THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-0007

Appeal of Algonquin Gas Transmission, LLC;
Appeal of Public Service Company of New Hampshire d/b/a Eversource Energy

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APPEAL BY PETITION PURSUANT TO RSA 541:6 AND RSA 365:21
(NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION)

REPLY BRIEF OF APPELLANT ALGONQUIN GAS TRANSMISSION, LLC

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Table of Contents

Table of Cases

Table of Statutes

Algonquin Gas Transmission, LLC ("Algonquin") offers the following reply to briefs filed by Conservation Law Foundation ("CLF"), NextEra Energy Resources, LLC ("NEER"), and the current and former state senators and representatives ("Amici") dated June 29, 2017, and the brief filed by the Office of the Consumer Advocate ("OCA") (collectively with NEER, CLF and Amici, the "Opponents") on June 30, 2017.

I. ARGUMENT

In their briefs, the Opponents attempt to obfuscate the issues before this Court. For instance, they argue that RSA Chapter 374-F (the "Restructuring Statute") does not permit an electric distribution company ("EDC"), like Public Service of New Hampshire d/b/a Eversource Energy ("Eversource"), to ***own*** electric generation facilities. CLF Br. at 24; NEER Br. at 11-23, 25-26; OCA Br. at 18-21; Amicus Br. at 5-11. However, the contractual relationship (the "Access Northeast Program") described in Eversource's February 2016 petition (App. at 200, the "Petition") to the Public Utilities Commission (the "Commission") would not result in Eversource owning generation. The central question before this Court is: whether, despite numerous statutes[1] that authorize Eversource to enter into a contract for natural gas transmission capacity (the "Authorizing Statutes"), did the Commission err in implicitly repealing those Authorizing Statutes and concluding that the Access Northeast Program violates the principles of the Restructuring Statute? Quite simply, the answer is: Yes, for all the reasons set forth below and in Algonquin's initial brief and Eversource's initial and reply briefs.

[1] Specifically, RSA 374:1 and 374:2 (responsibility of EDCs to provide safe and reliable service at just and reasonable rates); RSA 374:57 (providing for Commission approval of certain contracts for transmission capacity); RSA Chapter 374-A (authorizing EDCs to participate in, or enter contracts related to participation in, electric power facilities); and RSA 378:37 and 378:38 (resource planning statutes). *See* Algonquin Br. at 20-25; Eversource Br. at 25-32.

A. Standard Of Review

All of the parties agree that the issues presented by this appeal are questions of law, not fact.[2] This Court reviews "an agency's interpretation of a statute *de novo.*" Algonquin Br. at 11-12 (*citing Appeal of Old Dutch Mustard Co., Inc.*, 166 N.H. 501, 506 (2014)). While the Court has afforded some deference to administrative agencies, as the Opponents concede, that deference "is not absolute." *Appeal of Town of Seabrook*, 163 N.H. 635, 644 (2012); *see also* CLF Br. at 9; NEER Br. at 9; OCA Br. at 14. This Court is "still the final arbiter of the legislature's intent as expressed in the words of the statute considered as a whole…and [is] not bound by an agency's interpretation of a statute…" *Seabrook*, 163 N.H. at 644 (internal citations omitted). As such, this Court "will not defer to an agency's interpretation if it clearly conflicts with the ***express statutory language***…or if it is plainly incorrect…" *Id.* (emphasis added); *see also Appeal of Weaver*, 150 N.H. 254, 256 (2003) (reversing an order of the New Hampshire Compensation Appeals Board because it, like the Commission in this case, improperly read a statutory provision in isolation and not in the context of the larger statutory scheme). The deference urged by Opponents is clearly misplaced given the Commission's incorrect interpretation, in conflict with express statutory language.

B. The Access Northeast Program Is Authorized By New Hampshire Law

Opponents argue that the Restructuring Statute (specifically RSA 374-F:3, I) "does not provide the Commission with the authority to allow" the Access Northeast Program. OCA Br. at 24; s*ee also* CLF Br. at 17-19. However, such a claim is just another attempt to obfuscate the issues before this Court and should be ignored. The Appellants have not argued nor did the Commission examine whether the Restructuring Statute ***authorizes*** the Access Northeast

[2] To the extent that Algonquin offered facts in its brief, they were offered to provide the Court with context to assist it in evaluating the legal issues presented. *See* Supreme Court Rule 16(3)(d); *cf.* Commission Order No. 25,860 (Jan. 19, 2016), at 3 (recognizing the legal issues at play are best understood in the context of specific facts).

Program. *See, e.g.*, App. at 327-28 (asking "whether Eversource has the corporate authority to enter into the Access Northeast Contract ***under*** RSA Chapter 374-A and RSA 374:57") (emphasis added). Rather, as NEER and OCA concede and the Appellants noted in their briefs, the authority for the Access Northeast Program is found in the Authorizing Statutes. *See* OCA Br. at 24-25 (acknowledging that Eversource "could indeed still invest or otherwise 'participate in' electric power facilities"); NEER Br. at 28-29 (noting that the Authorizing Statutes can be read to permit Eversource to enter the Access Northeast Program only to the extent allowed by the Restructuring Statute); Algonquin Br. at 20-25; Eversource Br. at 30-31.

In a futile attempt to undermine the Authorizing Statutes, CLF argues that, if Eversource had been "truly confident in its reliance on RSA 374:57," it would have simply furnished the contract for Commission approval, rather than filing the Petition. CLF Br. at 26. This argument is without merit and completely ignores the fact that the Commission specifically directed Eversource to submit the Petition. Order No. 25,860 (Jan. 19, 2016), at 3. Concomitantly, OCA erroneously argues that "by virtue of its plain language," RSA 374:57 is limited to electricity, and that the "triad" of terms "generating capacity, transmission capacity, or energy" all relate to electricity. OCA Br. at 28-29. First, the word electricity does not appear anywhere in the "plain language" of the statute. Moreover, as Algonquin explained in its opening brief, the term transmission capacity can refer to either electric or natural gas capacity and the General Court has used the word "energy" to include more than just electricity so those three terms have not and should not be considered a "triad" applicable only to electricity. Algonquin Br. at 20-22.

