

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

November 7, 2016 - 10:05 a.m.
Concord, New Hampshire

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RE: DE 16-693
EVERSOURCE ENERGY:
Petition for Approval of a Power
Purchase Agreement with Hydro
Renewable Energy, Inc.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Eversource Energy:

Robert A. Bersak, Esq.
Matthew J. Fossum, Esq.

Reptg. NextEra Energy Resources, LLC:

Douglas L. Patch, Esq. (Orr & Reno)
Brian J. Murphy, Esq.
Meghan Leahy, Dir./Reg. & Leg. Affairs

Reptg. New England Ratepayers Assn.:

Marc Brown, President

Reptg. Conservation Law Foundation:

Thomas Irwin, Esq.

Reptg. New England Power Generators
Assn.:

Richard A. Kanoff, Esq.
Carol Holahan, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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ORIGINAL TRANSCRIPT

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APPEARANCES: (C o n t i n u e d)

Reptg. Office of Energy & Planning:

Christopher G. Aslin, Esq.

Asst. Attorney General

N.H. Dept. of Justice

Reptg. Residential Ratepayers:

Donald M. Kreis, Esq., Consumer Adv.

Pradip Chattopadhyay, Asst. Cons. Adv.

Office of Consumer Advocate

Reptg. PUC Staff:

Alexander F. Speidel, Esq.

George McCluskey, Electric Division

Daniel Phelan, Electric Division

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I N D E X

PAGE NO.

STATEMENTS RE: LEGAL MEMORANDA BY:

Mr. Bersak	7
Mr. Patch	10
Mr. Kreis	12
Mr. Speidel	13

FURTHER COMMENTS BY:

Mr. Patch	15
Mr. Speidel	15

1 **P R O C E E D I N G**

2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here this morning in Docket
4 16-693, which is a proposal by Eversource to
5 purchase power from a Hydro-Quebec affiliate.
6 We have a number of interventions, we have a
7 Motion for Confidentiality, a suggestion from
8 OCA as to how to proceed with that.

9 But, before we do anything else,
10 let's take appearances.

11 MR. BERSAK: Good morning,
12 Commissioners. I'm Robert Bersak. I'm here on
13 behalf of Eversource Energy. With me today is
14 my colleague, Matthew Fossum.

15 MR. PATCH: Good morning,
16 Commissioners. Doug Patch, with the law firm
17 of Orr & Reno, on behalf of NextEra Energy
18 Resources, LLC. And with me this morning are
19 Brian Murphy and Meghan Leahy.

20 MR. BROWN: Marc Brown, New England
21 Ratepayers Association.

22 MR. IRWIN: Good morning,
23 Commissioners. Tom Irwin, Conservation Law
24 Foundation.

1 MR. ASLIN: Good morning. Chris
2 Aslin, on behalf of the Office of Energy and
3 Planning.

4 MR. KANOFF: And good morning.
5 Richard Kanoff, on behalf of the New England
6 Power Generators Association.

7 MR. KREIS: Good morning, Mr.
8 Chairman. I am Donald Kreis, of the Office of
9 the Consumer Advocate. And with me today is
10 Pradip Chattopadhyay of our staff.

11 MR. SPEIDEL: Good morning,
12 Commissioners. Alexander Speidel, representing
13 the Staff of the Commission. And I have with
14 me George McCluskey, Assistant Director of the
15 Electric Division for Wholesale Power Markets,
16 and also Dan Phelan, who is an analyst in the
17 same division. Thank you.

18 CHAIRMAN HONIGBERG: I think that's
19 the first time in a number of dockets where
20 there are multiple intervenors where all of the
21 intervenors are here. So refreshing to have
22 people actually show interest enough to come to
23 the prehearing conference.

24 I know we have a number of things to

1 do. We do want to hear from everyone as to
2 their views as to how this should proceed. Mr.
3 Kreis put a stake in the ground with his letter
4 that came in within the last day or two. We
5 could start with a discussion of
6 confidentiality, which I think will be short,
7 or we could start with the suggestion that we
8 had in our Order of Notice that we're going
9 to -- we want to take legal briefs on the
10 overall legality of this before moving into a
11 full exploration of the merits.

12 My inclination is to discuss that
13 matter first, because it helps answer the
14 confidentiality question, if it's decided one
15 way.

16 So, are there other issues that we'll
17 need to discuss? Obviously, there are motions
18 for intervention, which fall out the same way,
19 I think. If we are going to take legal briefs,
20 anybody who wants to file a legal brief can do
21 that. And we'll take everybody's best
22 arguments and work with them. You don't
23 necessarily -- we don't need to rule
24 specifically on interventions, if that's the

1 way we proceed.

