

May 30, 2018

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New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6310

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

**RE: Appeal of Public Service Company of New Hampshire d/b/a Eversource Energy
Pursuant to RSA 541:6 and RSA 365:21 (New Hampshire Public Utilities
Commission)**

NOTICE PER SUPREME COURT RULE 31

Dear Attorney General MacDonald and Clerk Fox:

Enclosed with this letter is a copy of a Notice of Appeal of Public Service Company of New Hampshire d/b/a Eversource Energy, being filed today with the New Hampshire Supreme Court. Pursuant to Supreme Court Rule 31, "Cases in Which the State is Not a Party, But Which Involve the State's Interests":

A party who intends to draw in question the constitutionality of any State statute, any State administrative procedure or regulation, and any State official conduct in any proceeding in the supreme court to which the State, or any agency thereof, or any officer or employee thereof as such officer or employee, is not a party, shall, upon entry of the case in the supreme court, give immediate notice in writing to the clerk of the supreme court and the attorney general, and shall at the same time send the attorney general a copy of his notice of appeal, transfer statement, or petition.

Today's Appeal includes a challenge to the actions of the New Hampshire Public Utilities Commission on constitutional grounds. As this Appeal is made under Supreme Court Rule 10, "Appeal from Administrative Agency," the Public Utilities Commission is not, strictly speaking, a "party" to this Appeal. Hence, out of an abundance of caution, Eversource is supplying this notice to comply with Rule 31.

Eversource does not undertake this appeal lightly, but out of a strong concern pertaining to the arbitrary nature of the underlying decision of the New Hampshire Public Utilities

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT
No. _____**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

Petition for Recovery of Annual Assessment and Consultant Costs

**APPEAL OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
PURSUANT TO RSA 541:6 AND RSA 365:21
(NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION)**

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Pursuant to RSA 541:6, RSA 365:21 and Supreme Court Rule 10, Public Service Company of New Hampshire, d/b/a Eversource Energy (“Eversource”) appeals to this Court from Order No. 26,108 (the “Order”) of the New Hampshire Public Utilities Commission (the “Commission”) dated March 2, 2018, and the Commission’s Order on Reconsideration, Order No. 26,127 dated on May 1, 2018 (“Order on Reconsideration”). In support of this Petition, Eversource states as follows:

a. PARTIES AND COUNSEL

1. Name and Counsel of Parties Seeking Review

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2. Names and Addresses of Parties and Counsel

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**b. ADMINISTRATIVE AGENCY'S ORDERS AND FINDINGS SOUGHT TO
BE REVIEWED**

Copies of the Order and the Order on Reconsideration and the following documents are
contained in the Appendix filed with this Petition:

Commission Order Regarding Staff Audit of
Consultant Costs
Order No. 26,108
March 2, 2018

Appendix page 1

Eversource's Motion for Reconsideration
March 30, 2018

Appendix page 7

Objection of NH PUC Staff to Motion for
Reconsideration
April 9, 2018

Appendix page 14

Response of the Office of the Consumer
Advocate to Motion for Reconsideration
April 9, 2018

Appendix page 20

Commission Order Denying Motion for
Reconsideration
Order No. 26,127
May 1, 2018

Appendix page 22

c. QUESTIONS PRESENTED FOR REVIEW

1. Did the New Hampshire Public Utilities Commission violate the “takings” provisions of the State and Federal Constitutions by ordering Public Service Company of New Hampshire d/b/a Eversource Energy to pay third-party consultant costs incurred in non-adjudicative proceedings by that Commission and the Office of the Consumer Advocate on behalf of the State for a public purpose and by then forbidding Eversource from receiving just compensation for those same costs?
2. Did the New Hampshire Public Utilities Commission violate New Hampshire statutes by ordering Public Service Company of New Hampshire d/b/a Eversource Energy to pay third-party consultant costs incurred in non-adjudicative proceedings by that Commission and the Office of the Consumer Advocate on behalf of the State for a public purpose and then forbidding Eversource from the timely recovering such amounts as required by law?

d. PROVISIONS OF CONSTITUTION, STATUTES, ORDINANCES, RULES AND REGULATIONS

The constitutional provisions, statutes and rules involved in this case are:

