STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 21-078

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

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

JOINT MOTION FOR REHEARING OF ORDER NO. 26,667

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07 and RSA 541:3, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company"); the New Hampshire Department of Energy ("DOE"); the New Hampshire Department of Environmental Services ("DES"); the Office of the Consumer Advocate ("OCA"); Clean Energy New Hampshire ("CENH"); and Conservation Law Foundation ("CLF") (together, the "Moving Parties") respectfully request rehearing of Order No. 26,667 (the "Order") issued by the New Hampshire Public Utilities Commission (the "Commission") on August 15, 2022 in the above-referenced docket. As explained in this Motion, the Commission should grant rehearing because a critical element of the Order is unlawful and unreasonable, and if not corrected will have the unintended consequence of thwarting the purpose of the approved settlement agreement, which is to best supplement DES' VW Trust funding to develop the most possible electric vehicle ("EV") charging infrastructure across the State of New Hampshire by leveraging the full $2.1 million in Eversource make-ready funding.

In this motion, the Moving Parties seek rehearing of the Commission's disallowance of a return on capital investments made by Eversource in support of the EV Make-Ready Program. As explained below, the Commission's determination to set a de facto cap on capital investments on

which the Company is eligible to earn a return, is unlawful and unreasonable. That determination overlooks and mistakenly conceives evidence in the record, including the settlement agreement itself, and ignores legal precedent allowing a utility to recover a reasonable return on prudently incurred capital investments. The limit on capital eligible for a rate of return is unreasonable and arbitrary and will frustrate the core purpose of the approved settlement agreement, which had broad support from a diverse group of stakeholders.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 7, 2022, Eversource entered into and filed with the Commission a comprehensive Settlement Agreement for Approval of Electric Vehicle Make-Ready Program and Demand Charge Alternative Rate (the "Settlement Agreement"). The Settlement Agreement was signed by the Company, the DOE, the DES, the OCA, CENH, CLF, and ChargePoint, Inc.

This docket and the Settlement Agreement were preceded by a settlement agreement reached in the Company's last full distribution rate case, considered by the Commission in Docket No. DE 19-057 and approved in Order No. 26,433 (December 17, 2020). Section 16.4 of that settlement agreement required Eversource to collaborate with stakeholders to develop both an EV make-ready infrastructure program ("Make-Ready Program") and a proposal for an alternative to demand charges for EV charging rates (the "DCA"), so that both could support the development of EV infrastructure and adoption within the Company's service territory. Eversource filed its Make-Ready Program and DCA petition on April 15, 2021, including supporting materials that were later incorporated by reference into the Settlement Agreement signed by Eversource and the other settling parties.

After the July 7, 2022 filing of the Settlement Agreement, the Commission issued a letter requesting that a DES representative be present at the July 14, 2022, hearing. The hearing was

held as scheduled and representatives of the settling parties, including DES, provided supporting oral testimony or comments regarding the Settlement Agreement. The Commission issued a procedural order presenting three record requests to the Company and continuing the hearing in this matter for a second day, on August 9, 2022. Eversource provided responses to the Commission's record requests on July 15, 2022.

On July 28, 2022, and August 4, 2022, respectively, the City of Dover and ReVision Energy filed written comments in support of the Settlement Agreement and the proposals presented therein. On August 8, 2022, the Town of Derry filed written comments advocating that the Commission modify the Settlement Agreement to enable municipal fleet operators, whose chargers are not available to the general public, to qualify for the DCA. On August 9, 2022, the final day of hearing was held as scheduled, at which the Commission directed the parties to submit written closing statements. Written closing statements were submitted on August 10, 2022 by Eversource, DOE, ChargePoint, CLF, DES, the OCA, and CENH, all providing arguments in support of the Settlement Agreement. The Order was issued on August 15, 2022.

II. LEGAL STANDARD

Pursuant to RSA 541:3 and 541:4, a party may move for rehearing of a Commission order within 30 days of the order by specifying every ground upon which it is claimed that the order is unlawful or unreasonable. The Commission may grant rehearing or reconsideration where a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal, or by identifying new evidence that could not have been presented in the underlying proceeding. *Id*. at 4-5; see also *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017). Within 30 days of

the filing of a motion for rehearing, the Commission must grant, deny, or suspend the order or decision complained of pending further consideration, and the suspension may be upon such terms and conditions as the Commission may prescribe. RSA 365:21.

