

**THE STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

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

**Docket No. DE 24-070**

Request For Change in Distribution Rates

**Reply Brief of the Community Power Coalition of New Hampshire Objecting to Eversource Energy Motion to Limit Intervention**

The Community Power Coalition of New Hampshire (“CPCNH” or “Coalition”) submits this reply brief in accordance with the directives of the New Hampshire Public Utilities Commission (the “Commission”) at the July 22, 2024 pre-hearing conference. This reply brief explains: (1) CPCNH’s objection to Eversource Energy’s (“Eversource” or “the Company”) motion to limit CPCNH’s participation in this docket at the outset; and (2) why the Coalition qualifies for full intervenor status pursuant to RSA 541-A:32, I. In summary, the Motion understates CPCNH’s interests and organizational purposes and omits that the Commission may limit intervention both at the outset of and later in this proceeding. Accordingly, and for the reasons discussed below, the Commission should deny Eversource’s request to limit CPCNH’s intervention at this time.

**I. BACKGROUND**

On June 11, 2024, Eversource requested an increase in distribution rates and approval of a four-year performance-based ratemaking (“PBR”) plan. On June 28, 2024, the Commission issued Order No. 27,029 (“OON”) noticing the Commencement of Adjudicative Proceeding and Prehearing Conference and setting deadlines of July 12 and 18, 2024 to seek or object to intervention, respectively, pursuant to N.H. Admin. R., Puc 203.17 (OON at 11). On July 12,

2024, CPCNH timely petitioned to intervene (“Petition”). On July 18, 2024, Eversource filed a motion (“Motion”) that did not object to CPCNH’s intervention; however, the Company recommended that CPCNH’s intervention “be limited exclusively to interconnection issues directly related to the Company’s proposal for a change in distribution rates, to the extent that there are any, and demand response only to the extent that it relates to the demand response reporting metric included in the Company’s filing in this docket” pursuant to RSA 541-A:32, III(a). (Motion at 1.)

At outset of the pre-hearing conference on July 22, 2024, Chairman Goldner outlined the process by which the Commission would rule on the eight intervention petitions and requested “that the currently existing parties, Eversource, DOE, and OCA, respond to the following by August 2nd, 2024, for each Petition. Number one, whether or not the Petition to Intervene could be limited in scope, that would still enable the intervenor to participate in the proceeding to protect each intervenor's rights, duties, privileges, immunities or other substantial interest, but still allows the proceeding to proceed in an orderly manner; and, two, what limitations, if any, should be placed on each Petition to Intervene” pursuant to RSA 541-A:32, III. (Tr. at 7.) Chairman Goldner further stated that after “receiving the responses by August 2nd, 2024, the potential intervenors will have until August 9th to file reply briefs, if necessary” and that the Commission would “issue a substantive order addressing the multiple Petitions to Intervene by August 16th, 2024.” (Tr. at 8.)

On August 2, 2024, the Office of Consumer Advocate (“OCA”) and the Department of Energy (“DOE”) both filed statements supporting full intervenor status for all eight petitioning entities, without any limitations pursuant to RSA 541-A:32, III at the outset of granting intervention, while Eversource filed a brief (“Brief”) regarding limiting interventions where they

argued that only CPCNH's participation be limited. All three parties noted that RSA 541-A:32, III provides that any limitation or conditions on an intervenor may be made "either at the time that intervention is granted or at any subsequent time" during the proceeding. DOE stated the following:

At so early a stage in the proceeding, in the opinion of the Department, limiting CPCNH's participation is ill-advised. The Department notes that RSA 541:32 provides for limitations at any stage of the proceedings. So long as CPCNH's - or any other intervenor's - participation remains relevant, limitation is unnecessary. Any issue that may arise later seems best suited to case-by-case resolution during technical sessions or at hearing, if necessary. *See Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,946 at 3 (September 27, 2016) (Commission finding that it was unnecessary to limit a party's intervention as "all parties are limited to the scope of the proceeding"). [at 3-4]

The OCA likewise stated "[s]hould the Coalition or any other party seek to expand the scope of the proceeding beyond those issues identified in Order No. 27,027 (June 28, 2024) through which the Commission commenced this proceeding, we are confident that the problem can be dealt with as it arises." The Coalition agrees with both the DOE and the OCA.