2 Are there other things that are out
3 there and pending that I'm missing?

4 *[No verbal response.]*

5 CHAIRMAN HONIGBERG: All right.

6 Mr. Bersak, why don't you start us off with
7 your thoughts on whether we should take legal
8 memoranda before going to the merits.

9 MR. BERSAK: Thank you. I think you
10 pretty much summarized what the Company's
11 thoughts on the Consumer Advocate's proposal
12 are. You know, the Consumer Advocate's
13 suggestion to undo the phased approach that the
14 Commission set forth in the Order of Notice,
15 and we've considered that, but we disagree with
16 that proposal, probably because of the reasons
17 that you set forth.

18 Because, in their proposal, the
19 Consumer Advocate not only wants to do away
20 with the phased approach, but also wants a
21 ruling from the Bench on the confidentiality
22 issue, and they are linked. Because what the
23 Consumer Advocate is asking is that the
24 Commission make a decision to reveal the

1 confidential pricing terms of the Power
2 Purchase Agreement before the Commission even
3 decides if it's going to get to the merits of
4 that Agreement. And that puts our contracting
5 partner, Hydro Renewable Energy, which is a
6 competitor in the marketplace, you know, in a
7 difficult situation, where it has to have its
8 pricing terms revealed without any certainty
9 that the substance of that Agreement will
10 actually be looked at.

11 Plus, as you said, at this point we
12 don't even know who the intervenors are going
13 to be. To the extent that the Commission is
14 going to allow everybody to file briefs, should
15 we go through the phased approach, that's fine.
16 But, if we get to the substance, perhaps the
17 Commission could look at the standing issues of
18 the various intervenors at that point to
19 determine who should be able to participate in
20 Phase 2, as set forth in the Order of Notice.

21 And, frankly, the elimination of the
22 phased approach at this point really will not
23 speed this docket along. You know, the Order
24 of Notice set out the filing of briefs nine

1 business days from today. So, it's not like
2 we're going to save a lot of time if we do away
3 with that and just go with a normal
4 consolidated docket. Because, if we don't file
5 the legal briefs first, you know, the
6 confidentiality issues, the intervenor issues
7 become forefront. Plus, we have discovery, the
8 inevitable discovery problems, intervenors
9 testimony, discovery on that, and then, only
10 then, would the Commission decide if it's even
11 going to consider the substance of the Power
12 Purchase Agreement.

13 So, we think that the process set
14 forth in the Order of Notice makes a lot of
15 sense, for a number of issues, the
16 confidentiality, the intervenor status, and
17 others.

18 So, we appreciate the Consumer
19 Advocate suggesting a way to move this docket
20 forward, we just don't think it works
21 particularly well in this situation.

22 CHAIRMAN HONIGBERG: Thank you, Mr.
23 Bersak. Who wants to be next?

24 Looks like Mr. Patch is grabbing a

1 microphone.

2 MR. PATCH: Thank you, Mr. Chairman.
3 We also disagree with the Consumer Advocate.
4 We believe that the Commission got it right, in
5 terms of the process that it laid out in the
6 Order of Notice.

7 We think, as a matter of
8 administrative efficiency, this makes sense.
9 Depending, of course, on how the Commission
10 rules on the legal issues, this approach could
11 save the Commission, the OCA, and whatever
12 parties are allowed to intervene, a lot of time
13 and resources.

14 As the OCA noted in its letter, the
15 approach the Commission outlined in the Order
16 of Notice is similar to the approach that was
17 used in DE 16-241. So, there's clear precedent
18 for this approach in a docket that raised very
19 similar issues.

20 We disagree with the OCA's contention
21 that this is just a "garden variety wholesale
22 power contract between a distribution utility
23 and a wholesale power producer". We think what
24 Eversource is proposing here is very unique,

1 and, in many ways, resembles what the
2 Commission noted in Order 25,950 in the other
3 docket, was a contract that is a component of
4 generation services. And, as the Commission
5 also noted in that order, it did not agree that
6 an EDC is responsible for either the
7 reliability of the generation supply or the
8 price of such supply, that the function had
9 been shifted to the competitive marketplace for
10 retail generation service. And, on its face,
11 the PPA being proposed that is the subject of
12 this docket is far from being what the OCA
13 calls a "garden variety wholesale power
14 contract".

15 And, therefore, we think the approach
16 the Commission has laid out is an appropriate
17 one. So, we would urge you to stick with that
18 approach.

19 CHAIRMAN HONIGBERG: Thank you, Mr.
20 Patch. Who else wants to speak on this?

21 Mr. Speidel -- well, Mr. Speidel, do
22 you want to go before or after Mr. Kreis?

23 MR. SPEIDEL: I'll go after Mr.
24 Kreis.

1 CHAIRMAN HONIGBERG: All right. Mr.
2 Kreis.

3 MR. KREIS: That seems like a
4 rational choice on behalf of Staff. And I
5 guess, since everybody is disagreeing with the
6 OCA, that must mean that we are offering up a
7 very sensible proposal for how to proceed with
8 this docket.

