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July 24, 2015

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

RE: DE 15-251 - Complaint of Robert Fisher
Eversource Hearing Notification

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|--------------------------------|-----------|
| ORIGINAL | |
| N.H.P.U.C. Case No. | DE 15-251 |
| Exhibit No. | # 3 |
| Witness | Taney / |
| DO NOT REMOVE FROM FILE | |

Dear Director Howland:

On July 20, 2015 the Commission issued an order, in letter form and over the objection of Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), granting the request for reconsideration submitted by Robert Fisher in the above-referenced complaint and scheduling a hearing for August 10, 2015. In conjunction with that order, the Commission established certain requirements for submissions to be made in advance of the hearing. Consistent with the requirements of the July 20, 2015 order, Eversource will submit the exhibits it intends to rely upon by August 7, 2015. In the first instance, however, Eversource provides its responses to the matters described in Item 1 of the Commission’s July 20, 2015 order.

Item 1(a) requires “a list of witnesses they intend to call at the hearing, identifying each witness by name and business or home address.”

Eversource would intend to call:

Janice Johnson
Credit Supervisor
73 West Brook St.
Manchester NH 03101
603-621-6802

Item 1(b) requires “a short written summary of each witness’s position, which summary should provide the witness’s account of the facts and any other relevant topic about which the witness is expected to testify.” Ms. Johnson’s summary of events is included as Attachment 1 to this letter.

LINKED

Item 1(c) provides “The parties may also provide a summary of the legal issues involved in this case. The Commission is particularly interested in whether and how a utility may interpret

and apply a Commission rule when the rule does not specifically or precisely provide the answer to the situation that the utility confronts.” Eversource’s summary of the legal issues is provided as Attachment 2 to this letter.

Thank you for your assistance with this matter. Please do not hesitate to contact me with any questions.

Very truly yours,



Matthew J. Fossum
Senior Counsel

Enclosures
CC: Service List

**Summary of Events and Position of
Janice Johnson
Credit Supervisor
Eversource Credit & Collection Department**

DE 15-251 - Complaint of Robert Fisher Against Eversource Energy

SUMMARY OF EVENTS:

- **On March 4, 2015**, Eversource requested a deposit for \$680.00, consistent with the Commission's regulations, due to the fact that Mr. Fisher had received 11 disconnect notices for non-payment in a rolling 12 month period.
- **On March 10, 2015**, Mr. Fisher called and requested that the deposit be waived. He was advised by the representative of the options available to him to have the deposit request waived and was also advised that the deposit could be paid in installments over 3 months. Mr. Fisher stated that he did not want to pay the deposit and, at that time, he was advised that failing to pay the deposit could result in a disconnection. Mr. Fisher confirmed that he was aware of that possibility and asked to speak with a supervisor.
- **On March 10, 2015**, Mr. Fisher spoke with a credit supervisor and stated that he was unhappy with the deposit request and that he did not wish to pay it. He was advised of the available options to waive the deposit, including the option to have someone else provide a guarantee, as well as the option to pay the deposit in installments if it was not waived. Mr. Fisher asked whether Eversource would disconnect his service for not paying the deposit and he was advised that the company could do so. He then stated that he would not pay the deposit, that he was not interested in the other options to have the deposit waived, and that he believed it would be a poor decision to disconnect his service. He was then advised that if we were unable to help him, he could contact the Commission with his concerns.
- **On March 10, 2015**, I spoke with the Commission's staff and following that conversation I agreed to reduce Mr. Fisher's deposit request to \$380.00 rather than \$680.00.
- **On March 18, 2015**, Mr. Fisher called and spoke to me about the requirements for having another person act as a guarantor. I told him that he should ask the potential guarantor to call me to discuss the details and I provided my contact information and availability.
- **On April 13, 2015**, Mr. Fisher's brother, Sam Fisher, called and spoke to a representative about the possibility of acting as a guarantor. He was advised that because he had only been an Eversource customer for 2 months, he did not qualify to act as a guarantor.
- **On April 14, 2015**, Eversource informed the Commission staff why Sam Fisher would not be accepted as a guarantor – his record of service was insufficient to put him in good standing for purposes of acting as a deposit guarantor.
- **On April 29, 2015**, Eversource representatives, including myself, met with Mr. Fisher and members of the Commission staff to discuss this issue. At that meeting, the history of this issue was discussed and the deposit waiver options were again discussed, along

with the requirements for someone to act as a guarantor. Mr. Fisher was also given the option to pay the deposit over 6 months, rather than 3. We left that meeting with the understanding that Mr. Fisher would continue to consider the options available to him to pay or waive the deposit.

