

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-693

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

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

Order Dismissing Petition

ORDER NO. 26,000

March 27, 2017

In this Order, the Commission dismisses Eversource's petition requesting approval of a proposed 20-year Power Purchase Agreement between Eversource and Hydro Renewable Energy Inc., and associated program details. The Commission has determined that the proposal cannot be approved because it is inconsistent with New Hampshire law, specifically the Electric Utility Restructuring Statute, RSA Chapter 374-F.

I. EVERSOURCE'S PROPOSAL

On June 28, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a petition, pursuant to RSA 374:57, for approval of a proposed 20-year Power Purchase Agreement (PPA) between Eversource and Hydro Renewable Energy Inc. (HRE), an indirect wholly-owned subsidiary of Hydro-Quebec. Under the terms of the PPA, HRE would sell, and Eversource would buy, approximately 100 megawatts (MW) of firm, on-peak electric energy delivered to Eversource's Deerfield Substation over the proposed Northern Pass Transmission (NPT) transmission line. This energy would then be resold into the ISO-New England wholesale energy market by Eversource. Under the terms of Eversource's proposal, net gains or losses from the purchase and subsequent resale of the energy would be accounted for through the Stranded Cost Recovery Charge (SCRC) rate established by the 2015 Restructuring

Settlement Agreement and approved by the Commission in Order No. 25,920 (July 1, 2016) in Docket Nos. DE 11-250 and DE 14-238. The SCRC is assessed on all Eversource customers pursuant to RSA 374-F:3, XII (d).

II. PROCEDURAL HISTORY

With its petition in June, Eversource filed supporting testimony and related exhibits along with a motion for confidential treatment of certain information. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-693.html>

On July 1, 2016, the Office of Consumer Advocate (OCA) filed notice of its participation on behalf of residential ratepayers pursuant to RSA 363:28. Several other entities sought intervenor status. They included the State Office of Energy and Planning (OEP), the Conservation Law Foundation (CLF), the New England Power Generators Association (NEPGA), NextEra Energy Resources, LLC (NextEra), the New England Ratepayers Association (NERA), and the Society for the Protection of New Hampshire Forests (Forest Society). Eversource filed timely objections to the motions to intervene in November 2016.

The Commission issued an Order of Notice on October 25, 2016, indicating that, among other matters, it would consider whether Eversource's PPA proposal would be lawful in light of the Commission's ruling in Docket No. DE 16-241, Order No. 25,950 (October 6, 2016), *appeal docketed*, No. 2017-0007 (N.H. Sup. Ct. February 15, 2017). In that ruling, the Commission dismissed an Eversource petition to acquire gas capacity for resale to electric generators as violating the Restructuring Principles of RSA Chapter 374-F.

In its Order of Notice in this matter, the Commission further indicated that it would review briefs submitted by Eversource, Commission Staff (Staff), and any others wishing to file regarding whether the PPA and its affiliated program elements would be allowed under New Hampshire law; and that if the Commission were to rule against the legality of the PPA, the instant petition would be dismissed. If the Commission were to rule in the affirmative regarding the question of legality, the Commission would then open a second phase of the proceeding to examine the appropriate economic, engineering, cost recovery, and other factors presented by Eversource's proposal. The Commission scheduled a prehearing conference for the first phase of the proceeding for November 7, 2016, and set deadlines for initial submissions and responses on the legal issues of November 21 and December 5, respectively.

At the prehearing conference, the Commission deferred ruling on the question of interventions, pending resolution of the question of legality, and invited all interested persons to submit legal briefs subject to the schedule outlined in the Order of Notice. *See* Transcript of the November 7, 2016, prehearing conference.

III. POSITIONS OF THE PARTIES

A. Eversource

The only party to this proceeding that filed legal briefs in favor of the legality of the petition was Eversource. Eversource's basic argument is that RSA Chapter 374-F, the Electric Utility Restructuring Statute, was intended to lower energy prices and that Eversource's entering into the PPA with HRE could further that intent, and would also further the statutory directives to ameliorate stranded costs (if the PPA were to be below market and the SCRC were to receive an offset through Eversource's proposal).

Eversource also relies on its general corporate authority under RSA Chapter 295, and the specific statutory provisions of RSA Chapter 374:57, which sets forth Eversource's obligations when it "enters into an agreement with a term of more than one year for the purchase of generating capacity, transmission capacity, or energy." In particular, Eversource points to the experience of Docket No. DE 11-184, which related to certain PPAs entered into by Eversource with small wood-fired energy producers (Wood IPPs), pursuant to the federal Public Utility Regulatory Policies Act (PURPA) and RSA 374:57. Eversource cites Order No. 25,305 issued in Docket No. DE 11-184 (December 20, 2011), at 35, where the Commission stated that RSA 374:57 provided adequate justification for the approval of the Wood IPPs' PPAs, without needing to resort to federal legal authority. Eversource also contends that the PPA would not violate the Federal Power Act.

B. Opponents of the Power Purchase Agreement

Staff, NextEra, NEPGA, CLF, and the Forest Society (collectively the Opponents), all disagree. The Opponents focus on what, in their view, is the primary intention of the Restructuring Statute, RSA Chapter 374-F: separating the functions of generation, transmission, and distribution for electric distribution utilities (EDCs) in New Hampshire to enhance competition and to prevent EDCs from shifting the risks of generation and transmission investments to distribution customers through distribution rate recovery, as they had done in years past. In this instance, the Opponents argue that recovery of PPA-related losses through the SCRC would serve as an impermissible intermingling of generation and/or transmission activities on the one hand, and distribution activities on the other, and an impermissible shifting of related financial risks to Eversource's customers.

