BEFORE THE NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY 2024 ENERGY SERVICE SOLICITATIONS	: : : :	DOCKET NO. DE 24-046

JOINT COMMENTS OF CPCNH AND NRG RETAIL COMPANIES
RE ORDER *NISI* APPROVING ENERGY SERVICE RATES

The Community Power Coalition of New Hampshire ("CPCNH"), and Direct Energy Services LLC; Direct Energy Business, LLC d/b/a NRG Business; NRG Business Marketing, LLC (f/k/a Direct Energy Business Marketing LLC); Reliant Energy Northeast LLC d/b/a NRG Home; and XOOM Energy New Hampshire, LLC (collectively, the "NRG Retail Companies") (together with CPCNH, the "Joint Commenters") hereby submit these comments regarding the New Hampshire Public Utilities Commission's ("Commission") Order *Nisi* Approving Energy Service rates[1] in the above-captioned proceeding.

BACKGROUND

On June 13, 2024, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or "PSNH") filed a petition requesting that the Commission approve an adjustment to its default Energy Service ("ES") rates for effect on August 1, 2024.[2] On June 20, 2024, the Commission issued an Order Approving Solicitations, and Requesting Re-Filing of

[1] Order No. 27,034 (Jul. 12, 2024) ("Order *Nisi*").

[2] *See* Petition for Adjustment to Energy Service Rates for Effect on August 1, 2024 (Jun. 13, 2024) ("Petition").

Energy Service Rates by July 10, 2024.[3] Subsequently, Eversource submitted its revised filing,[4] and a correction to that filing.[5]

On July 12, 2024, the Commission issued the Order *Nisi*, which approved new ES rates to be effective August 1.[6] The Order *Nisi* also provided an opportunity for persons interested in doing so to submit comments regarding the order.[7] The Joint Commenters hereby submit these comments in response to the Order *Nisi*.

COMMENTS

The Commission is required to ensure that the provision of default service does "not unduly harm the development of competitive markets, and mitigate[s] against price volatility without creating new deferred costs . . . ."[8] However, the Large Customer Group ES rates approved in the Order *Nisi* ("Approved Rates") fail to meet each of these criteria. Moreover, the Approved Rates are not just and reasonable because they contravene the 1996 Electric Utility Restructuring Act ("Restructuring Act"),[9] violate the well-accepted cost causation principle, represent a major deviation from long-standing Commission precedent, and will unduly harm the development of competitive markets and consumers. Thus, for the reasons set forth more fully below, the Joint Commenters request that the Commission order Eversource to maintain the Large Customer Group ES rates currently in effect while the Commission re-evaluates

[3] Order No. 27,022 (Jun. 20, 2024), at 10. Both the Office of Consumer Advocate ("OCA") and the Joint Commenters filed Motions for Rehearing regarding Order No. 27,022. *See* OCA Motion for Rehearing of Order No. 27,022 (Jul. 11, 2024); Joint Motion of CPCNH and NRG Retail Companies for Rehearing (Jul. 19, 2024).

[4] *See* Technical Statement of Parker Littlehale, Luann Lamontagne, Yi-An Chen, and Scott Anderson (Jul. 3, 2024) ("Eversource Technical Statement") and related attachments.

[5] *See* Revised Attachment YC/SRA-1, Page 2 of 4.

[6] *See generally* Order *Nisi*.

[7] *Id.* at 6.

[8] RSA 374:F-3,V(e).

[9] RSA 374-F.

Eversource's proposed ES rates,[10] or, in the alternative, to only approve the Large Customer Group ES rates for effect from August 1, 2024 through August 31, 2024 and revise those rates effective September 1, 2024 to address these issues.

I. The Approved Rates Contravene The Restructuring Act

As noted above, the Restructuring Act requires the Commission to ensure that the provision of default service does "not unduly harm the development of competitive markets, and mitigate[s] against price volatility without creating new deferred costs . . . ."[11] The Restructuring Act further requires that "[a]ny prudently incurred costs arising from . . . purchased power agreements shall be recovered through the default service charge."[12] Moreover, the Restructuring Act requires that customers be provided "***clear price information on the cost components*** of generation, transmission, distribution, and any other ancillary charges."[13] Further, "[c]osts should not be shifted unfairly among customers."[14] The Approved Rates fail to satisfy each of these statutory requirements.

First, the Approved Rates will unduly harm the continued development of the competitive market and consumers because they exclude $6.5 million in under-recoveries while, at the same time, provide a credit for previous over-recoveries.[15] This creates artificially low default service rates; thereby distorting the price signals to customers. As a consequence, customers in the Large Customer Group will not receive "***clear price information on the cost components*** of generation, transmission, distribution, and any other ancillary charges." Without

[10] *Cf.* DG 22-015, Order No. 26,618 (Apr. 28, 2022) (extending winter cost of gas rates through May 31, 2022).

