

**THE STATE OF NEW HAMPSHIRE
BEFORE THE 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.**

INITIAL BRIEF OF CONSERVATION LAW FOUNDATION

Pursuant to the New Hampshire Public Utility Commission’s (“Commission”) October 25, 2016 Order of Notice in the above-captioned matter, Conservation Law Foundation (“CLF”) submits the following briefing relative to the legality of the proposed Power Purchase Agreement (“PPA”) between Petitioner Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) and Hydro Renewable Energy Inc. that is the subject of this docket.

I. THE PROPOSED PPA

PSNH’s corporate affiliate, Northern Pass Transmission, LLC (NPT), is currently seeking permit approval for construction and operation of the so-called Northern Pass electric transmission line, a project proposed to transmit 1,090 MW of electricity generated by Hydro Quebec, a Canadian crown corporation. The proposed transmission line would span 192 miles – from Pittsburg, New Hampshire to Deerfield, New Hampshire, where it would enter the New England grid, and would be located within 160 miles of right-of-way owned by PSNH.

PSNH affiliate NPT has encountered substantial opposition to its project in the processes pending before the N.H. Site Evaluation Committee and U.S. Department of Energy.¹ To

¹ More than 160 parties opposed to the proposed Northern Pass project, including individuals, municipalities, and non-profit organizations, sought intervention in the N.H. Site Evaluation Committee’s Docket No. 2015-06. The U.S. Department of Energy’s federal process has experienced similarly broad public engagement in opposition to the proposed project.

enhance its prospects in those permitting processes, NPT has developed and actively marketed a package branded as its “Forward NH Plan,” in which it promises, *inter alia*, funds for a variety of projects, tax revenues for communities, employment opportunities, and lower energy costs.²

Included among its promises for lower energy costs, the Forward NH Plan explains:

“Eversource, the parent company of Northern Pass, is negotiating a Power Purchase Agreement with Hydro-Quebec that would provide additional energy cost savings and stability for Eversource NH customers.”³

On June 28, 2016, PSNH filed a petition seeking Commission approval of a PPA with Hydro Renewable Energy Inc., an indirect wholly-owned subsidiary of Hydro-Quebec. According to PSNH, the PPA would involve the purchase, over a twenty-year term, of firm, on-peak energy equal to approximately 100 megawatts. The energy that would be the subject of the PPA would be transmitted *via* PSNH affiliate NPT’s proposed Northern Pass electric transmission line, a project that – if successfully permitted – would inure to the benefit of PSNH and its corporate parent, Eversource Energy. The proposed PPA is not the product of a competitive solicitation.

II. THE PROPOSED PPA VIOLATES NEW HAMPSHIRE’S RESTRUCTURING LAW

Clearly intended to enhance the permitting prospects for NPT’s proposed Northern Pass transmission project,⁴ and to thereby benefit NPT, PSNH, and their corporate parent Eversource

² See <http://www.northernpass.us/forward-nh.htm>.

³ See <http://www.northernpass.us/lower-energy-costs.htm>.

⁴ As stated by the Office of the Consumer Advocate:

To state the obvious, in essence what is happening here is that Eversource – which owns both Northern Pass Transmission and PSNH – is proposing to commit approximately ten percent of the project to its retail customers in New Hampshire in the hope that this will defuse the widespread public opposition to the [Northern Pass] project, bolster the case for approval of the transmission project by the Site Evaluation Committee, and demonstrate to the satisfaction of the Commission

Energy, the proposed PPA violates New Hampshire’s restructuring law, RSA Chapter 374-F, including essential elements of that law as recently interpreted by the Commission in its October 6, 2016 Order (No. 25,950) in DE-16-241 (“Order”).

A. The Proposed PPA is Unlawful Because It Exceeds PSNH’s Authority as an EDC to Supply Competitively Procured Energy to Default Service Customers

In furtherance of its goal to enhance the permitting prospects of its affiliate’s Northern Pass transmission project, PSNH proposes a PPA to purchase power (1) not solely for its default service customers, and (2) absent a competitive procurement. Under New Hampshire’s restructuring law, and consistent with the Commission’s recent Order, these elements of the proposed PPA render it fatally flawed.

RSA 374-F:3, V does not provide PSNH, as an EDC, the requisite authority to enter the proposed PPA. To the contrary, the statute defines a more limited role for EDCs in a post-restructured environment, establishing that EDCs “have an obligation to connect all customers in [their] service territory to the distribution system,” and that default service “procured through the competitive market” must be provided “to provide a safety net and to assure universal access and system integrity.” *See* RSA 374-F:3, V(a), (c).⁵

The Commission, in its Order addressing the role of Eversource as an EDC under New Hampshire’s restructuring law, recently stated:

While natural gas utilities continue to arrange natural gas supplies for their residential and small commercial customers, following restructuring, electric utilities do not arrange electric supply for their customers. Instead, pursuant to RSA 374-F:3, V(c), electric

and the public that Northern Pass will yield palpable benefits to electric consumers in the Granite State.

See Opposition of the Office of the Consumer Advocate to Motion for Confidential Treatment, Docket No. DE 16-693 (July 1, 2016) at 5.

