

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket DE 19-057

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

Notice of Intent to File Rate Schedules

**DEPARTMENT OF ENERGY OBJECTION TO
EVERSOURCE MOTION TO REJECT AUDIT COMMUNICATION**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07(e), the Department of Energy Regulatory Support Division (Energy) hereby objects to Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource)'s motion to reject the Inter-Agency Communication and attached rate case expense audit filed by Energy in DE 19-057 on August 26, 2021.

In support of this objection, Energy states as follows:

1. On March 22, 2019, Eversource filed a notice of intent to file rate schedules, followed by a full permanent rate increase request on May 28, 2019. After several months of adjudicative processes, the parties filed a settlement agreement (Settlement) on November 9, 2020. The Commission held hearings on the settlement during the final week of October 2020. On November 30, 2020, Eversource filed the technical statement of Douglas P. Horton (Horton Technical Statement), clarifying that \$2,449,051 of rate case expenses had been incorporated into the Settlement Agreement at a rate of \$489,810 annually, for five years, and identifying the process that would be undertaken to consider and reconcile allowed rate case expenses. (Stating, "Once final invoices are received from all experts, the costs will be subject to thorough and final review and audit by the Commission's audit staff. The amount included in base rates will then

be subject to reconciliation to account for any changes in the amount allowed for recovery.”)
Horton Technical Statement at 1-2.

2. On December 15, 2020, the Commission issued Order No. 26,433 approving the Settlement. In approving the Settlement, the Commission directed Eversource to remove any rate case expenses from the settled revenue requirement and instead file for recovery of rate case expenses within 30 days, consistent with N.H. Admin. R., Chapter Puc 1900. Order No. 26,433 at 23 (December 15, 2021). Eversource complied with the Commission’s directive regarding rate case expenses on January 15, 2021. Consistent with the November 30, 2020 Technical Statement of Douglas P. Horton, and Order No. 26,433, the Commission’s Audit Division reviewed Eversource’s rate case expenses and produced an initial rate case expense audit report (Audit Report) on March 30, 2021.

3. On July 1, 2021, the Commission’s Audit Division, as well as all functions, powers, and duties that were previously within the authority of the Commission’s Audit Division, were transferred to the newly created Department of Energy (Energy). RSA 12-P:11, 14. On August 26, 2021, Energy filed an Inter-Agency Communication (Memorandum) in DE 19-057. That filing included the Audit Report, a summary of the Audit Report, and stated the Energy’s position regarding the recommended disallowances within the Audit Report.

4. On September 24, 2021, Eversource moved to reject the Memorandum and Audit Report contained therein, arguing that the “does not provide a basis for any particular action by the Commission,” and that to provide such a basis, Energy must “submit a motion or petition with testimony or a technical statement or other information supporting the requested ruling.” Motion at 4.

5. Eversource's argument that the Commission should reject the Memorandum and related Audit Report is without merit because Eversource fails to recognize: (1) the role of the Energy pursuant to Order No. 26,433; (2) the proper characterization of the Memorandum and Audit Report; and (3) the nature and credibility of audit reports, generally.¹

6. The Eversource motion asserts that RSA 12-P:2, IV and 12-P:9 should be understood as granting Energy "the same rights and responsibilities as other parties in other Commission proceedings." Motion at 4. While it is without question that Energy's participation in Commission proceedings must be consistent with RSA 541-A, Eversource fails to recognize that, under the instant fact pattern, Energy's statutory authority and Order No. 26,433 place unique duties upon Energy in the instant proceeding. Eversource is correct that RSA 12-P:2, IV provides Energy with the authority to appear before the Commission, and does so, *et. alia*, "for the purposes of providing a complete record for consideration by the Commission." However, the Eversource fails to recognize that RSA 12-P:11 also transfers all functions powers, duties, records, personnel and property incorporated in the statutes establishing the department of energy," from the Commission to Energy. Therefore, when the Commission's Audit Division transferred to Energy on July 1, 2021, Audit's existing duties and obligations transferred as well. When the Commission issued Order No. 26,433, it did so in reliance on the Horton Technical Statement, which provided that "the costs will be subject to thorough and final review and audit by the Commission's audit staff," and that "[t]he amount included in base rates will then be subject to reconciliation to account for any changes in the amount allowed for recovery." Order No. 26,433 at 20; Horton Technical Statement at 1-2. Energy's filing of the Audit Report in the

¹ Energy uses this opportunity to object only to Eversource's Motion to reject the Memorandum and Audit Report, but reserves the right to request leave to reply to the objections contained within the Motion.

instant proceeding is simply Energy complying with the expectation of the parties, and the Commission, regarding Energy's obligation to submit the Audit Report for Commission review.

7. The Motion further claims that the Memorandum and Audit Report can only be properly submitted as a petition or motion and must be consistent with Puc 203.05. Motion at 4. This position misunderstands the purpose of the Memorandum and Audit Report. Energy is not a moving party in this instance and carries no burden of proof; the audit report itself provides a basis for Commission action, consistent with the expectations expressed in the Horton Technical Statement upon which the Commission relied in Order No 26,433. As such, the Memorandum and Audit report are not required to take the form of a motion or petition. The Memorandum is simply a summary of the Audit Report and statement of Energy's position on the matter, comparable to the unsworn but commonly utilized "technical statement" format, even if the words "technical statement" did not appear at the top of the memorandum.² Ultimately, the Commission — not Energy — will decide whether recovery of a given expense is just, reasonable, and in the public interest, pursuant to Puc 1904.02, giving whatever weight it deems advisable to the Memorandum and Audit Report.

8. In moving to reject the Memorandum and Audit Report, Eversource also misunderstands the credibility that such records are afforded, generally. RSA 365:9 provides that the Commission is not bound by the technical rules of evidence in any investigation or hearing, and therefore may accept the results of the Audit Report as evidence regardless of whether there is any sworn testimony supporting it. However, if the Commission were to consider the rules of evidence when considering the Motion, it would recognize that business records kept in the regular course of a business activity, as well as public records, are generally afforded greater

² See, DE 19-057 Technical Statement of Douglas P. Horton regarding rate case expenses.

credibility than other documents. N.H. R. Evid. 803(6) and 803(8). The Audit Report at issue is one of dozens conducted regularly by Department of Energy auditors in the regular scope of their employment, audits which are not generally intended to be contentious or the focus of litigation, and therefore fit precisely within this category of documents that is afforded greater credibility by reviewing courts.

WHEREFORE, Energy respectfully requests that this honorable Commission:

- a. Deny the Eversource motion to reject the Audit Communication; and
- b. Grant any other relief as may be just and equitable.

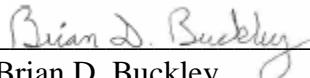
Respectfully Submitted

October 4, 2021

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Certificate of Service

I hereby certify that a copy of this Objection was provided via electronic mail to the individuals included on the Commission's service list for this docket.



Brian D. Buckley