

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

Docket No. 2017-0007

Appeals of Public Service Company of New Hampshire d/b/a Eversource Energy  
and Algonquin Gas Transmission, LLC

**MOTION FOR LEAVE OF COURT**  
**TO SUPPLEMENT RECORD**

NOW COMES Conservation Law Foundation (“CLF”), which on this day filed an appellee brief in the above-captioned matter, and respectfully moves for leave of Court to supplement the record in the above-referenced appeal, as follows:

1. This case is an appeal pursuant to RSA 541:6 and RSA 365:21 by Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) and Algonquin Gas Transmission, LLC (“Algonquin”) (collectively “Appellants”) from a decision of the Public Utilities Commission (“PUC”). In their appeal, Appellants challenge the PUC’s dismissal of a petition in which Eversource, an electric utility, sought permission to (1) enter a twenty-year contract with Algonquin to purchase natural gas capacity on the proposed Access Northeast natural gas pipeline, (2) release such natural gas capacity to gas-fired electric generators in New England, and (3) recover costs associated with the twenty-year contract from ratepayers. *See* PUC Order No. 25,950 (Oct. 6, 2016), Appellants’ Joint App. to Appeal by Petition at 1.
2. The PUC rendered its decision based solely on a legal interpretation of New Hampshire’s Electric Utility Restructuring statute, RSA Chapter 374-F (“Restructuring Act”), and certain other utility statutes advocated by Appellants. *See id.* Specifically, it concluded that Eversource’s multi-part gas capacity proposal would violate the Restructuring Act and was otherwise impermissible under New Hampshire law. *Id.* The PUC rendered

these legal determinations based on legal briefing by numerous parties, pursuant to a bifurcated process in which it rendered a threshold determination regarding the legality of Eversource's gas capacity proposal. *See* PUC Order of Notice, Appellants' Joint App. to Appeal by Petition at 297.

3. Where, as here, the matter on appeal is premised on threshold legal determinations and not based on evidentiary findings, the Court's "review is limited to questions of law." *See In re N.H.P.U.C. Statewide Elect. Utility Restructuring Plan*, 143 N.H. 233, 237 (1998) (*citing* RSA 365:20; Sup. Ct. R. 9).
4. Appellants make repeated factual assertions in their briefs that Eversource's proposed multi-part gas capacity scheme is justified by conditions in the electric market. *See, e.g.*, Eversource Br. at 12, 14; Algonquin Br. at 3-5. In addition to being both irrelevant for purposes of the Court's review and premised on an underlying record in which such claims were not subject to discovery, cross-examination, or experts with countervailing opinions, Appellants' assertions also are based in part on two documents that were not included in the PUC's administrative record, namely a September 26, 2016 Union Leader article and a December 5, 2016 ISO-New England press release.<sup>1</sup> *See* Appellants' Joint Appendix to Briefs at 508-511.
5. While the extra-record materials submitted by Appellants should not be considered because they were not part of the record before the PUC,<sup>2</sup> should the Court elect to consider Appellants' extra-record materials and argument associated therewith, CLF

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<sup>1</sup> Eversource referenced, and provided a website address for, the Union Leader article in its Motion for Reconsideration filed with the PUC but did not provide the document, in part or in full.

<sup>2</sup> *See* RSA 541:14 (in appeals from the PUC "[n]o new or additional evidence shall be introduced in the supreme court, but the case shall be determined upon the record and evidence transferred."). *See also* N.H. Sup. Ct. Rules. 10(2), 13(1).

requests, in the interests of fairness and to provide the Court with further context, that the record be supplemented to include the contents of the appendix to its brief, which contains a single document: a recent report by the University of New Hampshire's Carsey School of Public Policy titled "New Hampshire's Electricity Future: Cost, Reliability, and Risk."<sup>3</sup> Analyzing the New England electric market, and premised on an extensive study by the report's authors, the UNH report paints a picture very different from the one-sided, untested claims asserted by Appellants, concluding, *inter alia*:

We find evidence that near-term levels of demand and supply pose no threat to grid reliability, that current pipeline capacity is adequate, and that better contracting practices and other "soft-infrastructure" changes combined with the promotion of energy efficiency and renewable energy will have at least as large a return on investment as expanded pipeline capacity, without exposing ratepayers to higher electricity rates stemming from expensive infrastructure investments.

Appendix to Conservation Law Foundation's Brief at 2.

6. The Office of the Consumer Advocate concurs with the relief requested in this motion.
7. NextEra Energy Resources, LLC takes no position.
8. The Coalition to Lower Electric Costs, which is on the service list in this docket but is not participating in briefing, indicates through counsel that it does not assent but will not file an objection.
9. Eversource and Algonquin object to the relief requested herein but do not object to CLF's reference to the UNH study in its briefing. Out of an abundance of caution, because the UNH report in CLF's Appendix to Brief is extra-record material, CLF nonetheless requests leave of Court to supplement the record.

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<sup>3</sup> Although not voluminous, the document is being provided in an appendix in order that it be segregated for purposes of this motion.

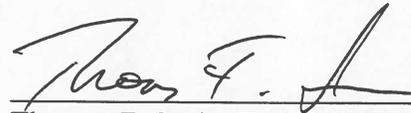
WHEREFORE, Conservation Law Foundation respectfully requests that the Court:

- A. Grant it leave to supplement the record on appeal with the report contained in the Appendix to Conservation Law Foundation's Brief; and
- B. Grant such other relief as it deems appropriate.

Respectfully submitted,

CONSERVATION LAW FOUNDATION

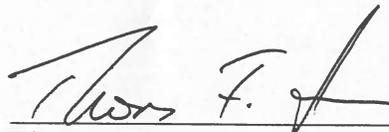
By Its Attorney,



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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, a copy of the within motion has been sent via first-class, U.S. Mail, to counsel for all parties of record.



Thomas F. Irwin

Dated: June 29, 2017