STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-004

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

Proposed Purchase of Receivables Program

COMMENTS ON AND EXCEPTIONS TO HEARINGS EXAMINER'S REPORT AND RECOMMENDED ORDER

Pursuant to the Procedural Orders issued by the New Hampshire Public Utilities Commission ("Commission") on September 1, 2023 and December 29, 2023, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company"), respectfully submits these Comments on and Exceptions to the Hearings Examiner's Report and Recommended Order filed on December 22, 2023 (the "Report"). The Department of Energy ("DOE") and the Community Power Coalition of New Hampshire ("CPCNH") have indicated that they support these comments and exceptions.

The Report recommends that the Commission deny the parties' Settlement Agreement while approving in part the proposed purchase of receivables ("POR") "program framework presented in the Settlement Agreement." Report at 12. The basis for the recommended denial is that the Settlement Agreement "recast[s] 'pro rata share' to mean incremental costs of administration and collection," and does not initially include any baseline utility administrative and collections costs, or any working capital, whereas the statute requires that "a POR program must include a proportional share of baseline collection efforts costs, which could also encompass costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting." *Id.* at 5, 8. The Report recommends that, during the

second phase of the proceeding, the Company be required to "quantify and apportion a pro rata share of collection efforts and working capital in the [Discount Percentage Rate ("DPR")], or demonstrate that these factors are not quantifiable." *Id.* at 12-13.

As discussed below, Eversource believes that the relevant statute does not require the pro rata allocation of baseline utility costs of administering collection activities, and that such an allocation indeed may be unworkable and unreasonable. Nor is there any basis for delaying POR implementation to determine whether a working capital component should be included in the initial DPR calculation during the second phase of the proceeding. Eversource urges the Commission to fully approve the Settlement Agreement as filed at the earliest possible time. In support of that position and request, the Company states as follows:

1. On January 10, 2023, the Company filed a proposal for its POR program, consistent with RSA 53-E:9 and N.H. Admin. Rules Puc 2205.16(e). The supporting testimony of Brendan J. O'Brien stated that the Company "does not expect to incur incremental costs due to administering collection efforts under the POR Program proposal," and, therefore, "no related administrative costs have been allocated to the POR;" however, the Company "will continue to monitor administrative costs associated with the POR Program and may request approval to include any such costs in a future adjustment of the discount rate." Exh. 1 at Bates 9 (Tab 1 in Virtual File Room).

2. On June 16, 2023, following extensive discovery and technical sessions, the DOE filed a technical statement, the NRG Retail Companies[1] filed comments, and CPCNH filed testimony, with respect to the Company's POR program proposal. *See* Exhs. 2, 3, and 4, respectively (Tabs 18, 19, and 20 in Virtual File Room). In its Technical Statement, the DOE stated that it "supports

[1] The "NRG Retail Companies" are Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Reliant Energy Northeast LLC, and XOOM Energy New Hampshire, LLC.

Eversource's view that the pro rata share of the costs of administering collection efforts referenced in RSA 53-E:9, II should be interpreted as the incremental costs incurred by Eversource. In the [DOE's] view, this approach is consistent with the requirement in RSA 53-E:9, II that a utility and its customers not participating in the POR Program should not bear costs associated with its use." Exh. 2 at Bates 3 (Tab 18 in Virtual File Room).

3. Following settlement negotiations, the Company, the DOE, the NRG Retail Companies, and CPCNH (collectively, the "Parties") executed a comprehensive Settlement Agreement that was filed with the Commission on September 13, 2023 (the "Settlement Agreement"). *See* Exh. 5 (Tab 29 in Virtual File Room).[2] In the Settlement Agreement, the Parties agreed that the DPR calculation formula would include a component referred to as the "ACPcc ("administrative cost percentage")," which is defined as

> the total *forecasted incremental costs of POR program administration and collection* to be recovered through the DPRcc for the subsequent year divided by the total amounts billed for Supplier Service by the Company through consolidated billing service for the most recent calendar year. For the first year or other initial period of the POR program, ending on April 30, 2025, the administrative cost percentage shall be zero. The costs will be apportioned to each customer classification based on the total supplier kWh billings for such customer classification.

Exh. 5 at Bates 6 (emphasis added) (Tab 29 in Virtual File Room).

4. During the hearing held before the Hearings Examiner on September 20, 2023, Mr. O'Brien testified that the Company "currently estimates that we will not have any additional incremental administrative costs due to operating the [POR] Program. However, we will track any potential future costs. And, if they are identified, they will be included in the Administrative Cost

[2] The settlement discussions held on July 18 and July 26, 2023 included representatives of Unitil Energy Systems, Inc. and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty. The purpose of those joint settlement discussions was to achieve consistency, where possible, among the POR programs to be implemented by the three regulated electric distribution companies.

Percentage component of the discount rate calculation." Hearing Transcript 9/20/23 at 11. There were no questions from the Parties or from the Hearings Examiner that addressed the potential inclusion in DPR adjustments of a pro rata share of the cost of administering collection efforts, nor were there any questions regarding working capital as a component of DPR calculation.