⁵ RSA 374-F:3, V also establishes a role for EDCs to provide transition service, “procured through competitive means,” as competitive markets emerge. The proposed PPA, which would have a term of twenty years, would not provide transition service.

utilities provide electric supply *through default service*, which is offered only to those customers who have not opted to purchase their electricity from a competitive supplier. Default service is designed to be a safety net for customers who do not choose an independent competitive supplier. Further, default service *must be competitively procured*.”

Order at 11-12 (emphases added). *See also id.* at 12 (stating that EDCs are no longer required to conduct long-term planning for electric supply and that planning requirements, such as those contained in RSA 378:37 and RSA 378:38, “are limited to procurements of electric supply for the EDC’s default service customers.”).

PSNH’s proposed PPA is neither limited to its default service customers, nor is it the result of a competitive solicitation. Accordingly, it violates the clear language New Hampshire’s restructuring law and the Commission’s recent interpretation thereof.

B. The Proposed PPA is Unlawful Because It Exceeds the Boundaries of PSNH’s Role as EDC in New Hampshire’s Restructured Electric Utility Market

PSNH seeks to justify the proposed PPA – again, a tool clearly intended to enhance its corporate affiliate’s permitting prospects for the Northern Pass electric transmission project – based on a model that exceeds PSNH’s role as an EDC. PSNH attempts to justify the PPA as an approach that would reduce market volatility and enhance price stability and be “consistent with the obligation to plan for adequate resources to meet the expected demands of electric customers.” *See* Pre-Filed Direct Testimony of James G. Daly at 5, 10; Petition at 3. PSNH misapprehends its new, more limited role as an EDC in New Hampshire’s post-restructuring environment.⁶

⁶ PSNH describes itself in its Petition as “a public utility . . . that provides electric generation, transmission and distribution services in New Hampshire. *See* Petition at 1. Since having filed its Petition, the Commission has approved a settlement agreement requiring PSNH to proceed with divestiture of its electric generating facilities as well as the auction design for such divestiture. *See* N.H. Pub. Utilities Comm’n, Docket No. DE 14-238, Order No. 25,920 (July 1, 2016); N.H. Pub. Utilities Comm’n, Docket No. DE 16-817, Order No. 25,967 (Nov. 10, 2016).

Pursuant to New Hampshire’s restructuring law, RSA Chapter 374-F, EDCs such as PSNH are now engaged solely in the distribution of electricity, as opposed to electric generation. Emphasizing the limited role of EDCs in a restructured environment, the Commission recently concluded that EDCs are not “responsible for either the reliability of the generation supply, or the price of such supply.” *See* Order at 10. As discussed above, the Commission also rejected the notion that EDCs must engage in long-term planning for electric supply, stating that EDCs are limited in their planning “to procurements of electric supply for the EDC’s default customers.” *Id.* at 12.

In light of the foregoing, including the Commission’s appropriate interpretation of the role of EDCs in New Hampshire’s restructured electric utility industry, considerations advocated by PSNH as justification for entering the PPA are beyond the purview of PSNH’s role as an EDC.

III. THE PPA MUST BE REJECTED BECAUSE IT IS NOT THE RESULT OF A COMPETITIVE SOLICITATION AND IS INTENDED TO DIRECTLY BENEFIT PSNH’S AFFILIATES

The PPA – the complete details of which have not been made public, or otherwise available to the parties in this proceeding – is the result of closed-door negotiations between PSNH’s corporate parent, Eversource Energy, and Hydro-Quebec. Its clear intent is to advance a major project in which PSNH, PSNH affiliate NPT, PSNH corporate parent Eversource Energy, and Hydro-Quebec have significant financial interests. Separate and apart from the competitive procurement obligations imposed by New Hampshire’s restructuring law, the closed-door, non-competitive nature of the PPA flies in the face of strong statements by the Commission in its final order in Docket No. IR 15-124.

In Docket No. IR 15-124, the precursor to Docket No. DE 16-241, the Commission investigated the legality of EDCs acquiring natural gas capacity. Although deferring its legal conclusion pertaining to New Hampshire's restructuring statute for a later docket involving specific proposal (ultimately, a proposal by PSNH in DE 16-241), the Commission stated the following:

[T]he 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. . . . *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.*

See N.H. Public Utilities Comm'n, Docket No. IR 15-124, Order No. 25,860 (Jan. 19, 2016) at 4-5 (emphases added).

As discussed in Part I, above, the proposed PPA violates New Hampshire restructuring law, RSA Chapter 374-F, including important recent interpretations of that law by the Commission. However, even if, assuming *arguendo*, the PPA could somehow be determined lawful in New Hampshire's restructured electric utility industry, both PSNH's failure to conduct

an open, transparent, competitive bidding process, and its inextricable ties to Northern Pass project partners NPT, Eversource Energy and Hydro-Quebec, render the PPA unlawful.

IV. CONCLUSION

For the foregoing reasons, and reserving the right to engage in further briefing in accordance with the Commission's schedule, CLF urges the Commission to dismiss PSNH's petition in this proceeding on the grounds that the PPA violates New Hampshire's restructuring law and, further, that it is the product of a non-competitive, utterly non-transparent process in concert with corporate affiliates and business partners with strong interests in advancing the proposed Northern Pass transmission project.

Respectfully submitted,

CONSERVATION LAW FOUNDATION



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition has on this 21st day of November, 2016 been sent by email to the service list in this docket.

A handwritten signature in black ink, appearing to read "Thomas F. Irwin", written over a horizontal line.

Thomas F. Irwin (NH Bar No. 11302)