Part I, Article 2, New Hampshire Constitution	Appendix page 30
Part I, Article 12, New Hampshire Constitution	Appendix page 31
United States Constitution, Amend. V	Appendix page 32
United States Constitution, Amend. XIV	Appendix page 33
RSA 363:28	Appendix page 34
RSA 365:28	Appendix page 35
RSA 365:37	Appendix page 36
RSA 365:38-a	Appendix page 37

e. PROVISIONS OF INSURANCE POLICIES, CONTRACTS OR OTHER DOCUMENTS

The following documents are contained in the Appendix filed with this Petition:

Petition and Testimony to New Hampshire Public Utilities Commission	Appendix page 38
Order of Notice (DE 17-160)	Appendix page 55
Transcript of December 19, 2017 Hearing	Appendix page 59
Order No. 26,091	Appendix page 85
Staff Response to Audit Report	Appendix page 92
Eversource Response to Staff	Appendix page 103
Order of Notice (IR 15-296)	Appendix page 108
Order of Notice (DE 16-576)	Appendix page 116

f. STATEMENT OF THE CASE

The State of New Hampshire, by order of the New Hampshire Public Utilities Commission (“Commission”), took over \$200,000 of property from a private citizen, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), to pay for services for which the State had contracted and committed to public use, but contrary to constitutional and statutory protections, rejected Eversource’s claim to be compensated for that taking.

To execute its governmental obligations relative to the regulation of public utilities in New Hampshire, including Eversource, the Commission, or its Staff, and the Office of Consumer Advocate (“OCA”) may, from time to time, require the assistance of consultants and experts in various fields. This need for such outside assistance is acknowledged in law. Rather than using general funds appropriated as part of the state budgeting process, RSA 365:37, II provides that:

Whenever the commission institutes a proceeding, or when more than one utility subject to the jurisdiction of the commission shall be involved in a proceeding in which the commission requires the assistance of experts, accountants or other assistants, regardless of whether they petitioned the commission in the first instance, the commission may assess the costs of experts, accountants or other assistants hired by the commission against the utilities and any other parties to the proceeding.¹

Thus, utilities may be compelled by law to pay the costs of expert consulting services the Commission incurs in its sole discretion. Similarly, the OCA, which is administratively attached to the Commission, RSA 363:28, I, has authority to contract with, and pay, experts to assist it in proceedings before the Commission. RSA 363:28, III. To recover the costs of the OCA's experts, by law the Commission "shall charge a special assessment for any such amounts against any utility participating in such proceedings and shall provide for the timely recovery of such amounts for the affected utility." RSA 363:28, III.

Utilities, including Eversource, have no oversight of the experts retained by the Commission or the OCA, do not set their budgets, do not direct their work, and do not have any ability to limit their activities or expenses. In short, the Commission and the OCA have the legal right to hire experts to fulfill their governmental duties, and utilities like Eversource have the legal obligation to pay for the costs of the experts retained by those State entities, whatever those costs may be, and even when the underlying proceeding was not initiated by a utility.

Coextensive with this ability to hire outside experts to perform a governmental function and to require a utility to pay for those services, is the Commission's obligation to permit the utility to recover those costs from its customers. The ability to pass those costs through to

¹ Similarly, RSA 365:37, I, provides that based upon the petition of a utility, whenever an investigation is necessary for the Commission to rule upon certain enumerated issues, or "any other matter which requires the commission's approval," the Commission may assess the costs of that investigation, including the costs of consultants and experts, to the petitioning utility. When those costs are assessed, the utility "shall pay to the commission the expense involved in the investigation of the matters covered by said petition, including the amounts expended for experts, accountants, or other assistants." *Id.*

customers recognizes that these are not expenses of the utility itself which may, under certain conditions, be borne by the company or its shareholders, but rather they are costs associated with the performance of governmental functions. Relative to the expenses of the Commission, the law provides that “The commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest.” RSA 365:38-a. And, relative to the expenses of the OCA, the law provides that when the Commission has charged a special assessment against a utility for expert expenses, the Commission “shall provide for the timely recovery of such amounts for the affected utility.” RSA 363:28, III.

