IR 15-124

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October 15, 2015

Debra Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: Docket No. IR 15-124
Investigation into Potential Approaches to Ameliorate Adverse Wholesale Electricity Market Conditions in New Hampshire

Comments of Public Service Company of New Hampshire d/b/a Eversource Energy Re: Staff's September 15, 2015 Report

Dear Director Howland:

Attached with this letter, please find the Comments of Public Service Company of New Hampshire d/b/a Eversource Energy Re: Staff's September 15, 2015 Report consistent with the Commission's September 18, 2015 secretarial letter in the above-captioned docket.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Very truly yours,

Matthew J. Fossum
Senior Counsel

Enclosures
CC: Service List

THE STATE OF NEW HAMPSHIRE

before the

PUBLIC UTILITIES COMMISSION

ELECTRIC DISTRIBUTION UTILITIES

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

Docket No. IR 15-124

COMMENTS OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY RE: STAFF'S SEPTEMBER 15, 2015 REPORT

A. INTRODUCTION

On April 17, 2015, the New Hampshire Public Utilities Commission ("Commission") issued an Order of Notice opening an investigation surrounding "significant transitions in New Hampshire's wholesale and retail electricity markets" and the "increasing dependence on natural gas-fueled generation plants within the region over the past two decades as aging coal, oil, and nuclear plants have been retired." Order of Notice at 2. This increased dependence, the Commission noted, coupled with "significant constraints" on the natural gas supply to the New England region, has resulted in extreme price volatility in gas markets which, in turn, has resulted in sharply higher wholesale and retail electricity prices. *Id.* Accordingly, the Commission directed Staff to investigate "the gas-resource constraint problem that is affecting New Hampshire's [electric distribution companies] EDCs and electricity consumers," and to determine whether there are reasonably available and economically effective alternatives that the EDCs could use to address the supply and demand imbalance. *Id.* at 3.

On May 14, 2015, the Staff issued a letter setting out its initial questions and considerations and requested that stakeholders offer comments on the matters in the letter. On

June 2, 2015, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"), and others, submitted comments on the issues as requested by Staff. In those comments Eversource explained how New Hampshire customers are being required to bear the direct impact of high and volatile retail electricity prices due to the imbalance of supply and demand for natural gas, and, in light of the significant role of natural gas in New England's electric generation portfolio, reliability concerns and high retail electricity prices would not be alleviated until existing constraints on natural gas pipeline capacity are eliminated. Initial Comments of Eversource Energy at 3. It is, and has been, Eversource's position that the solution most likely to address the identified constraints, reliability concerns, and the supply and demand imbalance in the wholesale gas and electricity markets in the most reasonable time and at the most reasonable cost is the construction of incremental pipeline capacity resources into New England. *Id.* at 3. As one potential vehicle for pursuing the development of new gas capacity in the region, Eversource had previously identified the use of contracts with credit-worthy EDCs for the purchase of incremental gas pipeline capacity and associated liquefied natural gas storage. *Id.* at 10-11.

On July 10, 2015, the Staff submitted a memorandum intended to discuss the issues of the EDCs' legal authority to enter into such arrangements and the Commission's authority to review or approve those contracts. In that memorandum, the Staff sought to describe its understanding of a potential proposed acquisition of natural gas capacity by New Hampshire's EDCs and the existing legal authorities in New Hampshire that might attend to such an acquisition. On August 10, 2015, Eversource and others responded to the Staff's legal memorandum and discussed their understanding and interpretation of the relevant legal authorities in New Hampshire. For its part, Eversource contended that there was sufficient authority in New Hampshire to support EDCs entering into such contacts, and for the Commission to approve appropriate cost recovery of them if they met the relevant criteria.