[11] RSA 374:F-3,V(e).

[12] RSA 374-F:3,V(c).

[13] RSA 374-F:3,III (emphasis added).

[14] RSA 374-F:3,VI.

[15] Order *Nisi*, at 2-3, 4 (approving "a credit of 0.485 cents per kWh to be assessed as part of ES rates for the Large Customer Group.").

clear and accurate price signals, customers cannot make informed decisions about the value of competitive supply options; thereby harming the continued development of the competitive market and consumers. Thus, the Approved Rates violate the Restructuring Act.

The Approved Rates also create new deferred costs by failing to include $6.5 million in under-recoveries.[16] Because the Approved Rates defer $6.5 million for future recovery,[17] they do not include "[a]ny prudently incurred costs arising from . . . purchased power agreements . . . ."[18] Moreover, the deferral of the $6.5 million in under-recoveries arising from service to the Large Customer Group for future recovery from all ratepayers[19] also shifts costs "unfairly among customers."[20] Thus, the Approved Rates contravene the Restructuring Act and should not be permitted to go into effect.

II. The Approved Rates Violate The Cost Causation Principle

As the Commission is aware, the cost causation principle is "well-accepted."[21] In fact, the Commission has relied on this principle in setting default energy supply rates for decades.[22]

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[16] Order *Nisi*, at 2-3 (noting that Eversource "was required to place a prior-period under-collection of approximately $6.5 million, arising from its ES operations for the Large Customer Group, into a deferral account").

[17] *Id.*

[18] RSA 374-F:3,V(c).

[19] Eversource Technical Statement, at 1; Order *Nisi*, at 2-3 (noting that Eversource "was required to place a prior-period under-collection of approximately $6.5 million, arising from its ES operations for the Large Customer Group, into a deferral account"); *Id.* at 5.

[20] RSA 374-F:3,VI.

[21] DG 05-147, Order No. 24,540 (Oct. 31, 2005), at 15.

[22] *See* DE 05-064, Order No. 24,511 (Sep. 9, 2005), at 13 ("The inclusion of administrative costs in the DS [default service] rate will result in the recovery of those costs from DS customers only, which is consistent with the Restructuring Act and with the principle of cost causation."); DE 05-126, 24,577 (Jan. 13, 2006), at 12 (same); *see also* DG 17-144, Order No. 26,120 (Apr. 18, 2018), at 4 ("The increase is the result of efforts by Northern to assess, on the basis of cost causation, the component of supply-support service that could reasonably be assessed to competitive natural gas suppliers relying on Northern's distribution system, under difficult operational conditions such as those experienced in late December and early January."); DG 05-080, Order No. 24,627 (Jun. 1, 2006), at 17 ("[W]e find that the capacity costs that Northern seeks to recover from New Hampshire customers through its COG filings are no longer the result of a cost allocation methodology that is based on sound cost causation principles. Moreover, because the extent of the cost shift is now significant, as demonstrated by the change in New Hampshire's annual allocation factor over the past several years, we find that the PR Allocator no longer achieves the 'just and reasonable' ratemaking standard required under RSA 378:7.") (footnote omitted).

Notably, even in circumstances where "the percentage increases are very high for some classes," the Commission has continued to apply the cost causation principle because "the resulting rates better approximate the cost to serve each customer class . . . ."[23] Despite this, the Approved Rates violate the cost causation principle by failing to include $6.5 million in under-recoveries and deferring those under-recoveries to be collected from all customers[24] – even those on competitive supply. As consequence, the Approved Rates are not just and reasonable[25] and should not be permitted to go into effect.

III. The Approved Rates Are Inconsistent With Long Established Precedent

As it has for more than twenty years, "avoiding deferrals remains sound policy."[26] In fact, as noted above, the Restructuring Act specifically provides that provision of default service should "mitigate against price volatility ***without creating new deferred costs***."[27]

Consistent with this, more than a decade ago, the Commission determined that "[t]he price of . . . default service shall be PSNH's actual, prudent, and reasonable costs of providing such power . . . ."[28] Further, consistent with the requirement that "any prudently incurred costs arising from . . . purchased power agreements shall be recovered through the default service charge,"[29] the Commission has concluded that the actual costs of providing default service should include any over- or under-recoveries associated with providing default service.[30] In fact,

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[23] Order No. 25,613 (Dec. 23, 2013), at 12.