9 In the end, Mr. Chairman, what we
10 want to do is whatever the Commission feels is
11 best for managing this proceeding. I, as I
12 thought about this last week, was trying to
13 come up with a approach to this case that would
14 simplify it and make it less of a circus. And,
15 really, that is the spirit of the set of
16 suggestions that I filed with the Commission on
17 Friday afternoon. And they truly are
18 suggestions. I don't really intend to try to
19 make a forceful argument, and I definitely
20 don't mean to suggest that there is only one
21 approach to this docket that the Commission can
22 adopt.

23 And, ultimately, if you feel that the
24 approach that's in the Order of Notice and the

1 way the docket is phased is the way that you
2 would like to handle the case, we're willing to
3 proceed on that basis.

4 We will, in that situation,
5 forcefully argue that the proposal that the
6 Company has put forward here is not consistent
7 with New Hampshire law.

8 CHAIRMAN HONIGBERG: Thank you, Mr.
9 Kreis. Mr. Speidel.

10 MR. SPEIDEL: Thank you, Mr.
11 Chairman. We would echo the comments of
12 certain of the parties and the Company, that
13 this proceeding's structure as it's currently
14 established within the Order of Notice is a
15 good way to save time and resources. There
16 will be reply briefs and original legal briefs
17 tendered to the Commission for its
18 consideration within the month. There's not
19 going to be substantive discovery or testimony
20 being drafted during that period. This is
21 simply a question on the legal issues.

22 And, furthermore, we can defer the
23 question of intervention, we think the
24 Commission can defer that question until it's

1 ruled on the issue of legality. Because any
2 person, any interested person is welcome to
3 file a legal brief. And I think the
4 Commission's posture regarding a lot of issues
5 will be shaped by the course of the proceeding
6 after the legal briefs are tendered.

7 CHAIRMAN HONIGBERG: Do any of the
8 others who haven't spoken want to offer
9 anything up on this issue?

10 *[No verbal response.]*

11 CHAIRMAN HONIGBERG: All right.
12 Seems pretty clear that Mr. Kreis's suggestions
13 didn't find receptive audiences among the
14 parties and the prospective intervenors. And,
15 in all honesty, we think it's appropriate to
16 proceed the way we laid it out in the Order of
17 Notice. So, that's I think what we're going to
18 do.

19 Are people satisfied with the
20 briefing schedule? Is there any dispute or
21 need to discuss that?

22 *[No verbal response.]*

23 CHAIRMAN HONIGBERG: Does anyone want
24 to offer up other thoughts on anything else? I

1 mean, you can -- if you want to talk about the
2 merits of the proposal, you can do that. If
3 you want to preview a legal argument, as I
4 think Mr. Patch did, you're welcome to do that.
5 Does anyone want to share any other thoughts
6 with us at this time?

7 I see shaking -- oh, yes. Mr. Patch.

8 MR. PATCH: Mr. Chairman, I just
9 wanted to make sure that it was clear that,
10 based on what you said, we will have the
11 opportunity to file a legal brief. And I had a
12 number of arguments prepared to, in response to
13 what the OCA and Eversource had filed, but, you
14 know, contesting our petition to intervene.

15 CHAIRMAN HONIGBERG: No. You and the
16 other prospective intervenors are welcome to
17 file legal memoranda on the schedule that has
18 been set.

19 Anything else that we want to be deal
20 with?

21 Mr. Speidel.

22 MR. SPEIDEL: Yes, Mr. Chairman. I
23 would imagine that, as the proceeding continues
24 along, there probably will be a second

1 prehearing conference, I imagine, at some
2 point, depending on the outcome of the case.
3 And, if so, then interventions could be dealt
4 with substantively, if they were no longer a
5 live issue, that will be dealt with
6 administratively, obviously.

7 But, I think, in general terms, the
8 Staff is prepared to file legal briefs on the
9 schedule presented. And we look forward to
10 seeing what other parties have to say about
11 this question. Thank you.

12 CHAIRMAN HONIGBERG: Anyone else?

13 *[No verbal response.]*

14 CHAIRMAN HONIGBERG: All right. We
15 will adjourn the prehearing conference. I
16 think there's a technical session -- no? No
17 technical session scheduled, because we're just
18 going straight to briefs?

19 *[Mr. Bersak nodding in the*
20 *affirmative.]*

21 CHAIRMAN HONIGBERG: That makes
22 sense. Mr. Bersak was confirming that for me,
23 and that's who I was speaking to just now.

24 And, with that, we will adjourn. And

1 thank you all.

2 *(Whereupon the prehearing*
3 *conference was adjourned at*
4 *10:17 a.m.)*

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