STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

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

Petition for Approval of Electric Vehicle Make-Ready and
Demand Charge Alternative Proposals

Docket No. DE 21-078

Closing Statement of the Office of the Consumer Advocate

Following the evidentiary hearing in this docket, conducted on July 14, 2022 and August 9, 2022, the Commission requested written closing statements from the parties. In response to this request, the Office of the Consumer Advocate ("OCA") states as follows in its capacity as the statutory representative of the residential customers of the subject utility:

I. Introduction

This docket requires the Commission to consider two related but separate proposals from Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") intended to facilitate the transition from vehicles powered by internal combustion to electric vehicles ("EVs"): a Demand Charge Alternative ("DCA") rate, available to commercial customers operating public EV charging stations, and the expenditure of $2.1 million, to be recovered from customers, in "make-ready" infrastructure associated with the development of such publicly available EV charging stations. The proposals are before the Commission as

conditioned by a Settlement Agreement (exh. 1) entered into among Eversource, the Department of Energy ("Department"), the Department of Environmental Services ("DES"), the OCA, Clean Energy New Hampshire, Conservation Law Foundation, and ChargePoint, Inc., all parties to the docket.

Fundamentally, this docket requires an exercise of policy judgment concerning the question of how best to enable and facilitate the transition to EVs in a state that has, to date, earned a reputation in neighboring jurisdictions as a 'charging desert.' In such circumstances, the Commission should approach with caution and humility the prospect of substituting its judgment for that of two executive branch agencies with relevant policy insights as well as the judgment of the agency tasked with advancing the interests of the majority of the subject utility's customers.

As regards the latter interest – residential ratepayers – the OCA confesses to being a somewhat reluctant and enduringly cautious convert to the EV 'cause.' We are mindful that too often it is utility customers – particularly residential customers – to whom the state has unfairly turned to pay for public policy initiatives that are, at best, tangentially related to the service for which customers are ostensibly paying via their utility bills. With respect to EVs, we no longer consider the charging infrastructure necessary to fuel these vehicles, and the special rate design issues implicated by this emerging transportation technology, to be tangential to the service provided to customers by Eversource and other electric utilities. In our judgment, the transition in transportation from gasoline and diesel fuel to

electricity is inexorable. Thus the question becomes how to avoid a situation in which Granite Staters are (literally) left behind and, just as importantly from our perspective, how turning to the electricity grid to meet this emerging need can be leveraged so that the provision of this critical commodity, electricity, is achieved in as inexpensive and reliable a fashion as possible. It is in quest of these objectives that the OCA became a signatory to the Settlement Agreement in this docket.

II. Demand Charge Alternative Rate

The DCA rate proposal received little attention at hearing and its approval appears to be a matter of little if any controversy. As noted in the Settlement Agreement, the purpose of the DCA rate is to offer a purely volumetric alternative for EV charging stations so as to allow them to avoid Eversource's Rate GV and its demand charge. The premise is that public charging stations cannot manage their peak demand and, therefore, requiring them to take service via Rate GV would deter the development of such facilities by the private sector. If approved, the DCA rate would operate alongside Eversource's commercial EV time-of-use (TOU) rate whose purpose is to serve customers *not* offering charging facilities to the public. The Settlement Agreement limits the availability of the DCA rate to three years, which means the Commission is, in effect, being asked to allow Eversource to conduct an experiment. There is no evidence of record to suggest that it is not in the public interest to allow Eversource to do so, and the Company has met its burden of demonstrating that the proposed rate would meet the statutory "just and reasonable" standard.

III. Make Ready Infrastructure Program

As the Commission is aware, and as the parties to this proceeding are certainly well aware, on May 3, 2022, via Order No. 26,623 in Docket No. DE 21-030, the Commission rejected a suite of proposals by Unitil Energy Systems ("Unitil") related to EVs, prominent among them the expenditure (and rate recovery) of up to $2,362,000 for make-ready infrastructure. *See* Order No. 26,623 at 27-29. The Settlement Agreement endeavors to distinguish the instant proposal from the one rejected in the Unitil proceeding. We simply urge the Commission to change course and reconsider its hostility to rate recovery of EV charging infrastructure.