The Opponents also misconstrue RSA 374-A:2. In particular, they assert that this provision does not authorize the Access Northeast Program "because . . . the Access Northeast

pipeline [sic],[3] is not an 'electric power facility' for purposes of RSA 374-A:2." CLF Br. at 24-25; *see also* OCA Br. at 25-26. However, neither the Algonquin Pipeline nor the Access Northeast Program need to be electric power facilities themselves for the statute to apply. RSA 374-A:2 authorizes Eversource to "enter into and perform contracts and agreements for such joint or separate planning, financing, construction, purchase, operation, maintenance, use, sharing costs of, ownership, mortgaging, leasing, sale, disposal of or other participation in electric power facilities …" RSA 374-A:2, II (emphasis added). The Access Northeast Program contract is an agreement pursuant to which Eversource would be providing a service to generators (i.e., for "other participation in electric power facilities"). Thus, it is specifically authorized by RSA 374-A:2, II.

C. The Access Northeast Program Is Consistent With The Restructuring Statute

In an attempt to support the Commission's flawed conclusion that the Access Northeast Program is inconsistent with the policy principles set forth at RSA 374-F:3 (the "Restructuring Policy Principles"), the Opponents erroneously claim that the Access Northeast Program would permit Eversource to re-bundle electric generation with transmission/distribution services (CLF Br. at 12-21; NEER Br. at 11-17; OCA Br. at 18-21) and would perpetuate a monopoly or otherwise impinge on the New Hampshire Constitution's commitment to "free and fair competition." (CLF Br. at 11-12; NEER Br. at 18-19; OCA Br. at 30-31; Amicus Br. at 5-9). However, the Opponents' claims evince either a misunderstanding or deliberate clouding of the structure of the Access Northeast Program.

For instance, CLF argues that "Appellants' interpretation would enable Eversource, post-restructuring, to purchase, own, and operate electric power facilities…" CLF Br. at 24.

[3] There is no such thing as the "Access Northeast pipeline." The existing Algonquin Pipeline and Maritimes & Northeast Pipelines have served New Hampshire, and the rest of New England, for many years. Access Northeast is the name for a suite of critical infrastructure upgrades to the existing Algonquin Pipeline.

However, the Access Northeast Program would not result in Eversource's purchase, ownership or operation of electric generation. In fact, as OCA admits "the fuel supply itself or the means of getting that supply to the generator ***are no more a part of the generation facility*** than are other key inputs, from waste disposal to water supply to the infrastructure that makes and delivers spare generator components." OCA Br. at 25 (emphasis added). Thus, the Access Northeast Program will not, as the Opponents baselessly claim, re-bundle electric generation with transmission/distribution services; it will simply allow Eversource to offer a service to electric power generators as it is permitted to do and does today. *See, e.g.*, Eversource's Tariff for Electric Delivery Service (effective May 1, 2016) ("Eversource Tariff"),[4] at 71-73 ("Backup Delivery Service Rate B," which offers backup service, including the provision of energy, to electric generators). Accordingly, consistent with the Restructuring Statute, the Access Northeast Program would retain the functional separation of generation from transmission and distribution.

The Access Northeast Program is also consistent with the Restructuring Policy Principle that "[g]eneration services should be subject to market competition and minimal economic regulation." RSA 374-F:3, III. If the Access Northeast Program is approved, generators would still be free to continue to independently secure firm transportation on the Algonquin and/or Maritimes & Northeast Pipelines (the pre-existing pipelines to be expanded through the Access Northeast project), secure firm transportation on the competing Tennessee Gas Pipeline or Portland Natural Gas Transmission System, or rely on the capacity release market for natural gas transportation capacity. However, natural gas-fired generators would also have the option to secure the natural gas transmission capacity associated with the Access Northeast Program from

[4] Available at: https://www.eversource.com/Content/docs/default-source/rates-tariffs/electric-delivery-tariff.pdf?sfvrsn=26.

Eversource, which would enhance the opportunities for those generators to be available to compete in the wholesale electric market; thereby, increasing available supply choices and decreasing prices. Algonquin Br. at 18. In the end, all of the many layers of competition in the electric supply chain would remain: generators would still competitively secure the natural gas commodity and pipeline capacity; generators would still compete in the wholesale electric marketplace; and retail electric suppliers would still competitively procure energy and compete for end-user market share.[5] Thus, consistent with the Restructuring Statute, "[g]eneration services [would] be subject to market competition and minimal economic regulation." Accordingly, the Access Northeast Program would not, as the Opponents incorrectly assert, perpetuate a monopoly or otherwise impinge on the New Hampshire Constitution's commitment to "free and fair competition." Algonquin Br. at 18-20.

D. The Authorizing Statutes Remain In Effect

Opponents attempt to support the Commission's erroneous conclusion that, since the passage of the Restructuring Statute, the Authorizing Statutes no longer provide Eversource authority for the Access Northeast Program; resulting in an implied repeal of the Authorizing Statutes. CLF Br. at 23-28; NEER Br. at 27-30; *cf.* OCA Br. at 24-27 (arguing that the Authorizing Statutes had not been repealed by implication but that RSA Chapter 374-A "no longer applies" to Eversource). However, repeals by implication are generally disfavored. *Board of Selectmen v. Planning Board*, 118 N.H. 150, 152-53 (1978). As the Commission (and CLF and OCA) conceded, "the Court construes statutes, where reasonably possible, so that they lead to reasonable results and do not contradict each other." Order at 7 (*citing Old Dutch*

[5] Opponents imply that the Access Northeast Program will impede retail choice. CLF Br. at 11-12; NEER Br. at 25-26; OCA Br. at 18-20. Tellingly, Opponents fail to articulate how retail choice would be threatened by the Access Northeast Program. References to retail choice are a red herring and are not relevant to this appeal. The Access Northeast Program would in no way limit ratepayers' ability to choose a competitive electric supplier.

