

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DOCKET NO. DE 19-057
REQUEST FOR PERMANENT RATES

TESTIMONY OF DOUGLAS P. HORTON

Rate Case Expenses

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

March 18, 2022

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1 **I. INTRODUCTION**

2 **Q. Please state your full name, position and business address.**

3 A. My name is Douglas P. Horton. I am the Vice President, Distribution Rates and Regulatory
4 Requirements, for Eversource Energy Service Company (“ESC”). My business address is
5 247 Station Drive, Westwood, Massachusetts 02090.

6 **Q. What are your principal responsibilities in this position?**

7 A. ESC provides centralized services to the natural gas and electric operating subsidiaries of
8 Eversource Energy, including Public Service Company of New Hampshire d/b/a
9 Eversource Energy (“Eversource” or the “Company”). In my role as Vice President,
10 Distribution Rates and Regulatory Requirements, I have overall responsibility for rates and
11 rate-related policies and procedures, as well as preparation and presentation of regulatory
12 filings made by the Eversource Energy operating affiliates to the respective regulatory
13 commissions in New Hampshire, Massachusetts and Connecticut. In this phase of the

1 proceeding, I am responsible for presenting and supporting the Company's request for
2 recovery of rate case expenses.

3 **Q. Please describe your educational background and professional experience.**

4 A. I graduated from Bentley College (now Bentley University) in Waltham, Massachusetts in
5 2003 with a Bachelor of Science degree. In 2007, I graduated from the Bentley University
6 McCallum Graduate School of Business with a Master of Business Administration. I was
7 hired by NSTAR as a Senior Financial Planning Analyst in August 2007 and promoted to
8 Project Manager, Smart Grid, in March 2010. In 2012, I was promoted to Manager,
9 Revenue Requirements, Massachusetts and was subsequently promoted to Director,
10 Revenue Requirements, Massachusetts in February 2015. I was promoted to my current
11 role of Vice President, Distribution Rates and Regulatory Requirements in December 2018.

12 **Q. Have you previously provided testimony before the New Hampshire Public Utilities**
13 **Commission in this docket.**

14 A. Yes. I previously provided testimony before the New Hampshire Public Utilities
15 Commission (the "Commission") in this docket in support of the Company's request for a
16 base rate increase and the comprehensive Settlement Agreement on Permanent Distribution
17 Rates dated October 9, 2021 ("Settlement Agreement"), which was approved with
18 modifications by the Commission in its Order No. 26,433 issued on December 15, 2020
19 (the "Order").

20 **Q. What is the purpose of your testimony?**

21 A. The purpose of my testimony is to describe and support the Company's request for
22 recovery of rate case expenses from its base rate proceeding, as authorized by Puc 1904.02

1 and 1906.01. As discussed in my testimony, the Company has provided substantial
2 documentary evidence for the recovery of its actual, known, and measurable rate case
3 expenses from Docket No. DE 19-057, all of which are related to the rate case, just and
4 reasonable and in the public interest. The Commission’s Audit Staff recommended a
5 disallowance of \$901,659 in the areas of outside legal services, plant additions contractor
6 labor support, and cost-of-service studies, and this recommendation was later forwarded to
7 the Commission in its entirety without any additional analysis by the Department of Energy
8 (“Energy” or “DOE”) Staff in an unsolicited interagency communication to the
9 Commission. My testimony demonstrates that all of these costs were reasonable and
10 necessary to the Company’s rate case, and that the Audit Staff’s recommendation adopted
11 by DOE is contrary to the facts of this case and the Commission’s rules.

12 **Q. Are you presenting any attachments with your testimony?**

13 A. Yes. I am presenting the following attachments as part of my testimony in this case:

Attachment	Description
Attachment ES-DPH-1	Rate Case Expense Summary and Documentation
Attachment ES-DPH-2	Eversource Response to Data Request OCA 7-039
Attachment ES-DPH-3	DOE Audit Report and DOE Recommendation

14 **Q. How is your testimony organized?**

15 A. Following this introductory section, Section II discusses the procedural history and
16 background related to the Company’s request for rate case expenses. Section III describes
17 the Commission’s legal standard for recovery of rate case expenses. Section IV describes

1 the Company's actual, known and measurable expenses incurred for the preparation and
2 presentation of its rate case in Docket No. 19-057, including detailed information on the
3 categories of expenses and the documentary support of these expenses provided in this
4 docket in accordance with the Commission's rules. Section V responds to the
5 recommendation of the Audit Staff and Energy that the Commission disallow \$901,659 of
6 the Company's expenses and explains that their recommendation is contrary to the
7 Commission's rules and unsupported by the facts for recovery of the Company's actual,
8 known and measurable costs. Section VI provides concluding remarks to my testimony.

