

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
DE 14-238**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
DETERMINATION REGARDING PSNH'S GENERATION ASSETS**

NEPGA'S AND RESA'S RESPONSIVE MEMORANDUM

I. Procedural Background

The New Hampshire Public Utilities Commission ("the Commission") opened this docket as a result of legislative changes to RSA 369-B:3-a which became effective on September 30, 2014. *See* N.H. Laws of 2014, Ch. 310:2 (HB 1602). In Order No. 25, 733 (Nov. 15, 2014), the Commission granted the intervention requests of the New England Power Generators Association ("NEPGA") and Retail Energy Supply Association ("RESA") and a number of others. At the duly noticed prehearing conference held October 2, 2014 and by secretarial letter dated October 30, 2014, the Commission directed parties to submit briefs or memoranda on scope and other issues by December 5, 2014 and indicated that responses were to be filed by January 7, 2015.

On or about December 5, 2014 memoranda or comments were filed by NEPGA and RESA (joined by TransCanada), the Commission Staff, the Office of Consumer Advocate ("OCA"), Public Service Company of New Hampshire ("PSNH"), the Conservation Law Foundation ("CLF"), the Sierra Club, the International Brotherhood Electrical Workers Local Union #1837 ("IBEW"), Granite State Hydropower Association

(“GSHA”), the City of Berlin, and PJA Energy Systems Design LLC. The Office of Energy and Planning filed a letter saying it was taking no position on scope at that time.

NEPGA and RESA recognize the pending Motion for Stay to allow for a settlement discussion on the issues raised in this docket and in DE 11-250. Nonetheless, because the procedural schedule in the instant docket has not been modified, NEPGA and RESA jointly make this filing in response to the filings made on December 5, 2014 regarding threshold issues that should be addressed in this proceeding. TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc., to which the Commission also granted intervention status, join in this Responsive Memorandum.

II. Responses to Issues Raised in Preliminary Briefs

A. The generating assets being considered for divestiture should include Power Purchase Agreements (“PPAs”).

Commission Staff took the position that generating assets subject to divestiture should include all of PSNH’s generating plants and its power purchase agreements (“PPAs”), including its agreement with the Burgess plant entity. Staff Brief at 1. NEPGA, RESA and CLF took a similar position to that of Staff. However, PSNH and the City of Berlin argued that divestiture should not include PPAs. PSNH’s and the City of Berlin’s position is unpersuasive for several reasons set forth below.

First, as Staff notes, N.H. Laws of 2014, Ch. 310:1 and :2 (HB 1602) refers to PSNH’s “remaining generation assets” and “all or some of PSNH’s generation assets” without limitation. *Id.* Second, as CLF points out, including all of PSNH’s physical generation assets as well as its PPAs is consistent with the approach taken in the March 31, 2014 Technical Report prepared for the Commission by LaCapra

Associates. CLF Brief at 2-3. Third, the Commission has previously included PPAs in divestiture/restructuring proceedings of New Hampshire electric utilities. *See Re Statewide Electric Utility Restructuring Plan*, 82 NH PUC 122, 137 (Feb. 28, 1997); *Granite State Electric Company*, 83 NH PUC 532, (Oct. 7, 1998); and *Unitil Service Corporation*, 85 NH PUC 440 (June 12, 2000). RESA and NEPGA submit that the Commission's investigation in this docket should include PPAs for the reasons outlined by Staff and others.

PSNH cautions that divestiture of certain supply arrangements (*i.e.*, obligations under the Public Utility Regulatory Policies Act ["PURPA"]) "may be complicated, or perhaps prevented, by operation of federal law." *Initial Scoping Document of PSNH* at 6. PSNH also avers that "[a] divestiture process that attempted to supplant the PURPA rights of certain generations may run afoul of federal law." *Id.* However, PSNH has provided no further explanation or analysis in support of these assertions. NEPGA and RESA assert that a utility can simultaneously honor its PURPA and other PPA commitments and divest itself of the power purchased under those arrangements, as is the case in Maine. Maine's electric utilities are required to divest their interests in electric generating plants as well as the entitlements to energy and capacity that they receive under PPAs. *See* 35-A M.R.S.A. §3204(4). The Maine Commission, which oversees the sale by utilities of the rights to energy and capacity from their non-divested entitlements, *id.*, has engaged in the practice of allowing bids for standard offer service to be linked to bids for obtaining the output of entitlement contracts. *See, e.g.*, Maine Public Utilities Commission Dockets Nos. 2009-171 and 2009-180, Order Designating Standard Offer Provider and Directing Utility to Enter

Entitlements Agreement (Sept. 29, 2009). NEPGA and RESA submit that New Hampshire should follow Maine's treatment of this issue.

B. Neither the Restructuring Settlement Agreement nor any prior Commission order limits the Commission's authority in this docket.

NEPGA and RESA believe that the Agreement to Settle PSNH Restructuring in Docket DE 99-099 (August 2, 1999) is not dispositive of any of the issues implicated in the instant docket except for the issue of employee protections which is explicitly recognized in RSA 369-B:3-b. For the reasons cited by CLF and Sierra Club in their opening briefs, the Settlement Agreement does not limit the Commission's authority to pursue divestiture in this docket. In addition, the Commission's orders relating to the Settlement Agreement do not bind the Commission or the parties to any particular result in this docket. The Commission is authorized by RSA 365:28 to modify any order made by it after notice and hearing, and this statute should be liberally construed. *See Meserve v. State* 119 N.H. 149 (1979).