The Commission may do so because, though the doctrine of *stare decisis* remains applicable in the judicial context (at least in state court), the Commission is not bound by its own precedents. As former Commissioner Bruce Ellsworth (who served from 1986 to 1998 upon successive nominations by Govs. John H. Sununu and Judd Gregg) was famously known to state from the bench, "I reserve the right to get smarter as I get older."

In Order No. 26,623, the Commission observed that it is "settled principle" in New Hampshire that "unreasonable cross-subsidization of expansionary business by an existing utility, or of one class or locality of utility customers by the general customer base of a utility, is to be avoided." Order No. 26,623 at 27 (citations omitted). The Commission further observed that the cost of EVs is "generally high" and thus EV users are "likely to be among the most affluent group of . . .

customers." *Id.* at 28. Finally, the Commission found that "businesses, municipalities, and institutions *throughout New Hampshire* are now offering fast-charging stations at their own cost, as a convenience to their customers, employees, patrons, and visitors" and that these existing facilities would "compete" with "proposed new, subsidized charging stations to be paid for with the subsidies proposed by the terms of the Settlement Agreement" offered (but ultimately rejected) in the Unitil docket. *Id.* at 28.

The OCA readily agrees that New Hampshire law precludes unreasonable cross-subsidization between rate classes or other customer groups (including prospective customers). But the key word is "unreasonable," an implicit acknowledgement that ratepayers actually subsidize one another in ubiquitous fashion. To avoid such a reality, a utility would have to analyze the cost of serving each customer individually and design a unique rate for each customer accordingly. "Unreasonable" in this context is a term of art and, in practical terms, unless and until the General Court acts the Commission has nearly boundless discretion to interpret the word because the New Hampshire Supreme Court tends to defer to the Commission exercises of discretion and industry expertise.

Thus, for example, in 2003 the Commission approved the acquisition by Public Service Company of New Hampshire of Connecticut Valley Electric Company ("CVEC") (which served Claremont and environs) on terms that essentially involved socializing CVEC's restructuring-related stranded costs among Eversource's large customer base of 500,000 – effectively requiring some 490,000 customers to offer a

subsidy to CVEC's 10,000 customers. *See* Order No. 24,176 in Docket No. DE 03-030 (2003 WL 21801687). If that example of cross-subsidization met the reasonableness test, then surely the make-ready program at issue here does as well. In both instances, public policy questions and solicitude for the future of New Hampshire loomed – and loom – large.

For evidence that this proceeding -- and questions related to the make-ready proposal in particular – primarily raise policy issues, the Commission need look no further than the first four pages of the Settlement Agreement. There the parties have recounted the extensive attention the question of EVs has received both at the General Court and within the Executive Branch of state government. Of particular note are the legislative findings made last year via SB 131, now officially Chapter 204 of the 2021 New Hampshire Laws. The General Court found that the development of public charging infrastructure is "critical to facilitating the development of the overall electric vehicle (EV) market in the region and will support our tourism-based economy." 2021 N.H. Laws Ch. 204:1, I. The Legislature (with, obviously, the imprimatur of Governor Sununu, since he signed SB 131) called out in particular the importance of "[e]lectric utility investments in grid infrastructure to support the installation of [electric vehicle supply equipment, i.e., public charging facilities]," adding that make-ready utility infrastructure "can accelerate charging infrastructure deployment" and "has the potential to put downward pressure on rates by spreading fixed costs over a greater volume of electric sales."

The General Court's latter observation, about the potential effect on all rates, is especially salient from the OCA's perspective. Zooming out, the Commission should add the General Court and Governor Sununu to the list that, as noted above, includes two executive branch agencies and the OCA – public servants whose policy judgment and expertise the Commission disregards in its rush to adverse judgment about rate recovery of make-ready investments. Such a stance merits comparison to the ancient Greek philosopher Diogenes, famous for mocking Plato and Alexander the Great alike, living in a jar, and proclaiming the supposed virtues of cynicism.