9 **II. BACKGROUND**

10 **Q. Please explain the procedural history of this docket that is relevant to the Company's**
11 **request for recovery of rate case expenses.**

12 A. On March 22, 2019, Eversource filed with the Commission a Notice of Intent to File Rate
13 Schedules pursuant to N.H. Code Admin. Rule Puc 1604.05 pertaining to a request for
14 temporary rates. On April 26, 2019, the Company filed with the Commission proposed
15 tariffs and rate schedules, testimony, attachments and other information supporting that
16 request as well as a Notice of Intent to File Rate Schedules pertaining to its request for
17 permanent rates. On May 28, 2019, the Company submitted its permanent rate filing.
18 Following discovery and a technical session, on June 13, 2019, Eversource filed a
19 settlement agreement on temporary rates and on June 27, 2019, the Commission issued
20 Order No. 26,265 approving that settlement agreement.

21 On June 28, 2019, the Commission approved an initial procedural schedule for adjudication
22 of the Company's permanent rate request, to which nine parties intervened, and which

1 anticipated a Commission order by May 20, 2020. On March 24, 2020, the Staff filed a
2 letter in the docket describing the status of the matter and the agreement of the Company
3 to a three-month extension of the procedural schedule to account for the state of emergency
4 declared by Governor Sununu on March 13, 2020, regarding the COVID-19 pandemic. On
5 April 24, 2020, Governor Sununu issued Exhibit D to Executive Order #29, pursuant to
6 Executive Order 2020-04, extending the Commission's authority to suspend rate schedules
7 by six months, from 12 to 18 months. During this extension, the Commission suspended
8 the Company's permanent rate schedule for an additional 6 months and directed the
9 Company to file supplemental testimony.

10 In the weeks prior to and following the Commission's order extending the suspension
11 period, the Company, then-Commission Staff (now DOE), the Office of the Consumer
12 Advocate ("OCA"), and the intervening parties conducted discovery that included over
13 1,000 data requests. The same parties engaged in settlement discussions, which were
14 subsequently expanded to include additional intervenors. Based upon these discussions,
15 the comprehensive Settlement Agreement was reached between all parties to the docket
16 and hearings on that settlement were held on October 26, 27 and 29, 2020. On December
17 15, 2020, the Commission issued Order No. 26,433 approving the Settlement Agreement.

18 **Q. Did the regulatory process leading to the Settlement Agreement and Order extend**
19 **over a relatively long period of time?**

20 A. Yes. The Company engaged its service providers and commenced work to prepare the case
21 for presentation to the Commission in early 2018. The Company's initial filing was then
22 made on April 26, 2019 and the Order was issued on December 15, 2020, or just under 18

1 months from the time of filing. Overall, the rate case required nearly three years of
2 intensive and dedicated effort by the Company's internal personnel and external service
3 providers.

4 **Q. Did the Settlement Agreement allow for recovery of the Company's rate case**
5 **expenses?**

6 A. Yes. The revenue requirement in the Settlement Agreement contained an amount
7 attributable to the recovery of rate case expenses, but in the Order the Commission directed
8 those expenses removed from the settled revenue requirement pending further review. The
9 Company subsequently filed a motion with the Commission on January 15, 2021
10 ("Motion") requesting its review and approval of the recovery of rate case expenses
11 incurred in this docket, as directed in the Order.

12 **Q. What was the scope of the Motion?**

13 A. The Motion explained that Eversource engaged numerous experts and specialists to support
14 the preparation and presentation of the rate case and relied on the work of those experts
15 through the extended period of this proceeding. It stated that the expenses incurred for
16 these resources qualify as allowed expenses under Puc 1906.01. It stated that Eversource
17 provided an initial estimate of rate case expenses when the case was filed and updated those
18 expenses during the pendency of the case consistent with Puc 1905.01. In compliance with
19 these rules, the Company provided the Commission up-to-date information on the service
20 providers and the level of expenses throughout the case.

21 **Q. Was the Motion supported by documentation as required by the Commission's rules?**

22 A. Yes. The Motion included attached materials required by Puc 1905.03 containing

1 information on the vendors, their invoices, descriptions of their services, the relevant
2 contracts, and other supporting materials. Each of the service providers engaged by
3 Eversource was obtained through a competitive bid process, which resulted in services
4 provided in an efficient and cost-effective manner, as required by Puc 1905.04. A copy of
5 the materials filed with the Motion are included as Attachment ES-DPH-1 to this
6 testimony.

