

**STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire d/b/a Eversource Energy

**DOCKET NO. DE 19-057**  
Notice of Intent to File Rate Schedules

**MOTION TO RESOLVE DISPUTE REGARDING SETTLEMENT AGREEMENT**  
**IMPLEMENTATION**

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (hereinafter “Eversource” or the “Company”) by and through its undersigned attorney, and respectfully moves the New Hampshire Public Utilities Commission (the “Commission”) to resolve a dispute that has arisen with respect to Section 3.2 of the settlement agreement approved by the Commission in Order No. 26,433 issued in the above-captioned docket (the “Settlement Agreement”).<sup>1</sup> In support of this Motion, Eversource states as follows:

1. Section 3.2 of the Settlement Agreement included an agreement by the Company to engage in a business process audit (“BPA”). The BPA was agreed to as a way to address allegations asserted by the Department of Energy (“DOE” or the “Department”) (previously Commission Staff) regarding the quality of the Company’s capital authorization process and documentation for capital projects presented for recovery in a regulatory proceeding (Settlement Agreement, § 3.2). The scope of the BPA is detailed in Appendix 2 of the Settlement Agreement. The scope of the BPA is also included in Exhibit B of the contract entered between DOE and its consultant.<sup>2</sup>

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<sup>1</sup> The Settlement Agreement is included with this Motion as Attachment A.

<sup>2</sup> The contract between DOE and its contractor, River Consulting Group, Inc. is included with this Motion as Attachment B.

2. Appendix 2 of the Settlement Agreement establishes a four-step process for the BPA. Step 3 of the BPA is as follows: “[t]he consultant will be *hired and supervised* by the Commission and Staff, and paid for by the Company” (emphasis added). Following approval of the Settlement Agreement, DOE retained River Consulting Group, Inc. (“RCG”) to conduct the BPA. The contract between DOE and RCG memorializes the scope of the work to be performed by RCG and confirms that the Company agreed to a “business process audit by an *outside* consultant.”<sup>3</sup> The Company has paid RCG’s invoices of approximately \$420,000 and fully committed its resources to the audit process. For example, the Company responded to 224 data requests; participated in approximately 50 interviews and panel discussions; and hosted several field visits.
3. The dispute that has arisen with respect to the Settlement Agreement is that DOE has interpreted the language stating that RCG would be “hired and supervised” by DOE as justifying DOE’s unilateral revisions to the consultant’s final report, before it is issued to the Company, and without providing a transparent record of the revisions through redlines or comments. As detailed below, this lack of transparency is contrary to the plain terms of the Settlement Agreement and has defeated the independence and integrity of the “outside” audit. This lack of transparency is also wholly inconsistent with industry and regulatory standards for an independent, third-party audit, as well as the Commission’s own internal Audit Division processes.
4. Step 4 of the BPA memorialized Appendix 2 of the Settlement Agreement is as follows: “Staff *and the Company* will have an opportunity to review and comment on the

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<sup>3</sup> Attachment B at 1 (emphasis added).

consultant's final report prior to filing with the Commission" (emphasis added). This language makes clear that the DOE and the Company stand on equal footing with respect to the opportunity to review and comment on the *consultant's* report. However, this has not occurred.

5. DOE received a copy of the consultant's BPA Report on or about August 2022 (the "August Report"). The Company was not provided a copy of the consultant's BPA Report at the same time. Instead, the Company received a version of the BPA Report from RCG on November 30, 2022 that the Company believes incorporates unidentified revisions from DOE (the "November Report"). The version of the BPA Report provided to the Company does not include redlines, comments or any other markings that would allow the Company to discern between the original BPA Report issued by RCG and the revisions, additions or deletions made by DOE to the August Report *after* RCG delivered its report to DOE, but before the BPA Report was provided to the Company almost four months later.
6. The Company has reviewed the November Report provided to it by RCG and compared the November Report with other audit reports issued by RCG in relation to other, similar consulting engagements.<sup>4</sup> Based on this comparison and the Company's past audit experience, it is plainly apparent that edits were likely made to the BPA Report by DOE. However, the Company cannot determine the true nature or extent of these edits without access to the August Report as provided by RCG to DOE.