Mustard, 166 N.H. at 509); CLF Br. at 22 n. 15; OCA Br. at 20; *see also Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("In the absence of some affirmative showing of an intention to repeal, the ***only*** permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.") (emphasis added); *Board of Selectmen*, 118 N.H. at 153 (holding that this Court will not find an implied repeal if two statutes can be reasonably construed together). As a consequence, a repeal by implication must be demonstrated "by evidence of convincing force." *Board of Selectman*, 118 N.H. at 153. Moreover, the scope of such a repeal must be "confined to repealing as little as possible of the preceding statute." *State v. Wilson*, 43 N.H. 415, 418 (1862).

OCA asserts that "[t]he commission did not explicitly determine that any prior statutes had been impliedly repealed." OCA Br. at 24-27. This argument is simply unavailing. There is no requirement that the Commission use any magic words. The Commission concluded that "[t]he change in the industry through the Restructuring Statute, first passed in 1996, ***effectively ended*** a restructured EDC's ability to participate in the generation side of the electric industry." Order at 14 (emphasis added); *see also* Order on Reconsideration at 5 ("We stand by our conclusions that 'RSA 374-A ***no longer applies*** to an EDC like Eversource…") (emphasis added). While it did not use the words "implied repeal," the Commission determined that Eversource was no longer authorized to undertake actions specifically permitted by statute. As such, it repealed RSA Chapter 374-A by implication.[6] *See also* Algonquin Br. at 22-25.

Both NEER and OCA admit that the Restructuring Statute and Authorizing Statutes can be reasonably read together so as not to contradict each other. OCA Br. at 24-25 (arguing that Commission "correctly concluded that the Restructuring Act can be harmonized with prior

[6] In what appears to be an attempt to support such a repeal, OCA argues that RSA Chapter 374-A is "no longer applicable" (i.e., repealed by implication) because "the practical and accounting difficulties of an investment that cannot be included in the rate base would be enormous." OCA Br. at 25. A passing reference to "practical and accounting difficulties" alone does not constitute the "evidence of convincing force" required to support a repeal by implication. *Cf. Board of Selectman*, 118 N.H. at 153.

enactments referenced by the appellants."); NEER Br. at 28 (conceding that the Authorizing Statutes "and the Restructuring Statute can be consistently construed."). The Appellants agree that these statutory provisions can be read in harmony (albeit in a different way). Algonquin Br. at 22-24; Eversource Br. at 28-32. Thus, the Commission erred when it impliedly repealed the Authorizing Statutes. *Cf. Morton*, 417 U.S. at 550; *Board of Selectmen*, 118 N.H. at 153.

In a fruitless attempt to support the Commission's implied repeal of the Authorizing Statutes, CLF and NEER argue that, if the Authorizing Statutes are read to conflict with the Restructuring Statute, the Restructuring Statute "prevails as it is later in time and addresses the subject matter with specificity." NEER Br. at 28-29 (*citing Petition of Public Service Co. of N.H.*, 130 N.H. 265, 282-83 (1988)); *see also* CLF Br. at 22. "[T]o the extent two statutes conflict, the more specific statute…controls over the general statute." *Ford v. N.H. Dep't of Transp.*, 163 N.H. 284, 294 (2012); *see also Morton*, 417 U.S. at 550-51 ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, ***regardless of the priority of enactment***.") (emphasis added). The Authorizing Statutes provide Eversource authority to undertake specific, enumerated actions. Conversely, the Restructuring Statute provides "policy principles . . . intended to guide the New Hampshire public utilities commission in implementing a statewide electric utility industry restructuring plan . . . ." RSA 374-F:1, III. Since the Authorizing Statutes are more specific, they control. *Morton*, 417 U.S. at 550-51; *Ford*, 163 N.H. at 294. In fact, RSA 374-A:2 controls "[n]otwithstanding any contrary provision of any general or special law relating to the powers and authorities of domestic electric utilities." *See King v. Sununu*, 126 N.H. 302, 306-07 (1985) (finding that the word "notwithstanding" demonstrates clear direction from the legislature on which statute should prevail in the event of conflict).

Moreover, if the Court were to find that the Restructuring Statute implicitly repealed Eversource's authority to engage in certain activities, the scope of the repeal must be limited to those activities. For instance, if the Court were to conclude that the Restructuring Statute implicitly repealed Eversource's ability to own generation as provided in RSA 374-A:2, I, it does not follow that the Restructuring Statute also implicitly repealed Eversource's authority to enter into agreements related to generation as provided in RSA 374-A:2, II. As OCA recognized, RSA 374-A:2 could be read to authorize Eversource to provide a wide variety of services to electric power generators, from catering to janitorial. OCA Br. at 25-26. Eversource does have that authority pursuant to RSA 374-A:2, II and that broad authority has not been repealed by the Restructuring Statute. Otherwise, all Eversource contractual relationships that relate in any way to electric power generators would be prohibited. This is clearly an absurd result, especially given Eversource's two decades of activity since restructuring.

E. The Commission Erred In Concluding That Eversource Could Not Recover Access Northeast Program Costs

OCA and NEER argue in support of the Commission's erroneous conclusion that the costs related to the Access Northeast Program may not be recovered from ratepayers. OCA Br. at 25, 27; NEER Br. at 28. However, the Commission's erroneous conclusions regarding the Restructuring Statute and Access Northeast Program led to its further improper conclusion that the Access Northeast Program "is designed to support electric generation supply, and therefore expenses related to generation supply would be disallowed in distribution rates." Order at 14. Despite the Opponents' efforts to put forth other justifications for excluding Access Northeast Program costs from Eversource's delivery rates, the Commission did not rely on any other reasoning to support its conclusion and specifically reserved the issue of "cost recovery" to the second phase. App. at 328. Thus, if the Court determines that the Commission erroneously

concluded that the Access Northeast Program is "fundamentally inconsistent with the purposes of restructuring," it must also find that it erred in concluding that the costs of the Access Northeast Program were not recoverable.

II. CONCLUSION

For all of the reasons set forth above and in Algonquin's initial brief and Eversource's initial and reply briefs, Algonquin requests that this Court vacate the Order and Order on Reconsideration and remand to the Commission for further proceedings on the Petition.

