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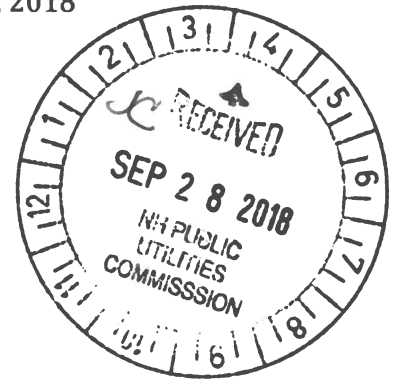
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September 28, 2018

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

195
Re: Reopened Docket No. DE 10-~~295~~¹⁹⁵, Implementation of SB 577



Dear Director Howland:

On September 18, 2018, the Office of Consumer Advocate (“OCA”) filed a “Motion for Determinations as a Matter of Law” in the above-captioned proceeding.

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) does not intend to file a formal response to the OCA Motion. Eversource sets forth its position herein.

During the prehearing conference held on September 5, 2018, Eversource indicated that SB 577 was not self-effectuating. That is, the law merely requires a specific change to a specific Commission Order. The law does not – and could not – change the underlying contract (the Power Purchase Agreement, or “PPA”) that governs the relationship between Eversource and Burgess.

In its Motion, OCA sets forth various federal and state constitutional contract clause arguments that are relevant to whether SB 577 could legally modify the PPA – which the law does not. Moreover, as discussed during the prehearing conference, the PPA represents a wholesale power contract between a utility and a qualifying facility (“QF”) entered into under the auspices of the Public Utility Regulatory Policies Act (“PURPA”).

Under PURPA, there are only two types of rate treatment available: a. an avoided-cost rate under 18 CFR 292.304(a)(2); or, b. a voluntary negotiated contract entered into between a qualifying facility and an electric utility per 18 CFR 292.301(b). *See, In Re Connecticut Valley Elec. Co.*, 87 NHPUC 150, 168 (Order No. 23,939, Mar. 29, 2002) (“18 CFR § 292.301(b) . . . places beyond PURPA regulation contracts voluntarily entered into between QFs and utilities.”) Hence, PURPA does not allow a state-mandated rate for a QF purchase that is not based upon the utility’s avoided cost, nor does it allow a State to mandate the terms of a bilateral contract between a utility and a QF.

Per the August 2, 2018 Order of Notice reopening this docket, at the prehearing conference Eversource presented its statement of position regarding implementation of the new law. Eversource noted that to carry out the intent of the Legislature, it would be necessary for Eversource and Burgess to bilaterally negotiate amendments to the existing PPA. Eversource expressed its willingness to enter into such negotiations, upon two preliminary conditions: a. receipt of an amended Order No. 25,213 as required by Section 2, I of SB 577 that would provide the legal basis for such discussions; and, b. assurance from the Commission that the additional PPA costs created by SB 577 would be fully recovered by Eversource from customers via a non-bypassable charge. Eversource's position and willingness remain the same today.

The OCA Motion impacts the latter of the two preliminary matters. Although it appears that there was a general expectation that the additional PPA costs would be recovered by inclusion in Eversource's existing Stranded Cost Recovery Charge (see, e.g., fiscal impact assessments pertaining to SB 577 provided by the Commission to the Legislature), the Commission has authority to create a new non-bypassable charge if inclusion within the existing SCRC is problematic. See *Public Service Co. of New Hampshire, Bridgewater Power Co., L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Co., & Indeck-Alexandria, LLC et al.*, 96 NHPUC 722, 746 (Order No. 25,305, Dec. 20, 2011) (Commission concluded it had authority to approve a new, non-bypassable temporary charge for PSNH's recovery of the above-market costs of PPAs entered into with biomass-fired QF generators.)

Eversource takes no position on the OCA's demand for access to Burgess's books and records under Section 2, II of SB 577.

Respectfully submitted,



Robert A. Bersak
Chief Regulatory Counsel

cc: Service List

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

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NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**