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<sup>4</sup> A copy of a final report issued by RCG to Southern Connecticut Gas Company ("SCG") is provided as Attachment C for reference. The final report issued to SCG is a concise, objectively framed report consistent with expectations for an independent audit. The Company has also provided this example to the DOE to demonstrate that there is a patent difference in tone, content and approach between RCG's previous reports on independent audits and the BPA Report delivered to the Company in this case, indicating that the BPA Report is not likely the unadulterated work of RCG.

7. In an attempt to resolve this dispute cooperatively, the Company requested a copy of the August Report from DOE through a letter detailing the Company's concerns (i.e., that without the August Report the Company cannot identify the portion of the BPA Report that is RCG's work and the portion that is DOE's perspective, based on its own opinions and experiences, rather than that of the independent auditor observed during the course of the BPA process).<sup>5</sup> The Company has repeatedly emphasized to DOE that it is important for the BPA to be memorialized in an independent manner so that Commission can rely on it for purposes of evaluating the prudence of the Company's capital projects in future disputes that may arise in the Company's next base distribution rate case or other cases as a result of DOE claimed deficiencies in the Company's project authorization and documentation processes.
  
8. Eversource's letter to DOE also requested to establish a process for review of the BPA Report that would allow for redlined changes from both DOE and the Company to correct factual errors. The Company's position is that the only changes that should be incorporated into RCG's work product are factual corrections presented by the Company or DOE. Disclosure of RCG's original work product, and any edits to RCG's work product made for the limited purposes of correcting factual errors, is critical to maintain the independence and integrity of the BPA. The integrity of the BPA Report is necessary to support the Commission's fair and reasonable review of capital projects in the Company's next base distribution rate case proceeding.

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<sup>5</sup> A copy of the Company's letter is provided as Attachment D. Footnote 1 of the Company's letter refers to a final audit report prepared by RCG; this is the same final audit report provided with this Motion as Attachment C.

9. The Company's letter to DOE also confirmed that Eversource is willing to adopt the findings and recommendations put forth by RCG (subject to any factual corrections) once confirmation is obtained that the findings and recommendations in the BPA Report are those of an independent third-party utilizing industry expertise and working in a professional capacity. This commitment to adopt the findings and recommendations of RCG has always been Eversource's intent with respect to the BPA; however, the Company is concerned that the BPA Report has been influenced by DOE's continued allegations against the Company's capital investment strategy and documentation process. Specifically, DOE appears to be using the BPA Report as an opportunity to resurrect unsubstantiated claims originally presented in the Company's last base distribution rate case proceeding and to further its own position, whereas the BPA was supposed to serve as a fair and reasonable foundation for identifying a valid, industry-standard construct that could be used to facilitate future regulatory reviews.
10. In response to the Company's request to see a redlined comparison of the August Report and November Report, DOE sent the Company a one-paragraph letter from RCG stating that the findings and recommendations in the BPA Report are "those of an independent third-party (River Consulting Group, Inc.) using their industry expertise and working in a professional capacity."<sup>6</sup> Respectfully, the Company does not question the industry expertise and professionalism of RCG, nor is the Company suggesting that there is no content put forth by RCG in the November Report. The issue is that neither the Company, nor the Commission can discern what portions of the BPR Report are RCG's original work product and what portions were added by DOE.

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<sup>6</sup> A copy of DOE's letter is provided herewith as Attachment E.

11. With this statement in hand, the DOE requested that the Company provide any comments with respect to the November Report without further disclosure of the edits made by DOE to the BPA Report. However, this response from DOE does not address the Company's core concerns regarding transparency and did not resolve this dispute. Importantly, the RCG letter does not state that *no* edits were made to the BPA Report handed over to DOE by RCG in August 2022, nor does the letter state that the findings and recommendations in the BPA are *exclusively* those of an independent third-party. The Company does not doubt that RCG submitted the BPA Report to DOE in a form that included "findings and recommendations" arising from its comprehensive audit. However, the Company has a right to know whether any part of the BPA Report, including but not limited to the "findings and recommendations" were edited by DOE prior to the delivery of the BPA Report to the Company.
  
12. The Company's fundamental concern is that the purpose of the BPA was to utilize the professional services of a third-party, independent auditor to examine the Company's existing capital authorization and documentation processes to identify any gaps and/or needed improvements that could be implemented by the Company *prior* to the next base distribution rate case proceeding so that disputes with DOE regarding the process could be minimized and the Commission's review of the Company's capital projects made more efficient. At the evidentiary hearings conducted by the Commission on the Settlement Agreement, the Commission sought confirmation that the BPA would facilitate the future rate reviews. Some examples are the following:<sup>7</sup>

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<sup>7</sup> For ease of reference, Attachment F provides the referenced transcripts from Docket No. DE 19-057.

