STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DE 19-057

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

Notice of Intent to File Rate Schedules

DEPARTMENT OF ENERGY'S RESPONSE TO EVERSOURCE MOTION FOR RECONSIDERATION AND CLARIFICATION OF ORDER NO. 26,504

On August 27, 2021, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") filed a Motion for Reconsideration and Clarification of Order No. 26,504 (Motion). The Department of Energy Regulatory Support Division ("Division") hereby responds to this Motion and states as follows:

1. Under RSA 541:3, the Commission may grant rehearing when a party states good reason for such relief. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 at 8 (June 23, 2011). RSA 541:4 requires a motion for rehearing "shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." While the Division takes no position on whether Order No. 26,504 is unlawful or unreasonable, we take this opportunity to provide further information in response to some of the points of contention identified in the Motion, while also correcting certain factual inaccuracies.

2. Eversource asserts that the Commission has erred in disallowing Eversource's recovery of $911,000 in costs associated with the error of an engineering contractor responsible for work on the Pemigewasset Substation project. According to Eversource, "the only testimony in the proceeding is from Eversource witnesses who, in both written and oral testimony, provided

substantial information on the details involved in the project and the interactions with the engineering firm and described how these acts were prudent." Motion at 6-7. While it is true that the Eversource witnesses were the only ones to testify, upon cross-examination by the Division, the Eversource witnesses made statements which speak directly to the imprudence of the action that led to the $911,000 disallowance.

3. When asked whether the Company took any action to try to recover some of the incremental project costs associated with the contractor's error from the contractor, or the contractor's insurer, the Company's witness stated:

> We did not seek any insurance claim, per se, through [the contractor]. We do have contracts that have been negotiated with all of our engineering vendors, we have a lot of them, that limit the amount of liability that they are liable for. So, in this case, they did complete all of the additional engineering at their own cost, but their contract doesn't make them liable for the -- I don't know if the word is correct, but I would say -- I'd call them "consequential" damages.

July 19, 2021 Transcript (Tab #178) at 78-79.

4. For several pages, the Motion builds a straw man argument regarding why the Commission viewed the referenced "consequential damages" as relating to imprudent project management practices. The Motion then rebuts that straw man by citing Eversource's detection and remedy of the contractor error before any equipment was actually damaged. According to Eversource, without the rigorous testing requirements and oversight by Eversource employees, a transformer could have failed and the costs of the error could have been much higher. *Id*. at 79.

5. What the Motion fails to acknowledge is that the Commission's reference to the testimony more likely related to the prudence of the Company's contracting practice, a practice that in this case directly led to Eversource' inability to recover costs from a contractor, costs that were directly attributable to an error of that contractor. This project and the associated contractor

error simply provided the venue through which this imprudent contracting practice could come to light before the Commission.

6. Eversource argues that "there is no evidence that the Company's contracting terms with the consultant fell below industry practice." Motion at 9. RSA 378:8 declares that "When any public utility shall seek the benefit of any order of the commission allowing it to charge and collect rates higher than charged at the time said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant." Therefore, when requesting recovery of costs associated with this project in customer rates, it is the Company that must provide the evidence of prudence. It is not the responsibility for the Commission or parties to produce evidence of imprudence, as Eversource suggests. Eversource participated in discovery and technical sessions prior to hearing, and provided discovery responses speaking directly to the costs associated with the contractor error, and failed to present evidence for why this contracting practice — which resulted in nearly $1 million in additional costs for this project — was in fact prudent. Eversource's rehearing motion is the first instance the Company has made an argument about the prudence of its contracting practice. If there is a lack of evidence in the record, that lack of evidence is Eversource's responsibility.

7. Furthermore, industry standard practice is by no means a prudence review safe harbor, and has no bearing on whether limiting the liability of their contractor is the prudent choice for Eversource to make on behalf of its ratepayers. If Eversource's practice is to enter into contracts that limit the liability of its contractors (who almost certainly carry liability insurance) when its contractors make an error that costs money, that practice leaves only two places from which to recover those costs: Eversource *shareholders* or Eversource *ratepayers*. If the Commission were to allow Eversource to recover those costs from ratepayers, the Company would have no

motivation to negotiate contracts with vendors that adequately protect Eversource's ratepayers from the imprudent action, or error, of a contractor. The Commission ruled correctly on Eversource's request for recovery of the $911,000 associated with the contractor's error, and should reject Eversource's request for rehearing on this issue.