7 **III. RECOVERY OF RATE CASE EXPENSES**

8 **Q. Do the Commission’s rules allow for recovery of rate case expenses from a full rate**
9 **case?**

10 A. Yes. The Commission’s rules allow recovery of rate case expense provided such expense
11 has first been found by the Commission to be “just and reasonable and in the public interest
12 and otherwise conforms to the requirements of Chapter Puc 1900.”¹ The Commission’s
13 rules are designed “to ensure equitable reimbursement of rate case expenses, to establish
14 requirements for utilities to properly document and control rate case expenses, and to limit
15 the impact of rate case expenses on ratepayers.”² The rules establish the criteria for
16 determining whether the rate case expenses that have been incurred by a utility are just and
17 reasonable and are in the public interest.³ The rules allow recovery as rate case expenses
18 those “non-recurring expenses incurred by a utility in the preparation or presentation of a
19 full rate case proceeding before the commission, necessary for the conduct of the rate

1 Puc 1904.01.

2 Puc 1901.01.

3 Puc 1901.01.

1 case.”⁴ They allow recovery of the cost of “service providers,” which are defined as “any
2 natural person or legal entity who provides expert, consulting, administrative, or legal
3 services to a utility and whose services are not already included in the utility’s revenue
4 requirement.”⁵

5 **Q. Did the Company’s filings conform to the Commission’s rules?**

6 A. Yes. Consistent with the Commission’s rules, the Company provided an initial estimate of
7 rate case expenses when the case was filed and updated cost information every 90 days
8 thereafter during the pendency of the case. The Company’s filings included detailed
9 descriptions of rate case expenses actually incurred as of the date of the filing and projected
10 total rate case expenses and contained: (a) the name of the service provider; (b) the
11 procurement process; (c) the amount of the expense; and (d) a description of the charge or
12 service rendered. The filings included a list of all services to be rendered on behalf of the
13 Company by each vendor, and the total estimated costs of each service.⁶ Lastly,
14 Eversource filed its request for recovery pursuant to Parts Puc 202 and 203, along with all
15 supporting documentation, with the Commission on January 15, 2021, which was no later
16 than 30 days after the Commission’s final order.⁷

4 Puc 1903.05.

5 Puc 1903.06.

6 Puc 1905.01.

7 Puc 1905.02.

1 **Q. What types of costs are allowed rate case expenses?**

2 A. The following types of costs are allowed as rate case expenses:

- 3 • costs related to the preparation of items required as part of a full rate case, pursuant
4 to PART Puc 1604;
- 5 • expert consultant fees;
- 6 • legal and accounting fees;
- 7 • expenses associated with changing billing systems to reflect temporary and
8 permanent rate changes;
- 9 • travel expenses;
- 10 • administrative costs such as postage costs, publication costs, photocopying
11 expenses, and transcription costs; and
- 12 • such other similar expenses that are related to the preparation or presentation of a
13 full rate case, defined by Puc 1903.03, as determined by the Commission after its
14 review.⁸

15 **Q. What is the Commission's criteria for determining allowed rate case expenses?**

16 A. The Commission determines whether: (1) an expense is properly recoverable as an allowed
17 rate case expense as described above; (2) the expense is an actual, known, and measurable
18 expense associated with a full rate case proceeding, defined in Puc 1903.03; and (3)
19 recovery of the expense is just, reasonable, and in the public interest. The Commission
20 considers the following factors in applying these criteria:

- 21 • Whether the issues presented are novel or complex;
- 22 • The cost of the service provided to prepare and present the rate case;

⁸ Puc 1906.01(b).

- 1 • Where appropriate, any information concerning the customary fee for similar
2 services, including the fees rendered in the relevant market to companies of similar
3 size in matters of similar importance to the client;

- 4 • Whether the work was relevant and reasonably necessary to the rate case
5 proceeding and the extent to which the services contributed to the efficient
6 resolution of matters presented;

- 7 • Whether the utility used a competitive bidding process, when required, pursuant to
8 Puc 1905.03 and Puc 1905.04, and in selecting a winning bidder considered
9 information concerning the availability, experience, quality and cost of services
10 provided;

- 11 • The experience and ability of the service provider;

- 12 • Whether the request for a rate change was just and reasonable; and

- 13 • Other factors as may be considered relevant to a particular rate case proceeding.⁹

14 **IV. EVERSOURCE’S RATE CASE EXPENSES**

15 **Q. Please describe the Company’s actual, known and measurable rate case expenses.**

16 A. Eversource incurred \$2,186,264 in actual, known and measurable rate case expenses for
17 the preparation and presentation of its rate case. This amount includes \$1,747,020 of costs
18 for experts and specialists retained by the Company; \$415,680 for consultants and legal
19 counsel retained by then-Commission Staff; and \$23,565 for consultants retained by
20 OCA.¹⁰ Specifically, the Company retained the following service providers for this rate
21 case:

⁹ Puc 1904.02

¹⁰ The Motion also noted as “unknown” certain additional OCA costs for Larkin & Associates. The PUC Audit Staff report dated March 30, 2021 stated these costs were contemplated to be paid from the OCA Litigation account (at the State accounting level), rather than from the Special Assessment account used by the PUC Business Office for other consultant costs. As a result, the costs were not included in the request for recovery, as was accurately noted in the Company’s filing.

