

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

Docket No. DE 16-817

Public Service Company of New Hampshire
d/b/a
Eversource Energy

Auction of Electric Generation Facilities

**OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO THE
CITY OF BERLIN'S AND THE TOWN OF GORHAM'S
REQUEST FOR DESIGNATION OF COMMISSION STAFF**

Public Service Company of New Hampshire d/b/a Eversource Energy (hereinafter “Eversource” or “the Company”) hereby objects to the request to designate Commission staff under RSA 363:32 filed by the City of Berlin (the “City”) and the Town of Gorham (the “Town) (collectively, the “Municipalities”).

In support of this Objection, PSNH states:

1. The Municipalities’ request for designation of staff was part of their joint comments filed in this proceeding on September 30, 2016. Specifically, paragraph 31 of the Municipalities’ comments reads: “31. Finally, the City and the Town respectfully request that Attorney Ross and Mr. Frantz be designated as ‘Staff Advocates’ pursuant to RSA 363:32 (II) as was the case in the Divestiture Docket.”
2. By Secretarial letter dated October 4, the Commission notified the parties to this proceeding that the Municipalities’ request would be treated as a motion. *See* Rule Puc 102.08. The Commission directed that responses to the Municipalities’ request be filed by October 6.

3. The statutes governing designation of staff are RSA 363:30 - :36. The Municipalities specifically cite to RSA 363:32, II to support their designation request. Under RSA 363:32, II, there is no requirement for the Commission to grant a designation request. That section of the statute gives the Commission discretion to determine whether or not to designate one or more members of its staff as “staff advocates.” (“...the commission *may* designate one or more member of its staff...”). (Compare this to RSA 363:32, I, which, if applicable, requires that “...the commission *shall* designate one or more member of its staff...”).

4. RSA 363:32, II provides:

Whenever the commission conducts an adjudicative proceeding in accordance with the provisions of RSA 541-A:31 through RSA 541-A:35, the commission may designate one or more members of its staff as a staff advocate, as defined in RSA 363:30, VIII, if requested by a party with full rights of participation in the proceeding, or upon its own initiative, at any time for good reason, including that: the proceeding is particularly controversial and significant in consequence; the proceeding is so contentious as to create a reasonable concern about staff's role; or it appears reasonable that such designations may increase the likelihood of a stipulated agreement by the parties.

5. Designation of staff under RSA 363:32, II may only be considered “for good reason.” The Municipalities have provided no factual or legal basis whatsoever to support their request. In *Re Public Service Company of New Hampshire*, 85 NH PUC 609, 612, fn. 1 (2000), the Commission stated that a lack of factual or legal specificity in a motion to designate was reason to deny that motion, citing to Rule Puc 203.03(d)(1) [now Rule Puc 203.07(d)(1)]. 85 NH PUC at 612, fn. 1. On that basis alone, the Commission should reject the request.

6. Not only have the Municipalities failed to provide any reason to support their request for designation, their request is antithetical to one of the illustrative factual reasons for designating staff set forth in the statute; i.e., “that such designations may increase the likelihood of a stipulated agreement by the parties.” The City is a party to the various agreements reviewed and approved by the Commission in Docket No. DE 14-238, including of note, the “Partial Litigation Settlement,” Exhibit C in DE 14-238. The City qualified its participation in the Partial Litigation Settlement to matters “in Section II only, without opposition to Sections I and III.” See signature of counsel on behalf of the City. Paragraphs

22, 23, and 25 of the Partial Litigation Settlement, which are in Section II of that document and therefore supported by the City, read:

22. The Settling Parties and Staff agree that the participation of designated Advocate Staff in the Commission's selection and management of an auction advisor would be in the interests of the Commission, the parties, and ratepayers.

23. Accordingly, pursuant to RSA 363:32. IV and RSA 363:33. the Settling Parties and Staff stipulate to the immediate removal of Advocate Staff's designation with regard to the selection and management of an expert auction advisor. A joint motion of the Settling Parties and Non-Advocate Staff to remove Advocate Staff's designation as outlined above is submitted concurrently with this Litigation Settlement.

25. In order to simplify the issues presented at hearing, and in recognition of the above stipulated agreements and the amendment to the Settlement Agreement, the Settling Parties and Staff agree that the issue of specific auction design(s) shall be presented in a separate adjudicatory docket to be opened by the Commission rather than in the February hearings in this docket

7. The City has previously expressly agreed and stipulated "that the participation of designated Advocate Staff in the Commission's selection and management of an auction advisor would be in the interests of the Commission, the parties, and ratepayers." The Municipalities' request in this "separate adjudicatory docket" runs afoul of the "stipulated agreement" the City has already entered into and supported. Granting the Municipalities' request on the basis that such "designations may increase the likelihood of a stipulated agreement by the parties" is belied by the City's breach of the stipulated agreement it previously entered into "as a compromise of disputed issues and in an effort to both simplify and strengthen the record presented to the Commission in this docket [14-238]." Partial Litigation Settlement, para. 29.

8. The Municipalities' request should also be denied as it was not timely filed. The Commission, by its approval of the Partial Litigation Settlement in Order No. 25,920 dated July 1, 2016, in Docket No. DE 14-238, determined that staff would not be designated in this "separate adjudicatory docket." The Municipalities, both of whom were parties to Docket No. DE 14-238, did not seek timely rehearing of the Commission's decision in Order No. 25,920 as required by RSA 541:3 and Puc 203.07(a).

9. In the 2000 *PSNH* case, the Commission discussed the adverse impact that the granting of a Motion to Bifurcate (designate) would have on the prompt and orderly conduct of the proceeding, due to the limited staff available to the Commission. *PSNH*, 85 NH PUC at 611. *See also Re West Epping Water Company*, 86 NH PUC 906, 909 (2001) (“ If the Staff attorney who is the subject of the Motion were not available to us to assist in appraising the record and preparing drafts of our order subject to our direction and final approval, we believe that this would cause an inordinate delay in the proceeding.”)

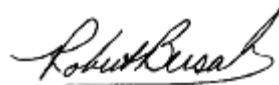
10. The instant Joint Motion would have the same adverse impact on the conduct of this proceeding that the Commission discussed in *PSNH* and *West Epping Water*. In the Partial Litigation Settlement, the City and other parties thereto have agreed and stipulated that the participation of Attorney Ross and Mr. Frantz “would be in the interests of the Commission, the parties, and ratepayers.” This means that the Municipalities’ request to once again designate them would be against the interests of the Commission, the parties and ratepayers.

WHEREFORE, for the reasons set forth above, Eversource respectfully requests that the Commission DENY the Municipalities’ request to designate staff pursuant to RSA 363:32, II.

Respectfully submitted,

**PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE d/b/a
EVERSOURCE ENERGY**

Dated: October 5, 2016

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CERTIFICATE OF SERVICE

I certify that on this date I caused this Objection to be served to parties on the Commission's service list for this docket.

October 5, 2016