Dated: July 19, 2017

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that two copies of this Reply Brief has this day been sent via first class mail to all counsel of record.

Joey Lee Miranda

Dated: July 19, 2017

III. SUPPLEMENT TO REPLY BRIEF

A. State of New Hampshire, Public Utilities Commission, Order No. 25,950

B. State of New Hampshire, Public Utilities Commission, Order No. 25,970

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 16-241

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

Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC, Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery

Order Dismissing Petition

O R D E R N O. 25,950

October 6, 2016

In this Order, the Commission dismisses Eversource's petition requesting approval of a contract to purchase capacity on the proposed Access Northeast gas pipeline, and associated program details and distribution rate tariff. The Commission has determined that Eversource's proposed program is inconsistent with New Hampshire law. The legal authorities relied upon by Eversource and other supporters of the petition do not overcome the policies preventing such activity found within the Electric Utility Restructuring statute, RSA Chapter 374-F.

I. EVERSOURCE'S PROPOSAL

On February 18, 2016, Public Service Company of New Hampshire d/b/a Eversource (Eversource) filed a petition for approval of a proposed 20-year contract with Algonquin Gas Transmission, LLC (Algonquin), for natural gas capacity on Algonquin's Access Northeast Pipeline Project (Access Northeast pipeline), and for recovery of associated costs through a new distribution rate tariff, to be assessed on all of Eversource's customers. In its petition, Eversource sought approval of: (1) a 20-year interstate pipeline transportation and storage contract providing natural gas capacity for use by electric generation facilities in the New England region (the Capacity Contract); (2) an Electric Reliability Service Program to set

parameters for the release of capacity and the sale of LNG supply made available to electric generators through the Capacity Contract; and (3) a Long-Term Gas Transportation and Storage Contract tariff for Eversource's rates (Tariffed Rate) to be applied through a uniform cents-per-kWh rate element on all retail electric customers served by Eversource, to provide for recovery of costs associated with the Capacity Contract.

Eversource is a public utility headquartered in Manchester, operating under the laws of the State of New Hampshire as an electric distribution company (EDC). Algonquin is an owner-operator of an interstate gas pipeline located in New England. Algonquin is owned by a parent company, Spectra Energy Corp (Spectra), a publicly-traded corporation headquartered in Houston, Texas. Algonquin has partnered with Eversource's corporate parent, Eversource Energy, headquartered in Boston, Massachusetts, and Hartford, Connecticut, and with National Grid, the parent company of EDC subsidiaries in Rhode Island and Massachusetts, to develop the Access Northeast pipeline. In general terms, Eversource Energy's EDC subsidiaries in Connecticut, Massachusetts, and New Hampshire and National Grid's EDC subsidiaries in Rhode Island and Massachusetts, are each individually seeking regulatory approval of gas capacity on the Access Northeast pipeline.[1]

The Access Northeast pipeline is intended to provide 500,000 million British thermal units (MMBtu)/day of incremental gas transportation capacity and 400,000 MMBtu/day of incremental liquefied natural gas (LNG) storage deliverability. Under its petition, Eversource would hold contractual entitlements for firm gas transportation and storage deliverability up to a

[1] The Massachusetts Supreme Judicial Court issued an order prohibiting the Massachusetts Department of Public Utilities from approving the companion petition from the Massachusetts affiliates of Eversource Energy and National Grid. The Massachusetts Court concluded such a Capacity Contract would contradict the policy embodied in the Massachusetts restructuring act, which removed electric companies from the business of electric generation. 475 Mass. 191 (2016).

Maximum Daily Transportation Quantity of 66,000 MMBtu/day, which would represent 7.4 percent of the total capacity of the Access Northeast pipeline. Eversource asserts that energy cost savings resulting from the increased supply of gas capacity to New England electric generators would exceed contract-related costs by a 3:1 ratio, excluding any additional capacity-release revenues that would be credited to Eversource's customers, thereby offering Eversource's customers significant benefits and justifying the recovery of the contract costs through rates.

II. PROCEDURAL HISTORY

With its petition in February, Eversource filed supporting testimony and related exhibits along with a motion for confidential treatment of certain information. Algonquin filed a similar motion for confidential treatment on March 10, 2016. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241.html.

There was significant interest in this docket from its inception. On February 22, 2016, the Office of Consumer Advocate (OCA) filed notice of its participation on behalf of residential ratepayers pursuant to RSA 363:28. Numerous other entities and groups sought intervenor status. They included Algonquin, NextEra Energy Resources LLC (NextEra), Richard Husband, TransCanada Pipelines (TransCanada), Portland Natural Gas Transmission System (PNGTS), Exelon Generation Company, LLC (Exelon), Coalition to Lower Energy Costs (CLEC), Tennessee Gas Pipeline Company (Tennessee), the New Hampshire Municipal Pipeline Coalition (NHMPC), SunRun Inc., Pipe Line Awareness Network of the Northeast (PLAN), Repsol Energy North America Corporation (Repsol), the Office of Energy and Planning, the Conservation Law Foundation (CLF), and ENGIE Gas &LNG, LLC (ENGIE). On April 22,

2016, the Commission issued Order No. 25,886, addressing intervention requests and certain procedural issues.

In its March 24, 2016, Order of Notice, the Commission indicated that before assessing the merits of Eversource's proposal, it would determine as a threshold matter whether the proposed Capacity Contract and the associated request for rate recovery, are consistent with New Hampshire law. The Commission set deadlines for initial submissions and responses on the legal issues of April 28 and May 12, respectively.

On May 10, 2016, the OCA filed a motion pursuant to RSA 363:32, for designation as Staff Advocates, Electric Division Assistant Director, George McCluskey and Staff Attorney, Alexander Speidel. The OCA alleged that, due to past involvement in the IR 15-124 investigation regarding gas supply constraints into the New England region, past pleadings at FERC, involvement in regional wholesale market meetings regarding related topics, and alleged statements made by Staff at a technical session in the instant docket, Messrs. McCluskey and Speidel should be designated Staff Advocates. This motion received the concurrence of CLF, Richard Husband, NextEra**,** and NHMPC.