Service Provider	Description of Services
Keegan Werlin LLP	Legal Services, Production and Filing Fees
Economists Incorporated	Marginal Cost of Service Study, Allocated Cost of Service Study, and related testimony and data responses
Concentric Energy Advisors, Inc.	Cost of Capital Study, and related testimony and data responses
Gannett Fleming, Inc.	Deprecation Study, and related testimony and data responses
Randstad	Plant Additions Contractor Labor Support
Aon	Actuarial Contractor Costs
Spectrum Marketing Companies, Inc.	Postage and Delivery Services

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Attachment ES-DPH-1 contains detailed cost information as required by Puc 1905.03. The Motion confirmed that each of the service providers engaged by Eversource was obtained through a competitive bid process, which resulted in services provided in an efficient and cost-effective manner, as required by Puc 1905.04. Further, the Company’s process considered information concerning the availability, experience, customary fees for similar services, quality, and cost of the service provider.

Q. Do these costs meet the criteria for recovery under the Commission’s rules?

A. Yes. As explained in more detail below, these categories of expenses are the types of costs properly recoverable as an allowed rate case expense; the expenses are actual, known, and measurable expense in furtherance of the Docket No. DE 19-057 rate case proceeding; and recovery is just, reasonable, and in the public interest. The rate case was the first for Eversource in 10 years and included a number of novel and complex issues. Over this time period, the Company had experienced significant organizational and operational changes

1 that included the merger of Northeast Utilities and NSTAR in 2012, and the completion of
2 the divestiture of the Company's electric generating assets in 2018. In addition to the
3 complexity of issues arising from the Company's first rate case in a decade, there were also
4 a host of issues and interests raised by the nine intervening parties to the docket. The case
5 required substantial outside support from highly experienced legal and subject matter
6 experts, all of whom agreed to work under reasonable, market-based fee arrangements
7 resulting from competitive bid processes. All of their work was relevant and necessary to
8 the preparation and presentation of the Company's rate case proceeding and contributed to
9 an efficient resolution of the matter presented, as reflected in the comprehensive Settlement
10 Agreement.

11 **V. RESPONSE TO STAFF AUDIT AND DEPARTMENT OF ENERGY**
12 **RECOMMENDATION**

13 **Q. Did the PUC Audit Staff conduct an audit of the Company's rate case expenses?**

14 A. Yes. Following Eversource's submission of the Motion, the Commission's Audit Staff
15 (now the Audit Staff of DOE), commenced an audit of the expenses. As is typical of the
16 audit process, the Audit Staff identified several areas of concern in a draft audit, allowing
17 the Company a single opportunity to respond to those concerns, and then issuing a final
18 audit report with its recommendations. The final audit report was issued on March 30,
19 2021 (the "Audit Report") and noted Eversource's disagreement with a number of the
20 proposals and conclusions contained in the Audit Report. Specifically, the Audit Report
21 recommended disallowance of \$901,659 in requested costs for a total recovery proposal of
22 \$1,284,606 in rate case expenses.

1 **Q. What happened next?**

2 A. On August 26, 2021, the Staff filed an “Inter-Agency Communication” in which it
3 supported the Audit Report’s proposed disallowances. The communication recited the
4 Audit Report’s findings accompanied by a brief statement of the Staff’s agreement. The
5 entirety of the Staff’s recommendation was as follows:

6 Staff has reviewed the final audit report provided by the Audit Division involving
7 PSNH’s request for recovery of rate case expenses. It is Staff’s opinion that the
8 audit is complete and accurate and that the disallowance recommendations
9 contained therein are well supported and justified. Staff also reviewed the
10 Company’s responses, but when weighed against the observations contained in
11 Audit’s review, Staff did not find the responses persuasive. Therefore, Staff
12 recommends that the Commission adopt the findings contained in the Report and
13 approve the recommended disallowances totaling \$901,659, requiring PSNH to
14 reduce the total amount of recoverable rate case expenses from \$2,186,264 to
15 \$1,284,606.¹¹

16 The Audit Report and DOE recommendation are provided in Attachment ES-DPH-3.

17 **Q. Did the Company file a response to DOE’s submission?**

18 A. Yes. On September 24, 2021, the Company filed a motion for the Commission to reject
19 the “Inter-Agency Communication” on procedural and substantive grounds. The Company
20 explained that the communication requested that the Commission disallow recovery of
21 prudent and reasonable rate case expenses necessarily incurred by Eversource to prepare,
22 support and resolve the 2019 rate case filing, and asked for this finding without adequate
23 process or support. The communication contained no indication of the relevant legal

¹¹ Attachment ES-DPH-3 at 4.

1 standards for recovery of rate case expenses, nor any analysis of how those standards apply
2 in this case.