[24] *See* Technical Statement, at 1; Order *Nisi*, 2-3, 5.

[25] *Cf.* DG 17-144, Order No. 26,120 (Apr. 18, 2018), at 4 (finding rates to be just and reasonable because they were determined "on the basis of cost causation"); DG 05-080, Order No. 24,627 (Jun. 1, 2006), at 17 (finding that, because of cost shifting, "the PR Allocator no longer achieves the 'just and reasonable' ratemaking standard required under RSA 378:7").

[26] DE 03-175, Order No. 24,252 (Dec. 19, 2003), at 29.

[27] RSA 374-F:3,V(e) (emphasis added).

[28] DE 11-184, Order No. 25,305 (Dec. 20, 2011), at 40.

[29] RSA 374-F:3,V(c).

[30] *See, e.g.,* DE 11-215, Order No. 25,380 (Jun. 27, 2012), at 6 (finding that Eversource's actual costs included an estimated over-recovery and denying Eversource's "request to defer the over-recovery in energy service revenues.").

the Commission specifically determined that "once [PSNH's] Part 3 Stranded Costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with . . . Default Service would thenceforth be carried forward for reconciliation purposes into the Default Service (i.e., Energy Service) rate."[31] Despite this, the Approved Rates only include under-recoveries associated with providing default service and defer over-recoveries for future recovery from all customers.[32] As a consequence, the Approved Rates do not represent "PSNH's actual, prudent, and reasonable costs of providing [default service] power . . . ."[33] Thus, the Approved Rates directly contravene long standing Commission precedent[34] and should not be permitted to go into effect.

IV. The Approved Rates Will Unduly Harm The Competitive Market And Consumers

Reconciliations distort the relationship between the actual cost of providing default service during a particular period and the market price of power. Allowing Eversource to recover reconciliations associated with the provision of default service in delivery rates will only further

[31] DE 06-068, Order No. 24,711 (Dec. 15, 2006), at 2-3; *see also* DE 12-116, Order No. 25,466 (Feb. 27, 2013), at 2 ("Previously, the difference between revenues and costs associated with providing . . . default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. Pursuant to the Restructuring Agreement, Part 3 stranded costs were those stranded costs for which PSNH undertook some risk of non-recovery. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs and the Commission approved a reduction to the Company's SCRC to reflect that development. In a prior order, the Commission had determined that once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with transition service and energy service would be reconciled in the energy service rate.") (citations omitted).

[32] Eversource Technical Statement, at 1; Order *Nisi*, at 2-3, 4 (approving "credit of 0.704 cents per kWh to be applied as an offset to ES rates for the Small Customer Group, including residential customers, and a credit of 0.485 cents per kWh to be assessed as part of ES rates for the Large Customer Group.").

[33] *Cf.* DE 11-184, Order No. 25,305 (Dec. 20, 2011), at 40.

[34] DE 11-184, Order No. 25,305 (Dec. 20, 2011), at 40 ("The price of . . . default service shall be PSNH's actual, prudent, and reasonable costs of providing such power . . ."); DE 11-215, Order No. 25,380 (Jun. 27, 2012), at 6 (finding that Eversource's actual costs included an estimated over-recovery and denying Eversource's "request to defer the over-recovery in energy service revenues."); DE 06-123, Order No. 24,682 (Oct. 23, 2006), at 13 ("We deny UES' request to switch to a uniform annual rate for Non-G1 DS customers. While such a rate might reduce the rate impact felt by winter users, with the removal of the under-collection and associated interest expense from the calculation of the Non-G1 DS charge the rate impact benefits of the proposal will be smaller than previously thought. In addition, we are concerned about the implications of UES' proposal for energy conservation during the winter months, for intra-class subsidies, and for creating unnecessary new deferred costs with interest.").

distort the accuracy of default service pricing. As a consequence, default service customers will never know the actual cost of default service.

Furthermore, customers that chose competitive supply run the risk of paying twice for the wholesale energy incorporated into their supply rates - once from their chosen competitive supplier and once as a distribution customer paying a portion of the cost of default service (even though the customer has chosen not to use it) in delivery rates. As a result, customers will not be provided "***clear price information on the cost components*** of generation, transmission, distribution, and any other ancillary charges."[35]

Only when customers know the true cost of their power supply can they make appropriate decisions regarding their preferred supplier. In contrast, if customers do not know the true cost of their power supply, they are discouraged from adopting new solutions to meet their energy needs, including solutions that the competitive market can provide that offer customers prices that may be lower than the default service rate, provide longer term price stability, and/or offer other value-added products and services, such as renewable energy content that exceeds the mandatory requirements.[36] Because the Approved Rates do not include the full cost that Eversource has incurred in providing default service to the Large Customer Group, those rates are artificially low and do not provide customers with clear and accurate price information on which they can rely to make information decisions about their supply choices; thereby unduly harming the competitive market[37] and consumers.

