

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

EVERSOURCE ENERGY

Notice of Intent to File Rate Schedules

Docket No. DE 19-057

**OBJECTION TO AARP PETITION REQUESTING THAT
EVERSOURCE BE ORDERED TO FILE SUPPLEMENTAL TESTIMONY
REGARDING IMPACT OF THE COVID-19 CRISIS
AND SUSPENSION OF TEMPORARY RATE INCREASE**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”) and, pursuant to Puc 203.07, hereby objects to the “AARP Petition Requesting that Eversource be Ordered to File Supplemental Testimony Regarding Impact of the COVID-19 Crisis and Suspension of Temporary Rate Increase” (the “Motion”) filed on April 17, 2020 by AARP New Hampshire (“AARP”).¹ PSNH fully recognizes and appreciates the financial impact on many of its customers from the COVID-19 pandemic that is causing economic harm to New Hampshire and the world at large. PSNH is already taking steps designed to mitigate the impact of the pandemic on its customers. However, to take the additional extraordinary steps requested in the Motion is not justified by the circumstances, would subject PSNH to unfair and unconstitutional treatment, and may actually lead to more damaging long-term outcomes for both PSNH and its customers. Accordingly, PSNH objects and says the following:

1. At the outset, PSNH does not dispute that the effects of the COVID-19 pandemic, and the local, state, and national responses to it have, in a remarkably short time, changed the

¹ Though titled as a “Petition” the filing more appropriately treated as a motion submitted in the instant docket. Accordingly, PSNH treats the filing as a motion to which an objection is proper.

economic landscape in which both PSNH and its customers operate. Moreover, PSNH agrees with AARP (Motion at 3) that there was no way to predict this pandemic would occur, and, therefore, the full impacts of COVID-19 are not yet known, and likely will not be fully understood for months or years. Although providing appropriate relief from this event is necessary – and is already being delivered – PSNH counsels against making short-term decisions that will have unknown, and quite possibly adverse, long-term outcomes for PSNH and its customers to the overall detriment of New Hampshire.

2. With respect to the specific requests for relief, PSNH does not agree that there is cause for requiring additional testimony as described, and even if the Commission were to find it appropriate, the process proposed by AARP is improper and results in prejudice to PSNH. On the basis that “the record must be supplemented with the best information available regarding all significant changes in revenues, expenses or income,” AARP has argued that PSNH should update its testimony “to include refreshed calculations and projections that underlie Eversource’s proposed revenue requirement (i.e., projections of an inflation rate, calculations underlying a proposed ROE, calculations/projections of forward-looking commodity prices and sales, and other elements of a revenue requirement).” Motion at 2-3. While using the best information available is appropriate in a rate-setting proceeding, revising testimony in these circumstances is not necessary and does not make legal or practical sense.

3. As a first matter, the Commission uses an historical test year with limited post-test year adjustments in analyzing rate case filings. Shifts in markets, commodity prices, labor costs, inflation and other factors always occur between the submission of an initial case and its completion. Some shifts will be short-lived and others long-lasting, and some will increase costs to the utility and others would decrease costs. The underlying point is that things can and do

change between the start and end of a case, and the mere fact that things have changed does not, in itself, require new, and last-minute, analyses and testimony. Further, while the scope of immediate changes brought about by COVID-19 are substantial, the long-term impacts are largely uncertain. Any new testimony or analyses undertaken or submitted now will be based upon the facts and circumstances today, but which could change in a matter of days. Also, any analysis could not fully anticipate the impacts of other on-going events such as, for example, the Coronavirus Aid, Relief, and Economic Security or “CARES” Act, Public Law 116–136, the largest economic stimulus package in United States history – a stimulus that has already been supplemented, and may be supplemented further.² It strains credulity to suggest that PSNH (or anyone else) would be in a position to fully and accurately understand and account for those changes in any new testimony. AARP is asking PSNH to engage in an exercise in guesswork.

4. Additionally, the true impact of granting AARP’s request essentially would be to restart the case. Though AARP has identified certain items it believes should be updated, the reality is that if updates are to be made, then they would be required for virtually every aspect of the case filing. Essentially, AARP is asking the Commission to disregard hundreds of pages of testimony already filed (along with the more than 1000 questions PSNH has answered) and have them replaced by new testimony and information. Given the scope of the changes requested, it would not be feasible or fair to cherry pick the items identified specifically by AARP.