III. POSITIONS OF THE PARTIES

A. Supporters of the Capacity Contract

Eversource, Algonquin, and CLEC[2] (collectively the Supporters) argue generally that Eversource's plans are authorized by a number of statutes, either standing alone or in combination. The Supporters' basic argument is that RSA Chapter 374-F, the electric utility restructuring statute, was intended to lower energy prices and that an EDC's purchase of gas capacity to be used by generators could further that intent. The Supporters argue as well that

[2] Although CLEC supported the legality of an EDC entering into a long-term gas capacity contract, it objected to the lack of a competitive procurement process for the Capacity Contract entered into by Eversource. CLEC Brief at 26-29.

Eversource's proposal could be considered to be part of its obligation to provide reliable service at reasonable rates under RSA 374:1 and :2; or the type of "least cost" resource planning required by RSA 378:37 and :38. They also point to the specific language in RSA 374:57, which sets forth an EDC's obligations when it "enters into an agreement with a term of more than one year for the purchase of generating capacity, transmission capacity or energy"; and to RSA Chapter 374-A, which discusses EDCs' participation in electric power facilities. The Supporters dispute the opposition arguments that Eversource's plan would violate the Federal Power Act and the Natural Gas Act. They maintain that the proposal is consistent with Federal law and thus not preempted.

B. Opponents of the Capacity Contract

ENGIE, NextEra, CLF, OCA, Exelon, NHMPC, and PLAN, (collectively the Opponents), all disagree. They argue that the most significant intention of the restructuring statute, RSA Ch. 374-F, was to do what its title promised and restructure the industry to get the EDCs out of the generation business completely. To the Opponents, lower rates were and continue to be expected as a result of that restructuring, as competition for generation services replaces the vertically integrated generation, transmission, and distribution structure that existed for decades before. The Opponents view competitive markets and retail choice for consumers as the key components of restructuring; rate effects are secondary to competition. They also claim that in the restructured market, the risks associated with investments in generation would be borne by the owners of that generation, not by the ratepayers of the regulated distribution utilities. As for the other statutes that are part of the Supporters' arguments, the Opponents' general position is that the restructuring statute controls. They argue that those other statutes do

not support Eversource's proposal, either because they never meant what the Supporters argue, or because they have been superseded by the more recent enactment of RSA Chapter 374-F.

The Opponents make two additional points to support their position. First, they argue that the notion of an EDC charging customers for the costs of a gas capacity contract is fundamentally inconsistent with the requirement that assets included in rate base must be "used and useful." They also assert that the proposed Capacity Contract and the release of gas capacity to wholesale power generators is pre-empted by the Federal Power Act and the Natural Gas Act.[3] They cite to decisions by the Federal Energy Regulatory Commission ("FERC"), and recent decisions by the United States Supreme Court to argue that state laws permitting proposals like Eversource's improperly interfere with FERC's regulation of both the wholesale natural gas market and the wholesale electric market.

IV. COMMISSION ANALYSIS

A. New Hampshire Electric Utility Restructuring Statute, RSA Chapter 374-F

The threshold question regarding any potential proposal for gas capacity acquisition by a New Hampshire EDC is whether the Electric Utility Restructuring Statute, RSA Ch. 374-F, (Restructuring Statute) prohibits such activity. All parties to this proceeding make arguments based on the Restructuring Statute passed in 1996 and implemented over the course of many years, including most recently through Order 25,920 (July 1, 2016) approving the divestiture of Eversource's remaining hydro and fossil electric generation facilities. We must determine: (1) whether the functional separation of transmission/distribution activities on the one hand, and generation activities on the other, called for by RSA 374-F:3, III, would be violated by the terms of Eversource's proposal, and (2) if yes, whether this directive of the Restructuring Statute

[3] *See* Natural Gas Act 15 U.S.C. § 717c(b) (prohibiting preferential pricing for natural gas capacity releases) and Federal Power Act 16 U.S.C.§824(b)(1)(giving FERC core responsibility for regulating electric transmission and wholesale pricing).

overrides, or supersedes, all other restructuring principles and therefore prohibits the Capacity Contract and associated Tariffed Rate contemplated by Eversource.

In examining these questions, we apply traditional New Hampshire principles of statutory interpretation. The New Hampshire Supreme Court first looks to the language of the statute itself, and, if possible, construes that language according to its plain and ordinary meaning. The Court interprets statutes in the context of the overall regulatory scheme and not in isolation. The goal is to determine the Legislature's intent. Further, the Court construes statutes, where reasonably possible, so that they lead to reasonable results and do not contradict each other. When interpreting a statute, the Court gives effect to all words in the statute and presumes that the legislature did not enact superfluous or redundant words. *See Appeal of Old Dutch Mustard Co., Inc.,* 166 N.H. 501 (2014); *State v. Collyns*, 166 N.H. 514 (2014). When a conflict exists between two statutes, the later statute will control, especially when the later statute deals with the subject in a specific way and the earlier enactment treats that subject in a general fashion. *Board of Selectmen v. Planning Bd.*, 118 N.H. 150, 152 (1978); *see also Appeal of Pennichuck Water Works,* 160 N.H. 18, 34 (2010) (quoting *Appeal of Plantier*, 126 N.H. 500 (1985)).

Because the Restructuring Statute contains numerous policy directives, we begin our analysis of the statute with reference to its stated purposes.

> I. The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment. Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry that will require unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services.

> II. A transition to competitive markets for electricity is consistent with the directives of Part II, article 83 of the New Hampshire constitution which reads in part: "Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it." Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.

RSA 374-F:1, I and II.

In addition to the overall statutory purposes, RSA 374-F:3 outlines the restructuring policy principles that must govern the Commission's approach to restructuring the New Hampshire electric market. RSA 374-F:3, III states, in part:

> When customer choice is introduced, services and rates should be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges. Generation services should be subject to market competition and minimal economic regulation and at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future. However, distribution service companies should not be absolutely precluded from owning small scale distributed generation resources as part of a strategy for minimizing transmission and distribution costs.