## **II. CPCNH OBJECTION TO EVERSOURCE MOTION**

Eversource in its Motion and Brief incorrectly construes CPCNH's interests and organizational purpose to be limited to those of a joint power agency supplying power to its customers. It asserts that "CPCNH entered into agreements with its member aggregations that allow it to intervene on behalf of the aggregations in 'germane regulatory proceedings,' [and] it has not demonstrated that this is such a germane proceeding." (Motion at 2). This is not factually correct. CPCNH did not enter into agreements with its member aggregations, it entered into a Joint Powers Agreement with subdivisions of the State of New Hampshire, currently 58 municipal and 2 county members. CPCNH's purpose and authority is not limited to providing "electric supply services to its end-use municipal aggregation customers" (Motion at 3). In its Brief at 3, Eversource incorrectly asserts that "[e]ach petition to intervene sets forth the issues

that the petitioners intend to participate in during the proceeding.” While some petitions may have done so, this is neither a requirement nor a purpose of such petitions, nor was it CPNCH’s intent to do so. Rather the purpose of such petitions is to state—pursuant to the law—“facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” (RSA 541-A:32, I(b)), as CPCNH has done.

CPCNH’s Petition succinctly and sufficiently sets forth facts demonstrating our rights, duties, privileges and other substantial interests that may be affected by this proceeding , which are many because of the broad range of interests possessed by municipalities that are served by Eversource as an electric distribution utility, and that may be affected by Eversource’s proposed 47% increase in overall distribution rates and proposed PBR plan to guide compensation and decisions about future investments in their distribution system. Further, the nature of being a governmental instrumentality pursuant to RSA 53-A, in effect, makes CPCNH an extension or arm of our Member jurisdictions with agency to act on behalf of our Members through a decision-making process governed by our Members, through their respective elected governing bodies.

At paragraph 2, CPCNH’s Petition states that “CPCNH is a governmental instrumentality of its 60 members comprised of 58 NH municipalities and two counties and is organized pursuant to a joint powers agreement (“JPA”) under NH RSA 53-A and 53-E:3, II(b).” While the latter citation (RSA 53-E) references the authority to operate municipal and county power aggregations jointly pursuant to RSA 53-A, it is not the only purpose for which CPCNH was created under RSA 53-A. The purpose of Chapter 53-A “Agreement Between Government Units” is “to permit municipalities and counties to make the most efficient use of their powers by enabling them to cooperate with other municipalities and counties on a basis of mutual

advantage” (RSA 53-A:1). RSA 53-A:3 “Joint Exercise of Power” provides that “[a]ny power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised jointly with any other public agency of this state” and that the agreement for such specify “[t]he precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto . . . [and] [i]ts purpose.”

The purpose of the Coalition’s JPA is stated in Article II, Section 2, with emphasis added:

**The purpose of this Agreement is for Members to make the most efficient use of their powers on a basis of mutual advantage** through a corporation separate from, and for which, the Members are not liable for the debts, liabilities, or obligations of the Corporation, except to the extent they may have contracted with the Corporation to be liable thereafter. **The Members will form the Corporation to regulate and manage the affairs of the Corporation not inconsistent with the laws of New Hampshire or the Articles of Agreement, in order to study, promote, develop, conduct, operate, and manage energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose.** Without limiting the generality of the foregoing, the Members intend for the Corporation to jointly exercise certain powers, privileges, and authorities granted to municipalities and counties pursuant to NH RSA 33-B, NH RSA 53-E, NH RSA 53-F, and NH RSA 374-D (and by reference NH RSA 33), all in accordance with NH RSA 53-A; to assist Members in exercising their authorities under, and complying with, the provisions of NH RSA 53-E in developing and implementing Electric Aggregation Plans and Programs, known as CPAs; to provide supportive services and technical assistance to CPAs serving member municipalities and counties; and **to support and promote public education and civic engagement by the residents and businesses of member communities in developing and implementing energy and climate policies and actions and the role of CPAs in advancing such policies and actions for the common good.**