Moreover, AARP is asking that the Commission require this new case filing, along with a period for discovery and responsive testimony (but without an opportunity for discovery on that

² See, e.g. New Hampshire Public Radio, Congress Passes Latest Economic Relief Package to Confront Coronavirus, April 24, 2020, available at: <https://www.nhpr.org/post/congress-passes-latest-economic-relief-package-confront-coronavirus>

responsive testimony), in addition to hearings, in a few months. Such an undertaking with such a compressed timeframe would be prejudicial to PSNH and AARP's request should not be granted.

5. The Motion's request that the collection of temporary rates be ended is even more troubling, and has the potential for significant adverse long-term outcomes ranging well beyond the economic difficulties imposed by the pandemic. PSNH's utmost priority is the continuous provision of safe, reliable, and affordable service to its customers. Utility service has been declared an essential critical worker function by the U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency³ and an essential service in this State pursuant to the Governor's Emergency Order #17.⁴ Affordable, reliable, and stable electric power is foundational to the healthcare system, public safety, and the broader economy, and in recognition of this reality PSNH is fully committed to meeting the needs of all of its customers during this uncertain time. At the same time, however, the socioeconomic impacts of the current public health emergency are having significant operational and adverse financial impacts on PSNH as well as the state's other utilities. The Governor has ordered that utilities are prohibited from disconnecting customers for non-payment, and has suspended late payment charges.⁵ To the extent customers do not pay during this time and develop arrearages, the Governor has ordered utilities to provide payment plans to customers lasting at least 6-months at the end of the state of

³ See March 19, 2020 Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, available at <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce#download>

⁴ See March 26, 2020 Emergency Order # 17 Pursuant to Executive Order 2020-04, available at <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-17-1.pdf>, and its Exhibit A, available at <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-17-ex-a.pdf>.

⁵ See March 17, 2020 Emergency Order #3 Pursuant to Executive Order 2020-04, available at <https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-3.pdf>

emergency.⁶ More broadly, the following is a list of the full range of actions PSNH has taken, including those in the Governor's order, and beyond, in response to this pandemic:

- Moratorium on Residential Shut-offs: PSNH has suspended all disconnections for nonpayment for residential customers and is not sending any disconnect notices. This measure is extraordinary because a moratorium on shutoffs is typically limited to hardship customers during the winter moratorium and for medically protected customers, but it has now been expanded to all residential customers, regardless of their willingness or ability to pay.
- Moratorium on Business Shut-offs: PSNH has suspended all disconnections for nonpayment for business customers and is not sending disconnection notices.
- No Security Deposits or Payments to Reinstate Utility Service for Residential and Business Customers: PSNH has suspended the requirement to provide a security deposit and pay past due balances for previously terminated customers to reinstate their utility service.
- Moratorium on Assessing Late Payment Charges: PSNH has stopped assessing late payment charges for all residential and business customers.
- Expanded and More Flexible Payment Plans and No Down Payments Required: PSNH is now offering an unprecedented extension of payment arrangements for all residential and business customers, some for up to 12 months with no down payment required.
- Collections Activities Suspended: For any customers with balances that had already been subject to collections activities, those activities have been suspended.

⁶ *Id.*

The Attachment to this filing describes the various offerings and programs available to PSNH's customers. Also, though not yet approved, as part of the rate case filing PSNH has proposed an arrears management program that would allow customers a greater ability to manage and eliminate long-standing arrearages and a no-fee credit card payment option that would provide additional flexibility for future payments.

6. The actions PSNH is already taking are protecting customers' ability to retain an essential service now and following this emergency, but at the same time are causing, and will continue to cause, adverse financial impact to PSNH, even if temporary rates are continued as they are presently. The above changes, along with the broader changes brought about by the pandemic, impact PSNH's cash flow and revenue (to say nothing of the costs and impacts on employees' work practices and safety)⁷, and these impacts are currently the subject of inquiry from the financial and investment community. The adverse impacts could eventually manifest in the form of increased borrowing costs and impacts to PSNH's (and its parent company's) credit-rating. That would be detrimental to customers because it makes it more difficult to obtain access to reasonable cost capital during a period when the State and the Commission are looking for utilities to extend maximum flexibility to customers. These impacts may also degrade PSNH's ability to procure the materials and supplies necessary to conduct its business. Ultimately, those shifts would have the effect of raising costs more than they otherwise would have and imperiling the reliability of service. Beyond PSNH, having the Commission order temporary rate collection to cease would create substantial regulatory uncertainty for utilities in