- **On May 6, 2015**, the Commission received a complaint from Mr. Fisher about the company's application of the rules relating to deposits and deposit guarantees. Eversource responded to the complaint on May 22, 2015.
- **On May 19, 2015**, Mr. Fisher was disconnected in error for non-payment of the deposit. He was reconnected later that same day and, because it was an error by Eversource, all fees were waived and a "good will" credit was applied.
- **On June 8, 2015**, the Commission issued its order finding that Eversource had properly interpreted the rules on deposits.
- **On June 10, 2015**, I called Mr. Fisher to let him know that in light of the Commission's decision his account would be up for disconnection should he not pay the deposit or accept one of the options for having it waived. Later that day, Mr. Fisher had his friend call to act as a guarantor but Eversource did not accept his guarantee because he did not have service with Eversource.

STATEMENT OF POSITION:

Eversource's position is that throughout this process it has acted reasonably and in line with the Commission's rules. Based on Mr. Fisher's history – having received 11 notices of disconnection for non-payment in a 12 month period – Eversource had good cause to request a deposit to secure future payments. The initial deposit request was based on the Commission's rules for those requests and Eversource properly informed Mr. Fisher of the options available to pay or waive that deposit request. Those same options continued to be available to him once the amount of the deposit request was reduced, and additional payment options were provided to him. Mr. Fisher appears to disagree with some aspects of the Commission's rules, and he appears not to be interested in using certain of the options available to him to help with the deposit, but I do not consider those to be reasons to change anything about how Eversource has handled such deposit requests in the more than 20 years I have done this kind of work. Eversource stands by its deposit request, and remains willing to work with Mr. Fisher to find an appropriate means of addressing the deposit issue within the Commission's rules.

THE STATE OF NEW HAMPSHIRE
Before the
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 15-251

Complaint of Robert Fisher Against Eversource Energy

Public Service Company of New Hampshire d/b/a Eversource Energy's Summary of Legal Issues in Advance of the August 10, 2015 Hearing

In its July 20, 2015 secretarial letter order on reconsideration, the Commission stated that the parties to the above-referenced matter may “provide a summary of the legal issues involved in this case. The Commission is particularly interested in whether and how a utility may interpret and apply a Commission rule when the rule does not specifically or precisely provide the answer to the situation that the utility confronts.” Consistent with the Commission’s invitation, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) herein provides its summary of the legal issues in the case. Eversource frames its discussion around the specific matters involved in this case and, therefore, to the extent relevant, Eversource may make references to the underlying facts as part of its summary of legal issues. In so doing, Eversource notes that there does not appear to be a material disagreement on the underlying facts of this matter. In light of the claim in the motion for reconsideration that the Commission improperly accepted the “common definition” of a term contained in its regulations, and the Commission’s statement in its July 20, 2015 order that it is “interested in whether and how a utility may interpret and apply a Commission rule when the rule does not specifically or precisely provide the answer to the situation that the utility confronts,” Eversource understands that the Commission is concerned with addressing legal issues relating to the interpretation and

application of administrative regulations by a regulated entity where the regulation does not proscribe a specific course of action.¹

Initially, and in response to the item in which the Commission is particularly interested, Eversource points out that at the State and Federal levels there are substantial bodies of law relating to the proper interpretation and application of agency regulations, how disputes about the meaning or intent of those regulations are to be addressed, and the level of deference courts or legislative bodies should or must give to the interpretations of those regulations by the implementing agency. The existence of such bodies of law, in itself, demonstrates that there are often differing or conflicting interpretations of regulations by those subject to them. Agency regulations, and statutory law for that matter, are often unclear or incomplete, sometimes by design and other times unintentionally, and it is unreasonable to expect or require that each regulation or statute clearly define the duties, responsibilities and obligations of all parties to every situation. Therefore, it must be the case that regulated entities are permitted, and at times required, to interpret and apply relevant regulations to novel factual situations because the alternative is to ask the impossible – that every statute and every rule cover, with specificity, each and every situation for all potential parties and provide a particular and definable means to address every conceivable circumstance that might fall under the statute or rule.

Aside from the underlying logic, and as noted above, there is a significant body of law in New Hampshire relating to the application and interpretation of agency regulations when a

¹ Eversource notes that the Commission’s July 20, 2015 order did not state a specific basis upon which the reconsideration was granted and the hearing provided, other than to state that it was based upon “a review of the pleadings and further consideration.” July 20, 2015 Order at 2. Accordingly, these comments are based upon what Eversource understands are the underlying legal issues, and it reserves the right to respond further should the Commission provide further clarification that departs from that understanding.

dispute arises over the interpretation of a regulation. The New Hampshire Supreme Court has described its review of disputes in the interpretation of agency rules thusly:

We use the same principles of construction in interpreting administrative rules as we use with statutes. When interpreting agency rules, where possible, we ascribe the plain and ordinary meanings to the words used. We also construe rules in their entirety, rather than in segments. Further, the administrative intent of the issuing authority is important where that intent can be ascertained. While an agency's interpretation of its regulations is to be accorded deference, our deference is not total because we still must examine the agency's interpretation to determine if it is consistent with the language of the regulation and with the purpose which the regulation is intended to serve. Where language is ambiguous or where more than one reasonable interpretation exists, we must look beyond the rule itself to determine its meaning. In such cases, we will consider regulatory history to determine administrative intent.