Further, the OCA agrees with Eversource, the Department, and DES that it would be improvident for the Commission to eschew a blanket approval for the requested $2.1 million in favor of specific approval of $650,000 in capital costs and $1.4 million in expenses. The record reflects that this division between capital and non-capital costs was provided for illustrative purposes only. Imposing that allocation would needlessly hamstring the process of deploying these funds in conjunction with deployment by DES of the funds available for EV infrastructure from the Volkswagen Trust funding. Although the underlying purpose of the Volkswagen Trust received no attention at hearing in this docket, the Commission should keep in mind that the available Trust funding is part of a $15 billion settlement to which an auto company agreed after years of deploying vehicle software "designed to cheat on federal emissions tests.:[1] While the Commission has

[1] This information is taken from the relevant page of the DES web site, https://www.des.nh.gov/business-and-community/loans-and-grants/volkswagen-mitigation-trust.

historically (and perhaps erroneously) disclaimed any role as a protector of the environment, the PUC should nevertheless avoid thwarting efforts by agencies that *do* have such a mission as they seek to leverage the resources made available in New Hampshire as the result of such grievous corporate wrongdoing.

In other words, the Commission should let the Department of Environmental Services do its job. Eversource should likewise be left to the faithful discharge of its responsibilities as a public utility. In particular, the record reflects that in administering the available Volkswagen Trust Funds, DES will limit those funds to paying for a maximum of 80 percent of the cost of any public charging station that prevails via the competitive bidding process overseen by DES. In all circumstances, the customer – by which is meant, here, the commercial customer that will install and operate the public charging station – must cover at least 20 percent of the costs that would otherwise be eligible for Trust funding while also being required to cover any costs that do not fall within the proposed Eversource make-ready program (e.g., taxes, leases of property, signage). In these circumstances, it is reasonable for the Commission to expect both DES and Eversource to exercise their separate responsibilities to assure that this program is faithfully managed in a manner that protects ratepayers from what has been characterized in other contexts as "funny math."

IV. Conclusion

In addition to the arguments set forth above, the OCA incorporates by reference the closing statements of Eversource, Conservation Law Foundation,

ChargePoint, the Department of Environmental Services, and the Department of Energy. We categorically reject the premise that appears to have taken hold at the Commission, that any use of ratepayer funds to stimulate the development of EV infrastructure in New Hampshire amounts to Robinhood in reverse such that poor people will end up paying for the leisure habits of the Tesla-driving wealthy. Even assuming that present-day anecdotal evidence supports such a snapshot of EV usage in New Hampshire, the Commission does a disservice to all ratepayers by refusing to make reasoned guesses about the near-term and longterm future of our state and its economy.

The day when no new internal combustion engines are available from auto companies is coming, and soon thereafter the private transportation needs of rich and poor alike will be met exclusively by EVs. At that point, if New Hampshire has not taken care to assure that public charging facilities are ubiquitously available, the wealthy will cope; those within the state will charge their SUVs in the multi-unit garages appended to the sprawling mansions that line Lake Sunapee and similar locations, while those residing outside our borders will simply travel elsewhere in New England after sprinting across New Hampshire (without alighting) as necessary. That will leave working people and/or poor people to figure out how they will get to work, and otherwise go to where their challenging lives require them to travel – in circumstances where fueling their vehicles imposes upon them yet another daunting challenge.

The Office of the Consumer Advocate respectfully urges the Commission to reject that vision of our state's future. Approval of the Settlement Agreement pending in this docket amounts to a modest commitment of ratepayer resources to a different and brighter future – which makes such approval well worth the chance that future events will not play out as presently expected by the Department of Environmental Services, the Department of Energy, the Office of the Consumer Advocate, the General Court, and the Governor.

Sincerely,

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Certificate of Service

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

Donald M. Kreis