STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DOCKET DE 24-046

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

2024 Energy Service Solicitations

Joint Motion of CPCNH and NRG Retail Companies for Rehearing

NOW COMES 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, "NRG Retail Companies") (together with CPCNH, the "Joint Movants") and move pursuant to RSA 541:3 and N.H. Code Admin. Rules Puc 203.07 for rehearing of Order No. 27,022 entered by the Public Utilities Commission ("Commission") in this docket on June 20, 2024 ("June 20 Order").

I. Introduction

The Joint Movants support the Office of Consumer Advocate's ("OCA") July 11, 2024 Motion for Rehearing ("OCA Motion") and all the arguments raised therein supporting the conclusion that "Order No. 27,022 unlawfully provides for future recovery of the $6.5 million via the SCRC"[1] and incorporate them into this motion. The Joint Movants provide additional argument and legal bases for rehearing in this motion. The Movants have standing because of the potential financial harm directly affecting the Joint Movants as well as their members and customers from the June 20 Order directing Public Service Company of New Hampshire d/b/a

[1] OCA Motion at 3.

Eversource Energy ("Eversource") to remove from the large customer group default energy service ("ES") rate calculation $6.5 million of prior-period under-recovery and, instead, "prepare a proposal for the integration of the ES Reconciliation Adjustment Factor charges into collection through the SCRC [Stranded Cost Recovery Charge] to be filed thirty (30) days in advance of the Company's next SCRC petition filing."[2] This would mark a significant departure from decades of existing policy precedent as such recovery through the SCRC, a non-bypassable charge, would mean that the costs incurred by one customer class of the utilities' default service customers are recovered from all Eversource distribution customers, including those customers using Community Power Aggregation ("CPA") service, competitive supply service, and Eversource's larger default service customer base of residential and small business customers.

II. Standing

As the Commission is aware, the New Hampshire Administrative Procedures Act provides that "any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order . . ."[3] Thus, the Joint Movants need not have been a party to the proceeding. Furthermore, the issue of default service cost recovery from the whole distribution customer base was not included in the Commission's May 6, 2024 Commencement of Adjudicative Proceeding and Notice of Hearing ("May 6 Order of Notice"). As a consequence, the Joint Movants could not reasonably foresee the need to petition to intervene in this proceeding in order to request that the Commission not enter the provisions of the June 20 Order directing Eversource to: 1) place $6.5 million of "under-collection into a deferral account" and reduce its proposed rates for the large customer

[2] June 20 Order at 9.

[3] RSA 541:3 "Motion for Rehearing".

group by excluding those costs associated with prior period provision of default service, including current carrying costs; and 2) "prepare a proposal for the integration of the ES Reconciliation Adjustment Factor charges into collection through the SCRC to be filed thirty (30) days in advance of the Company's next SCRC petition filing;"[4]

The Joint Movants are directly affected by the June 20 Order for the following reasons:

CPCNH is a governmental instrumentality of 60 member subdivisions of the State of New Hampshire authorized by its Board of Directors to file this motion for rehearing on behalf of its members.[5] CPCNH's member jurisdictions directly pay for Eversource electric distribution services and pay the SCRC across hundreds of Eversource accounts. CPCNH also serves around 65,000 Eversource customers in 37 CPA communities.[6] Most, if not all, of CPCNH's members and their customers would be financially harmed by the proposed cost shifting of utility default service costs through the SCRC that all customers pay.

The procurement and pricing of utility commodity supply service has a direct and substantial effect on the competitive retail energy market.[7] In fact, the Commission is required to ensure that the provision of default service by the utilities does not cause undue harm to the competitive markets.[8] Further, the recovery of stranded costs must be "consistent with the

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[4] *See* June 20 Order at 9.

[5] A full list of CPCNH members is available at: https://www.communitypowernh.gov.

[6] Cities of Berlin, Dover, Nashua, Portsmouth, and Somersworth, Cheshire County, and the Towns of Atkinson, Barrington, Bethlehem, Boscawen, Bradford, Canterbury, Charlestown, Chesterfield, Dublin, Durham, Enfield, Fitzwilliam, Gilsum, Grantham, Hanover, Harrisville, Hudson, Loudon, Nelson, New London, Newmarket, Pembroke, Peterborough, Plainfield, Roxbury, Rye, Stratham, Sugar Hill, Tamworth, Warner, Webster, Westmoreland, Winchester (some of which are being served on a default service basis by Cheshire County).