5. As noted above, the Report interprets RSA 53-E:9, II to require that "a POR program must include a proportional share of baseline collection efforts costs, which could also encompass costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting." Report at 8. According to the Report, the failure of the DPR adjustment provisions in the Settlement Agreement to cover "both the full incremental share of implementation and operations costs necessary to administer the POR program, and not less than [a] fair share of base administration costs, including collection efforts costs" is inconsistent with both "RSA 53-E:9, II's express requirements [and] the public good standard." *Id.* at 9.

6. Eversource believes that conclusion is incorrect and that RSA 53-E:9, II does not require the pro rata allocation of baseline utility costs of administering collection activities through the DPR adjustment mechanism. In essence, this is an issue of statutory interpretation, and the canons of statutory construction are well-established. When interpreting a statute, the language of the statute must be examined first, considered as a whole, and given its plain and ordinary meaning, in order to determine the intent of the legislature. *Appeal of Mullen*, 169 N.H. 392, 402 (2016). Statutory language must be interpreted "in the context of the overall statutory scheme and not in isolation . . . [and it is necessary to] construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. This review enables [the adjudicator] to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." *Petition of State of New Hampshire*, 175 N.H. 547, 550-551 (2022) (citation omitted). It is

necessary to "not consider words and phrases in isolation, but rather within the context of the statute as a whole." *Appeal of Algonquin Gas Transmission,* 170 N.H. 763, 770 (2018) (citation omitted). Legislative history need not be considered unless the language of the statute is ambiguous. *Appeal of Mullen,* 169 N.H. at 402. And if statutory language is ambiguous and reliance on legislative history is necessary, the Supreme Court has held that "[w]here that history plainly supports a particular construction of the statute, we will adopt that construction, since our task in interpreting statutes is to determine legislative intent." *Union Leader Corp. v. New Hampshire Ret. Sys.,* 162 N.H. 673, 678 (2011) (internal quotations and citation omitted).

7. Application of those basic principles of statutory construction reveals that the Report's conclusion is inconsistent with both the plain language and the overall statutory scheme of RSA 53-E:9, II. It is critical to first review the full text of RSA 53-E:9, II, which reads as follows (emphasis added):

> Each electric distribution utility shall propose to the commission for review and approval a program for the purchase of receivables of the supplier in which the utility shall pay in a timely manner the amounts due such suppliers from customers for electricity supply and related services less a discount percentage rate equal to the utility's actual uncollectible rate, adjusted to recover capitalized and operating costs *specific to the implementation and operation of the purchase of receivables program,* including working capital. Additionally, such discount rate adjustments shall include a pro rata share of the cost of administering collection efforts *such that the utility's participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any costs arising from its use. Such pro rata costs must include,* but not be limited to, any increases in the utility's bad debt write-offs *attributable to participants in the purchase of receivables program,* as approved by the commission. However, the allocation of costs arising from different rate components and determination of the uncollectible rate shall be equitably allocated between such suppliers, utility provided default service, and other utility charges that are a part of consolidated billing by the utility as approved by the commission. The discount percentage rate shall be subject to periodic adjustment as approved by the commission.

The italicized language in the quotation above demonstrates that the legislative intent was to hold harmless non-participating customers, such as customers in municipalities not served by a

community power aggregation and customers remaining on utility default service, from costs related to a utility's implementation and administration of a new POR program. That is best understood to cover only the *incremental* costs of such implementation and administration, without requiring any re-allocation of *baseline* costs related to existing *status quo* utility operations, even in the second sentence that is the near-exclusive focus of the Report.

8. In contrast to the type of holistic review and interpretation required under the statutory construction principles, the Report focuses almost entirely on the phrase "pro rata share of the cost of administering collection efforts" in the second sentence of RSA 53-E:9, II. The Report emphasizes the difference between the isolated phrases "pro rata share" and "incremental costs," citing to definitions in *Black's Law Dictionary,* and implies that the Parties impermissibly "recast" the first phrase to mean the same as the second phrase. That type of atomistic interpretation of words and phrases in isolation, however, is inconsistent with core principles of statutory construction as described above.

9. Moreover, the Report ignores the latter part of that same sentence, which qualifies the "pro rata share" cost allocation requirement to clarify the legislature's fundamental intent that "the utility's participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any costs arising from its use." The language "arising from its use" should be understood to refer to the "use" of the POR program, meaning that the purpose of the sentence is to ensure that no new and incremental costs related to POR program implementation and administration will be borne by non-participating customers or by the utility itself. Similarly, the Report fails to consider the import of the next sentence, which addresses in particular one subset of "such pro rata costs" (referring to the "pro rata share" language in the preceding sentence), specifically "any increases in the utility's bad debt write-offs" that are "attributable to

participants in the [POR] program." The word "increases" and the phrase "attributable to participants" in the third sentence, like the phrase "arising from its use" in the second sentence, should be read to evince the legislative intent that only the *incremental* costs of POR program implementation and administration are to be allocated to the DPR mechanism, without requiring any re-allocation of *baseline* costs related to existing *status quo* utility administration of collection efforts.