On September 15, 2015, the Staff issued its 2015 Report on Investigation into Potential Approaches to Mitigate Wholesale Electricity Prices (the "Report"), in which it summarized and discussed the investigation it had undertaken, set out its analysis and conclusions with respect to the legal authorities of the state's EDCs and the Commission, and described its analysis of the merits of various existing proposals for addressing the natural gas supply imbalance in New Hampshire and New England. The Staff requested that interested parties be given until October 15 to respond to the Report – a request the Commission granted by secretarial letter on September 18, 2015. By this submission, Eversource provides its comments in response to the Report.

As an initial matter, Eversource notes that some of the issues in the Report, particularly as they related to the relevant legal authorities, were addressed on a conditional basis. That is, the Report contained the Staff's conclusions based upon the information available relating to possible or potential proposals, and was not intended to represent its final stance on any issues because a specific proposal had not yet been set out before the Commission. Report at 9. Similarly, and in acknowledgment of the concern that final decisions have not been made, and clear and defined proposals have not been set out for the Commission's consideration, Eversource will not attempt to address the full scope of issues contained in the Report in these comments. Eversource recognizes that many issues could only be fully discussed and determined in the context of a specific proposal. Accordingly, Eversource will focus on what it regards as broader issues underlying the Report that are worthy of additional comments and will refrain from discussing the merits of specific proposals or approaches.

B. The Staff Report Gave Inadequate Consideration to Electric Reliability in its Analysis

From the outset of its investigation, the Staff appeared to focus its attention on the issue of high and volatile wholesale electricity prices. While this is a relevant and important issue, it is not, and should not be, the exclusive measure by which the potential solutions for New Hampshire and the New England region are measured. Enhancing reliability should be a key consideration in any analysis of the merits or value of proposed solutions to the issues identified by the Commission in its Order of Notice. Though the Staff did solicit input on the issue of regional electricity reliability, it appears that in the final analysis the Staff discounted the value of enhanced reliability, and, in Eversource's opinion, did not adequately account for the value provided by improved reliability in its analysis.

In its initial comments, Eversource emphasized that it supported a solution that: "(1) will most directly and surely moderate retail electricity prices on an economically efficient basis *while ensuring reliability of supply*; and (2) can be implemented in the shortest possible timeframe balancing considerations of reliability and cost." Initial Comments of Eversource at 4 (emphasis added). It was in this context that Eversource discussed its support for expanding natural gas infrastructure in New England, *see id.* at 9, and for relying upon the capabilities of the region's EDCs to support that expansion. *Id.* at 11. Reliability of supply was, and remains, a crucial component in any analysis of the costs and benefits of any project that might deliver relief to New Hampshire customers.

Moreover, the need to enhance reliability in the region through the delivery of additional natural gas is a position supported by the regional grid operator, ISO New England Inc. ("ISO-NE"). For example, in a recent submission by ISO-NE to FERC regarding a set of proposals relating to the Winter Reliability Program, ISO-NE noted that "Both proposals are intended to address the well-documented reliability challenges created by New England's increased reliance on natural gas-fueled generation. Both are also intended to be stop-gap measures until revised incentives for capacity resources become fully effective in 2018." July 15, 2015 ISO New England Inc. and New England Power Pool, Filings of Winter Reliability Programs at 2.[1] Also, in its August draft of the 2015 Regional System Plan, ISO-NE described in detail the constraints on the natural gas infrastructure in the region and the resulting impact on electric reliability. As one example:

> Because natural gas plants make up such a large part of the generating fleet, the availability of this fuel has an immediate effect on power grid reliability. For example, the planned or unplanned outage of a major gas pipeline at any time of year may affect many thousands of megawatts of generation. Additionally, when gas-fired generators are unavailable to run or are derated, the ISO needs to commit significant amounts of additional generating resources—mostly oil and coal plants—to maintain system reliability. However, many of the oil and coal plants called on to run require a long time to start and ramp up, may have performance problems related to their age, and may not have enough fuel to run as long as needed. This creates challenges to operating the system reliably and economically. In addition, many of these resources are retiring, limiting the amount of replacement capacity that the ISO can call on during stressed system conditions.