[7] *Cf.* RSA 374-F:3,V(e) (requiring consideration of harm to competitive markets).

[8] *See* RSA 374-F:3,V(e); *see also* Order No. 24,577 (Jan. 13, 2006), at 12; Order No. 24,511 (Sep. 9, 2005), at 12-13.

promotion of fully competitive markets."[9] The decision to allow Eversource to recover the under-recovery of costs associated with the provision of default service in stranded costs will cause undue harm to the competitive markets and impact the continued development of such markets. In particular, it will create artificially depressed default service rates. As a result, customers will not receive accurate price signals. Consequently, customers will not be able to accurately evaluate the value of competitive supply offers; thereby inhibiting the continued development and sustainability of the competitive retail electric market in New Hampshire. The NRG Retail Companies are registered competitive electric power suppliers[10] that serve residential, commercial and/or industrial electric customers in New Hampshire. As such, they have a substantial and specific interest in ensuring that the provision of default service does not impact their ability to provide value to customers and in the continued development and sustainability of the competitive retail electric market in New Hampshire.

III. The June 20, 2024 Order addresses and decides issues beyond the originally noticed scope contained in the May 6, 2024 Order of Notice and thus deprived Joint Movants of Due Process Rights.

The Commission did not provide public notice that the use of the non-bypassable SCRC would be considered as a new method to recover prior period under-recoveries of the cost of providing default service in this docket. The OCA motion correctly points out that Section 31 of the New Hampshire Administrative Procedures Act requires that the Commission, when commencing an adjudicative proceeding such as this one, provide "reasonable notice" that includes, *inter alia,* "a short and plain statement of the issues involved."[11] The Commission's

[9] RSA 374-F:3,XII(d)

[10] REG 2023-089, REG 2023-088, REG 2021-008, 2023-090, 2024-048.

[11] RSA 541-A:31, III.

May 6 Order of Notice indicates that the proceeding is an adjudicated one and lists the issues that will be determined in the docket.[12] Specifically, the related issues identified in the May 6 Order of Notice include whether the power supply procurement process is consistent with certain prior default service solicitation Orders and "whether the resulting rates are just and reasonable as required by RSA 374:2, and RSA 378:5 and :7."[13] The Joint Movants concur with the interpretation of the OCA in its motion when it states that "'resulting rates' clearly means default energy service charges – not stranded cost recovery charges."[14]

Default service costs have been recovered exclusively through default service rates for nearly 25 years with the exception of the recovery of certain generation costs, independent power producers (IPPs) purchases and Power Purchase Agreements (PPAs) that Eversource retained or entered into before their sale of its generation assets and transition to market based procurement in 2018.[15] Based on the May 6 Order of Notice, there was no reason for the Joint Movants to anticipate that this proceeding would consider radically modifying decades old precedent and adopt such a drastic change to the default service reconciliation process that would impact non-utility default service customers. In fact, the May 6 Order of Notice did note that the issues to be considered included "whether Eversource's power supply procurement process is ***consistent*** with Order No. 26-092 (December 29, 2017) . . . ."[16] Order 26-092 approved Eversource's initial default service reconciliation proposal. As part of the approved settlement, the "Settling Parties

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[12] May 6 Order of Notice at 3.

[13] May 6 Order of Notice at 3.

[14] OCA Motion at 4.

[15] *See* Order No. 26,092 (Dec. 29, 2017) at 4 and 7-10. Even before 2018, when Eversource was providing default service from generation assets that it owned and from other sources, the "Commission review[ed] the difference between the actual cost and the actual revenues to determine whether there was an over- or under-collection in that year that should be applied ***to the calculation of ES rates*** for the coming year." Order No. 26,092 at 4 (emphasis added).

[16] May 6 Order of Notice at 3.

. . . agree[d] that the reconciliation of ES costs and revenues will be handled consistent with Eversource's initial proposal . . . ."[17] The initial proposal stated, in pertinent part:

> Eversource would propose to follow a reconciliation method similar to that used by other New Hampshire utilities. Under the proposed process, Eversource would track the over and under collections specific to each customer group, small and large, and would reconcile them separately. That would ensure that the costs and revenue attributable to each group are addressed through that group.[18]

Despite indicating that it would consider if Eversource's proposal was consistent with Order 26-092, the Commission adopted a change that was entirely inconsistent with that Order.

