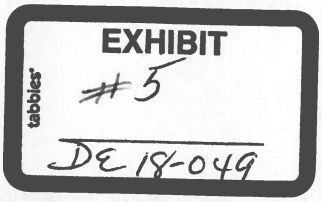
EVERSOURCE ENERGY



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July 9, 2018

Donald M. Kreis, Esq.
Office of the Consumer Advocate
21 S. Fruit Street
Concord, NH 03310

Re: Draft Article, "Eversource Wants to Keep Your Money"

Dear Don:

Thank you for giving Public Service Company of New Hampshire d/b/a Eversource Energy (PSNH or Eversource) an opportunity to review your proposed article captioned "Eversource Wants to Keep Your Money" that relates to changes in federal tax laws that took effect January 1 of this year.

Eversource believes that the caption and tone of your article are incorrect. Moreover, your article demonstrates that the Office of the Consumer Advocate (OCA) desires to ignore the express terms of the "2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement," an agreement entered into and signed by your predecessor on behalf of the OCA.[1] Such repudiation of the 2015 Settlement would place the OCA in breach of its duties under the Settlement.

As you are aware, Section III, G of the 2015 Settlement deals with "Exogenous Events." An "Exogenous Event" is defined by the 2015 Settlement generally as certain changes in law or regulation that amount to a total increase or decrease in costs to Eversource over the course of a calendar year. Expressly included in matters covered by the Exogenous Events provision are changes in federal tax laws. Subsection 2 of Section III, G reads:

> ***"Federally Initiated Cost Change" shall mean any externally imposed changes in the federal tax rates,*** laws, regulations, or precedents governing income, revenue, or sales taxes or any changes in federally imposed fees, which impose new obligations, duties or undertakings, or remove existing obligations, duties or undertakings, and ***which individually decrease or increase PSNH's distribution costs, revenue, or revenue requirement.*** (Emphasis added.)

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[1] Other "Settling Parties" to the 2015 Settlement include the Office of Energy and Planning (now called the Office of Special Initiatives), Designated Advocate Staff of the New Hampshire Public Utilities Commission, New Hampshire District 3 Senator Jeb Bradley, New Hampshire District 15 Senator Dan Feltes, the City of Berlin, New Hampshire, Local No. 1837 of the International Brotherhood of Electrical Workers, the Conservation Law Foundation, TransCanada Power Marketing Ltd., TransCanada Hydro Northeast Inc., and,the New Hampshire Sustainable Energy Association d/b/a NH CleanTech Council.

There can be no reasonable disagreement that the change in federal tax rates is clearly included within this "Federally Initiated Cost Change" term of the Exogenous Events section.[2]

The Exogenous Events provision of the 2015 Settlement sets forth an agreed-upon methodology for dealing with any/all Exogenous Events that exceed $1,000,000 in total over the course of a calendar year. That methodology dictates both how and when costs/credits caused by Exogenous Events will be placed into Eversource's rates. The 2015 Settlement also provides that this Exogenous Events rate methodology will continue to be in effect "until PSNH's next general distribution rate case."

The New Hampshire Public Utilities Commission reviewed and approved the 2015 Settlement on July 1, 2016, by Order No. 25,920. The Exogenous Events provision of the 2015 Settlement was discussed in that Order: "Section III.G. specifies "Exogenous Events," which under the terms of the 2015 Settlement Agreement would permit Eversource to seek additional rate adjustments (upwards or downwards), as appropriate. *Id. at 15-17.*" Order at p. 39. Not only was your office (OCA) a signing Settling Party to the 2015 Settlement, but OCA also submitted testimony urging the NHPUC to approve the Settlement, saying "the Office of the Consumer Advocate supports the 2015 Settlement Agreement including generation divestiture... ." July 17, 2015 testimony of Jim Brennan, Finance Director, Office of the Consumer Advocate, at p. 2. Mr. Brennan also testified, "I believe that the Settlement Agreement fairly and appropriately addresses the risk described in Sections I and II above, and presents a fair resolution of the issues before the Commission... ." *Id*. at p. 23.

None of this should come as a surprise to you. Not only was OCA a Settling Party to the 2015 Settlement, but Eversource formally set out the applicability of the Exogenous Events provision of that Settlement in a filing made two weeks ago with the NHPUC in Docket No. DE 18-049, the on-going "Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions." Supplemental Technical Statement of Christopher J. Goulding, June 26, 2018.

As you state in your article, Eversource originally indicated that the impact of the recent federal tax law changes would be included as part of a near term rate case that the Company anticipated filing subsequent to completion of the divestiture of all its electric generation assets. As noted in the 2015 Settlement, one of the key basis for that agreement is "Expeditious pursuit of the divestiture of PSNH's generating plants after a final decision by the Commission approving the settlement set forth in this Agreement." (2015 Settlement at p. 2).