August 28, 2015 Public Meeting Draft, *2015 Regional System Plan*, Section 8.3 at 130-131.[2] There is substantial further discussion of, and elaboration on, this issue through Sections 8.2 through 8.4 of the draft plan. The concern of ISO-NE about this potential for reliability concerns was highlighted again in a September presentation by Peter Brandien, Vice President, System Operations of ISO-NE where he stated that while ISO-NE is "reasonably confident that it can achieve reliable winter operations", the "loss of any major non-gas unit or significant disruptions

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1 Available at: http://www.iso-ne.com/static-assets/documents/2015/07/er15-2208-000_7-15-15_winter_reliability_program.pdf

2 Available at: http://www.iso-ne.com/static-assets/documents/2015/08/rsp15_public_meeting_draft.docx

in gas supply or pipeline capability will create major challenges for ISO operations." September 17, 2015 presentation of *2015-2016 Winter Preparedness* to FERC by ISO-NE at slide 2.[3] The need to address reliability is real and an important part of any solution for New England.

Furthermore, in the on-going docket in Massachusetts investigating natural gas capacity in New England, the Massachusetts Department of Energy Resources ("DOER") contended that "gains from additional natural gas capacity can reduce ratepayer costs, diversify the energy mix, and secure electric system reliability." October 2, 2015 Order of the Massachusetts Department of Public Utilities in Docket No. 15-37 at 3.[4] In evaluating the position of the DOER, and others, the Massachusetts Department of Public Utilities ("DPU") concluded that "the Department finds that DOER and other parties to this proceeding have provided sufficient information to support DOER's assessment of current New England wholesale market conditions" and that the weight of the evidence presented to it showed "that increasing regional gas capacity will lead to lower wholesale gas and electricity prices." *Id.* at 12. Additionally, the DPU concluded that should any EDC seek to procure natural gas capacity, in seeking approval of such procurement the EDC "must show that the price of the resource is competitive and that the contract satisfies other non-price factors such as reliability of service and diversity of supply." *Id.* at 43-44. Thus, the effect on reliability is viewed by the DPU as part of the analysis underlying such contracts.

In the Report, the Staff discussed and analyzed a number of projects that have been proposed to address the natural gas infrastructure limitations in the region, including the Access Northeast and Northeast Energy Direct ("NED") projects. In its benefit-cost analysis relating to the Access Northeast project, the Staff determined what it believed to be the value of that project and, in contrast to the above-referenced analyses on the importance of reliability, expressly noted

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[3] Available at: http://www.ferc.gov/industries/electric/indus-act/rto/iso-ne-presentation.pdf
[4] Available at: http://web1.env.state.ma.us/DPU/FileRoomAPI/api/Attachments/Get/?path=15-37%2f1537_Order_10215.pdf

that its valuation did not take into account enhanced grid reliability. Report at 22. It reached a similar conclusion with respect to the NED project. Report at 29. While the Report discusses the issues surrounding grid reliability and the enhancements that would come from additional natural gas supply, in its final analysis, the Staff discounted the reliability concern. In Eversource's opinion, this analysis did not properly account for the value that would accrue to New Hampshire and New England through the enhanced electric reliability that would be provided by additional natural gas delivery infrastructure. Providing additional, reliable gas supplies to New England's electric generators will provide more than economic value, but will also support a more robust and resilient electric grid. Eversource recommends that the Commission appropriately consider that value in the context of any proposals that may come before it.

In addition to the above, Eversource notes that in the Report the Staff stated that it did not understand why, for example, the Access Northeast project focused on reliability when ISO-NE had only recently implemented its Pay for Performance program which, according to the Staff, "was designed to address among other things the reliability risks associated with New England's growing dependence on natural gas and attendant vulnerability to interruptions in gas supply." Report at 18. ISO-NE has the responsibility to develop market rules but it cannot order the construction of facilities. With recognition of this limitation, ISO-NE implemented its Pay for Performance rule, where, if generators fail to generate when instructed, they will pay significant penalties. However, Pay for Performance does not require generators to secure firm gas supplies and, in fact, some generators may actually find it more economical to pay penalties rather than to sign long term contracts for natural gas, in which case the mere implementation of penalties does not assure reliability. ISO-NE itself has stated that although Pay for Performance will likely encourage generators to be more available , it may only lead to adding dual fuel capability or firming up gas supply.[5,6] The Staff, therefore, should not defer on the issue of reliability to the ISO-NE's ability to implement market rules alone.