3 **Q. Which of the Company's costs did Staff recommend for disallowance?**

4 A. The Staff recommended disallowances of a portion of the costs for four of those
5 consultants: Keegan Werlin, LLP (legal services); Economists, Inc. (cost of service
6 studies); Concentric Energy Advisors (cost of capital and return on equity); and Randstad
7 Corporate Services (temporary corporate support services). The following sections of my
8 testimony respond to these items.¹²

9 **A. Legal Services**

10 **Q. Do the Commission's rules allow legal services costs as rate case expenses?**

11 A. Yes. The Commission's rules, Puc 1906.01, specifically provide that "legal and accounting
12 fees" are allowable rate case expenses. The Commission's rules acknowledge that a utility
13 may require additional legal services specifically for work pertaining to rate case filings
14 beyond the capacity of its internal resources. Consistent with these rules, it was reasonable
15 for Eversource to retain outside legal expertise for a "surge" item such as the rate case that
16 represents a low frequency, high impact event. The Staff seeks to disallow 100 percent of
17 these costs despite the Company's necessary use of outside legal support and reasonable
18 cost controls.

¹² As noted in the Audit Report, Eversource agreed to the removal of \$38,432 of Concentric costs. Therefore, Eversource takes no exception to the removal of the identified Concentric costs.

1 **Q. Was it possible for Eversource to support the rate case solely with its internal legal**
2 **staff?**

3 A. No. The Company’s internal legal staff did not have the capacity to support the rate case.
4 Without any analysis, the Audit Report recommended to disallow the Keegan Werlin costs
5 in full, citing Puc 1907.01(a), which excludes costs “for matters handled by service
6 providers that are typically performed by utility management and staff of the utility, *based*
7 *on their experience, expertise, and availability.*”¹³ According to the Audit Report:

8 All of the time spent preparing, reviewing, editing data request responses and
9 updating logs, daily phone calls with what was called the “core” rate case team,
10 discussions among counsel and Eversource employees regarding testimony,
11 technical sessions, hearings, preparing and filing documents for submission to the
12 NH PUC, should have been accomplished by the legal staff of the Company.¹⁴

13 **Q. What was wrong with the Audit Staff’s conclusion?**

14 A. The Audit Report recommends a full disallowance of all Keegan Werlin LLP costs, in the
15 amount of \$695,579. In essence, the Audit Report asserts that simply because Eversource
16 employs attorneys, it should not be allowed to recover outside legal expenses for a rate
17 case, which is mistaken for several reasons. The Audit Report did not address the fact that
18 there was substantial incremental work and activity associated with preparation, conduct
19 and resolution of the numerous issues associated with the Company’s first rate case in 10
20 years, and the first case since the 2012 NU-NSTAR merger and the 2018 generation
21 divestiture. The report presumes that any lawyer employed somewhere within Eversource
22 Energy (irrespective of experience, expertise or availability) may be brought in to support

¹³ Puc 1907.01(a) (emphasis added).

¹⁴ Attachment ES-DPH-3 at 5.

1 a rate case filing, and that repurposing other Eversource Energy attorneys (i.e., taking them
2 away from the work needed in other areas of the organization) would occur at no
3 incremental cost to the Company, which is not the case.¹⁵ As noted above, the
4 Commission’s rules exclude recovery for the costs of activities of the “staff of the utility,
5 based on their *experience, expertise, and availability*” but the Company does not staff
6 internal legal counsel for incremental work associated with a rate case or maintain an
7 excess supply of attorneys with availability to support infrequent items associated with a
8 specialized, high-volume, long-term (12-18 month) proceeding. In addition, it is not
9 reasonable to limit the Company to the use of internal legal counsel even though that
10 counsel would have no expertise in utility ratemaking or New Hampshire ratemaking
11 precedent.¹⁶

12 **Q. How does the Company set its internal legal staffing requirements?**

13 A. In New Hampshire, Eversource has sought to maintain an appropriate level of legal
14 professionals to address the regulatory work presented to the Company as part of its regular
15 and recurring regulatory business. The Company staffs for a “steady-state” workload and
16 does not maintain an excess capacity of other attorneys who may be substituted in for
17 specific, high-impact cases, requiring specific technical expertise, such as a rate case.
18 Further, keeping excess, incremental legal resources available on a full-time basis for
19 “surge” items such as rate cases would be inefficient, wasteful, and likely imprudent. In

¹⁵ See Attachment ES-DPH-3 at 12.

¹⁶ Notably, the Staff retained additional outside legal counsel to support the rate case and these costs are included in the Company’s rate case expenses. The Company does not challenge these costs.

1 this approach, the Company works to assure that its internal legal costs are sized
2 appropriately for its day-to-day business requirements (which do not go away and still must
3 be supported during a rate case). This approach enables the Company to keep its internal
4 staffing costs contained and reasonable. Maintaining legal resources at the level the Audit
5 Report would seem to suggest is counter to that goal, and would likely be counter to the
6 interests of New Hampshire utility customers.