Despite the making of all timely regulatory filings necessary for the divestiture of its generating assets, one final required regulatory approval is still outstanding. On December 29, 2017, Eversource and Hull Street Energy, the purchaser of Eversource's hydroelectric generating assets, requested permission from the Federal Energy Regulatory Commission (FERC) to transfer the federal hydroelectric licenses required under federal law for ownership and operation of Eversource hydroelectric generation assets.[3]

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[2] The NHPUC itself noted early on that the change in federal tax laws were typically treated as exogenous events. Order No. 26,096, January 3, 2018, at 2. Eversource similarly noted the applicability of the Exogenous Events provision of the 2015 Settlement to the recent change in federal taxes. *See* April 23, 2018 Certification of Exogenous Events for 2017 filed in Docket No. DE 14-238.

[3] Eversource owns and operates nine hydroelectric generating stations. All but one, Jackman Hydro, are subject to FERC jurisdiction under the Federal Power Act.

The average time for FERC to issue its approval of a request for transfer of hydroelectric license is 75 days. In our joint filing, Eversource and Hull Street Energy requested expeditious treatment by FERC. Hence, it was not unreasonable to assume that we would have received the necessary FERC approval by mid-March, and that divestiture of PSNH's generation assets would have been fully completed by the end of March.[4] We are approaching 200 days since the FERC filing was made and are still awaiting FERC approval.[5]

As a result of the delay in divestiture caused by FERC's inaction, the contemplated filing for the review of Eversource's distribution rates has also been delayed. Hence, the Exogenous Events provision of the 2015 Settlement remains in effect per the terms of the 2015 Settlement.

Notwithstanding the applicability of the Exogenous Events provision of the 2015 Settlement to the recent change in federal tax law, at the June 18 NHPUC prehearing conference referenced in your article, Eversource indicated that it was open to discuss other ideas or proposals for dealing with the change in tax laws. At this point in your article, your perception of what transpired is 180° different from what Eversource observed. Your article identifies Eversource attorney Matthew Fossum by name as stating that Eversource has "have some ideas and proposals, rather than offer those up on the record today, we would appreciate having the time to discuss our ideas and proposals with the Staff [of the PUC] and the OCA, and to see . . . whether there might be room to find an agreed-upon method for addressing the tax changes." You then go on to say, "But the Company did no such thing. If anyone from Eversource had any ideas and proposals to offer at the technical session, they went undetected by the others in the room."

Your insinuation that Eversource said one thing and then did something else is just plain wrong. At the Technical Session which followed the June 18 prehearing conference, Eversource did in fact present ideas/proposals for dealing with the change in tax laws that varied from the 2015 Settlement's Exogenous Events methodology. Such ideas/proposals included an "ROE collar" type of mechanism or funding of grid modernization investments. However, NHPUC Staff took the position that they wanted the impacts of the tax law change included in rates as of August 1. Period. And, when you were asked whether that was the position of the OCA, your response was in the affirmative.[6]

So, your article incorrectly states that Eversource failed to offer any ideas or proposals during the June 18 Technical Session. Eversource made proposals. But, as we noted in our June 26 NHPUC filing, Commission Staff and the OCA were "open to only one proposal." OCA and Staff decided not to consider any proposals other than their own. OCA's and Staff's dislike of other ideas/proposals does not mean such ideas/proposals were not made.

Your article goes on to state "The Company is now insisting that it be allowed to keep the money and apply it to storm-related expenses Eversource claims (in a separate proceeding) it is entitled to recover from customers. Otherwise, Eversource is threatening to call tax reform an "exogenous event" within the meaning of the 2015 asset divestiture agreement." Eversource is not "insisting" on anything; nor is it "threatening" anything. Your use of such inflammatory rhetoric is deemed to be in bad faith, as it not

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[4] Eversource completed the sale of its thermal-fired generating stations in early January, 2018.

[5] The New Hampshire Public Utilities Commission recently asked FERC to act on this matter.

[6] This sequence of events was included in Eversource's June 26 filing with the NHPUC.

only incorrectly depicts the facts, but it also ignores the OCA's duties it voluntarily took on as a Settling Part to the 2015 Settlement.

It is ironic that after castigating Eversource for supposedly not providing any ideas/proposals on how to deal with the economic effects of the change in federal tax laws, that you then complain about a proposal that was made as part of a formal filing with the NHPUC. And, your complaint is that Eversource wants to use the dollars from the tax law change to pay for storm costs that customers already owe, the amount of which is growing as they accrue "interest" until paid. Paying off a debt owed by customers and stopping the accumulation of additional interest does not equate with "Eversource Wants to Keep Your Money" – the title of your article. More aptly, Eversource's proposal would "pay down the outstanding mortgage" by using the windfall to prepay what is already owed by customers. Eversource is not "insistent" on this proposal; it is just that – a proposal – one that benefits customers by paying down an existing debt.