By failing to provide notice that it was considering such a drastic change, the Commission circumvented the due process rights of unnoticed parties, including but not limited to the Joint Movants, which stand to be potentially financially harmed by the Commission's decision.

Moreover, even if there had been notice of consideration of such possible changes (which Joint Movants dispute) or if the Commission concludes that its actions were within scope of the May 6 Order of Notice (which Joint Movants also dispute), a timely petition for intervention may not have been granted until the day of the June 18, 2024 hearing on the proposed new rates. The schedule would not have allowed the Joint Movants the opportunity to conduct discovery on Eversource's novel proposal or the reason for the under-recovery which was made public only three business days prior to the June 18, 2024 hearing.[19] The timeline also would not have allowed sufficient time for the offering of any evidence or testimony in response to Eversource's

[17] DE 17-113 Settlement Agreement (Nov. 27, 2017) at 7.

[18] DE 17-113, Testimony of Shuckerow, White & Goulding, Bates p. 31, lines 8-13.

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

June 13, 2024 proposal to shift certain costs of providing default service out of default service and into the SCRC, prejudicing the potentially harmed Joint Movants.

IV. The June 20 Order directed Eversource to make a proposal in its SCRC docket, which would be contrary to New Hampshire law and therefore this aspect of the order should be reversed.

The Commission's decision in the June 20 Order to allow recovery of prior period under-recovery of costs arising from utility default service through the SCRC is contrary to New Hampshire law and thus, that aspect of the June 20 Order should be reversed. The 1996 Electric Utility Restructuring Act ("Act") specifies what costs may qualify as stranded costs for recovery through the SCRC. The recovery of prior period under-recovery of utility default service costs is not included in the qualifying list.[20] The Act further specifies that costs arising from purchased power agreements,[21] as well as for renewable portfolio standard (RPS) compliance in the provision of utility default service "shall be recovered through the default service charge" and

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[20] RSA 374-F:2, IV. "Stranded costs" means costs, liabilities, and investments, such as uneconomic assets, that electric utilities would reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric service continued and that will not be recovered as a result of restructured industry regulation that allows retail choice of electricity suppliers, unless a specific mechanism for such cost recovery is provided.

Stranded costs may only include costs of:

(a) Existing commitments or obligations incurred prior to the effective date of this chapter;

(b) Renegotiated commitments approved by the commission;

(c) New mandated commitments approved by the commission, including any specific expenditures authorized for stranded cost recovery pursuant to any commission-approved plan to implement electric utility restructuring in the territory previously serviced by Connecticut Valley Electric Company, Inc.;

(d) Costs approved for recovery by the commission in connection with the divestiture or retirement of Public Service Company of New Hampshire generation assets pursuant to RSA 369-B:3-a; and

(e) All costs incurred as a result of fulfilling employee protection obligations pursuant to RSA 369-B:3-b. *Id.* [emphasis added]

[21] The "Master Power Supply Agreement" or "MPSA" is the contractual agreement used by Eversource to purchase power from suppliers, so is a form of a "purchased power agreement" (Exh. 1 at 9, lines 11-14), the expense of which Eversource describes as "purchased power expense." (Exh 1 at pp. 70, 71, 74, Att. YC/SRA-2, pp. 1-2,5 of 5, lines 3-4).

provides that the costs of administering default service "should be borne by the customers of default service."[22] The upcoming period carrying cost, estimated to be $278,000,[23] is an ongoing cost of administering default service in the form of a charge on working capital to carry the deferral account that "should be borne by the customers of default service"[24] as they are incurred and not be deferred for recovery from a future group of ratepayers, including those not on utility default service, in a growing deferral account.