8. Eversource also seeks reconsideration regarding a $163,000 disallowance of costs associated with the Lockes and Welch Island cable replacement project, arguing that the Commission has overlooked or mistakenly conceived facts relating to that project. Motion at 12. Eversource asserts that no party sought a disallowance of costs relating to the project, and cites the Division's position at closing as supporting the prudence of this investment. Motion at 11. Upon further review, the Division agrees with Eversource that the prudence of the Locke and Welch Island cable replacement project should be reconsidered by the Commission. In light of the disparity between the initial estimate of $360,000 and the supplemental request of $1.9 million, it is unclear from the record whether either of the Company's estimates considered repair options rather than replacement, and why those options — such as cable injection — were not the preferred alternative to total replacement.[1] If the Commission grants Eversource's request for rehearing regarding the cable replacement project, the Commission should consider placing the choice to replace rather than repair the cable within the scope of that rehearing.

9. Eversource also seeks reconsideration and clarification of the Commission's directive that Eversource treat load tap changer controls (LTCCs) as a maintenance expense item on a going forward basis. Eversource supports its request by asserting that after the issue first arose in the audit of the first step, "there was no public indication that there were continuing issues with the items identified in the audit report generally or with LTCCs specifically," and further

[1] The Company's supplemental request form (Exhibit 64, page 6) lists alternatives that were considered as including only distributed generation. Cable repair options appear not to have been considered.

asserts that "Eversource was confined to responding to questions during the hearing on a matter it was not aware was in issue in this case." Motion at 14.

10. In making these process arguments, Eversource overlooks the notice it was afforded, prior to hearing, by: (1) the filing of the audit report on July 9, 2021, ten days prior to the step adjustment hearing; (2) a technical session held on July 14, 2021 where the LTCC issue was a topic of discussion; (3) the submission of the audit as an exhibit pursuant to the remote hearing guidelines prior to the hearing date; (4) the fact that Eversource is given an opportunity to — and did — respond to audit's recommendations within the audit report itself; and (5) the exchange between the Company and the Division that occurred during the discussion of this same exact issue during the Company's last step adjustment hearing, which is excerpted below:

> Q (Buckley) And if, for example, there were some degree of disagreement by the Commission's Audit Staff about treatment, for example, the LTC Controllers that are requested to recover in the step here, as to whether they are minor or major plant, is that something that the Company agrees would be reconcilable after the audit recommendations?
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> A (Menard) Yes.

December 1, 2020 Hearing Transcript at 62.

> Q. (Buckley) …What happens if Audit determines that [an investment] shouldn't have been included or some portion of that should not have been included in rate base? Is that reconcilable? And how does that happen?
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> A (Menard) I would assume, and I'm sort of making up the rules here, because this is the first step that we have been through in a while, but I would assume that, if there is anything that comes out of Audit, that we would agree to have some sort of reconciliation. My guess would be it could be included in the next step as a reconciliation, or we could -- yes, that's probably the cleanest, but, you know, we could find some other approach, too, if we needed to.

Id. at 96.

In light of the above-described notice and opportunities to respond to the LTCC issue identified by audit, the Division believes the process afforded to Eversource was more than adequate to

satisfy any due process concerns the company has manufactured for the purpose of its rehearing motion. The Commission ruled correctly on the LTCC capitalization issue raised by audit, and should reject Eversource's request for rehearing on this issue.

11. In summary, while the Division takes no position on whether Order No. 26,358 is unlawful or unreasonable, as Eversource contends, we take this opportunity to provide further information in response to some of the points of contention identified in the Motion as a means of further illuminating the record regarding Eversource's newly raised arguments.

WHEREFORE, for the reasons set forth herein, Division respectfully requests that the Commission:

1. Accept the information provided in this Staff response in support of the record in this proceeding; and
2. Grant such further relief as is just, equitable, and appropriate.

Respectfully submitted,

Department of Energy Division of Regulatory Support

By its Attorney,

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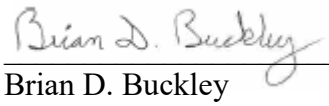
I hereby certify that, on September 2, 2021, a copy of this Response has been sent electronically to the Service List in this matter.



Brian D. Buckley