



May 15, 2017

Via Hand-Delivery and Electronic Mail

Ms. Pamela Monroe, Administrator
New Hampshire Site Evaluation Committee
21 Fruit Street, Suite 10
Concord, NH 03301

**Re: 2015-06— Joint Application of Northern Pass Transmission, LLC and
Public Service Company of New Hampshire d/b/a Eversource Energy for a
Certificate of Site and Facility—NEPGA Request for Service List Changes**

Dear Ms. Monroe:

Please find enclosed the Response of the New England Power Generators Association, Inc. to Eversource Energy's Supplement to Objection to New England Power Generators Association's Motion to Strike Power Purchase Agreement, filed on behalf of the New England Power Generators Association, Inc. in the above-captioned proceeding.

Please contact me if you have any questions with respect to the enclosed Response.

Very truly yours,

Bruce F. Anderson

cc: Service List 2015-06 (electronic mail only)

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2015-06

**Joint Application of Northern Pass Transmission, LLC
and Public Service Company of New Hampshire
d/b/a Eversource Energy for a Certificate of Site and Facility**

**RESPONSE OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.,
TO EVERSOURCE ENERGY'S SUPPLEMENT TO OBJECTION TO NEW ENGLAND
POWER GENERATORS ASSOCIATION'S MOTION TO STRIKE POWER
PURCHASE AGREEMENT**

On March 27, 2017, the New Hampshire Public Utilities Commission (PUC or Commission) denied Eversource's petition seeking approval of a Power Purchase Agreement between the Public Service Company of New Hampshire and Hydro Renewable Energy, Inc. (PPA), finding that the PPA violates the Restructuring Act. *Order No. 26,000* at 7. The PUC subsequently denied Eversource's motion for rehearing on April 20, 2017. On April 24, 2017, the New England Power Generators Association, Inc., (NEPGA) filed with the Site Evaluation Committee (SEC or Committee) a Motion to Strike the PPA from this proceeding, explaining in part that because the Commission dismissed Eversource's PPA as illegal under the Restructuring Act it is not relevant to this proceeding. On May 4, 2017, Eversource filed an objection to NEPGA's Motion to Strike, and more recently on May 10, 2017, filed a "legislative update" which it styles as a "supplement" to its objection, specifically with respect to the New Hampshire House Science and Technology Committee's (House Committee) recent action retaining New Hampshire Senate Bill 128.

The House Committee voted to retain Senate Bill 128, which bill if enacted in its current form may have allowed the Commission to approve certain utility actions currently illegal under

the Restructuring Act. The House Committee's action on Senate Bill 128, however, does not support a finding that the PPA is relevant to this Committee proceeding, rather it confirms that New Hampshire law will not change in this respect for the foreseeable future if at all. The Restructuring Act is the law, and the PPA is illegal under the law. Eversource fails to explain how the failure to pass Senate Bill 128 is relevant to this proceeding, and likewise fails to explain why the House Committee action supports Eversource's objection to NEPGA's Motion to Strike. Indeed, to the extent it has any relevance to this proceeding, the House Committee action confirms NEPGA's position that Eversource cannot execute the PPA, that the PPA will not create any benefits to New Hampshire ratepayers, and that it (and all testimony and other evidence referring to any benefits derived from the PPA) should be stricken from the evidence in this proceeding.

I. The Applicants' Motion Does Not Comply With the Committee's Regulations

1. Just weeks ago, the Commission dismissed Eversource's PPA petition because the PPA "is inconsistent with New Hampshire law, specifically the Electric Utility Restructuring Statute, RSA Chapter 374-F." *Order No. 26,000* at 1. In seeking reconsideration of that decision, Eversource argued that the Commission should suspend its order denying the PPA petition given the Senate's passage of Senate Bill 128. The Commission rejected Eversource's argument, finding that Eversource had not provided "any new information regarding the merits of the Commission's decision" and that "reference to an unenacted bill in the legislature" does not justify suspending the order denying the PPA petition. As the Commission affirmed, its decision is "consistent with existing law."

2. On May 10, 2017, Eversource filed a "supplement" to its objection to NEPGA's Motion to Strike, asserting that the Committee should take notice of the House Committee's

retention of Senate Bill 128 because, if passed into law in its current form, it may allow the Commission to “reconsider its position.” Eversource’s “legislative update” amounts to a request that this Committee ignore existing law in favor of entertaining as relevant a bill held in conference and a PPA that is illegal. The Commission, however, bases its decisions not on hypothetical changes in the law but upon existing law. *See, e.g., PUC Order No. 25,571 (September 12, 2013) DT 12-308.* This Committee should likewise decline to accept Eversource’s invitation to entertain as evidence in this proceeding a contract that is illegal and cannot provide any benefits to New Hampshire ratepayers under New Hampshire law.

3. Despite the Commission’s unequivocal finding that Senate Bill 128 is not relevant to whether the PPA is lawful and not a basis for suspending its decision-making pending the resolution of the bill, Eversource asks the SEC to make a contrary finding that the very same bill is relevant to its decision-making. Eversource takes it a step further, asking the Committee to accept as evidence the PPA, the legality of which relies on a change in New Hampshire law, and even then, may still not be legal given that it would require Commission approval under a yet to be defined standard. Eversource asks the SEC to make this finding when legislative action on Senate Bill 128 since the Commission made its decision on the PPA makes it less, rather than more likely that the necessary change in law will occur. The House Committee action to retain Senate Bill 128 effectively ends its consideration by the full House in this legislative session. It is therefore more certain now than it was when the Commission found Senate Bill 128 irrelevant that the Legislature will not change New Hampshire law during the Committee’s consideration of the Application in a way that may allow for a Commission finding that the PPA is legal. Taken together, Eversource asks the Committee to contradict the Commission’s decision by finding as relevant an illegal PPA that theoretically could be legal under some future undefined

change in New Hampshire law and undefined standard for Commission review, when the House Committee's recent action confirms that there will be no such change in New Hampshire law prior to the Committee rendering a decision in this proceeding. The Committee should reject Eversource's invitation to do so.

4. Further, allowing the PPA as evidence in this proceeding is inefficient and unduly burdensome. The SEC and parties to this proceeding would be burdened with litigating the potential benefits, or lack thereof, of a contract that is not legal and therefore will not provide any benefits to New Hampshire ratepayers under New Hampshire law. The Committee and parties to this proceeding should be spared the burden of litigating an issue that does not exist due to the Restructuring Act.

WHEREFORE, NEPGA respectfully requests that this Committee:

- A. Reject Eversource's Supplement to Objection;
- B. Strike or disallow any and all testimony, evidence and references to the PPA in this proceeding; AND
- C. Grant such other and further relief as necessary.

Respectfully Submitted,

**NEW ENGLAND POWER GENERATORS
ASSOCIATION, INC.**

By its Attorney,

Date: May 15, 2017

By: /s/ Bruce F. Anderson
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CERTIFICATE OF SERVICE

I hereby certify that on this day, May 15, 2017, a copy of the foregoing Response was sent by electronic mail to persons named on the Service List of this docket.

___/s/ Bruce F. Anderson_____