7 **Q. Is it reasonable to expect that other attorneys in the Eversource Energy organization**
8 **could be assigned to support a New Hampshire rate case?**

9 A. No. The Audit Report ignores the practical consideration that attorneys have specific
10 experience, expertise and availability, and it is inaccurate that any attorney within the
11 organization would be able to act as competent counsel for a New Hampshire rate case
12 filing. Although Eversource Energy maintains an internal legal staff, including lawyers
13 and paralegals, these resources practice across myriad disciplines involving both the
14 regulated and unregulated businesses within Eversource Energy, including corporate
15 governance, bankruptcy, labor and employment, and numerous other areas outside of state
16 regulatory issues. It is unreasonable and impractical – and patently unfair – to expect the
17 Company could have redirected those attorneys from their areas of competence and
18 responsibility to a New Hampshire rate case. To do so would risk having those attorneys
19 acting outside their areas of competence in potential violation of their professional ethics
20 requirements. At the same time, it essentially creates a requirement that Eversource use
21 attorneys who are not familiar with Eversource’s regulated business or ratemaking practice,
22 New Hampshire public utility law, New Hampshire regulatory process for ratemaking

1 proceedings, or other issues specific to New Hampshire's regulatory requirements.
2 Although Eversource does employ other regulatory counsel for steady-state work in
3 Connecticut, those regulatory attorneys already have (and had) a full-time slate of work to
4 support the daily regulatory requirements in Connecticut.

5 **Q. Could the Company have staffed the rate case solely with its internal legal counsel in**
6 **New Hampshire?**

7 A. No. The rate case required a substantial and sustained work effort over a long period of
8 time, during which the Company continued to support its day-to-day business
9 requirements. The Company used its internal New Hampshire counsel to support the rate
10 case (in addition to their other responsibilities). However, the Audit Report ignores the
11 fact that, even using internal resources, the rate case required a substantial amount of
12 incremental work that could not be handled by internal resources alone. The Company
13 therefore incurred incremental costs that were properly charged to the rate case. If no
14 outside legal services were retained, the work associated with the rate case would have far
15 exceeded the capacity of work that could have been accomplished by Eversource's existing
16 regulatory attorneys in New Hampshire.

17 **Q. If in the past a utility did not use outside legal services for a rate case, does that have**
18 **any bearing on the present request?**

19 A. No. The Company's requirement for outside service providers for a rate case is based on
20 the experience, expertise and availability of its internal resources at the time of the case.
21 The circumstances of past cases or other the practices of other companies do not have a
22 bearing on this analysis.

1 **Q. Could the Company have avoided the use of outside legal services if the rate case was**
2 **based on a test year other than 2018?**

3 A. No. The Audit Report mistakenly concludes that “[t]he selection of 2018 as a test year,
4 with the sale of the Generation side of the business also complicated what could have been
5 a more streamlined rate proceeding, had that year not been chosen.”¹⁷ It is unreasonable
6 and incorrect to contend that recovery of rate case expense is obviated or precluded in
7 circumstances where the case complexity is associated with circumstances that the utility
8 could have “controlled,” or could have handled differently if it wanted to obtain recovery
9 of rate case expense. Eversource customers benefitted from a long period without a change
10 in base rates, and also benefitted from the sale of generation, subject to the closely managed
11 process developed by the Commission. The timing of these circumstances should not have
12 any bearing on the recoverability of legal costs because the timing of these two events were
13 not planned on the basis of the recoverability of legal costs, rather than on the basis of
14 factors benefitting customers. Further, and as to the timing issue, in Eversource’s prior
15 rate case, Docket No. DE 09-035, the settlement contained a five-year term during which
16 Eversource was not to file a new case. Similarly, in the instant docket, the Settlement
17 Agreement approved by the Commission contains, in Section 10.6, a prohibition on filing
18 any rate case prior to the first quarter of 2023 based upon a test year of 2022. Accordingly,
19 there were limitations on the timing of Eversource’s prior rate case filing and on the next
20 rate case filing.

¹⁷ Attachment ES-DPH-3 at 16.

1 It is speculative for the Audit Report to suggest that the rate case would have been less
2 complex if the timing was adjusted. In addition, other factors outside of the Company's
3 control added to the complexity of the case. As previously mentioned, there were nine
4 intervenors in the matter including the Staff and the OCA. Those entities, collectively,
5 served over 1,000 data requests (many of which had numerous subparts) for the Company
6 to answer. There were multiple rounds of testimony filed by various parties, including the
7 Staff, which included vigorous counters to Eversource's positions and that required
8 Eversource to rebut. Lastly, the demand for legal services was increased further by impact
9 of the pandemic and extension of the rate case review process to 18 months.

10 **Q. Do you have any other comments on the Staff's recommendation for disallowance of**
11 **the Company's legal costs?**

12 A. Yes. In the analysis of legal costs, it is important to consider the substance of the
13 representation and the nature of the services that were provided, but the Audit Report does
14 not do this. In this case, neither the Audit Report nor DOE's communication reviewed any
15 of those issues in determining whether recovery of legal costs was appropriate, only to
16 assert that the case should have been handled by internal resources, which was impossible.
17 In fact, the Audit Report takes no issue with the method of procurement; the qualifications
18 of, and rates for, the counsel retained; or the time spent or the descriptions of the rate case
19 activities. It simply concludes without support that existing internal legal resources were
20 sufficient and presumes that outside lawyers should not have been hired at all. In addition,
21 the Company's request does not include approximately \$99,057 in costs for legal services

1 provided but that the Company deducted from its payments to Keegan Werlin LLP based
2 on the terms of its engagement letter.