In the instant case, Eversource had been directed to pay for expert services the Commission and the OCA had retained for two different proceedings – one pertaining to grid modernization (Commission Docket No. IR 15-296) and the other, net metering (Commission Docket No. DE 16-576). Eversource did not petition for the creation of either of the underlying non-adjudicative dockets. Rather, both were mandated to be opened by the Legislature. *See* Order of Notice for Docket No. IR 15-296, dated July 30, 2015 (“Pursuant to House Bill 614, [2015] the Commission ‘shall open a docket on electric grid modernization on or before August 1, 2015.’”) App. at 108; Order of Notice for Docket No. DE 16-576, dated May 19, 2016 (“New Hampshire House Bill 1116 (HB 1116), amended several provisions of RSA 362-A:9, the net energy metering section of the Limited Electrical Energy Producers Act, RSA 362-A, effective as of May 2, 2016. Pursuant to new paragraph XVI of RSA 362-A:9, the Commission is required to initiate a proceeding to develop new alternative net metering tariffs, which may include other regulatory mechanisms and tariffs for customer-generators, and determine whether and to what extent such tariffs should be limited in their availability within each electric distribution utility’s

service territory.”) App. at 116. The Commission made Eversource a mandatory party to both proceedings. App. at 109 and 117.

On October 20, 2017 Eversource filed a petition and supporting testimony seeking to recover from its customers the above identified costs incurred by the Commission and the OCA, but assessed to Eversource. App. at 38-54.² Prior to that point, Eversource had not recovered those costs through its rates, and, absent its petition, would have continued to carry those unrecovered costs on its books. On December 27, 2017, and following a hearing, the Commission issued Order No. 26,091 permitting Eversource to recover all of the costs assessed to it by the Commission from customers by adjusting its rates to recover those amounts. App. at 85-91. Specifically, that order provided that “The Commission has reviewed the proposed adjustment to Eversource’s distribution rates to allow full recovery of the Commission’s assessment from the time the rate was established through the most recent assessment, and to recover costs associated with the Commission’s investigation into Grid Modernization and Net Metering.” Order No. 26,091 at 5, App. at 89 (footnotes omitted). That order also provided that “the Company’s accounting treatment of the consulting fees should be reviewed by Staff.” Order No. 26,091 at 5, App. at 89. During the hearing, when questioned about the purpose of this review, given that the expenses in issue were incurred by the Commission and the OCA and not by Eversource, the Commission’s Staff stated that it would be to “double check” the review the Staff had already conducted. Transcript of Hearing in DE 17-160 at 24-25, App. at 82-83.

² Eversource’s petition also included a request for recovery of changes in the general assessment levied by the Commission. This general assessment is an annual charge to New Hampshire utilities allowing the State to recover the costs of the Commission’s regular, daily operations. See RSA chapter 363-A. This assessment is distinct from the special assessment imposed upon a utility for the use of consultants or experts on a particular matter or matters under RSA 365:37 and RSA 363:28, III. As with the special assessment, utilities have no oversight or influence on the general assessment costs, but are required to pay them, and are permitted to recover those costs from customers. See RSA 363-A:6. The Commission allowed Eversource to recover that general assessment in rates, and the general assessment is not part of this appeal.

On January 30, 2018, the Staff filed a letter describing the review by the Commission's Audit Staff following Order No. 26,091 and recommending that Eversource not be permitted to recover \$200,904 of consultant expenses incurred by the Staff and OCA and charged to Eversource in 2016 because they disagreed with Eversource's bookkeeping for those costs. App. at 92-102. The specific basis for that recommendation was the claim that Eversource had treated the \$200,904 in expert consulting costs incurred by the Commission and OCA in 2016 as an expense item, rather than as a deferral item, as the Audit Staff believed was more appropriate. App. at 92. According to the Staff, changes made by Eversource in 2017 to the designation of those costs as a deferral item was not appropriate and therefore, although Eversource did not recover those costs anywhere else and customers had not been impacted by the bookkeeping entries for the costs, Eversource was prevented from recovering the costs of the services provided to the State by its outside experts. App. at 92-93. In other words, on the basis of the Staff's interpretation of certain accounting determinations which had no impact on the amount of the expenses or the way in which they were proposed to be recovered from customers, the Commission's Staff was recommending that Eversource not be compensated for expenses incurred by the State, but which, by law, Eversource was required to pay.