Vector Mktg. Corp. v. N.H. Dep't of Revenue Admin., 156 N.H. 781, 783-84 (2008) (internal citations, quotations and brackets omitted). Further, the Court has stated:

[W]e interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the plain language of the legislation nor add words which the lawmakers did not see fit to include.

Boviard v. N.H. Dep't of Admin. Svcs., 166 N.H. 755, 759 (2014) (internal citations and quotations omitted). Additionally:

Rules adopted by administrative agencies may not add to, detract from, or in any way modify statutory law and may fill in details to effectuate the purpose of the statute. Rules and regulations promulgated by administrative agencies, pursuant to a valid delegation of authority, have the force and effect of laws. It therefore follows that where terms or phrases in an administrative agency rule are not specifically defined, we may look to provisions not only within the statute, but within other rules promulgated pursuant to the statute for guidance.

State v. Elementis Chemical, Inc., 152 N.H. 794, 803 (2005) (internal citations and quotations omitted). Accordingly, agency regulations are interpreted through a review of their plain meaning within the context of the overall scheme in which the regulations exist, and in light of

the purpose the regulation is intended to serve. Moreover, where a specific term or phrase is not defined, such review will include looking to other provisions within the regulations for guidance.

Applying those principles to the instant situation, the underlying complaint arises out of the interpretation and application of portions of Puc 1203.03. In particular, under Puc 1203.03(e) a utility, such as Eversource, may request a deposit as a condition of continuing to provide service under specified circumstances, including that a customer has received a certain minimum number of disconnect notices for nonpayment within a 12 month period. Pursuant to Puc 1203.03(i), however, in lieu of retaining a deposit, a utility is required to accept various other options, including the irrevocable written guarantee of a customer in good standing of the utility. Puc 1203.03(i)(1). As noted in Eversource's initial response to the underlying complaint, the rule does not define what it means for a customer to be in good standing and, therefore, the utility must determine which customers can be considered to be "in good standing" and which cannot for purposes of applying the rule. In light of the lack of a definition, Eversource, and the Commission, must review the plain language of the rule and look to related regulations for guidance.

As stated in Eversource's initial response, guidance for interpreting the "good standing" status may be found in Puc 1203.03(1), a rule within the same overall regulatory provision relating to deposits, and adopted pursuant to the same statutory authority as Puc 1203.03(i). Pursuant to Puc 1203.03(1)(5) all deposits requested and retained by a utility must be refunded, with interest, when all bills have been paid, without arrearage, for 12 months. This rule sets out a clear standard for determining when a customer is not to be considered a sufficient risk to justify retaining a deposit, in other words, when the customer is one in good standing – the customer has made 12 months of payments without arrearages that might generate a notice of

disconnection for non-payment. Eversource has applied this same standard as the standard for determining when a customer is “in good standing” for purposes of being able to provide a guarantee on behalf of another customer.² Moreover, the Commission has already concluded that the application of this standard is reasonable in its initial ruling in this matter. Eversource and the Commission have done what is expected and required of them under the law: they have interpreted the regulations through a review of their plain meaning within the context of the overall scheme in which the regulations exist by looking to other provisions within the regulations for guidance and in light of the purpose the regulation is intended to serve.

Furthermore, the arguments contrary to Eversource’s position throughout this process have not been about whether Eversource adopted or applied an inherently unreasonable interpretation or that in upholding Eversource’s interpretation the Commission acted beyond its authority, but only that there may be a different way to read the regulation. With respect to that contention, Eversource notes that none of the citations offered for differing potential readings are in the context of utility service. Instead, they are out of context references to items such as: requirements or guidance relating to the ability to practice law in Ohio or Florida or Maryland, general guidelines on letter writing, references to credit card issuers, and other entirely unrelated items including uncited, generic references to Wikipedia and YouTube. They bear no relationship to the issue at hand – how to interpret regulations governing utility service in New Hampshire.

² Eversource notes that this standard does appear in its tariff, though not in the section on deposits specifically. Eversource’s tariff, at page 100 relating to the availability of residential energy efficiency loans through the Company, states “The Customer must have good credit with the Company, which is defined as a Customer that has not received a disconnect notice from the Company during the twelve months preceding the Customer’s request for service under this program.” Accordingly, Eversource applies this standard across its business. Eversource also notes that this standard is also used by the other regulated New Hampshire electric utilities. *See* Tariff NHPUC No. 3 of Unitil Energy Services at page 110; Tariff NHPUC No. 19 of Liberty Utilities at page 96.