Of note is that fact that RSA 374-D grants to municipalities the power to “design, develop, acquire, and construct small scale power facilities” and provides that the “[p]ower produced by such facilities may be transmitted and distributed by a municipality to any user of power or to any public utility” (RSA 374-D:2). The recitals in the Coalition’s JPA explain some of the reasons for forming the Coalition, including that “local communities have substantial responsibilities and authority for land use planning, including adoption of master plans that may

address transportation, utility and energy planning among other needs pursuant to NH RSA 674:2, zoning, development review, building and fire code administration, adoption of “stretch” codes pursuant to NH RSA 155-A:2, V, and creation of energy commissions pursuant to NH RSA 38-D for the study, planning, and utilization of energy resources and making recommendations on sustainable practices” (JPA, at 1-2). RSA 674:2 provides that local Master Plans may include (with emphasis added):

(g) A utility and public service section analyzing the need for and showing the present and future general location of existing and anticipated public and private utilities, both local and regional, including telecommunications utilities, their supplies, and facilities for distribution and storage.

. . . (n) An energy section, which includes an analysis of energy and fuel resources, needs, scarcities, costs, and problems affecting the municipality and a statement of policy on the conservation of energy.

In the broadest and most general terms, CPCNH’s right to intervene in this case as an agent for its Members, including all Member subdivisions of the State served by Eversource, without limitation in the initial instance, arises from the Coalition’s authority “to conduct, operate, and manage energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose” on behalf of our Members. In this instance, the energy-related program the Coalition is providing to our Members includes advocating for their interests, broadly and jointly, in this rate case for an electric distribution utility, which CPCNH relies upon in so many ways to power our communities.

Among the powers granted to the Coalition, to be exercised by and vested in its Board of Directors, as cited in ¶5 of the Petition, is the authority to “[i]ntervene in germane regulatory proceedings on behalf of itself and its Members.” It is for the Board of Directors and Members of CPCNH to determine what regulatory proceedings are germane to its purposes and the interests of its Members; not Eversource. No other entity seeking intervention purports to

represent the interests of municipalities or counties. The Coalition has consolidated and combined the interests of dozens of municipalities and two counties that rely on the Eversource distribution grid to power their communities, support economic vitality, and advance environmental and climate sustainability. Indeed, the Coalition followed its prescribed process to authorize its Petition for full intervenor status.

Article IX, Section 6 of the JPA provided for creation of a Regulatory and Legislative Affairs Committee (RLAC) to advise “the Corporation and Members in regard to regulatory and legislative engagement and shall have powers and responsibilities as specified in a Regulatory and Legislative Affairs Committee Charter,<sup>1</sup> which shall be adopted or amended by the Members at a Membership Meeting.” The RLAC Charter was duly approved at the October 25, 2023 Fall Membership meeting of CPCNH. That Charter sets forth a process for determining what regulatory proceedings CPCNH may participate in as an intervenor or petitioner. CPCNH followed the process in which RLAC recommended to the Board that CPCNH intervene in this proceeding and the Board subsequently approved this petition to intervene to represent the interests of CPCNH and its Members, without limitation. (*See* Petition at ¶6.) That is how the Coalition has correctly determined this docket to be “germane” to the Coalition’s interests.