On February 6, 2018, Eversource submitted a response to the recommendation of the Commission's Staff where it noted that: the Commission had already authorized full recovery of costs and therefore any departure from that finding would require a new hearing pursuant to RSA 365:28; Eversource's treatment of the costs in 2016 and 2017 was not improper or illegal, and did not create any new expense or result in any harm to customers or others; recovery was required by law; and similarly situated utilities had been permitted to recover the same costs without regard to accounting treatment. App. at 103-07. On March 2, 2018, the Commission

issued the Order rejecting, or not addressing, the points raised by Eversource and concluding that because Eversource had made a specific accounting determination, it would not be allowed to amend that bookkeeping entry, and was therefore required to forgo recovery of the amounts taken by the State used to pay for consultants utilized by the Commission Staff and the OCA. App. at 1-5.³

On March 30, 2018, Eversource timely filed for reconsideration of the Order contending that the Commission had misstated Eversource's position, not addressed certain arguments, ignored relevant legal obligations, and had violated Eversource's constitutional rights by taking property from Eversource to pay the State's expenses without compensation. App. at 7-13. On April 9, 2018 the Commission's Staff objected to Eversource's motion contending, in essence, that the Commission was justified in its actions because the Commission had the right to order an audit and "the duty to assure that ratepayers are assessed just and reasonable rates." App. at 19. Also on April 9, the OCA filed a response to Eversource's motion stating its agreement with the Staff. App. at 20-21. On May 1, 2018, the Commission issued the Reconsideration Order upholding its prior conclusions. App. at 22-29. This appeal followed.

³ The Commission's punitive action, not supported by any statutory or regulatory authority, is ironic in that the Commission's Audit Staff itself made an admitted bookkeeping error in its Report, but later corrected that error without criticism by the Commission. See the Order at fn. 1, App. at 2.

g. JURISDICTIONAL BASIS FOR APPEAL

RSA 541:6 and RSA 365:21 supply the jurisdictional bases for this appeal.

h. A SUBSTANTIAL BASIS EXISTS FOR A DIFFERENCE OF OPINION ON THE CORRECT INTERPRETATION AND APPLICATION OF MULTIPLE STATUTES AND CONSTITUTIONAL PROVISIONS. THE ACCEPTANCE OF THE APPEAL WOULD PROVIDE AN OPPORTUNITY TO CORRECT PLAIN ERRORS BY THE COMMISSION, PROTECT A PARTY FROM SUBSTANTIAL AND IRREPARABLE INJURY, AND CLARIFY AN ISSUE OF GENERAL IMPORTANCE TO THE ADMINISTRATION OF JUSTICE.

This case presents an opportunity for the Court to interpret – and clarify – the application of the State and Federal Constitutions to the recovery by utilities in New Hampshire of property taken by the State to perform State functions, as well as to interpret and clarify the application of RSA 365:38-a and RSA 363:28, III. Despite the clear directives of the cited statutes, and the rights afforded to Eversource under the constitutions, the Commission elected to take money from Eversource to pay for governmental expenses not covered by the general fund, and to deny Eversource’s ability to be paid back for the funds that were taken based upon its conclusion that a non-material bookkeeping entry could have been made differently. Moreover, in reaching this conclusion, the Commission not only determined to ignore the relevant law on recovery of these expenses, it likewise ignored relevant precedent and law regarding utility rates in general. Nothing about Eversource’s treatment of the expenses of the Commission and the OCA – costs Eversource was compelled by law to pay regardless of their amount or prudence – created any new costs, enhanced any existing costs, or in any other way harmed customers such that including recovery of the funds in Eversource’s rates would be unjust or unreasonable.

Accordingly, this Court should provide an opportunity to clarify and apply the correct legal standards.

1. The Order and Reconsideration Order Ignore the State and Federal Constitutions.

In its motion for reconsideration, Eversource raised two related provisions of the State and Federal constitutions, App. at 10-12, that the Commission dismissed in a single sentence. App. at 28. In so doing, the Commission essentially chose to ignore those arguments despite their direct relevance to the matters in issue. As pointed out to the Commission in Eversource's motion for reconsideration, Eversource was required by law to pay the expenses of the Commission and the OCA – or, more bluntly, under color of law the State took money from Eversource and committed it to public use to pay for its expenses. In such a case, Eversource is entitled to compensation under Part I, Article 12 of the State Constitution and the “takings clause” of the Fifth Amendment to the United States Constitution.