III. REQUEST FOR REHEARING

The Company requests rehearing of the following determination:

> On filing of the next Eversource full distribution rate case, the Company may seek recovery of the Make-Ready Program cost regulatory asset, *with up to $650,000 in capital expenditures being eligible for Eversource's allowed return on capital*, for inclusion into rates via Commission approval. The Commission does not restrict the Company's use of the $2.1 million recovery to a specific portion of behind the meter or front of the meter investment, or capital or expense expenditures, *but on balance limits the Company's return on capital expenditures based on the Make-Ready Program estimates provided in Hearings Exhibits 2 and 9*.[1]
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> FURTHER ORDERED, that Eversource may expend up to $2,100,000 for the EV Make-Ready Program discussed herein, with this amount to be accounted for in a regulatory asset, recoverable by Eversource in its next full distribution rate case, *with up to $650,000 in capital expenditures being eligible for Eversource's return on capital after approval in the next rate case*.[2]

The effect of the Order is to impose a de facto $650,000 cap on any capital investments made in connection with the $2.1 million Make-Ready Program, by restricting capital investments eligible for a rate of return. First, setting the limit at $650,000 is arbitrary and contradicted by record evidence. The Company provided preliminary cost information on the breakdown of the $2.1 million in expenditures between capital and expense in its original prefiled testimony submitted almost a year and a half ago that estimated $650,000 in capital expenditures, but these initial cost groupings were provided for illustrative purposes only. As the Company noted, "[t]he estimated budget was based upon several assumptions, and is subject to change based on any

1 Order at 10 (emphasis added).
2 Order at 11 (emphasis added).

subsequent adjustments to these assumptions as a result of the NH Trust RFP process."[3] Moreover, the illustrative cost groupings were provided based on DES's first request for proposals ("RFP"), which did not cover a great deal of the necessary behind the meter, or customer-side, work and equipment necessary for the program. Accordingly, Eversource based the expense cost category estimate at the time of filing its original testimony on the assumption that the Company would have to cover many of those costs.[4]

However, the second DES RFP—to which the Company will be pairing its Make-Ready Program funding—makes nearly all behind the meter equipment and work eligible for VW Trust funding, which means there is a substantial chance that a greater percentage of the Make-Ready Program funding will be devoted to capital costs rather than to the expense category.[5] At this time, there is still no visibility into the winning sites and the requisite make-ready infrastructure funding needs of each of those projects, and, given the quantity of variables and the degree of variability dependent on site specifics, there is no way to reasonably estimate what percentage of the $2.1 million Make-Ready Program funding will be used for capital costs and what percentage would be used for expense items.[6] Notwithstanding that fact, the overall program cap of $2.1 million reflects the reasonable balance of consideration agreed to by the settling parties, and was subsequently determined to be just and reasonable and in the public interest by the Commission.[7]

Despite finding the $2.1 million Make-Ready Program to be just, reasonable, and in the public interest, the Order impermissibly prohibits the Company from receiving a reasonable return on its capital investments, contrary to legal precedent. The Order does this by making any capital

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3 Exhibit 2, Settlement Agreement Attachment D, Bates page 32.
4 Transcript of August 9, 2022 hearing, pages 28-29.
5 *Id.*
6 *Id.* at 30-31.
7 Order at 9.

investments above $650,000 ineligible to earn a return, irrespective of whether such investments are prudently incurred. Since the Order prohibits the Company from earning a return on its prudently incurred capital investments, the Order does not comply with long-standing constitutional rate-making principles, which require that a utility have the opportunity to "earn a return on the value of the property which it employs" in service to customers. *Bluefield Waterworks & Imp. Co.,* 262 U.S. 679 at 692 (1923). It also impermissibly produces "[r]ates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used . . . [and, as such] deprives the public utility company of its property in violation of the Fourteenth Amendment." *Id.* at 690.