The Petition at ¶3 explains that CPCNH functions as the alternative default service supplier to approximately 67,000 Eversource customers in 37 municipalities served in whole or in part by Eversource, and that most of these Members have their own electric accounts with Eversource for distribution services. The Petition at ¶7 explained that its “member communities being served by Eversource have a substantial interest in this proceeding as it relates to the NH energy system and distribution costs to their own municipal or county accounts and those of their

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<sup>1</sup> CPCNH RLAC Charter, available at: [www.cpcnh.org/files/ugd/202f2e\\_d7890441253442a7be9479bd57e092ba.pdf](http://www.cpcnh.org/files/ugd/202f2e_d7890441253442a7be9479bd57e092ba.pdf)

residents, businesses and other consumers.” It is here that the Coalition asserts our agency on behalf of our Member municipalities as customers of Eversource distribution services in the cost or rates for those services, which necessarily implicates whether the proposed rates are just and reasonable and whether the investments proposed to be added to their rate base were prudently incurred. In the DOE’s Statement at 2, as stated for Walmart, the Rate LG Customer Consortium, and Mary Ellen O’Brien, simply being a customer of Eversource, or representing one, makes it “mandatory that these parties be granted intervenor status.” Municipalities have a wide range of load in various rate classes ranging from some of largest in their communities for water and wastewater treatment, to individual traffic control devices and streetlights, making rate design to also be a substantial interest to the Coalition.

In ¶8 of the Coalition’s Petition, we asserted our “strong interest in the following subject areas, all of which could be directly or indirectly impacted by the findings made in this proceeding: interconnection, performance-based ratemaking, rate design, energy efficiency and conservation, and advanced demand response.” (Note the reference to “advanced” demand response was an inadvertent conflation with the term “active” demand response used by Eversource in its PBR proposal by the original drafter of the Petition that the reviewers did not catch.) This comprehensive statement encompasses a broad range of interests of CPCNH and its Members—matters with which Eversource and the Commission should be well-acquainted.

There are several areas of substantial interest to our Member municipalities related to what the Coalition included in its Petition. For instance, performance metrics and rate impacts related to vegetation management and storm recovery are of substantial interest to our municipal Members given the fact that a large portion of a distribution utility’s physical plant, most poles, wires, and transformers, are located within public rights-of-way owned and managed by towns



and cities. How Eversource manages vegetation around its wires in the public rights-of-way and storm recovery is of direct interest to municipalities affecting municipal duties and responsibilities for emergency response, public safety, and maintaining and managing public rights-of-way, including licensing of utility pole locations.

In addition, it is commonly understood that municipalities provide for street lighting on their town and city streets. Rates and rate design for street lighting and efficiency options in outdoor lighting is of direct and substantial interest to CPCNH Members as customers of Eversource, particularly since outdoor lighting customers are proposed to proportionately have the largest rate increase of all rate classes.<sup>2</sup>

Municipalities, like the interests that NECTA represents, sometimes themselves have or seek attachments to utility poles for fire alarm systems and fiber optic cables and so would be impacted by those rates.

Eversource's practices around pole replacement and relocation may be of municipal interest as a performance metric considering how such performance may impact public safety and the cost of public roadway and sidewalk construction projects.

CPCNH's interest on behalf of municipal and county aggregations includes its authority to provide energy services that include: "(1) The supply of electric power and capacity. (2) Demand side management. [And] (3) Conservation" (RSA 53-E:3, II). Demand side management is another term for "active demand response" (which could also be considered "advanced demand response," a term used by the Electric Power Research Institute, a globally

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<sup>2</sup> See Testimony of Douglas W. Foley, Robert S. Coates, and Douglas P. Horton, 6/11/14, Bates page 01377, line 9 through Bates page 01378, line 10.

recognized organization conducting research and development across the electricity system<sup>3</sup>). For instance, CPCNH is naturally and substantially interested in whether Eversource's development of an "active demand response" performance metric, presumably for future use, may have the effect of favoring the establishment or perpetuation of an Eversource monopoly in providing "active demand response" services or whether it might incentivize Eversource to better enable competitive market driven demand response services that could drive innovation towards advanced demand response, helping reduce costs for all customers.<sup>4</sup>