3 Lastly, Staff's position is internally inconsistent because it ignores the Staff's own retention
4 of outside legal counsel for the rate case, which, to the Company's knowledge, was the
5 first time Staff retained an outside attorney for its work on a rate case. The Company does
6 not challenge these costs or Staff's need to supplement its internal legal staff with outside
7 support, which is the same situation for the Company.

8 **B. Plant Additions Contractor Labor Support**

9 **Q. What does the Audit Report state as its basis to disallow the Randstad costs?**

10 A. The Audit Report recommends disallowance of all of the temporary support services costs
11 related to the Randstad employees' work, in the amount of \$151,198, by claiming that it
12 was unable to identify specific tasks performed by the Randstad employees. This
13 recommendation is not supported by facts.

14 **Q. What type of information did the Company provide in support of these costs?**

15 A. In requesting recovery of rate case expenses, the Commission's rules, Puc 1905.03, require
16 that the utility provide certain documentation including the invoices paid, the name of the
17 vendor, the amount of the expenses, and the date and description of the services rendered,
18 among other criteria that do not pertain to this item. In response to this requirement,
19 Eversource provided the documentation supporting the costs to be included for Randstad

1 and answered the Audit Staff's inquiry for supporting information.¹⁸ Also, as noted on
2 page 16 of the Audit Report, Eversource described the individuals from Randstad
3 performing work for Eversource and provided details on the work they performed in
4 support of the rate case. This information was also provided during the course of discovery
5 in Docket No. DE 19-057 in response to OCA 7-039, which was known to the Audit Staff
6 and was referenced in the Audit Report. A copy of the Company's response to OCA 7-
7 039 is provided as Attachment ES-DPH-2.

8 **Q. What was the nature of these costs?**

9 A. The costs were described in the response to OCA 7-039 and in the Audit Report at page
10 16. As stated, Randstad provided four analysts, led by an Eversource retiree, as additional
11 resources to the Company's internal personnel in preparing information and exhibits in
12 support of the capital plant additions portion of this rate case. Specifically, the Randstad
13 analysts were necessary to assist in compiling project documentation and supporting
14 information for the Company's initial filing and for responses to data requests pertaining
15 to capital planning and capital additions. This work was supported primarily by the
16 Company's Investment Planning staff, but required supplemental resources due to the large
17 number of capital projects over the six-year time span since the Company's last step
18 increase. Eversource's existing Investment Planning staff do not have the bandwidth to
19 support normal daily operations as well as rate case work and therefore it was necessary,
20 and more cost effective, to bring in temporary assistance for purposes of the rate case. The

¹⁸ The supporting information is included as Attachment ES-DPH-1.

1 Randstad contractors have a unique set of skills as retirees of Eversource and have
2 familiarity with Eversource's capital project documentation and processes as these
3 contractors have performed this work for other rate cases when needed. Using contractors
4 is a more cost-effective approach to handle the additional workload of a rate case than to
5 hire full-time employees. The Randstad contractors were critical to enable PSNH to
6 prepare and file information on its plant additions and capital programs, and the
7 information supporting this fact is comprehensive, responsive and well-documented.

8 **Q. Do you have more information on these costs?**

9 A. The Company's work in preparing the rate case filing required the collection of substantial
10 plant records, including information on plant-in-service collected by year and tied to the
11 relevant FERC report for each year from 2013 through 2018 as well as information on
12 capital expenditures for all projects and programs for those same years. This data was
13 sorted into numerous categories and grouped by year to populate the data for the over 300
14 pages of entries included in Attachments ELM-2 and ELM-3 in Exhibit 13 in this
15 proceeding. This work involved collecting, compiling and cross-referencing information
16 over many months for each year in issue, as the data is compared to the annual FERC filing,
17 and also requires the related documentation for all of the projects to be gathered and
18 reconciled. Beyond the data provided in the referenced attachments, the Company also
19 had to produce other project documentation (including authorizations, supplements, and
20 closing reports) in support of its costs. This information was provided in response to
21 discovery on particular projects throughout the course of the docket. The unique size and
22 scope of this effort, which only occurs for rate cases, was significant and well beyond the

1 capacity of work that could be accomplished by Eversource's internal staff. The temporary
2 support services secured through Randstad were both economical and critical to the rate
3 case effort.

4 **Q. How does the Company account for these costs?**

5 A. The Company's contract with Randstad for temporary support staff provides that when a
6 temporary employee is hired through Randstad and enters their time in the Randstad payroll
7 system, the hiring manager at the Company provides a default work order that directs the
8 charges to a FERC account associated with that work order. The default work order is
9 assigned based on the tasks that the person is working on, and in this case was directed to
10 the rate case filing. The hiring manager also approves the payroll each week for the
11 temporary support personnel they are overseeing in the Randstad payroll system.