⁷ For example, to keep its lineworker personnel effective in maintaining reliable service when that service is arguably more important than ever, among other things PSNH has: required physical separation and the use of face coverings; altered shift schedules; and limited the number of employees in buildings and vehicles. Other changes have been made to the activities of the call center, corporate office staff, control center personnel, and virtually all other employee groups.

New Hampshire. The state's utilities could no longer be assured that the rates authorized by the Commission would remain in effect, and this uncertainty will be felt by the utilities and reverberate in the broader markets in which they operate.

7. Beyond the above reasons to reject the Motion's request to terminate temporary rate collection, and turning specifically to the statutory bases offered by AARP, those likewise do not support the relief requested. PSNH acknowledges the plenary ratemaking authority of the Commission, *see, e.g. Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. 267, 277 (2013); however, exercising its authority in the manner suggested AARP is essentially arbitrary and is not justified by the law or circumstances. AARP relies upon the temporary rate statutes of RSA 378:27 and :29 for support. RSA 378:29 provides that:

In any proceeding involving the rates of a public utility brought either upon motion of the commission or upon complaint, the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports.

While RSA 378:29 states, in relevant part:

Temporary rates so fixed, determined, and prescribed under this subdivision shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this subdivision, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding.

As noted by the New Hampshire Supreme Court "Sections 27 and 29, enacted in 1941, were designed to protect utilities against confiscatory rates and to permit recoupment of any deficiency in return suffered under a temporary order." *State v. New England Tel. & Tel. Co.*,

103 N.H. 394, 395 (1961). This protection against confiscatory rates is entirely in line with the long-recognized right under State and Federal law of an investor-owned utility such as PSNH to recover in rates revenue that is sufficient to reimburse it for its prudently incurred costs, attract needed capital, maintain its financial integrity, and deliver safe and reliable electric service to customers. *See Legislative Util. Consumers' Council v. Pub. Serv. Co.*, 119 N.H. 332, 345 (1979) (“We have held that a public utility must be given the opportunity to earn revenue ‘sufficient to assure the investor’s confidence in the financial soundness of the utility and enough to maintain and support its credit so that it will be able to raise money necessary to improve and expand its service.’”), and *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968) (utility rates must be sufficient to enable a utility to “reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed.”)

7. In Order No. 26,265 (June 27, 2019) in the instant docket, the Commission made the specific finding called for in law by stating “For purposes of temporary rates, and the more limited investigation envisioned by RSA 378:27, we find that the record supports an increase in rates on a temporary basis.” Order No. 26,265 at 7. In other words, the Commission has concluded that there is no basis for questioning the figures provided by PSNH and that the temporary rates in effect are appropriate to assure confidence in the financial soundness of the utility and to maintain and support its credit so that it will be able to raise money necessary to improve and expand its service. Further, other than AARP’s claims that it would be beneficial to customers to lower rates (though, as noted, it would be harmful to the essential and necessary operation of PSNH’s business), AARP provides no information demonstrating that the temporary rates in effect are not just and reasonable and appropriate to assure proper recovery of utility

costs. The Motion provides no evidence for the Commission to conclude that terminating temporary rates in the middle of a rate case – an extraordinary act that PSNH believes has never been undertaken by this Commission – is an appropriate course of action that balances the interests of the utility and customers. Based upon PSNH’s calculations, cutting the temporary rate would result in a savings of approximately \$3.33 a month on the bill of an average residential customer. Although any amount of savings is helpful to customers, the financial challenges that customers face are likely to far outstrip the benefit of eliminating this change in rates, whereas eliminating the change will have a significant impact on the Company at a point where it is imperative for the Company to maintain its financial integrity so that it can extend assistance to customers struggling to pay the *entire* bill, regardless of amount. Simply cutting off PSNH’s ability to collect the revenue it requires to conduct operations does not provide a path to resolving the needs of customers during this pandemic. Instead, it will be critical that the Commission look more broadly into policies and practices that will address longer-term customer challenges such as providing flexible payment plans, arrears forgiveness, and other options for eligible customers to avail themselves of to work with the utility to pay for the power needed for their homes and businesses.

