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NHPUC 7DEC'18PM12:03

December 5, 2018

Eileen Fox, Clerk  
New Hampshire Supreme Court  
One Charles Doe Drive  
Concord, New Hampshire 03301-6179

**Re: Case No. 2018-0305, Appeal of Public Service Company of New Hampshire (PSNH) d/b/a Eversource Energy**

Dear Clerk Fox:

On November 5, 2018, the Court remanded the referenced proceeding back to the New Hampshire Public Utilities Commission (NHPUC) for the limited purpose of allowing the Commission to consider and act upon the proposed settlement agreement that the parties reached during appellate mediation. The remand order directed PSNH to provide the Court with a brief written report concerning the status of Commission proceedings on or before today.

On November 14, 2018, the NHPUC issued the attached "Order *Nisi* Approving Settlement on Appeal." By that Order *Nisi* the NHPUC found that the Settlement Agreement sets forth a full and fair resolution of the issues in the appeal, results in a fair allocation of the risks inherent in litigation, is just and reasonable, and is in the public interest. Hence, the NHPUC's order, upon its effective date, vacates the prior order under appeal and accepts the settlement.

The NHPUC set a deadline for comments or requests for hearing of December 3. PSNH is unaware of any such requests being filed. Absent any such pleadings, the Order *Nisi* sets an effective date of December 14, 2018. Per RSA 365:21 and RSA 541:3, within 30 days of the Order *Nisi*'s effective date any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing. Assuming an effective date of December 14, 2018 for the Order *Nisi*, the 30-day rehearing period would expire on Monday, January 14, 2019. At that time, if the Order *Nisi* is final, PSNH will withdraw its appeal.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bersak". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert A. Bersak  
Chief Regulatory Counsel

Atch: NHPUC Order No. 26,191, "Order Nisi Approving Settlement on Appeal."

cc: Christopher Aslin, Esq. (NH AG)  
David Shulock, Esq. (NHPUC)  
D. Maurice Kreis, Esq. (OCA)  
Matthew Fossum, Esq. (PSNH)  
NHPUC – Docket No. DE 17-160

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 17-160**

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

**Petition for Recovery of Annual Assessment and Consulting Costs**

**Order *Nisi* Approving Settlement on Appeal**

**ORDER NO. 26,191**

**November 14, 2018**

In this order, the Commission vacates *Public Service Company of New Hampshire*, Order No. 26,108 (March 2, 2018). As a result, the Commission permits Eversource to recover \$200,904 in consulting costs incurred in 2016 relating to Docket No. IR 15-296 and Docket No. DE 16-576.

**I. PROCEDURAL AND FACTUAL BACKGROUND**

On October 10, 2017, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a petition to recover the annual assessments that Eversource pays for its portion of Commission expenses and consultant costs incurred by Commission Staff and the Office of the Consumer Advocate (OCA). As part of that petition, Eversource sought recovery of \$430,569 in consulting costs associated with IR 15-296, the Commission's investigation into grid modernization, and DE 16-576, in which the Commission considered the development of new alternative net metering tariffs and other regulatory mechanisms for customer-generators. Eversource asked the Commission to approve recovery of those costs through distribution rates at a rate of 0.005 cents per kWh over a one-year period from January 1 through December 31, 2018.

In Order No. 26,091 (December 27, 2017), the Commission approved the recovery proposed by Eversource, but determined that “the accounting treatment of the consulting fees should be reviewed by Staff.” Order at 5. The Commission’s Audit Division conducted that review and prepared a report dated January 24, 2018 (Audit Report). Staff filed the Audit Report on January 30, 2018 and Eversource responded on February 6, 2018. Staff filed a letter on February 23, 2018, correcting the Audit Report, noting that the correct amount of consultant costs eligible for recovery was \$229,665.<sup>1</sup>

In Order No. 26,108 (March 2, 2018), the Commission accepted the Audit Report’s conclusion that Eversource had violated the Uniform System of Accounts established by the Federal Energy Regulatory Commission (FERC) and overstated the requested deferral by including \$200,904 of 2016 expenses in its 2017 year-end deferral. In addition, the Commission understood Eversource’s statement that, “[g]oing forward, all OCA and NHPUC consultant costs incurred by the Company will be deferred as they are incurred for future recovery” to be agreement with “the Audit Report’s conclusion that Eversource cannot defer what it has already expensed.” Order No. 26,108 at 3-4. Given that agreement, the Commission construed Eversource’s arguments to be a request for “an exception from the applicable accounting rules.” *Id.* at 4. The Commission denied Eversource’s request for an exception and required Eversource to reduce its deferral by \$200,904, the amount Eversource had expensed in 2016.