Expanding on these principles, the Supreme Court of New Hampshire has held that the Commission's orders must conform "to certain well-established constitutional requirements," and that "'[a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.'" *See New England Tel. & Tel. Co. v. State*, 113 N.H. 92, 95 (1973) (quoting *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, at 692). The Court further refines this point to say "'[w]hile it is true that an attractive return to the investor is not necessarily just to the consumer . . ., a balancing of the interests of both investor and consumer requires a return which will enable the utility to maintain its credit and attract the necessary capital to meet increased demands for improvement and extension of its service.'" *Id*. (citing *Chicopee Mfg. Co. v. Public Service Company,* 98 N.H. 5 (1953); *Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591 (1944); *Colorado Interstate Co. v. Federal Power Comm'n,* 324 U.S. 581 (1944)). In this matter the Commission

found that balance of interests, stating that "the DCA, and the Make-Ready Program proposals are just and reasonable, concordant with the New Hampshire Energy Policy, will result in just and reasonable rates, will not result in unreasonable and unlawful cross-subsidization, and are in the public interest."[8]

But although the Order purports to allow Eversource to expend the $2.1 million between capital and expense items at its discretion, the limitation of a return on capital spending effectively means that capital expenditures would be capped at $650,000, as it is unreasonable to expect the Company to make an investment on which it is allowed no return, thereby creating an internal conflict within the Order itself. If there were no restriction on how the funds are spent, then Eversource should be allowed a rate of return on *all* prudently incurred capital expenditures. Limiting the capital spending eligible for a rate of return either imposes, as previously mentioned, a de facto cap on capital spending, or it imposes an unconstitutional restriction on the utility's right to recover a reasonable rate of return on prudently incurred capital expenditures, as anything over $650,000 would be automatically and arbitrarily denied such a rate of return.

As mentioned above, the Commission found that the Make-Ready Program is "just and reasonable, concordant with the New Hampshire Energy Policy, will result in just and reasonable rates, will not result in unreasonable and unlawful cross-subsidization, and [is] in the public interest" and it "approve[d] the terms of the Settlement Agreement in their entirety."[9] This means that the Settlement Agreement on its face sufficiently balances the interests of the utility and the ratepayer, and the Make-Ready Program *as proposed* is in the public interest. It is unreasonable to then impose an arbitrary limit on the amount of capital expenditures eligible for a rate of return,

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8 Order at 9.

9 *Id.*

contrary to the Settlement Agreement and the positions of the parties to the Settlement Agreement, and contrary to the evidentiary record.

The Commission's determination to "clarify . . . one element that was left open-ended by the Settlement Agreement's terms,"[10] beyond allowing the Company to book a regulatory asset, is wholly unfounded, because the Settlement Agreement provided flexibility for Eversource to determine how best to deploy the $2.1 million in terms of capital versus expense items. The terms of the Settlement Agreement were explicit that the Make-Ready Program would be funded at the total $2.1 million, and the estimates of the spending categories were very clearly presented only as estimates and were based on numerous assumptions that would likely change, and in fact did change with the issuance of the second and definitive DES RFP. Rather than clarifying an open-ended issue, the Order's determination to limit capital expenditures eligible for a rate of return is arbitrary and capricious, adding a term to the Settlement Agreement that the Settling Parties did not agree to and that is entirely unnecessary.

Lastly, the Order overlooked or mistakenly conceived the positions of all of the settling parties, including three state agencies, which were explicitly clear both at the second hearing and in written closing statements, advocating for no restriction on the Company's full discretion to deploy the $2.1 million Make-Ready Program funds for either capital or expense items, so that it could most effectively match the Make-Ready Program funding with the DES funding, thereby achieving the most effective combined effort to support development of fast-charging stations in the Company's service territory. By capping the funds eligible for a rate of return—and thereby

[10] *Id.*

capping capital expenditures at $650,000, the Order contradicts the unanimous positions of the settling parties on the record.[11]

WHEREFORE, THE MOVING PARTIES respectfully request rehearing for the reasons stated in this Motion. Specifically, the Moving Parties respectfully request that the Commission:

A. Withdraw the limit on capital expenditures eligible for a rate of return; and

B. Grant any such further relief as may be just and reasonable.

Respectfully submitted,

Public Service Company of New Hampshire d/b/a Eversource Energy; the New Hampshire Department of Energy; the New Hampshire Department of Environmental Services; the Office of the Consumer Advocate; Clean Energy New Hampshire; and Conservation Law Foundation

Date: September 14, 2022

By: _____

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[11] *See* Docket DE 21-078: New Hampshire Department of Energy written closing statement, page 2, tab 80; Office of Consumer Advocate written closing statement, pages 7-8, tab 84; Conservation Law Statement written closing statement, page 3 FN1, tab 82; Eversource Energy written closing statement, page 4, tab 78; Transcript of August 9, 2022 hearing, pages 28-31.

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Date: September 14, 2022

Jessica A. Chiavara