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October 14, 2022

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301

**Re: Docket No. DE 22-030
Public Service Company of New Hampshire d/b/a Eversource Energy
Third Step Adjustment**

Dear Chairman Goldner:

On October 12, 2022, the Public Utilities Commission (the “Commission”) issued a Procedural Order in Docket No. DE 22-030 that included a directive for Department of Energy (“DOE”) to file a status update regarding the Business Process Audit (“BPA”) that was agreed to as part of the settlement agreement approved in DE 19-057 (the “Settlement Agreement”), for Public Service Company of New Hampshire d/b/a Eversource Energy (the “Company”). DOE complied with this directive by filing a letter advising that the DOE has received the audit report from River Consulting Group (“River Consulting”) but does not consider the audit report final because DOE has not completed its review. DOE argues that its withholding of the draft is appropriate because DOE is responsible for “supervising” the audit consultant. However, the Settlement Agreement does not reserve or create the right for DOE to withhold the report produced by River Consulting, nor does DOE have a basis for avoiding discovery of the River Consulting report in its possession. The report produced by River Consulting is relevant to DOE’s testimony in this case and is discoverable.

With respect to DOE’s claim that its “supervisory” role shields the draft from disclosure, DOE’s letter asserts that River Consulting will issue the “final” report following completion of DOE’s review. This implies that the “final” version will be a draft that DOE has commented on, or even edited, prior to disclosure to the Company or the Commission (*i.e.*, neither the Commission nor the Company will ever receive the draft audit report actually generated by River Consulting and submitted to DOE). This process would lack transparency and is contrary to how the Settlement Agreement and/or audit process works in New Hampshire.

Appendix 2 of the Settlement Agreement determines the next step after production of the audit report by River Consulting and makes no provision for a report that is provided solely to DOE, for its review and comment prior to any inspection of the actual report produced by River

Consulting by the Company (or, ultimately, the Commission). Appendix 2 states, in relevant part, that “Staff *and* the Company will have the opportunity to review and comment on *the consultant’s final report* prior to filing with the Commission.” (Motion to Compel, Attachment A, at Bates 46 (emphasis added)). There is no aspect of the Settlement Agreement that shields the audit consultant’s report from disclosure, nor that provides DOE with exclusive access and control before any other inspection of the report delivered River Consulting occurs.

The process DOE is suggesting is also counter to DOE’s own audit process. The DOE routinely conducts audits through its Audit Division. The DOE Audit Division process proceeds in parallel with the regulatory, adjudicative proceeding and, as part of that parallel process, the DOE Audit Division issues its own data requests, holds informal discussions with the Company, and issues a draft audit report *to the Company* for timely comment in order to ensure factual accuracy.¹ The Company then provides comments and further explanations in response to the Audit Division’s draft report. It is the Company’s experience that, typically, the Company’s comments are included in the final audit report together with the Audit Division’s response, including any changes to the Audit Division’s recommendations that were made in response to Company comments, so that there is total transparency as to what the Audit Division found and what the Company’s response was. This audit process is devised to enable the Commission to act as the ultimate decision maker regarding the Audit Division’s original findings.

Here, DOE’s attempt to shield the Business Process Audit report prior to allowing the Company to review the report lacks transparency and will call into question the credibility of the “final” BPA report, which was designed to be a process conducted independent of *both* the Company and DOE. The sequence suggested by DOE would prevent the Company and, ultimately, the Commission from receiving the full benefit of the original audit process and consultant findings.

The report produced by River Consulting is discoverable. DOE’s witness testified in this proceeding that DOE’s recommended disallowances to the Third Step Adjustment are related to a “consistent pattern” of failing to identify project costs at the project’s outset leading to alleged overruns and that this “pattern” was the driver of the BPA (2022-09-22 Tr. at 212-213). Also, as shown in Attachment B to the Company’s Motion to Compel filed on October 10, 2022, evaluation of the Company’s process for developing initial project budgets/estimates was a specified component of the BPA. The consultant’s report is the result of the BPA, regardless of any desire by DOE to review and edit the report before there is any other inspection of the report. This would defeat the very purpose of the BPA, which was *specifically designed* to elucidate DOE’s assertions that the Company suffers from an alleged pattern of failing to develop reasonable project budgets or estimates.

¹ The Company is typically provided only 5-10 business days to turn around comments on an audit draft, unless there are extenuating circumstances. Here, it is the Company’s best estimate that the DOE likely received the audit report several weeks ago because discovery, interviews and field visits concluded in June 2022.

Letter to Chair Goldner
DE 22-030
October 14, 2022
Page 3 of 3

DOE should not be permitted to rely on the BPA in support of its testimony and then also argue that the BPA is not relevant or is somehow shielded from discovery, which it is not. In fact, there is no legal basis whatsoever for asserting that the report produced by River Consulting (draft or final) should be hidden from the Company and exempt from disclosure.

Please contact me if you have any questions. Thank you for your attention to this filing.

Sincerely,

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style with a large initial 'J'.

Jessica Buno Ralston

cc: Service List, Docket DE 22-030