It is your equating application of the 2015 Settlement to a "threat" where your article moves from merely being incorrect to becoming an anticipatory breach of contract. As noted above, you state that "Eversource is threatening to call tax reform an 'exogenous event' within the meaning of the 2015 asset divestiture agreement." In contrast to your claim, the 2015 Settlement expressly states that changes in federal tax law are within the scope of the Exogenous Events provision. But, when it comes to enforcing the terms of that 2015 Settlement, you state that such application of the Settlement "won't stick if we have anything to say about it."

Under the 2015 Settlement, the OCA, as a Settling Party, took on an obligation to support the terms and the Settlement and to take all actions necessary to implement the Settlement:

> The Settling Parties agree to support this Agreement before the Commission and in any related legal proceedings or legislative inquiries or hearings, to oppose legislation inconsistent with this Agreement, and to take all such action as is necessary to secure approval and implementation of the provisions of this Agreement.

Your statement that implementation of the 2015 Settlement "won't stick if we have anything to say about it" and that enforcement of the 2015 Settlement "is simply unfair to ratepayers and Eversource should not be allowed to get away with it" is totally inconsistent with the obligations agreed to by the OCA as part of the 2015 Settlement.

As you are <u>the</u> Consumer Advocate, publication of the article would be a breach of the OCA's duties. Eversource takes its duties under the 2015 Settlement seriously, as should every other Settling Party, including the OCA.

If you feel that the 2015 Settlement should be breached because its terms are "plain[ly] unconscionable," that would indicate that you deem the Settlement to be unenforceable. Would that mean that Eversource would be freed from the obligations that it took on under that Settlement? Would Eversource be free to ignore its agreement "to forego recovery of $25 million of previously deferred equity related to the Merrimack Station Scrubber"? Wouldn't such a monetary hit to

Eversource also be "unconscionable" because the NHPUC subsequently determined that Eversource's actions to comply with the statutory mandate to install the scrubber were indeed prudent?[7]

Eversource is not "threatening" you if you exercise your rights under the First Amendment to exercise free speech. Rather, Eversource is reminding you that the Office of Consumer Advocate, the NHPUC Staff, Eversource itself, and all of the other Settling Parties voluntarily and knowingly entered into a Settlement Agreement under which myriad benefits, promises, and bargains were made.

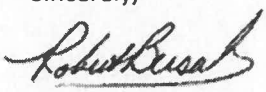
In your article, you repudiate OCA's obligation to implement the provisions of that Settlement. Eversource deems your repudiation to be an anticipatory breach of contract under New Hampshire law. *LeTarte v. W. Side Dev., LLC*, 151 N.H. 291, 294 (2004) ("An anticipatory breach of a contract occurs when a promising party repudiates his obligations either through words or by voluntarily disabling himself from performing them before the time for performance. 9 A. Corbin, *Contracts* § 959 (Interim ed. 2002). In instances of anticipatory breach, the non-breaching party has the option to treat the repudiation as an immediate breach and maintain an action at once for the damages. *Id.*"). *See also, Slania Enterprises, Inc. v. Appledore Med. Grp., Inc.,* No. 2017-0159, May 1, 2018, at 4 (citing to *LeTarte*).

Eversource remains ready and willing to discuss ideas and proposals for dealing with the federal tax law changes that vary from the methodology set forth in the 2015 Settlement. But, any such variance would require the consent of all Settling Parties – not just OCA, Staff, and Eversource. Absent such consensual agreement, all parties are bound by the Settlement.

Your statements that the 2015 Settlement is unconscionable and that you will work against the enforcement of that Settlement are textbook examples of anticipatory breach. As a matter of good-faith and fair-dealing, Eversource expects the Office of Consumer Advocate to comply with the obligations it voluntary accepted with it signed and supported the 2015 Settlement Agreement. No doubt, OCA has the same expectations of Eversource.

Therefore, we urge you to reconsider your intent to publish the article.

Sincerely,



[7] Recall that Settling Parties have both contractual and statutory rights to reject the Settlement if its terms are changed. RSA 369-B:3-a, II (as amended by 2015 N.H. Laws, Ch. 221), "If the commission conditions its approval, the settling parties may amend or terminate the 2015 settlement proposal." 2015 Settlement, Section XII, C: "The agreements contained herein are interdependent and not severable, and they shall not be binding upon, or deemed to represent positions of, the Settling Parties if they are not approved in full and without modification or condition by the Commission subject to subsection D of this section, below."; Section XII, D: "If the Commission does not approve this Agreement in its entirety and without modification or condition, the Settling Parties shall have an opportunity to amend or terminate this Agreement. If terminated, this Agreement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or be used for any purpose."