The disagreement in this matter is based on the multiple objectives in the sections quoted above. Supporters point to the purpose of reducing costs to customers, and argue that having EDCs purchase gas capacity for use by electric generators will further that goal. Opponents argue that competition, furthered by restructuring and unbundling, is the ultimate purpose of the statutory scheme.

In weighing the restructuring policy principles of RSA 374-F, we agree with the Opponents and find that the overriding purpose of the Restructuring Statute is to introduce competition to the generation of electricity. The competitive generation market is expected to produce a more efficient industry structure and regulatory framework, by shifting the risks of

generation investments away from customers of regulated EDCs toward private investors in the competitive market. The long-term results should be lower prices and a more productive economy. To achieve that purpose, RSA 374-F:3, III directs the restructuring of the industry, separating generation activities from transmission and distribution activities, and unbundling the rates associated with each of the separate services. A more efficient structure involves placing investment risk on merchant generators who can manage that risk, and allowing customers to choose suppliers, thus enabling customers to pay market prices and avoid long-term over market costs. This purpose is underscored by the Legislature's recent strong encouragement, through the passage of HB 1602 and SB 221, to approve the 2015 Settlement Agreement that will accomplish the functional separation of Eversource's generation activities from its distribution activities. *See* 2014 N.H. Laws Ch. 310 (H.B. 1602); 2015 N.H. Laws Ch. 221 (S.B. 221); and Order No. 25,920 (July 1, 2016).

Based on that finding, we conclude that the proposal brought forward by Eversource is fundamentally inconsistent with the purposes of restructuring. Specifically, we conclude that the Capacity Contract is a component of "generation services" under RSA 374-F:3, III, which requires unbundled, clear price information for the cost components of generation, transmission, and distribution. The acquisition of the gas capacity is clearly related to an effort to serve New England gas-fired electric generators with less expensive, more reliable fuel supplies. Including such a generation-related cost in distribution rates would combine an element of generation costs with distribution rates and conflict with the functional separation principal.

Having concluded that the basic premise of Eversource's proposal – having an EDC purchase long-term gas capacity to be used by electric generators – runs afoul of the Restructuring Statute's functional separation requirement, we turn to the question of whether any

of the other purported justifications would allow us to go forward in this proceeding to consider the merits of the proposal. To analyze the effect of other statutes applicable to EDCs on the Restructuring Statute, we must consider two issues. First, we must identify whether any of those statutes standing alone would support the Eversource proposal, and, if so, how those statutes are affected by the subsequent enactment of the Restructuring Statute.

B. Commission's General Oversight and Other Utility Statutes

Supporters note that RSA 374:1 and RSA 374:2 require that EDCs provide safe and reliable service at just and reasonable rates. They claim that by entering into the Capacity Contract and then selling capacity to gas-fired electric generators, Eversource would both increase reliability of electric supply and mitigate price spikes in the wholesale and retail markets in New England. That would, in turn, help Eversource meet its obligations under RSA 374:1 (safe and reliable service) and RSA 374:2 (just and reasonable rates). While we agree that those two sections of our supervisory statutes govern our regulation of Eversource's provision of distribution services, we do not agree that an EDC is responsible for either the reliability of the generation supply, or the price of such supply. That function has been shifted to the competitive marketplace for retail electric generation service in New Hampshire. For regional wholesale electric markets, the responsibility for regulating reliability and pricing remains with ISO-NE and FERC. *See* Federal Power Act, 16 U.S.C. § 824 (federal jurisdiction over electric transmission and wholesale electric sales).

Supporters also claim that the least cost planning statutes, RSA 378:37 and 378:38, create an affirmative obligation for Eversource to plan for adequate energy supply resources. The Legislature has set the goals for planning as follows:

> The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

RSA 378:37. In fulfilling its planning obligations a regulated utility is required to do a number of assessments, including:

> III. An assessment of supply options including owned capacity, market procurements, renewable energy, and distributed energy resources….
>
> VI. An assessment of the plan's long- and short-term environmental, economic, and energy price and supply impact on the state.
>
> VII. An assessment of plan integration and consistency with the state energy strategy under RSA 4-E:1.

RSA 378:38, III-VII. The Supporters reason that if the required assessments of generating capacity, price, and supply show that more gas is needed, and if the gas-fired generators are unwilling to purchase the necessary capacity, then it is the responsibility of the EDCs to do what has to be done and commit to those purchases.

Reading the planning statutes together with RSA Ch. 374-F, however, we do not find that the statutes permit the re-joining of distribution and generation functions in the manner provided by the Capacity Contract. The planning statutes must be read in concert with RSA Ch. 374-F and in light of the industries to which they apply. RSA 378:38 applies to both electric and natural gas utilities, and those industries now differ in a fundamental way. While natural gas utilities continue to arrange natural gas supplies for their residential and small commercial customers, following electric restructuring, electric utilities do not arrange electric supply for their customers. Instead, pursuant to RSA 374-F:3, V(c), electric 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. *Id.* As a result of the Restructuring Statute, electric distribution utilities are no longer required to conduct long-term planning for electric supply. Accordingly, we find that in a restructured electric industry, the planning requirements for an EDC are limited to procurements of electric supply for the EDC's default service customers. That obligation is not broad enough to justify approval of a proposal like Eversource's.

Supporters also point out that the 10-Year New Hampshire State Energy Strategy, referenced in RSA 378:38, VII, encourages exploration of ways to increase gas pipeline capacity in New England. They claim that the Strategy thus requires EDCs to explore ways to increase gas pipeline capacity. We disagree. As discussed above, RSA 378:38 applies to both electric and gas utilities. Both are required to plan to have an adequate supply to meet their customers' demand. In our view, gas supply under the State Energy Strategy is the responsibility of the gas utilities. While Eversource, an EDC, cannot enter into the Capacity Contract and have it paid for through its distribution rates, natural gas utilities might be appropriate proponents of increased gas pipeline supply under RSA 378:38, VII. *See Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,822 (October 2, 2015) (approving firm transportation agreement for natural gas supply).

Supporters cite RSA 374:57, "Purchase of Capacity," as support for Eversource's proposal.