CPCNH recognizes that energy efficiency programs by Eversource are primarily the subject of other dockets. Nevertheless, CPCNH and its Members do have a substantial interest in energy efficiency and conservation as a key strategy in climate action plans and lowering costs for consumers and communities and may be engaged in legislative advocacy on this subject. In their pre-filed testimony Eversource notes that if "energy efficiency programs expand so significantly beyond today's levels as a result of expanded or newly implemented state-mandated programming over the course of the PBR term that depresses the level of sales volumes experienced by the Company that would otherwise provide revenues to support the

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<sup>3</sup> See, for example "Advanced Demand Response with Variable Heat Pumps: Standard Test Procedure for Residential Equipment", December 19, 2023, <https://www.epri.com/research/products/000000003002027654>.

<sup>4</sup> In Order No. 22,875, the Commission noted: "As the New Hampshire Supreme Court stated:

[L]egislative grants of authority to the PUC should be interpreted in a manner consistent with the State's constitutional directive favoring free enterprise. Limitations on the right of the people to "free and fair" competition"...must be construed narrowly, with all doubts resolved against the establishment or perpetuation of monopolies.

RSA 374:26 thus should not be interpreted as creating monopolies capable of outliving their usefulness. Appeal of PSNH, 141 N.H. 13, 19 (1996) (emphasis added) (internal citation omitted). In this case, we have identified specific circumstances where electric utilities may exploit their privileged status to inhibit the development of a competitive retail electricity market. We will implement special protections to mitigate these anti-competitive practices. Should we determine these special protections are insufficient, we will impose additional pro-competitive measures."

implementation of such programs and exceeds the threshold exogenous events amount, the Company proposes that the resulting lost revenues qualify as an exogenous event eligible for recovery.”<sup>5</sup> This could affect CPCNH’s interest in legislative advocacy supporting expanded energy efficiency programs.

Eversource is proposing a PBR metric on “solar interconnection”<sup>6</sup> which could affect CPCNH’s interest in interconnecting new municipally owned or operated solar as well as the interconnection of third-party suppliers of distributed solar energy.

As a joint power agency supplying default energy service, CPCNH has a broad interest in how PBR metrics may or may not incentivize appropriate IT system investments that either support or limit a competitive market for electricity supply and related energy services, considering our dependence on Eversource IT systems for meter data, Electronic Data Interchange (EDI), consolidated billing, and load settlement services, where such investments can also impact distribution and supply rates and costs to our Members and mutual customers.

Eversource’s assertion in its Motion at 4 that “CPCNH raising issues outside the scope of the proceeding is likely to have a material impact on the timely and orderly resolution of” the case is incorrect in the first instance, as we have not raised issues outside the scope of the proceeding as explained above. Eversource’s Brief at 5 asserts that “CPCNH may, through its investigation of issues not relevant to its interests, jeopardize the prompt and orderly conduct of the docket.” As demonstrated in CPCNH’s Petition by the facts asserted and explained herein, we are not planning to investigate issues not relevant to our interests. Beyond that, the practical reality is, like all organizations, CPCNH’s resources are not unlimited; it must constrain itself to

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<sup>5</sup> Testimony of Douglas W. Foley, Robert S. Coates, and Douglas P. Horton, 6/11/14, at Bates p. 01413, lines 5-11.

<sup>6</sup> *Id* at Bates p. 01375, lines 17.

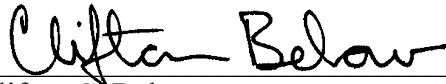
those topics within the scope of the proceeding and in which it has a substantial interest as determined by its internal governing process.

### III. CONCLUSION

Finally, the Coalition wishes to note that RSA 541-A:32, IV provides that “[l]imitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.” Again, the Commission is free to impose appropriate limitations at any time during the course of the proceeding if and when it finds a need to do so to promote the orderly and prompt conduct of the proceeding.

Respectfully submitted,  
Community Power Coalition of New Hampshire (CPCNH)

By its Chair,



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