10. The foregoing discussion demonstrates that the Report has misinterpreted the second sentence of RSA 53-E:9, II, in contravention of well-established principles of statutory construction. It is important also to note, however, the potential practical implications of that misinterpretation, in order to "avoid an absurd or unjust result." *See Petition of State of New Hampshire*, 175 N.H. at 550 (citation omitted). The Report implies that it would be necessary for a utility POR program to include, as a proportional share of baseline collection efforts, the costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting, while noting that "the record does not establish whether Eversource does or does not have other collection efforts costs and, if so, whether those costs are collected from default service customers or through distribution rates," nor does it "address variables that potentially could shift such costs from one customer group to another such as the demographics of participating aggregation programs and CEPS customers." Report at 8.[3]

11. Eversource's costs of collections currently are included in its base distribution rates charged to all customers and are not allocated separately to competitive electric power suppliers, community power aggregations serving as load-serving entities, or utility default service customers, through any charge, assessment, or other mechanism. The Company's collection

[3] The import of the reference to "demographics" in this context is unclear; and, as noted above, there were no questions regarding this issue during the hearing held on September 20, 2023.

efforts relate to *all* charges on the customer's bill, including the energy supply portion for those customers on default service or subject to consolidated billing for third party supply. Those collection efforts should not change in any material respect as a result of POR program adoption. It would be difficult and disruptive to break out costs related to customer disconnections and other collection efforts from base distribution rates and allocate those costs on some pro rata basis among POR program participants and default service customers for the supply portion of the bills and to all utility distribution customers for the other rate components.[4] And, of course, all Eversource customers are free to migrate to and from default service to competitive supply alternatives or to community power aggregation programs, where available. Any pro rata share allocation methodology would have to account for those "moving target" impacts. The Company's systems and processes also do not currently track those collections cost components between specific categories of charges on the customers' bills, whether for customer charges, distribution and transmission service, utility default service supply charges, or third-party supply charges included through consolidated billing. Nor has an estimate been prepared of the time and effort to implement any necessary changes to such systems and processes, and the related costs, but the time, effort, and costs may be significant and result in further delay in POR implementation.

12. As noted above, the Report also concludes that, "despite being a required input, Eversource's working capital is also not explicitly addressed," and therefore the Company "must establish how it will quantify and account for a pro rata share of . . . working capital in the DPR, or demonstrate that [this factor is] not quantifiable, in order for the proposed POR program to be

[4] As indicated in the record, Eversource anticipates using existing systems and personnel to engage in collection efforts following POR implementation, with none of those resources dedicated solely to POR. Accordingly, the Company has not identified any incremental costs attributable to POR implementation for inclusion in the initial DPR calculation but has confirmed that it will monitor such administrative expenses and collection costs and propose to include them in the ACP component of future DPR calculations if warranted.

consistent with RSA 53-E:9, II and the public good." Report at 9.[5] But Eversource has not identified any potential incremental working capital impacts that should be included in the initial DPR calculation. The Company will, however, monitor and track any such impacts once the POR program has been implemented and will propose to include a working capital component in subsequent DPR re-calculations if the impacts are determined to be significant and quantifiable.

13. More generally, moving any part of the DPR calculation methodology to the second phase of the adjudicated proceeding would serve to frustrate the stated intent of bifurcating the proceeding into two phases, i.e., to permit the Company to begin the system upgrades and modifications necessary to implement the POR program and be ready to implement POR upon finalizing the updates to the tariff and supplier services agreement following completion of that second phase. If there is ongoing uncertainty regarding approval of a significant part of the DPR calculation methodology, it may not make sense to proceed with the needed system upgrades and modifications until the end of the second phase of the proceeding, and any such determination could push back the timeline for POR implementation even further beyond what was contemplated in the Settlement Agreement.

14. The foregoing discussion and analysis demonstrate that the Report has misinterpreted the requirements of RSA 53-E:9, II, and that the misinterpretation may lead to an absurd and unreasonable result, both in contravention of well-established principles of statutory construction. Eversource therefore maintains that the relevant statute does not require the pro rata allocation of baseline utility costs of administering collection activities, and no such requirement should be imposed on its implementation of the proposed POR program. Nor is it necessary for any working capital component to be included in the initial DPR calculation, where no working capital impacts

[5] Those conclusions appear in the Report despite the fact that working capital was not at issue in the proceeding, never having been raised by the Company or by any other party nor addressed at all during the hearing.

have been identified for such inclusion by the Company or any other party. As noted above, the Report otherwise determined that the "proposed POR program framework presented through the Settlement Agreement is . . . consistent with both RSA 53-E-9, II and the public good standard." As noted above, the DOE and CPCNH have indicated that they support these comments and exceptions.

WHEREFORE, Eversource respectfully requests that the Commission approve in full the Parties' Settlement Agreement as filed in this proceeding at the earliest possible time, notwithstanding the Examiner's Report, and that the Commission grant such other or further relief as may be just and reasonable.

Respectfully submitted,

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

Date: January 12, 2024

By: ***/s/ David K. Wiesner***
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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.

/s/ David K. Wiesner

Date: January 12, 2024 David K. Wiesner