1. Transcript, October 26, 2020, Morning Session, at page 41-42.

Q [Commissioner Bailey] All right. The next section, "Plant In Service", can each one of you tell me what you think -- what you think the templates will include for the regulatory review? <sup>8</sup> And this is to address some testimony about how difficult it is to go back and review prudence that's occurred over the last ten years, since there was so much time in between rate cases. Is that right?

A. [Horton] [Excerpted] So, it's to review -- it's to get clarity and understanding on an agreement around the presentation of the project costs for plant that has been placed in service, which will be reviewed as part of the steps, and then after the steps, between rate cases.

You know, as we said in the Settlement Agreement, there were a number of questions raised by Staff and other parties around our presentation of the documentation associated with those plant investments that have been made. You know, certain things we just frankly didn't see eye to eye on as a part of the settlement process and those discussions. It was important to us that we agree to a process going forward, so that both parties -- all parties could have, you know, more productive discussion and review in the regulatory process.

2. Transcript, October 26, 2020, Morning Session, at page 55-56 (emphasis added).

Q [Commissioner Bailey] Can you talk a little bit about the business process audit and how that plays into this?

A [Horton] Sure. Like I said, Staff and other Parties had identified questions and issues during the course of the proceeding on our project documentation. And, so, this was --

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<sup>8</sup> Part of the business process audit was to develop a consensus on a "template" that would be used to present project information to be included in step adjustments in the short term and then longer term in future rate cases (Tr. 10/26/20 p.m., at 32, 47-48).

it's described in Appendix 2 to the Settlement Agreement what the scope will be of that business process audit. And, so, it was intended to provide a **third party review** of our business processes, and to, you know, provide opportunities for improvements into how we manage our projects and oversee the costs associated with them.

3. Transcript, October 26, 2020, Afternoon Session, at page 34 (emphasis added).

Q. [Commissioner Bailey] Mr. Dudley, do you believe that the business process review and audit and the establishment of the templates will address the concerns of rates in your testimony?

A. (Dudley) Yes, I do, Commissioner Bailey. The provision for the business process review audit is, in my opinion, one of the key elements and one of the positive attributes of the settlement. The audit will be structured to examine the issues that I raised in my testimony related to the Company's capital budgeting, planning, documentation, project management, et cetera. And what we hope to obtain from the **outside** expert's review are helpful recommendations involving improvements to the Company's processes involving those issues. So yes, I am satisfied.

4. Transcript, October 29, 2020, at page 151 (emphasis added).

[Amidon] Staff and the Company also agreed to engage an **independent** auditor to conduct a business process audit of the Company's capital budgeting and expenditure procedure. While the Commission could order such an audit at any time, it's particularly appropriate given the recent divestiture of the Company, the long time since its last rate case, and its merger with affiliates, with Eversource, to have that business audit be done at this point.



5. Transcript, October 29, 2020, at page 162 (emphasis added).

[Fossum] As Commissioner Bailey pointed out, the Staff's review of projects in this case was difficult. In the hopes and with the intent of minimizing similar issues in the future, we will have an agreed-upon way to show and provide that information to our mutual benefit. Along that same line, there will be a business process audit of the Company. That audit will likely be the source of an adjustments template and quite possibly will provide other insights to assist the Company and the regulators in doing the work that they need to do.

See, also, Tr. 10/26/20 a.m., at 32-33, 43-45, 41-48; Tr. 10/26/20 p.m., at 36-37, 44, 46, 48.

13. The importance of the BPA Report was highlighted by the third step adjustment proceeding (Docket DE 22-030). During the course of that proceeding, DOE asserted that it had observed “a consistent pattern, that the project was halfway through completion, cost overruns occurred, and the ‘Lessons Learned’ section of those Supplemental Request Forms indicated that...some of the costs should have been known and should have been taken into consideration during the scoping process” and that this consistent pattern was one of the reasons that the BPA was included in the Settlement Agreement (Docket DE 22-030 9-20-22, Tr. at 212-213<sup>9</sup>). The DOE made a number of recommendations in DE 22-030 based on this alleged pattern of cost overruns (Docket DE 22-030, 10-17-22 Tr. at 13-15). DOE’s position regarding the Company’s Third Step Adjustment underscores the need for a reliable BPA Report ahead of the Company’s next base distribution rate case.
14. Based on DOE’s recommendations in the Third Step Adjustment docket, the Company requested a copy of the August Report through discovery in Docket DE 22-030. DOE

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<sup>9</sup> The transcripts from Docket DE 22-030 are included in Attachment F beginning at Bates 000371.

objected to this discovery request as beyond the scope of Docket DE 22-030 and the Company filed a corresponding motion to compel.