Furthermore, even if resort to outside references was appropriate to resolve an ambiguity, and Eversource does not concede that it is, a Google search for references to good standing or good credit in the context of deposits for utility service yields numerous references to standards substantially the same as the one used and applied here. For example, see the Letter of Credit Requirements of SoCalGas:

In order to establish credit or possibly waive a deposit for your gas account, residential customers may provide a Credit Reference Letter from another utility company such as gas, electric, water, telephone or cable.

The letter must be on company letterhead and meet the following criteria:

- Twelve months of continuous service within the past two years from the previous utility, which can include more than one address
- The account was maintained in good standing within those 12 months with no closes for non-payment, no returned items and two or less overdue notices.

http://custhelp.socalgas.com/app/answers/detail/a_id/114/~/-why-am-i-being-asked-for-a-letter-of-credit%3F.

Michigan Public Service Commission, Consumer Standards and Billing Practices for Electric and Gas Residential Service, R 460.112, Guarantee terms and conditions:

(1) A guarantee that is accepted in accordance with these rules shall be in writing and shall be in effect for not more than 36 months. The written guarantee shall state all of the terms of the guarantee and the maximum amount guaranteed. The utility shall not hold the guarantor liable for a greater amount, unless agreed to in a separate written guarantee.

(2) Notwithstanding the stated term of the guarantee, if longer than 12 months, the customer's credit shall be established and the utility shall release the guarantor upon satisfactory payment by the customer of all proper charges for utility service for a period.

http://w3.lara.state.mi.us/orrsearch/107_92_AdminCode.pdf.

Public Utilities Commission of Ohio, Ohio Administrative Code, 4901:1-17-06, Refund of Deposit and Release of Guarantor:

(A) After discontinuing service, the utility company shall promptly apply the customer's deposit, including any accrued interest, to the final bill. The utility company shall promptly refund to the customer any deposit, plus any accrued interest, remaining, unless the amount of the refund is less than one dollar. A transfer of service from one customer location to another within the service area of the utility company does not prompt a refund of the deposit or a release of the guarantor.

(B) The utility company shall review each account holding a deposit or a guarantor agreement every twelve months and promptly refund the deposit, plus any accrued interest in accordance with paragraph (A) of this rule, or release the guarantor, if the account meets the following criteria:

- (1) The customer has paid his/her bills for service for twelve consecutive months without having had service disconnected for nonpayment.
- (2) The customer has not had more than two occasions in the preceding twelve months on which his/her bill was not paid by the due date.
- (3) The customer is not delinquent in the payment of his/her bills at the time of the review.

<http://codes.ohio.gov/oac/4901%3A1-17>.

Eversource does not intend to provide a lengthy or comprehensive list of such requirements or descriptions of the ways in which the requirements of other states or companies may align with, or differ from, the standard applied by Eversource. The above is, however, sufficient to demonstrate that Eversource uses and applies a reasonable and appropriate standard based upon the accepted manner of interpreting agency regulations in New Hampshire and that standard is essentially consistent with the standards used and applied by similarly situated entities - good standing with the utility may be established by 12 months of appropriate and timely payments.

In the end, and in response to the Commission's request for a summary of the legal issues involved in this case with an emphasis on whether and how a utility may interpret and apply a Commission rule when the rule does not specifically or precisely provide the answer to the situation that the utility confronts, Eversource states that there are, and likely always will be, situations where a utility will be called upon to interpret and apply a Commission rule in circumstances where the rule does not specifically or precisely provide an answer. In such cases,

the utility should generally follow the long established standard for interpreting agency regulations, that is, to review the regulations through a review of their plain meaning within the context of the overall scheme in which the regulations exist, and, as necessary, look to other provisions within the regulations for guidance and in light of the purpose the regulation is intended to serve. To the extent that such a review may not yield a complete answer to the matter, or to the extent a dispute may arise, it is left to the Commission to interpret its own regulations in the first instance. For more than 20 years, Eversource has applied the same standard under the Commission's rules for determining whether a customer is in good standing for purposes of deposits and guarantees. When the Commission was called upon to address that standard, the Commission found it reasonable in light of the common usage and understanding of the relevant terms. Eversource and the Commission have done precisely what the law would have them do. The fact that a person may allege that there is some other way to read the regulation provides no legal basis to conclude that the interpretation by Eversource is unreasonable or inappropriate or that the Commission erred in upholding that interpretation, and it is likewise not, in itself, a reason to eliminate, rewrite or amend the regulation.