

**BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. DE 23-026

Electric Distribution Utilities

**Potential Jurisdictional Conflicts
Related to Authorization of
Pilot Programs Under RSA 362-A:2-b**

**RESPONSE OF THE
COMMUNITY POWER COALITION OF NEW HAMPSHIRE
TO JOINT UTILITIES' MOTION TO STRIKE, OR IN THE ALTERNATIVE,
FOR LEAVE TO REPLY AND MODIFICATION OF PROCEDURAL SCHEDULE**

September 11, 2023

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Pursuant to N.H. Code Admin. Rule Puc 203.07(e), the Community Power Coalition of New Hampshire (“CPCNH”) respectfully submits this response to the Motion to Strike or, in the Alternative, for Leave to Reply and Modification of Procedural Schedule (“Motion”) of the Public Service Company of New Hampshire d/b/a Eversource Energy, Unitil Energy Systems, Inc., and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (collectively, the “Joint Utilities”). For the reasons provided below, the New Hampshire Public Utilities Commission (“Commission” or “NHPUC”) should deny the Motion to Strike. With respect to the request for Leave to Reply and Modification of Procedural Schedule, while CPCNH prefers to maintain the current schedule and does not particularly see the need for a delay for the Joint Utilities to submit a written reply, if the Commission prefers to delay the argument and provide additional time for reply by other parties, CPCNH does not object to such an extension and leave to reply.

I. The Motion to Strike Should be Denied

CPCNH’s September 7, 2023 letter addresses matters within the scope of the argument scheduled for September 14, 2023. The jurisdictional case law CPCNH submitted in the September 7 letter pertains to the threshold issue the Commission has asked the parties to address in this proceeding and does not broaden the scope of the issues in this proceeding

whatsoever. CPCNH intends to present the case law identified in the September 7 letter at oral argument. By detailing that authority in advance of the argument, CPCNH afforded the Commission and parties an opportunity to be prepared to engage in a full exchange at the scheduled argument on the additional authority CPCNH intends to argue. CPCNH's supplemental letter was not a response to the Joint Utilities' Reply Brief, rather it was a review of supplemental case law in support legal arguments already made in CPCNH's Initial and Reply Briefs, the relevancy of which can be debated at oral argument. The Joint Utilities' Motion is grounded in the unsupported assumption that the parties are limited at oral argument to the narrow confines of their briefs and only cases cited therein. The Motion argues that CPCNH seeks to augment its analysis of the jurisdictional issues the Commission is evaluating. Motion at 3. CPCNH submits that it has advanced the full discussion of the issues for which the Commission has requested oral argument by presenting the additional authority it will rely on in advance of the oral argument under the assumption that the Commission will be best served by focusing on the legal arguments, with relevant case law citations provided in advance. CPCNH's September 7 letter demonstrates that the Joint Utilities' jurisdictional concerns are without merit, consistent with CPCNH's Initial and Reply Briefs.

In addition, the Commission should dismiss the Joint Utilities' suggestion that a week is insufficient to review the case law presented. By their September 8 filing, in response to the September 7 letter, the Joint Utilities readily demonstrated their capability to respond promptly to opposing argument. Indeed, to respond to all briefs on the full range of issues in this proceeding, Joint Utilities agreed that two weeks (June 26, 2023 – July 10, 2023) was sufficient. Now they would have the Commission strike this letter arguing one-week is insufficient to review and respond to a single party's single-issue letter. Their argument strains credulity. The

Commission should deny the Motion to Strike as CPCNH's letter advances the jurisdictional analysis the Commission seeks and does not prejudice the Joint Utilities' opportunity to respond.

II. Request for Additional Time Should be Denied

Joint Utilities' request for additional time to respond in writing to the September 7, 2023 Supplemental Letter to the Commission identifying additional precedent is unwarranted, as CPCNH's letter includes case law that postdates CPCNH's Reply Brief and provides guidance on the jurisdictional issues in this proceeding that the NHPUC may find beneficial to consider. As previously noted, to respond to the briefs on the full range of issues in this proceeding, Joint Utilities agreed that two weeks was sufficient. In response to additional case law on the subject previously briefed, Joint Utilities seek two full weeks. Joint Utilities have provided no reason that the week they have in advance of the scheduled argument to review the case law CPCNH intends to present at oral argument, or before in writing if they prefer, is insufficient. A further extension is unnecessary and should be denied. The Joint Utilities fail to identify a due process concern that requires a delay in the proceeding. The parties will have a full opportunity at the September 14 argument to respond as they choose. In addition, the Commission has other means, including allowing post argument briefing, to ensure development of a full record that will not require further delay in this proceeding.

If, however, the Commission determines that it would benefit from additional time to review the September 7 letter and receive written replies, CPCNH does not object to such an extension and will work with the Commission, DOE, OCA, and the Joint Utilities to reschedule oral argument.

III. No Objection to Motion for Leave to Reply

CPCNH has no objection to the Joint Utilities' Motion for Leave to Reply to CPCNH's supplemental letter, whether the procedural schedule is modified or not. CPCNH would

welcome a filing by the Joint Utilities' identifying supplemental case law they may rely upon in oral argument in support of their briefs or that they contend contradicts case law cited by CPCNH.

IV. Conclusion

WHEREFORE, for the aforementioned reasons, CPCNH respectfully requests that the Commission deny the Joint Utilities' Motion to Strike, or in the Alternative, for Modification of the Procedural Schedule. Consistent with current Commission policy, this response is being filed only in electronic form. Please direct any questions to the undersigned counsel.

Dated: September 11, 2023

Respectfully submitted,

Community Power Coalition of New Hampshire
By their Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that I caused the attached document to be served pursuant to N.H. Code Admin. R. Puc 203.11 to the individuals included on the Commission's service list in this proceeding. Dated at Washington, D.C. this 11th day of September 2023.

/s/ Harry A. Dupre

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