The Commission does not have the authority to consider the ordered proposal in Eversource's next annual SCRC adjustment proceeding unless such costs fit within the statutory definition of a "stranded cost" and it makes a "determination in the context of a rate case or adjudicated settlement proceeding that such charge is equitable, appropriate, and balanced; is in the public interest; and is substantially consistent with these interdependent principles. The burden of proof for any stranded cost recovery claim shall be borne by the utility making such claim."[25]

The Joint Movants recognize the Commission's aside noting the filing of the OCA's motion for rehearing of Order No. 27,022 and clarification that its order directing Eversource to prepare a proposal to integrate the ES Reconciliation Adjustment Factor into collection through the SCRC was intended to signal the Commission's intent "to have an adjudication of any such proposal in a future proceeding, with a separate order of notice."[26] However, because the proposal will also affect how costs associated with the provision of default service are recovered,

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

[23] Attachment - Yi-An Chen and Scott Anderson at Attachment YC/SRA-2, Page 5 of 5.

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

[25] RSA 374-F:4, V.

[26] Order No. 27,034 (Jul. 12, 2024) ("July 12 Order") at 5.

which will affect the Joint Movants and their members and customers, and could lead to precedent that will be applied to all New Hampshire electric distribution utilities, it should be considered in a proceeding opened solely for the purposes of considering a modification to the Commission's decades old precedent.

V. Deferring the recovery of the entirety of $6.5 million in utility default service costs for large customers to future ratepayers and excluding all of those costs from recovery in new rates for the large customer group results in unjust and unreasonable rates.

It has been the practice since ~2000 for Unitil and Liberty, and since 2018 for Eversource to recover prior period reconciliation costs through their applicable default service rate, consistent with the requirement that "any prudently incurred costs arising from . . . purchased power agreements shall be recovered through the default service charge."[27] It is unreasonable for the Commission to now allow Eversource to completely exclude $6.5 million in prior period default service under-recoveries from the near-term default service rates going forward, artificially reducing those rates to the benefit of current ratepayers at the expense of future ratepayers. Moreover, deferral of all such costs, including carrying costs, to the future in anticipation of charging these costs to a larger group of ratepayers is contrary to cost causation ratemaking principles. Thus, the rates are not just and reasonable. Accordingly, consistent with the existing default service reconciliation process and cost causation principles, the Commission should reconsider the rates approved in its July 12 Order and adjust those for the large customer class on a going forward basis to include the prior period under-recovery as soon as practical. By doing so, the Commission will reduce harm to future ratepayers by reducing the amount of the ongoing carrying cost of the deferred amount.

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

Further, the Commission appears to have accepted Eversource's largely unsubstantiated assertion that the "continuing migration of Large Customer load to community power aggregations and competitive suppliers appears to be a significant factor driving those increases" to under-recoveries.[28] Such an assertion fails to recognize that the vast majority of the costs incurred in providing default energy service should vary in direct proportion to the amount of load served and billed for. All costs except collection of prior period reconciliation amounts and general and administrative ("G&A") costs should vary based on the amount of load served.

Most importantly, Eversource's power purchase agreements for the large-customer group required the supplier(s) to provide 100% load following service at fixed monthly rates that change each month, regardless of load migration in either direction, helping to minimize any mismatch between revenue and costs for current power supply.[29] The amount of load billed to customers while on utility default service should match the amount of load procured by and purchased from the suppliers, adjusted for line losses and other "residual" amounts.[30] RPS compliance costs are directly proportional to actual load served.[31] Working capital costs should also be largely proportional to the amount of load served and the applicable rates.

Given this, the scale of the under-recovery appears to be well in excess of any under-recoveries attributable to prior period reconciliation and G&A costs that Eversource was unable to recover due to load migration. Eversource is responsible for calculating the monthly rates set

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[28] Direct Testimony of Yi-An Chen and Scott R. Anderson (Jun. 13, 2024), Bates p. 54, lines 21-22.

[29] DE 23-043, Attachments - L. Lamontagne, June 15,2023, pp. 3-5 of 12; and Attachments-L. Lamontage and P. Littlehale, December 14, 2023, pages Bates pp. 18-20.

[30] "Residual" amounts to reconcile the difference between the amount of power delivered over the transmission grid to the amount of power billed to retail customers tend to decrease the apparent line losses due to most net metered exports to the grid not being accounted for, except in the residual.