C. Issues related to the retirement of PSNH's generation assets are not within the scope of this docket.

In addition to assertions regarding the effects of divestiture upon its generating assets, PSNH's Initial Scoping Document discusses potential consequences of the retirement of its generating assets. NEPGA and RESA submit that consideration of issues related to the retirement of generating assets is beyond the scope of this docket. Asset retirement implicates issues that are different from asset divestiture. Accordingly, retirement issues should not be considered in this docket. Furthermore, the Commission should not require that future purchasers of PSNH's assets be prohibited from retiring

them. PSNH asserts that the Commission should protect customers by requiring that no generation that uses fuel other than natural gas be retired. *Initial Scoping Document of PSNH* at 25. NEPGA and RESA believe that the Commission should not impose limitations of this type on prospective bidders because such a condition could adversely impact the divestiture process. For example, bidders may not be in the position to state with certainty whether or for how long they plan to continue operating post divestiture and, therefore, will either not participate in the divestiture auction or will adjust their bid prices to reflect the operating requirement. In either case, the divestiture process would be less robust than if the non-retirement condition did not exist. While a new owner very well may choose to continue operating the facilities, other uses (e.g. reusing the existing sites for power generation or other activities) may be the most economical for the host communities, power consumers and the new resource owner. Restricting the use of the plant site will adversely affect potential bids and potentially result in economically inefficient outcomes for the facilities and host communities. In view of the foregoing, the Commission should reject PSNH's request for a non-retirement requirement.

D. Investigation of asset divestiture does not implicate the issues of market volatility and power disruptions.

PSNH argues that divestiture may expose customers to market volatility/rate instability and power disruptions/supply curtailments. *See Initial Scoping Document of PSNH* at 9, 10-11 and 25. These arguments are unpersuasive. The region's power supply and electricity markets are ably managed by ISO- New England. A change in the ownership of PSNH's generation assets will not, in and of itself, change the amount of available capacity in the region or affect system reliability. The assets at issue in this

docket will continue to be available to meet the region's demand for energy and capacity after they are divested. In addition, concerns about exposing customers to price volatility can be addressed through the procurement of laddered or fixed price default service contracts.

E. There is no basis for treating PSNH's default service customers differently from PSNH's other distribution customers for purposes of stranded costs arising from divestiture.

All parties agree that the divestiture statute should be interpreted as requiring a consideration of the economic interests of all of PSNH's distribution system customers — i.e., those taking default service ("Energy Service") from PSNH as well as those who obtain their electricity from competitive sources. Although the scrubber law, RSA 125-O:18 limits recovery of scrubber related costs to default service or Energy Service customers of PSNH during ownership and operation of Merrimack Station by a public utility, the statute also contains a provision that addresses divestiture by cross referencing RSA 369-B:3-a, thereby allowing the collection of stranded costs associated with the scrubber from all distribution customers upon divestiture.

125-O:18 Cost Recovery. — If the owner is a regulated utility, the owner shall be allowed to recover all prudent costs of complying with the requirements of this subdivision in a manner approved by the public utilities commission. During ownership and operation by the regulated utility, such costs shall be recovered via the utility's default service charge. In the event of divestiture of affected sources by the regulated utility, such divestiture and recovery of costs shall be governed by the provisions of RSA 369-B:3-a.

F. The Commission should not address the PSNH alternative proposal for continued ownership of generation at this time.

In its Initial Scoping Document at page 25, PSNH offered a “potential resolution” should the Commission determine that retaining PSNH’s generation portfolio was in the best interests of PSNH’s customers. That proposal is to establish a non-bypassable charge or credit equal to the net difference between the revenues derived from the sale of portfolio outputs into the wholesale spot markets against the cost of PSNH’s generation portfolio. The proposal also includes PSNH procuring its default service requirements in a manner similar to other utilities.

NEPGA and RESA submit that any such proposal, along with any other options available, should only be considered once the Commission has addressed the threshold issue of whether divestiture would be in the economic interest of PSNH’s customers. In the event that the Commission reaches that conclusion and begins to consider the PSNH proposal among other alternatives, one issue that would need to be addressed is the issue raised by RSA 125-O:18 noted above. As written, absent further amendment, this law would prevent recovery of scrubber related costs from all distribution customers via a non-bypassable charge for as long as the utility owns and operates the underlying asset.

III. Conclusion

For the reasons outlined above, NEPGA and RESA submit that the Commission should determine that generating assets that should be included under a divestiture scenario include PPAs, that the Restructuring Settlement Agreement does not limit its authority, and should make such other determinations as noted above and as necessary to proceed with the docket.

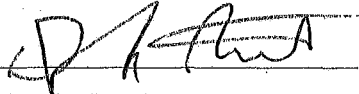
Respectfully submitted,

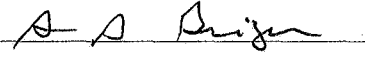
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and

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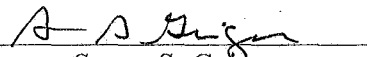
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Dated: January 7, 2015

Certificate of Service

I hereby certify that a copy of the foregoing Memorandum has on this 7th day of January, 2015 been sent by electronic mail to persons identified on the Service List for this docket.


Susan S. Geiger

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