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[35] RSA 374-F:3,III (emphasis added).

[36] *See* https://www.energy.nh.gov/engyapps/ceps/ResidentialCompare.aspx?choice=Eversource (reflecting residential competitive supply offers in the Eversource service territory) (last visited Jul. 27, 2024).

[37] *Accord* DE 05-064, Order No. 24,511 (Sep. 9, 2005), at 13 ("In addition, because competitive suppliers must recover their administrative costs through market prices, we believe the proposal will create a more level playing field and, as a result, help promote the development of retail competition."); DE 05-126, 24,577 (Jan. 13, 2006), at 12-13 (same).

V. Customer Migration Is Not A Basis For The Approved Rates

The Commission has long recognized that significant customer migration could impact default service rates.[38] Despite this, the Commission concluded that the actual costs of providing default service should include any over- or under-recoveries associated with providing default service.[39] The fact that what was expected to occur has come to pass does not warrant unduly harming consumers and the competitive market by allowing ES rates to go into effect that contravene the Restructuring Act, the "well-accepted" cost causation principle and long-standing Commission precedent.

Moreover, Eversource could have avoided a significant portion of the under-recovery by adjusting the load forecasts that it used to support the proposed Large Customer Group ES rates in 2023. For example, when it sought approval in June 2023 for new ES rates, Eversource's own quarterly migration data showed that Eversource was already experiencing substantial customer migration in the Large Customer Group.[40] However, Eversource's projected load failed to adequately account for this migration.[41] Thus, the fact that Eversource experienced substantial

[38] *Accord* DR 96-150, Order No. 22,514 (Feb. 28, 1997), at 180 ("The portfolio for default service . . . should be made up of supplies of a short contractual duration which will not create stranded costs regardless of the number of customers that may abruptly choose to acquire their own supplies.").

[39] *See, e.g.,* DE 11-215, Order No. 25,380 (Jun. 27, 2012), at 6 (finding that Eversource's actual costs included an estimated over-recovery and denying Eversource's "request to defer the over-recovery in energy service revenues."); DE 06-068, Order No. 24,711 (Dec. 15, 2006), at 2-3 ("[O]nce [Eversource's] Part 3 Stranded Costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with . . . Default Service would thenceforth be carried forward for reconciliation purposes into the Default Service (i.e., Energy Service) rate."); DE 12-116, Order No. 25,466 (Feb. 27, 2013), at 2 ("Previously, the difference between revenues and costs associated with providing . . . default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. Pursuant to the Restructuring Agreement, Part 3 stranded costs were those stranded costs for which PSNH undertook some risk of non-recovery. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs and the Commission approved a reduction to the Company's SCRC to reflect that development. In a prior order, the Commission had determined that once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with transition service and energy service would be reconciled in the energy service rate.") (citations omitted).

[40] Docket No. DE 06-125, PSNH 1st Quarter 2023 Customer Migration Report (showing that 96.4% of Eversource's Large Customer Group load was receiving competitive supply in March 2023).

[41] Docket No. DE 23-043, Direct Testimony of Marisa B. Paruta and Scott R. Anderson (Jun. 15, 2023), Attachment MBP/SRA-2, Page 2 of 4.

customer migration and needs to collect a significant under-recovery due, in part, to Eversource failure to make timely adjustments to its load projections to account for that migration should not provide sufficient justification to allow the Approved Rates to go into effect in violation of the Restructuring Act, the "well-accepted" cost causation principle or Commission precedent.

CONCLUSION

As the foregoing demonstrates, the Approved Rates are not just and reasonable because they contravene the Restructuring Act, violate the well-accepted cost causation principle, represent a major deviation from long-standing Commission precedent, and will unduly harm the continued development of the competitive market and consumers. Thus, for all the foregoing reasons, the Commission should order Eversource to maintain the Large Customer Group ES rates currently in effect while the Commission re-evaluates Eversource's proposed ES rates, or to only approve the Large Customer Group ES rates for effect from August 1, 2024 through August 31, 2024 and revise those rates effective September 1, 2024 to address these issues.

Dated: July 29, 2024

Respectfully submitted,

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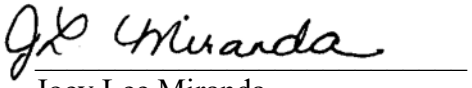
CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments has this day been sent via electronic mail or first-class mail to all persons on the service list.



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