8. AARP also points to the emergency provision of RSA 378:9 as granting the Commission authority to terminate temporary rates. That statute as well provides no support for AARP’s requested action. RSA 378:9 provides, in its entirety “Whenever the commission shall be of the opinion that an emergency exists, it may authorize any public utility temporarily to alter, amend or suspend any existing rate, fare, charge, price, classification or rule or regulation relating thereto.” As quoted by AARP in the Motion:

The [emergency] statute grants the commission broad discretionary powers. The commission may determine whether a state of emergency exists for a public

utility or the public, increase or decrease rates, and disregard existing rules and regulations without requiring the customary complement of formal hearings and investigations. The statute does not define “emergency,” but this court, in an earlier case, determined that emergency is synonymous with crisis and that “the Legislature ... intended ... to vest in the commission as a fact finding body wide discretionary powers to decide whether a crisis is of sufficient severity to warrant relief and if so the extent of relief.” *Petition of Public Service Co.*, 97 N.H. 549, 550, 84 A.2d 177, 178 (1951).

Petition of Public Service Co. of New Hampshire, 130 N.H. 265, 283 (1988). The words of this statute are limiting – they only provide a basis for the Commission to “authorize any public utility” to change rates rather than the power to unilaterally mandate a change in rates. *Cf., e.g.*, RSA 378:7 which provides that the Commission “shall fix” rates following an adjudicative hearing process.⁸ Further, the kinds of emergencies that have fallen within this statute in the past have pertained to financial condition of the utility and how that condition might impact the utility and its ability to serve customers. *See Petition of Public Service Co. of N.H., supra; Petition of Public Service Co.*, 97 N.H. 549, 551 (1951) (“We believe, therefore, that the test to determine whether the emergency statute may apply here is to inquire whether reasonable persons may find the affairs of this company are at such a crisis that immediate and substantial disaster threatens unless prompt relief is given.”); *New England Tel. & Tel. Co. v. State*, 95 N.H. 58 (1948). So far as PSNH is aware, this statute has never been employed to address issues pertaining to public health or general economic conditions. Though the COVID-19 concerns are severe, they do not provide a unilateral basis for the Commission to invoke this statute to amend utility rates.

9. Furthermore, even if an emergency as contemplated in the law did exist, the relief requested is mismatched with the harm that is alleged. Here, AARP has contended that there is an emergency as it relates to the public at large and that the remedy is to lower PSNH’s rates. If,

⁸ *See also* Puc 1601.01(e) describing how to document a utility’s request for emergency rate relief pursuant to RSA 378:9.

however, the emergency relates to the public and, in particular, the financial stress on all members of the public from having to pay their utility bills, then the means to address that emergency would be with a general decrease to all utility rates in the entire state for all regulated services. Notably, AARP does not request such an action, and, in PSNH's assessment, the Commission would not have authority to render such a sweeping mandate. The fact that PSNH is presently collecting the temporary rates to which the Commission has determined it is entitled is merely coincidental to the impacts of the COVID-19 pandemic. The actions PSNH has already taken to assist its customers during this pandemic are broad and appropriate and the current public health issues, with their attendant economic stresses, do not afford a basis for forcing PSNH to terminate its temporary rates. Instead, the focus should be placed squarely on devising programs and initiatives that will help customers manage and pay the bills associated with the electric service that they are consuming.

10. PSNH is working with its customers during this difficult time and will continue to do so for the foreseeable future. As shown in the Attachment to this filing, PSNH is already offering numerous programs and services to benefit customers. The blunt tool of a reduction to temporary rates of a single utility, however, is not legally justified, would be arbitrary and a violation of PSNH's due process and equal protection rights, would have any potential short-term benefits eliminated by long-term impacts, and would hamper PSNH's ability to assist customers while continuing its core mission of providing safe, reliable, and affordable service to its customers.

WHEREFORE, Eversource respectfully requests that the Commission:

- A. Deny AARP's Motion; and
- B. Grant such further relief as is reasonable and appropriate.

Respectfully submitted this 27th day of April, 2020.

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



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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

April 27, 2020



Matthew J. Fossum