> Each electric utility which enters into an agreement with a term of more than one year for the purchase of generating capacity, transmission capacity or energy shall furnish a copy of the agreement to the [C]ommission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission pursuant to the Federal Power Act or, if no such filing is required, at the time such agreement is executed. The [C]ommission may disallow, in whole or part, any

> amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.

RSA 374:57. The Opponents, however, maintain that the statute does not mean what the Supporters think it means. The Opponents argue that RSA 374:57 was enacted following PSNH's bankruptcy to tighten the commission's authority over contracting decisions for electric supply; a service EDCs no longer provide. According to the Opponents, a statute intended to give the commission authority to disallow unreasonable provisions in contracts with terms longer than one year cannot mean an electric utility can enter into a long-term contract for gas transmission.

While the Supporters' reading of the statute is plausible, we believe the Opponents have the better argument. The meaning of "capacity" in that legislation is limited to electric generating capacity and electric transmission capacity. First, the types of agreements listed are commonly associated with electric supply. Second, if gas capacity was to be included, the statute would have included references to the Natural Gas Act in addition to the Federal Power Act. Thus we find that RSA 374:57 concerns long-term contracts for electric supply and does not authorize EDCs to purchase gas capacity under long-term contracts.

Supporters claim that RSA Chapter 374-A's provisions granting EDCs authority to "enter into and perform contracts" related to "participation in electric power facilities" provide support for Eversource's petition. Supporters observe that those provisions were not repealed by subsequent enactments such as RSA 374-F. NextEra argues RSA 374-A applied to vertically integrated "electric utilities" as defined in 1975 by 374-A:1, IV and therefore that the provisions in RSA 374-A:2, I and II are inapplicable in a restructured market where electric utility has been redefined. RSA 374-A:1, IV defines electric utilities as "primarily engaged in the generation and

sale or the purchase and sale of electricity or the transmission thereof." We believe NextEra is correct and that RSA 374-A no longer applies to an EDC like Eversource.

The change in the industry through the Restructuring Statute, first passed in 1996, effectively ended a restructured EDC's ability to participate in the generation side of the electric industry. Given the centrality of the separation of functions between distribution and generation in the Restructuring Statute, allowing an EDC to "participate in electric power facilities" under RSA 374-A in the manner proposed by Eversource would make little sense in light of RSA 374-F.

Opponents also argue, based upon RSA 378:28, that the Capacity Contract violates the used and useful requirement which is a basic component of utility ratemaking under New Hampshire law. Supporters counter that RSA 378:28 applies to rate base and because the Capacity Contract does not add to Eversource's rate base, and is instead an ongoing expense, the used and useful standard does not apply. The requirement that utility rate base be used and useful for a utility to include a return on that rate base in rates has a corollary principle governing expenses. That is, expenses must be prudent and necessary for providing the service offered by the utility. In this case, we have found that after enactment of the Restructuring Statute, EDCs should unbundle rates for distribution from rates for energy supply. Capacity Contract expenses are not needed to supply distribution services to Eversource distribution customers. The Capacity Contract is designed to support electric generation supply, and therefore expenses related to generation supply would be disallowed in distribution rates.

C. Federal law

As noted above, the Opponents also argued that the Capacity Contract would violate a number of federal laws, including the Natural Gas Act, the Federal Power Act, and the terms of

FERC procedures and precedent. Having determined that we cannot approve the Capacity Contract and related capacity releases under New Hampshire law, we need not reach a decision concerning federal pre-emption.

V. CONCLUSION

The proposal before us would have Eversource purchase long-term gas pipeline capacity to be used by gas-fired electric generators, and include the net costs of its purchases and sales in its electric distribution rates. That proposal, however, goes against the overriding principle of restructuring, which is to harness the power of competitive markets to reduce costs to consumers by separating unregulated generation from fully regulated distribution. It would allow Eversource to reenter the generation market for an extended period, placing the risk of that decision on its customers. We cannot approve such an arrangement under existing laws. Accordingly, we dismiss Eversource's petition.

We acknowledge that the increased dependence on natural gas-fueled generation plants within the region and the constraints on gas capacity during peak periods of demand have resulted in electric price volatility. Eversource's proposal is an interesting one, with the potential to reduce that volatility; but it is an approach that, in practice, would violate New Hampshire law following the restructuring of the electric industry. If the General Court believes EDCs should be allowed to make long-term commitments to purchase gas capacity and include the costs in distribution rates, the statutes can be amended to permit such activities.

Because that concludes this proceeding, we deny the motion to designate Staff Advocates as moot. We will address the joint motion for confidential treatment in a separate order.

Based upon the foregoing, it is hereby

ORDERED, that Eversource's instant petition is hereby DISMISSED; and it is

FURTHER ORDERED, that the information subject to Eversource's joint motion for confidential treatment should be kept confidentially, pending an order by the Commission regarding the disposition of same under RSA Chapter 91-A; and it is

FURTHER ORDERED, that the motions to designate Staff Advocates are hereby DISMISSED, having been rendered moot by the decision delineated in this Order.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 2016.

Martin P. Honigberg	Michael J. Iacopino	Kathryn M. Bailey
Chairman	Special Commissioner	Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 16-241

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

Petition for Approval of Gas Capacity Contract with Algonquin Gas Transmission, LLC, Gas Capacity Program Details, and Distribution Rate Tariff for Cost Recovery

Order Denying Motions for Reconsideration

O R D E R N O. 25,970

December 7, 2016

The Commission hereby denies the motions for reconsideration of Order No. 25,950, which dismissed Eversource's petition in this docket.

I. PROCEDURAL BACKGROUND

On February 18, 2016, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), a New Hampshire electric distribution company (EDC) filed a petition for approval of a proposed 20-year contract with Algonquin Gas Transmission, LLC (Algonquin). The contract would have been for natural gas capacity on Algonquin's Access Northeast Pipeline Project (Access Northeast pipeline). Eversource also sought recovery of associated costs through a new distribution rate tariff, to be assessed on all of Eversource's customers. Following the submission of legal briefs by interested persons regarding the Eversource proposal, the Commission dismissed the petition. *See* Order No. 25,950 (October 6, 2016). In that order, the Commission concluded as a matter of law that Eversource's proposal conflicted with the principles and requirements of the Electric Restructuring Statute, RSA Chapter 374-F. For a more extensive description of the procedural history of this matter, together with the Commission's legal analysis regarding its decision to dismiss the petition, see Order No. 25,950.