Eversource moved for rehearing, and Staff filed an objection. The Commission denied Eversource’s motion for rehearing in Order No. 26,127 (May 1, 2018). Eversource appealed to the New Hampshire Supreme Court on May 31, 2018. On July 17, 2018, the Supreme Court

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<sup>1</sup> Because of the correction, page 5 of the Audit Report shows an incorrect amount of \$229,775. The correct amount is \$229,665, and the overstated amount is \$200,904.

denied a Commission motion for summary affirmance and then accepted the appeal. Eversource, the OCA, and Commission Staff all consented to the Court's Rule 12-A mediation process. On October 24, 2018, those parties filed a conditional settlement agreement (Settlement Agreement) resolving the appeal and a motion for limited remand to allow the Commission to consider the settlement proposal and issue an appropriate order either approving or rejecting the settlement. On November 5, 2018, the Supreme Court remanded to the Commission "for the limited purpose of allowing the Commission to consider and act upon the proposed settlement agreement that the parties reached during appellate mediation."

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-160.html>.

## **II. SETTLEMENT AGREEMENT**

The Settlement Agreement is conditioned on the Commission entering an order *nisi* vacating Order No. 26,108, thereby allowing Eversource to recover the full \$430,569 in expert consulting costs, and on the order *nisi* becoming final. In return, Eversource agrees to three substantive terms that will be binding upon Eversource, its successors and assigns, in all future proceedings before the Commission:

A. Pursuant to RSA 374:8 and RSA 374:13, the New Hampshire Public Utilities Commission ("the Commission") is authorized to enforce accounting rules adopted by the Commission;

B. Pursuant to the FERC Uniform System of Accounts, adopted by the Commission pursuant to RSA 374:8, I and Puc 307.04, any costs incurred by Eversource in connection with Commission proceedings for which Eversource desires to seek recovery pursuant to RSA 365:38-a and/or 363:28 as an Other Regulatory Asset must be entered in FERC account 182.3 as deferred costs in the year in which the cost are incurred; and

C. Any costs which had been expensed in a prior financial year, and for which deferral is contemplated, must comply with the restatement of financial statements outlined in the FERC Uniform System of Accounts.

### III. COMMISSION ANALYSIS

The Commission has reviewed the record in this docket and the settlement of the appeal before the New Hampshire Supreme Court. We find that the Settlement Agreement sets forth a full and fair resolution of the issues in the appeal and results in a fair allocation of the risks inherent in litigation. We also find that the result is just and reasonable, is in the public interest, and substantially comports with the applicable standards. N.H. Code Admin. Rules Puc 203.20(b); *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 at 48 (May 29, 2009). To the extent that a waiver of any of our rules is required to effectuate approval of the Settlement Agreement, we hereby waive such rule.

The Commission has authority to vacate any of its orders after notice and hearing. RSA 365:28 (“At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it.”). Because the Commission held a hearing on the recovery of expenses, and because all parties to this proceeding are also parties to the Settlement Agreement, we see no need to hold a hearing before vacating Order No. 26,108. We will however, delay the effectiveness of this order to ensure the public receives notice of our determination and has an opportunity to request a hearing.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that subject to the effective date below, Order No. 26,108 is hereby vacated; and it is

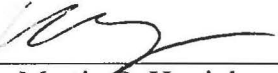
**FURTHER ORDERED**, that Eversource shall cause a summary of this order, issued concurrently with this order to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than November 26, 2018 and to be documented by affidavit filed with this office on or before December 10, 2018; and it is

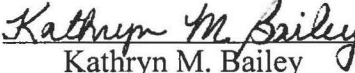
**FURTHER ORDERED**, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than December 3, 2018 for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than December 10, 2018; and it is

**FURTHER ORDERED**, that this order shall be effective December 14, 2018, unless Eversource fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.


By order of the Public Utilities Commission of New Hampshire this fourteenth day of November, 2018.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director