“[O]ur constitution is explicit that ‘no part of a man’s property shall be taken from him’ without due process and compensation.” *Appeal of Public Serv. Co. of N.H.*, 122 N.H. 1062, 1070 (1982); *N.H. CONST.* pt. I, art. 12; *U.S. CONST. amend.* V. “Because the constitution prohibits any taking of private property by whatever means without compensation, the just compensation requirement applies whenever the exercise of the so-called police power results in a taking of property.” *Appeal of Public Serv. Co. of N.H.*, 122 N.H. at 1070 (quotation omitted). “We see no greater right of the government to ‘take’ merely because a regulated utility is involved.” *Id.* at 1071.⁴ Similarly, the United States Supreme Court has held:

⁴ Similarly, this Court has also concluded that attempting to bar a utility from recovering other costs imposed by the State could amount to an unconstitutional taking. See *Opinion of the Justices*, 123 N.H. 349, 354-55 (1983):

Proposed RSA chapter 83-C would tax affected utilities retroactively to the beginning of 1983. Because utilities are constitutionally prohibited from seeking rate increases for services rendered

This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law.

Stone v. Farmers' Loan & Tr. Co., 116 U.S. 307, 331, 6 S. Ct. 334, 345, 29 L. Ed. 636 (1886).

As noted, by force of law, the Commission took money from Eversource, a private party, to pay a public expense, and then denied Eversource the just compensation to which it is entitled. The Commission's orders indicate that it believed it is permitted to take property from Eversource based upon nothing more than its interpretation of the proper designation of a bookkeeping entry – a designation that, as noted above, did nothing to change the nature or amount of the expense, and which could have been changed without harm to customers. This is essentially equivalent to a claim that if the State condemned property for a public purpose, but the former property owner recorded the fee for the that taking in a manner with which the State disagreed, the State is entitled to keep the property for free. Not only is such an outcome fundamentally unfair, it is contrary to law. In that the Commission's conclusions relative to the State and Federal constitutions result in a taking from Eversource without just compensation, there is a substantial basis for a difference of opinion on matters of constitutional law and acceptance of this appeal would protect against irreparable harm to Eversource, and provide an opportunity to clarify an issue of general importance in the administration of justice.

Additionally, because the underlying proceedings where the expert costs were initially incurred affected multiple utilities, the costs of those experts were charged to multiple utilities,

prior to the date they make such requests, *Appeal of Pennichuck Water Works*, 120 N.H. 562, 566–67, 419 A.2d 1080, 1083 (1980), the legislature could not retrospectively tax utility franchises. *N.H. Const.* pt. I, art. 23. Otherwise, such a bar to a utility's recovery of taxes imposed retrospectively might be an unconstitutional confiscation of private property for a public purpose without just compensation. *U.S. Const. amends. V & XIV*; *N.H. Const.* pt. I, art. 12.

consistent with RSA 365:37, II. For at least one other utility, as noted in Eversource's motion for reconsideration, the consultant costs in issue here were precisely the same costs for which full recovery was permitted for that utility by the Commission without having been audited by the Staff at all. App. at 10-11. "[I]n accordance with the United States Supreme Court, this State's equal protection guarantee is essentially a direction that all persons similarly situated should be treated alike." *Verizon New England, Inc. v. City of Rochester*, 151 N.H. 263, 270 (2004); *N.H. CONST.* pt. I, art. 12; *U.S. CONST. amend. XIV*. In this case, two utilities in the same state sought recovery of the same expenses, expenses that were incurred by the same parties for the same consultants at the same time and for the same public purposes. Thus, to that extent those utilities are similarly situated. Nonetheless, the Commission elected to treat them differently, resulting in harm to Eversource. The Commission attempted to justify this disparate treatment on the ground that recovery of costs by another utility "has no bearing on Eversource's failure to properly account for the recovery of the consultant costs incurred in 2016." Reconsideration Order at 5, App. at 26. The Commission is not correct.