[31] RSA 362-F:3.

for retail default service rates to cover the monthly cost of power purchased from suppliers, including forecasting loads on which to base prior period reconciliations and G&A cost recovery. Eversource uses an accrual system of accounting. As a consequence, there should not be a material mismatch between revenue and expense due to customer migration. The significant under-recovery suggests the possibility of a flaw, deficiency or recurring error in Eversource's metering, load settlement, Electronic Data Interchange (EDI), customer information, billing, and/or accounting systems as there is not a sufficient explanation how such a large gap occurred between energy service revenues and purchased power expenses as seen in Attachment YC/SRA-2, page 2 of 5, lines 1 and 3 (July 3, 2024).

Unfortunately, a transcript of the hearing is not available as of this writing. Thus, it is impossible for Joint Movants to know if Eversource's assertion that its under-recoveries are a result of customer migration was investigated as part of the hearing. Furthermore, there appears to be little evidentiary support for the Commission's conclusion that "[w]ith Community Aggregation accelerating, the decline in ES sales for the Large Customer Group, resulting under-collections, ..."[32]

Because most of the cost of providing large customer energy service is directly proportional to the volume of sales, Eversource's substantial under-recovery merits further investigation, and should not be deferred for collection from future customers beyond the time necessary for such investigation. Nor should an under-recovery specifically attributable to the large customer group on utility default service be charged to other customers not on utility default service to ensure going forward that rates are just and reasonable and are consistent with

[32] June 20 Order at 8.

the Commission's directive to promote customer choice and competitive markets for power supply.[33] All other suppliers, including CPAs, must recover their supply costs from the retail customers taking their supply, including any prior period under-recoveries of such costs, or absorb those costs. Enabling Eversource to defer these default service costs and pursue recovery from all distribution ratepayers is inherently anti-competitive and results in unjust and unreasonable rates.[34] Eversource should not be treated differently and preferentially to the disadvantage of Joint Movants and all customers and communities that have exercised electric generation supply choice.[35]

VI. Conclusion

For the foregoing reasons, the Commission should grant the Joint Movants motion for rehearing and withdraw the decision ordering Eversource to create a deferral account for the $6.5

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[33] *See* RSA 374-F generally, RSA 374-F:4, I specifically. *See also* Order No. 22,875, at 23-24.

[34] RSA 374-F:3, V(c) expressly grants the Commission the authority to "implement measures [such as raising rates above cost] to discourage misuse, or long-term use, of default service." And further provides that "[r]evenues, if any, generated from such measures should be used to defray stranded costs." The law does not likewise suggest that the Commission has the authority to do the opposite, lower default service rates below the costs of providing that service and use the deferred amounts to increase stranded costs." RSA 374-F:3, V(e) similarly provides that the Commission may approve alternative methods of providing default service "to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility ***without creating deferrals."*** *(emphasis added)*

[35] In Order No. 22,875, the Commission noted: "As the New Hampshire Supreme Court stated:

> [L]egislative grants of authority to the PUC should be interpreted in a manner consistent with the State's constitutional directive favoring free enterprise. Limitations on the right of the people to "free and fair" competition"...must be construed narrowly, with all doubts resolved against the establishment or perpetuation of monopolies.

RSA 374:26 thus should not be interpreted as creating monopolies capable of outliving their usefulness. Appeal of PSNH, 141 N.H. 13, 19 (1996) (emphasis added) (internal citation omitted). In this case, we have identified specific circumstances where electric utilities may exploit their privileged status to inhibit the development of a competitive retail electricity market. We will implement special protections to mitigate these anti-competitive practices. Should we determine these special protections are insufficient, we will impose additional pro-competitive measures." Order No. 22,875 (Mar. 20, 1998) at 23-24.

million under-collection from the large customer group to be recovered through the SCRC included in the June 20 Order.

WHEREFORE, the Joint Movants respectfully request that the Commission:

A. Grant the motion of the Joint Movants for rehearing of Order No. 27,022 by revising the order to hold that Eversource cannot recover, via its non-bypassable stranded cost recovery charge, any unrecovered costs associated with procurement of default energy service for the company's large customer class as described by the Company's witnesses at hearing; or in the alternative

B. Issue a supplemental or separate order of notice to consider the issues raised herein in this or another proceeding; and

C. Put Eversource on notice that the $6.5 million in unrecovered default energy service costs Eversource has now placed in a deferral account must be recovered, if at all, from the large customer class via default energy service charges; and

D. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,

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