Further, the underlying supply and reliability concern is a winter peak day issue. Generating resources cannot recoup firm gas fixed costs competing with resources using lower cost secondary gas capacity most days of the year. Further, adding more gas capacity will lower gas and power prices therefore erode overall energy margins of non-gas resources. Thus, even if new incremental facilities are built, the supply stack in New England will continue to be dominated by facilities without firm capacity contracts since those would be the most economic on most days of the year, other than peak winter days. In the end, the changes advocated or implemented by ISO-NE may not have a substantial effect on the underlying reliability concerns and are not a basis for the Staff or the Commission to defer to ISO-NE on the issue.

C. STATE ROLE IN RESOURCE PROCUREMENT

In the Report, the Staff stated that its:

> principal recommendation in this report is that if the Commission chooses to participate in a regional procurement of gas capacity (whether pipeline or LNG) for the benefit of electricity consumers it should condition that participation on

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[5] *See, e.g.*, June , 6, 2013 Answer of ISO-NE in FERC Docket No. EL13-66-000 at 10. "[T]he [ISO-NE] Tariff does not impose a 'firm fuel obligation' or any other specific obligation with respect to fuel procurement, and the ISO has not made the assertion or interpretation . . . that the Tariff does impose a firm (or other) fuel obligation. . . . For example, as an alternative to natural gas arrangements with firm transportation rights, a generator could utilize dual-fuel capability, services from an LNG provider, or other flexible gas supply options." Available at: http://www.iso-ne.com/static-assets/documents/regulatory/ferc/filings/2013/jun/el13_66_000_6_6_13_ans_nepga_complaint.pdf

[6] *See also* August 28, 2015 Public Meeting Draft, 2015 Regional System Plan, Section 8.4.3.4 at 138 Stating that Pay for Performance will create incentives to: "Make investments to ensure performance: The specific investment is not prescribed. Examples of the many available options include ensuring robust maintenance practices and adequate staffing, upgrading to dual-fuel capability, entering in noninterruptible gas-supply agreements, and investing in new fast-responding assets. Adding dual-fuel capability, however, could increase generator emissions and fuel costs." According to the Draft RSP, "By creating incentives for generators to firm up their fuel supply, pay for performance may indirectly provide incentives for the development of oil or LNG fuel storage or gas pipeline infrastructure." *Id.*

> the procurement being conducted through an open and transparent process that is demonstrably competitive and results in the lowest possible cost to consumers.

Report at 4. The Staff then went beyond this general call for an open and transparent process and recommended that:

> Despite the significant work done by project sponsors in organizing and hosting the open seasons, and by the participating EDCs in evaluating the various projects, Staff strongly recommends that if the New England states decide as a group to proceed with the procurement of incremental pipeline capacity on a regional basis that procurement not be based on the results of open seasons.

Report at 46. Further, Staff stated that "we believe it is imperative that the states develop and post for comment an alternative competitive solicitation process" and that "the terms and conditions for the pipeline capacity RFP including the criteria for evaluating the bids should be the responsibility of the states assisted by an independent consulting firm with extensive expertise in gas and electricity procurement matters." *Id.* Respectfully, Eversource disagrees with the procurement process advocated by the Staff.

