

STATE OF NEW HAMPSHIRE

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

Re: Docket No. DRM 21-122
Community Power Aggregation Rules
Motions filed by Public Service Company of New Hampshire

To the Commission:

Over the past two days, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) has made a pair of very unusual filings in the above-referenced docket. Yesterday Eversource filed a motion to waive a particular provision of the recently promulgated Puc 2200 rules – specifically, N.H. Code Admin. Rules Puc 22.03.02(b)(5) – on the ground that the Company “cannot comply” with this provision. Motion for Waiver of Puc 2203.02(b)(5) at 1. Today Eversource has filed a motion for an “order authorizing the Company to record the costs associated with implementing the necessary changes to existing enterprise billing systems to comply” with the Puc 2200 rules. Motion of Public Service Company of New Hampshire for Approval of a Regulatory Asset at 1-2 (citing RSA 53-E:5 as authority for cost recovery of certain Puc 2200 compliance costs).

The Commission must reject both of these pleadings as neither are appropriate for filing in a rulemaking docket. New Hampshire law does not authorize the Commission to exempt a utility from some or all of its rules upon request; if it could do that, the rules would not be rules but mere suggestions. Rule Puc 201.05 describes a procedure for obtaining a rules waiver, which requires certain findings that the Commission cannot make within a rulemaking docket.

The request to add a regulatory asset to its books is especially inappropriate for consideration within a rulemaking proceeding. Such a matter would amount to a “contested case” within the meaning of RSA 541-A:1, IV and this would require the Commission to open an adjudicative proceeding under RSA 541-A:31, I to consider Eversource’s request. As Eversource notes at page 2 of its motion to create a regulatory asset, the problem is that the Company’s ancient billing systems (one nearly 40 years old) cannot accommodate the needs of the sort of modern grid required by RSA 53-E community power aggregation. Whether this utility should be rewarded for its failure to update billing systems, or whether Eversource should have certain costs disallowed on the basis of imprudence, are controversial questions that a rulemaking docket most assuredly cannot address.

The basis for the positions articulated above is RSA 541-A:3, the provision of the Administrative Procedure Act that describes the process that occurs within a rulemaking proceeding. The last step in that process, described in paragraph VII, is “[a]dopting and filing a final rule under RSA 541-A:14.” Having accomplished that step, the Commission must now close this docket. To consider the two motions Eversource purports to have filed within the rulemaking docket would have potentially grievous due process implications.

Thank you for the opportunity to provide the position of the Office of the Consumer Advocate on these important matters.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Donald M. Kreis', written in a cursive style.

Donald M. Kreis
Consumer Advocate

cc: Service List