12 For purposes of payments, Randstad submits an EDI invoice to the Company and there is
13 no physical invoice. The EDI invoice contains all of the information necessary for the
14 Company to review and verify the charges, including the list of temporary employees, their
15 hours, and their rates. Using the default work order provided, the charges associated with
16 the temporary employees' expenses are applied to the FERC account associated with the
17 default work order. Although the electronic records system does not enable the Company
18 to produce a traditional hard-copy invoice, the Company is able to produce (and in fact did
19 produce for Audit Staff) detailed time sheet entries, including the timesheet ID from the
20 Randstad system with the temporary employees' names, hours and rates. As a result, the
21 Company has provided documentation required by and consistent with the Commission's

1 rules, has described and explained the work performed in support of the rate case filing by
2 this service provider, and has substantiated the costs incurred.

3 **C. Cost of Service Studies**

4 **Q. What does the Audit Report state as its basis to disallow the Economists, Inc. costs?**

5 A. The Audit Report recommends disallowance of a portion of the costs by Economists, Inc.,
6 in the amount of \$16,450, on the basis that the costs were incurred for a docket other than
7 the rate case, and therefore it is improper to recover those costs as a rate case expense.¹⁹
8 This conclusion does not consider rate case-related purpose of the work that led to those
9 costs and that there is no other means of recovery for this work other than as rate case
10 expense.

11 **Q. Was this service provider engaged to support specific elements of the Company's rate**
12 **case filing required by Commission orders?**

13 A. Yes. On June 23, 2017 in Docket No. DE 16-576, the Commission issued Order No. 26,029
14 and established numerous requirements for utilities, including that Eversource was to
15 perform a full marginal cost-of-service study.²⁰ Consistent with the Commission's
16 directive (as modified by a secretarial letter of June 29, 2018 in that docket), the Company
17 filed its cost of service study in that docket on July 16, 2018. On February 20, 2019, the
18 Commission issued Order No. 26,221 in Docket No. DE 16-576 which, among other
19 things, noted that the Company was in the process of updating its cost-of-service study so

¹⁹ Attachment ES-DPH-3 at 2. The Audit Report does not propose to disallow the \$437,208 balance of the Economists, Inc. costs.

²⁰ Order No. 26,029 at 61.

1 that an up-to-date version would be filed with its forthcoming rate case. The Commission
2 ordered “Eversource to file in this docket its updated MCOS Study, and a summary of the
3 material changes between the original and updated versions of that study, at the same time
4 the updated MCOS Study is filed in its rate case.”²¹ The Company filed the updated
5 marginal cost study in its rate case and also made the required filing in Docket No. DE 16-
6 576 on May 28, 2019. That updated marginal cost study was used throughout the rate case
7 docket.

8 **Q. Were these costs reasonable and necessary in preparation and presentation of the**
9 **Company’s rate case filing?**

10 A. Yes. The cost-of-service work performed by Economists, Inc. was necessary for the rate
11 case and was not undertaken in a vacuum for the sole purpose of compliance in Docket No.
12 DE 16-576. At the time of the Commission’s Order No. 26,221, the Commission was
13 aware that Eversource had committed to filing a rate case in 2019 based on a 2018 test
14 year.²² The cost-of-service studies were required components of the Company’s rate case
15 filing based on its settlement agreement in Docket No. DE 09-035.²³ The Company relied
16 on this work and utilized it as the basis for additional analysis to complete the studies
17 required for the 2019 rate case filing. Therefore, although the work was initially noted as
18 being within the context of Docket No. DE 16-576, the cost of the service work by
19 Economists, Inc. was necessary for the development of the cost-of-service studies filed and

²¹ Order No. 26,221 at 16.

²² See November 16, 2018 Petition in Docket No. DE 18-177 (initially filed in Docket No. DE 17-196) at 7.

²³ Docket No. DE 09-035, Settlement Agreement (Apr. 30, 2010) at Section 14.3, page 14.

1 used in this proceeding. The Audit Report presumes that these costs could be reassigned
2 for evaluation and recovery in Docket No. DE 16-576, but the costs were rate-case related
3 and there is no means of recovery other than as rate case expense.

4 **V. CONCLUSION**

5 **Q. Do you have any concluding remarks?**

6 A. The Company has demonstrated that its request for recovery of rate case expenses is
7 consistent with the Commission's rules. The Company provided substantial documentary
8 evidence for the recovery of its actual, known, and measurable rate case expenses from
9 Docket No. DE 19-057, all of which are related to the rate case, just and reasonable and in
10 the public interest. All of the costs of the Company's outside service providers were
11 necessary in the preparation and presentation of the rate case through the conclusion of the
12 comprehensive Settlement Agreement.

13 **Q. Does this conclude your testimony?**

14 A. Yes.