On November 7, 2016, Eversource filed a timely motion for reconsideration of the Commission's decision to dismiss its petition. Algonquin also filed a motion for reconsideration on November 7, 2016. On November 14, 2016, the Coalition to Lower Energy Costs (CLEC) made a filing styled a "Response" to the Eversource and Algonquin motions for reconsideration, broadly supportive of the Eversource and Algonquin pleadings. On November 15, 2016, the Conservation Law Foundation (CLF) filed a timely objection to the Eversource and Algonquin requests for reconsideration. Also on November 15, 2016, the Office of the Consumer Advocate (OCA) filed a timely objection to the Eversource and Algonquin pleadings. On November 18, 2016, NextEra Energy Resources, LLC (NextEra) filed its own objection to the requests for reconsideration. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-241.html.

II. POSITIONS OF THE PARTIES

A. Eversource

In its motion for reconsideration, Eversource reiterated the core arguments it made in its previously filed legal briefs. Specifically, Eversource argued that the Commission erred in failing to adopt the position that the objective of "lower energy costs" presented by the Legislature within the terms of the Electric Restructuring Statute, RSA 374-F, enabled the Commission to approve the Eversource-Access Northeast pipeline proposal. Eversource disagreed with the Commission's reliance on competition and functional separation of distribution and generation as the core principles of the Restructuring Statute. Eversource Motion at 2-5. Eversource also argued that the New Hampshire State Energy Strategy supports the acquisition of additional pipeline capacity for use by New England generators. Eversource

maintained that the prospect of "market failure" related to merchant generators' inability to acquire gas pipeline capacity militated in favor of the Commission's allowing the proposed activity. Eversource Motion at 5-7. Eversource also argued that RSA 374-A remains applicable to New Hampshire EDCs such as itself, even though Eversource did not rely on RSA 374-A in making its petition. Eversource Motion at 7-12.

B. Algonquin

In its motion for reconsideration, Algonquin alleged that the Commission ignored the various goal-oriented Restructuring Statute principles related to the perceived need for lower energy costs, among others, in favor of the functional separation principle presented in RSA 374-F:3, III, and the general principle of competition. Algonquin Motion at 3-9. Algonquin also reiterated its position that for Eversource to "simply provide a mechanism by which natural gas capacity would be made available" did not implicate RSA 374-F:3, III. Algonquin Brief at 9-11. Algonquin also argued that the Commission erred in not accepting legal arguments regarding the applicability of RSA 374:57 and RSA Chapter 374-A.

C. CLEC

In its pleading,[1] CLEC argued that the Commission was incorrect in concluding that the Eversource-Access Northeast proposal violated the terms of the Electric Restructuring Act. CLEC reiterated its position that there exists a state of "market failure" compelling the Commission to approve the proposal, that the proposal does not violate the functional separation principle of the Restructuring Act, and that the general corporate powers of Eversource enabled it to enter into the proposed activities. CLEC offered its broad support for the Eversource and Algonquin motions for reconsideration.

[1] CLEC's filing was not styled as request for rehearing or reconsideration. Instead, CLEC filed what it called a "response" to the motions of Eversource and Algonquin. The OCA argues that we should ignore CLEC's filing as untimely. In light of our decision, consideration of CLEC's arguments does not affect the result.

D. CLF

CLF opposed the requests for reconsideration, agreeing with the determinations of law made by the Commission in Order No. 25,950, and stated that there was no basis for the Commission to reconsider its decision.

E. OCA

The OCA supported the Commission's legal conclusion that the proposed Access Northeast contract would constitute a component of "generation services" in violation of the functional-separation principle of RSA 374-F:3, III, and the Electric Restructuring Act generally. *See* OCA Objection at 3-5. The OCA also presented arguments in opposition to Eversource's, Algonquin's, and CLEC's arguments regarding the import of the ancillary statutes considered by the Commission in its rulings.

F. NextEra

NextEra offered detailed analysis in support of the Commission's legal conclusions presented in Order No. 25,950.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3, RSA 541:4, *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011). A successful motion must establish "good reason" by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision," *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a

different outcome. *Public Service Co. of N.H.,* Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015).

Eversource's and Algonquin's motions for reconsideration do not present any new information, nor do they establish that the Commission overlooked or misunderstood issues in connection with its dismissal of Eversource's petition by means of Order No. 25,950. We carefully reviewed all of the statutory authorities relied upon by both supporters and opponents of the Eversource proposal, including RSA Chapter 374-F, and did not develop our legal conclusions in a vacuum. Historical context was of critical importance in our analysis. For instance, we carefully examined the definition of "Electric utility" presented in RSA 374-A:I, IV, and noted that Eversource is no longer the kind of electric utility defined in that section as "any individual or entity or subdivision thereof, private, governmental or other, including a municipal utility, wherever resident or organized, primarily engaged in the generation and sale or the purchase and sale of electricity or the transmission thereof, for ultimate consumption by the public." We stand by our conclusions that "RSA 374-A no longer applies to an EDC like Eversource" and "[t]he change in the industry through the Restructuring Statute, first passed in 1996, effectively ended a restructured EDC's ability to participate in the generation side of the electric industry." *See* Order No. 25,950 at 13-14.

Eversource and Algonquin simply reiterated their arguments that the goals of RSA 374-F, including lower energy costs and concomitant economic benefits, override the requirement to divest, if some alternative means is presented that promises to lower energy costs. Restating

prior arguments and requesting a different outcome is not grounds for rehearing. Therefore, Eversource and Algonquin's motions for reconsideration are denied.

Based upon the foregoing, it is hereby

ORDERED, that the petitions by Eversource and Algonquin for reconsideration are hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this seventh day of December, 2016.

Martin P. Honigberg	Michael J. Iacopino	Kathryn M. Bailey
Chairman	Special Commissioner	Commissioner

Attested by:

Debra A. Howland
Executive Director