, this competitive solicitation process should be open to all categories of gas capacity product, including pipeline, Liquefied Natural Gas, and Compressed Natural Gas capacity. It would also include storage solutions to ensure maximal choice and potential cost savings. In addition, in recognition of various state gas capacity procurement efforts occurring throughout the New England region, the Commission would accept a New Hampshire EDC's participation in another state's RFP platform where the evaluation and selection of competing projects is the responsibility of entities that have no affiliation with any of the project sponsors.

V. CONCLUSION

The Commission wishes to thank the Staff for its hard work during this investigation, and for the preparation of the Staff Report and ancillary materials. The Commission also extends its appreciation for the various stakeholders' engagement with this process, for their comments, and for their ongoing interest in this matter of great importance to our State.

Based upon the foregoing, it is hereby

ORDERED, that the Staff Report and companion stakeholder comments in this instant investigation are **ACCEPTED**, and that future petitions for gas capacity acquisition programs be governed by the policy approaches outlined in this Order.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of January, 2016.



Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director