Utilities like Eversource have long been in the business of seeking, evaluating and securing energy resources to serve the needs of customers. Utilities like Eversource have the personnel, expertise, financial capability and knowledge, and the risk analysis experience to effectively evaluate proposals for finding and selecting energy resources to serve the state and the region and they have done so through processes that have been long tested in the area. Moreover, procuring such resources is part of the charge of public utilities in this state. *See* RSA 378:37 and Eversource's August 10, 2015 Response to Staff's Legal Memorandum in Docket No. IR 15-124 at 5-7. The states, even with the assistance of a consultant, are not as effectively equipped to engage in the analysis and negotiation for such supplies. To reverse the positions as recommended by Staff would result in states determining, based upon their own criteria, what they believe to be the best options without necessarily accounting for the impacts or effects on the utilities, their operations, financial structures, risk profiles, and other factors. In short, rather than regulating the companies, by engaging in such a process the states would be actually determining how they conduct their business and would be upsetting the regulatory compact.

Staff's stated reason for its recommendation to have the states, rather than the utilities, develop and evaluate an RFP is its concern that many of the companies that would likely participate in a pipeline open season are affiliated with pipeline project sponsors or participants. In other words, Staff seeks to change the manner in which energy supplies are procured for New Hampshire and New England out of its concern for potential conflicts of interest. Staff's concerns, however, do not merit such a substantial departure from established processes.

As a first matter, any agreements ultimately created will be put before the Commission for its review and approval and the Commission, and any interested parties, will have the opportunity to review and evaluate the agreement and the circumstances under which it was negotiated and completed. As Eversource noted in its response to Staff's legal memorandum:

> In line with the criteria set out by Staff, Eversource has previously acknowledged that as the proponent of the gas capacity contract, the EDC would have the burden to establish the economic merits of its proposal, and to show how it considered and analyzed the benefits in comparison to other potential solutions. Moreover, Eversource recognizes that it will need to be prepared to demonstrate that the proposal is the product of a fair reasonable procurement solicitation process; that the costs are economic, and that shareholder interests were not placed ahead of ratepayer interests and consistency with affiliated transaction rules.

Eversource's August 10, 2015 Response to Staff's Legal Memorandum in Docket No. IR 15-124 at 16 (internal quotations, citations and brackets omitted). The burden to demonstrate the fairness of the contract in its development and execution would belong with the EDC and there would be a thorough and public process for determining if any contract was appropriately negotiated and provides meaningful benefits to New Hampshire customers.

Furthermore, under Staff's method, the review and approval of the regulatory agencies would not be eliminated or curtailed, but would only be postponed. According to Staff, even following the issuance of an RFP by the states for pipeline capacity, and the resulting state analysis of the bid responses on price and non-price factors, and the selection of a winning bidder or set of bidders, there would still be a requirement for the EDCs to negotiate agreements with the winning bidders for transportation service and then to seek regulatory review and approval of those contracts. Report at 46-47. Not only could this process make procurement less efficient by introducing multiple states into the process, but it would also not alleviate the Staff's concerns. If the winning bidder or bidders as selected by the state are affiliated with one or more EDCs, the same concerns that drove the Staff to recommend this new process would remain. Thus, this process would not only represent a substantial shift in New Hampshire's regulation of its EDCs but would not cure the problem it seems intended to address. Therefore, Eversource recommends that the Commission rely upon existing processes and methods and that, when appropriate, it review and evaluate projects or proposals that come before it through existing standards and procedures.

D. Conclusion

As Eversource has noted throughout this process, it supports long-term contracts with EDCs as the solution to the issues identified by the Commission that: (1) will most directly moderate retail electricity prices on an economically efficient basis; and (2) can be implemented in the shortest possible timeframe balancing considerations of reliability and cost. Moreover, reviewing any proposed solution, the Commission should consider not just the ultimate effect on wholesale and retail prices, but the overall effect on energy supplies and electric reliability in the area. The Commission has established means for addressing such proposals and should use this opportunity to establish a framework for reviewing potential future EDC contract proposals through its existing framework. In so doing, the Commission will help developers of the needed infrastructure reach their goals of providing stable, secure, reliable energy to customers at reasonable cost.