As a first matter, the Commission does not explain the manner in which the other utility accounted for the expenses, and, so far as Eversource is aware, the Commission never audited the expenses to understand the accounting by that utility. If the other utility accounted for them exactly as Eversource did, then it cannot be a "failure" by Eversource to have used the same treatment. The Commission's conclusion, without any justification, that the two acts were different is arbitrary. Rather than discuss why it permitted another utility to recover the costs without an audit at all, and then why it denied Eversource the same opportunity, the Commission attempts only to ignore the issue.

Further, even assuming Eversource's accounting treatment was a "failure," which it was not, this alleged "failure" did not change anything about the expenses or make them somehow imprudently incurred, nor did it make recovery unjust. To permit another utility to recover the identical costs, the Commission necessarily had to conclude that the costs were prudently incurred and that recovery of those costs was just and reasonable. *See* RSA 365:38-a. In that the Commission made such determinations, it has no basis to later claim that the costs themselves were imprudently incurred by Eversource or that recovery by Eversource would be unjust or unreasonable. If Eversource's treatment of these costs had altered them in any material respect, then, perhaps, some argument could be raised to treat Eversource differently. However, in that nothing changed about the costs, the right and ability of one utility to recover the identical costs sought by Eversource is relevant, and for the Commission to conclude otherwise was an arbitrary determination contrary to equal protection. Therefore, there is a substantial basis for a difference of opinion and acceptance of this appeal would protect against irreparable harm to Eversource, and provide an opportunity to clarify an issue of general importance in the administration of justice.

2. Several Statutes Grant Eversource the Right to Recover These Costs, But The Commission Ignored Those Statutory Requirements.

As described above, when a special assessment for expert costs is levied upon a utility, New Hampshire law at RSA 365:38-a and RSA 363:28, III, provides that the utility will be permitted to recover those costs. In the Order and the Reconsideration Order, combined, the Commission cites to these two statutes in only five passing references to the procedural background of the case, or the arguments of a particular party. Neither statute appears in any part of the Commission's analysis or conclusions in either order. The Commission relied upon these very

statutes to require Eversource to pay for the expenses of its consultants, but elected to ignore them when the same statutes provided for recovery of those expenses.

With respect to the expenses of the Commission, RSA 365:38-a provides that “The commission may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest.” RSA 365:38-a. In Order No. 26,091, the Commission found that Eversource was entitled to full recovery of these expenses. Moreover, as noted, the Commission allowed another utility to recover the identical expenses and to do so, the Commission had to make the findings required by RSA 365:38-a justifying recovery. Accordingly, the Commission had already rendered decisions that recovery of these expenses is just, reasonable, and in the public interest, once for Eversource and again for another utility. Only later did it attempt to undo its decision as to Eversource, and even then, it did so without any explanation why recovery of the expenses it had incurred for its own benefit, but which Eversource was required to pay, would be somehow unjust or unreasonable.

Regarding the OCA, the law provides that when the Commission has charged a special assessment against a utility for consultant expenses, the Commission “shall provide for the timely recovery of such amounts for the affected utility.” RSA 363:28, III. “The use of the word ‘should’ allows the PUC to exercise its discretion and judgment; in contrast, the word ‘shall’ establishes a mandatory duty.” *Appeal of Algonquin Gas Transmission, LLC et al.*, __ N.H. __ (decided May 22, 2018), slip op. at 11. Accordingly, in that the Commission “shall” provide for the recovery of expert costs incurred by the OCA but charged to utilities, this provision must be interpreted in line with its plain language and clear intent – to permit recovery of costs incurred by the OCA, and paid by Eversource. Rather than interpret and apply this mandatory provision,

however, the Commission simply did not address it on its way to concluding that Eversource was not entitled to compensation. Accordingly, there is a substantial basis for a difference of opinion on the interpretation and application of relevant statutory law, and acceptance of this appeal would protect against irreparable harm to Eversource, and provide an opportunity to clarify an issue of general importance in the administration of justice.

i. PRESERVATION OF ISSUES FOR APPELLATE REVIEW

Each issue raised in this appeal has been presented to the Commission by Eversource in its response to the Staff report on February 6, 2018, and its Motion for Reconsideration dated March 30, 2018 and has been properly preserved for appellate review.


Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY

By its Attorneys,

Dated: May 30, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2018, I served the foregoing Notice of Appeal by mailing two copies thereof by first class mail, postage prepaid, to the following:

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