STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Donald M. Kreis

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

OFFICE OF THE CONSUMER ADVOCATE
21 S. Fruit St., Suite 18
Concord, N.H. 03301-2429

Website:
www.oca.nh.gov

February 15, 2022

New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket Nos. DE 11-250, DE 14-238, and DE 22-004
Public Service Company of New Hampshire d/b/a Eversource Energy
Order No. 26,577
Request for Hearing

To the Commission:

Please treat this letter as the response of the Office of the Consumer Advocate ("OCA") to the directive in Order No. 26,577 (February 4, 2022) that parties wishing the Commission to hold a hearing in connection with the determinations in that Order do so by February 15, 2022. The OCA hereby requests such a hearing.

As the Commission knows, at issue here is the $5 million Clean Energy Fund that Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH") agreed to finance as a term of the Settlement Agreement approved in DE 11-250 and DE 14-238 via Order No. 25,920 in July of 2016. This was no ordinary settlement agreement. Known as the "Restructuring and Rate Stabilization Agreement, it paved the way, at long last, for PSNH to divest itself fully and completely of its generation assets and, thus fully accomplish the purposes of RSA 374-F – the 1996 statute by which the state's electric utilities were to be transformed from vertically integrated providers of electricity to electric distribution companies. *See* 2015 "Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement," filed on June 10, 2015 in Docket No. DE 14-238 (tab 73), subsequently amended via "Eversource Energy Partial Litigation Settlement" (tab 181) filed on January 26, 2016.

From the standpoint of the residential customers whose interests the OCA represents, the chief stumbling block to such an agreement was the fact that PSNH wasted some $425 million on building a mercury scrubber at Merrimack Station, the coal-fired power plant then owned by PSNH in Bow. PSNH based its decision to green-light this project on the dubious assumption that it had been ordered to build the scrubber by the General Court. *See* RSA 125-O:13 (directing PSNH to "install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2023"). In reality, because RSA 125-O:13 directed PSNH to seek the approval of the Commission for such a project, without exempting the project from the prudence standard by which such investments have historically been reviewed, the proper gloss on RSA 125-O:13 would have been to consider it a legislative

directive either to retrofit Merrimack Station with a scrubber if such a project were economical or, otherwise, to retire the facility altogether. By 2008 it was clear that retirement was the appropriate option. The Commission nevertheless failed to stop the project and the New Hampshire Supreme Court used the doctrine of standing as a pretext for avoiding the inconvenient legal truths. *See Appeal of Stonyfield Farm, Inc*., 159 N.H. 227, 231-32 (2009) (concluding, shockingly, that ratepayers lacked standing to challenge PUC ruling on the scrubber because the controversy was "not an appeal of a rate plan").

I was not the Consumer Advocate in 2015 and I therefore have no opinion about the litigation risk assessment that led my predecessor to sign the Settlement Agreement approved the following year via Order No. 25,920. That Agreement allowed PSNH to recover $400 million of its scrubber costs from ratepayers on a nonbypassable basis, with a disproportionate share of the recovery allocated to residential customers. One modest concession made by PSNH involved its creation a $5 million Clean Energy Fund, but to occur only when the utility's generation asset divestiture, along with the securitization of the resulting stranded costs, was fully complete – a denouement that did not occur until August of 2018.

But, of course, that $5 million fund was not deployed in 2018. Instead, the money has been sloshing around in the bilge of that gold-plated galleon known as PSNH for nearly four years. This is unconscionable.

Pages 24 and 25 of the 2015 Restructuring and Rate Stabilization Agreement recite Commission-approved terms governing the deployment of the Clean Energy Fund. The "details" were to be "established via a collaborative process overseen by Commission Staff and the Office of Energy and Planning." The Office of Energy and Planning was subsequently renamed the Office of Strategic Initiatives ("OSI"). On November 7, 2019, without having overseen any collaborative process, the PUC Staff and OSI jointly filed a proposal for use of the Clean Energy Fund. *See* November 7, 2019 filing of PUC Staff Attorney F. Anne Ross (tab 234) in Docket No. DE 14-238. *Fully a year later* – on November 10, 2020 -- the Commission convened a hearing and heard comments from stakeholders and others. Further discussions among stakeholders ensued and, as a result, on April 14, 2021 PUC Staff and OSI jointly filed an amended proposal for the Clean Energy Fund that enjoyed broad support among stakeholders and to which there has been *no opposition*. *See* filing of PUC Staff Attorney David K. Wiesner of April 14, 2021 (tab 256) in Docket No. DE 14-238.

Another 295 days went by with no action by the PUC. Then, on February 3, 2022, the Commission issued Order No. 26,577 (corrected on February 4) in which the agency only approved *part* of the joint proposal submitted the preceding April. As to plans for expending $2.35 million of the Fund – nearly half its corpus – on a program for low- and moderate-income customers along with a financing program for commercial and industrial customers, the Commission, astonishingly, announced plans for yet more administrative process in the form of an entirely new docket, No. DE 22-004, "for purposes of facilitating the ongoing collaborative process for interested stakeholders to continue to develop the approved programs," "to propose detailed programs for the remaining balance in the Clean Energy Fund," and to allow the Commission to "review and assess program development and implementation on an annual basis for prudency of costs and allocation of funds." Order No. 26,577 at 8.

The Office of the Consumer Advocate requests a hearing to give the OCA an opportunity to argue that the approach outlined in Order No. 26,577 is starkly at variance with the relevant terms of the 2015 Restructuring and Rate Stabilization Agreement. As the Commission is aware, what was once the PUC Staff and the Office of Strategic Initiatives have now combined and morphed into the new Department of Energy. Concomitantly, the General Court reduced the size of the PUC and the scope of its duties. In these circumstances, the PUC should absent itself entirely from matters related to the Clean Energy Fund and leave oversight of the Fund to the Department of Energy. The parties to the Agreement that created the Fund obviously assumed that any oversight would be conducted via the personnel who now comprise the Department of Energy, rather than continuing to subject the Clean Energy Fund to endless administrative processes at the Commission.

Pursuant to RSA 363:17-a, the Commission is designated as "the arbiter between the interests of the customer and the interests of the regulated utilities." The General Court left this framing of the Commission's purpose undisturbed in the course of reforming the PUC and creating the Department of Energy effective on July 1, 2021. As to the matters germane to Dockets DE 11-250 and DE 14-238, there was a time when ratepayer interests and shareholder interests were clashing sharply in circumstances that would have been a suitable occasion for regulatory intervention, vigilance, and even courage. But the Commission long ago squandered its opportunity to prevent the wasteful construction of the scrubber at Merrimack Station. The utilities and the ratepayers subsequently resolved their differences over the scrubber, in part by persuading PSNH to create the $5 million Clean Energy Fund that should have started helping people in the PSNH service territory four years ago. The ratepayers and the shareholders are on the same page about the Clean Energy Fund. It is time for the Commission to step out of the way and, finally, let the Clean Energy Fund begin serving the purposes for which it was created.

Thank you for the opportunity to request a hearing, and for considering our views about the foregoing.

Sincerely,

Donald M. Kreis
Consumer Advocate

cc: Service lists in DE 11-250, DE 14-238, and DE 22-004