15. The Commission denied the Company's motion to compel (Docket DE 22-030, 10-17-22 Tr. at 12, finding that the BPA Report was not relevant to the proceeding). Denial of the Company's motion to compel left Eversource with no option but to wait for production of the November Report without any commitment that the November Report would identify any edits made by DOE to the August Report.
16. Receipt of the November Report without any indication of the revisions that occurred between August and November 2022 has exacerbated the issues highlighted in Docket DE 22-030 and are likely to defeat the efficient review of capital project documentation in the Company's upcoming base distribution rate case. A biased audit report undermines the value of the BPA and its stated scope, notwithstanding all of the time and resources committed by the Company to this endeavor in the interests of mitigating future controversy. DOE and the Company agreed to conduct the BPA and the BPA was expressly designed to investigate and address DOE's allegations in Docket DE 19-057 that Eversource has a "consistent pattern" of failing to develop reasonable project budgets or estimates.
17. Without disclosure of the BPA Report originally produced by RCG, the Company is unable to receive the benefit of its bargain in the Settlement Agreement (i.e., an unbiased, independent BPA Report to guide review of the Company's capital projects in a rate proceeding). Therefore, the Company is respectfully requesting that the Commission direct the DOE to provide the Company with the original version of the BPA Report, as received from RCG in August 2022, together with a version of the November Report that shows

redlined differences between the August Report and the November Report with authorship of the redlines properly attributed to RCG and/or DOE.

18. Following this disclosure, the Company will be prepared to move forward and work cooperatively with DOE and RCG to review and prepare the BPA Report for filing with the Commission, with any changes made from the original BPA Report by DOE and/or the Company clearly delineated for the Commission so that there is total transparency. Except for good cause shown in the next base distribution rate case proceeding, the Company plans to implement the findings and recommendations from the BPA Report. The BPA Report submitted to the Commission will serve as an important reference point for review of the Company's capital projects in that case.
19. The request for production of the original RCG BPA Report is reasonable and necessary to provide Eversource with the benefit of its bargain, as well as to facilitate the Commission's review of the Company's capital project costs in the next base distribution rate case proceeding. The Company has devoted significant time and resources to this effort to obtain the benefit of that bargain and has done so in reliance on the Settlement Agreement and representations made – and accepted – by the Commission in reviewing and approving the Settlement Agreement.
20. As demonstrated above by transcript references, the BPA was intended to be an independent audit of the Company's capital authorization and documentation processes. Disclosure of the original RCG BPA Report and production of the redlined changes between the August Report and November Report is necessary to affirm the independence and integrity of the audit and the associated findings and recommendations. Without affirmation of the independence and integrity of the BPA, the Company will be left to

challenge the integrity of the BPA Report in the next base distribution rate case. Moreover, without the benefit of the agreed-upon resolution of the DOE's concerns over the Company's capital-project authorization and documentation processes, disagreements regarding these issues will persist.

WHEREFORE, Eversource respectfully request that this Commission:

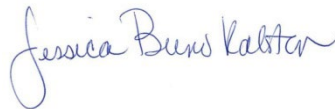
- A. Direct DOE to provide the original RCG BPA Report submitted to DOE in August 2022, along with redlined changes between the August Report and November Report, to the Company;
- B. Establish a process and schedule for further input on the RCG BPA Report by DOE and the Company to correct factual errors, if any, and to prepare a filing of the BPA Report with the Commission; and
- C. Grant such additional relief as it deems appropriate.

Dated: March 17, 2023

Respectfully submitted,

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

By its Attorneys,

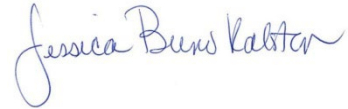


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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2023, a copy of this motion has been electronically forwarded to the service list in this docket.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style with a large initial 'J'.

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Jessica Buno Ralston