As for the other statutes that are part of Eversource's arguments, the Opponents' general position is that the restructuring statute controls, as it is more recently enacted than RSA 374:57, and more specifically addresses the core issue of functional separation. NEPGA further argues that, due to the corporate relationships among Eversource, its parent company, NPT, and Hydro-Quebec, that the proposal failed to comply with the Commission's affiliate transaction rules, N.H. Code Admin. Rules Puc 2100.

The OEP took no position on any issue regarding Eversource's legal authority to enter into the proposed PPA, but stated that the proposed cost recovery mechanism through the SCRC for PPA-related potential losses was not supportable. In particular, the OEP argued that the proposed assessment of losses from the PPA would not qualify under the definition of "stranded costs" presented under RSA 374-F:2, IV or offer an appropriate means of mitigating stranded costs as outlined in RSA 374-F:3, XII(c), due to the inherent risk of losses.

C. Office of the Consumer Advocate

While the OCA did not submit a formal legal brief in this proceeding, on November 4, 2016, it filed a letter regarding various issues in this docket in advance of the prehearing conference, which interested persons may view here: http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-693/LETTERS-MEMOS-TARIFFS/16-693_2016-11-04_OCA_LTR_POSITION_PHC.PDF. Specifically, the OCA argued against the Commission's approach of procedural bifurcation, advocated in favor of careful scrutiny of intervention requests by the Commission, and requested denial of Eversource's motion for confidential treatment.

IV. COMMISSION ANALYSIS

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.

As discussed in Order No. 25,950, the Commission found that after enactment of the Restructuring Statute, EDCs like Eversource should unbundle rates for distribution from rates for energy supply (and likewise, from rates for transmission). Order No. 25,950 at 14. The proposed PPA is not needed to supply distribution services to Eversource distribution customers, and its costs and related expenses would not be permissible “stranded costs” under the SCRC rate feature. The proposed PPA is designed to support electric generation supply over a proposed new transmission line, and therefore the expenses or losses related thereto would be disallowed in distribution rates, including the SCRC.

With regard to the question of the precedential effect of Docket No. DE 11-184 and Order No. 25,305, we note the Commission’s approval of the Wood IPPs was issued in the context of Eversource continuing to own its own generation plants, and expecting to own those plants for the foreseeable future (at the time Order No. 25,305 was issued in 2011). Also, as indicated by NEPGA in its brief, there is a clear difference between the short (two years or less) terms of the contracts entered into with the Wood IPPs, and the 20-year proposed term of the PPA here, both in terms of the risks posed to Eversource ratepayers and the general intent of the restructuring statute (to effectuate competition and service/price unbundling). Since that time, as

of the 2015 Restructuring Settlement, Eversource has committed to the divestiture of its generating plants, thereby moving toward the full implementation of the functional-separation goals of RSA Chapter 374-F. Furthermore, Order No. 25,305 bore the following proviso: “Our findings and rulings in this case are not to be taken as any kind of precedent or general policy statement regarding how the Commission would analyze a request for approval of above-market power purchase agreements in the future or, more generally, for approval of other cost recovery methods.” Order No. 25,305 at 43-44.

V. CONCLUSION

The proposal before us would have Eversource purchase electrical energy for a 20-year term over a new transmission line, resell that electricity into the wholesale market, and include the net costs or benefits of its purchases and sales in its electric distribution rates, through the mechanism of the SCRC. That proposal, 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. Allowing Eversource to use the SCRC mechanism as a ratepayer financed “backstop” for its proposed 20-year PPA would serve as an impermissible intermingling of a generation activity with distribution rates. Also, as argued by certain Opponents, the proposal does not fit within the parameters of what constitutes a “reasonable measure” to “mitigate stranded costs” as required by RSA 374-F:3, XII(c), nor are potential costs related to losses arising from the proposed PPA qualifying “stranded costs” under the definition of RSA 374-F:2, IV. As the Commission ruled in Order No. 25,950, we cannot approve such an arrangement under existing laws, and accordingly dismiss Eversource’s petition. Because that concludes this proceeding, we dismiss the

outstanding motions to intervene as moot. We will address the motion for confidential treatment in a separate order.

Based upon the foregoing, it is hereby

ORDERED, that Eversource's instant petition is hereby DISMISSED; and it is

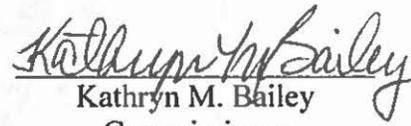
FURTHER ORDERED, that the information subject to Eversource's motion for confidential treatment should be kept confidentially, pending an order by the Commission regarding the disposition of same under RSA Chapter 91-A; and it is

FURTHER ORDERED, that the motions to intervene are hereby DISMISSED, having been rendered moot by the decision delineated in this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of March, 2017.

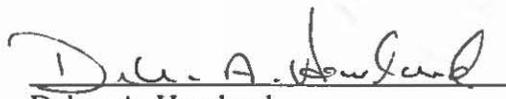


Martin P. Honigberg
Chairman



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director