

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 24-070

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

Request for Change in Distribution Rates

**New Hampshire Department of Energy
Motion to Accept Late-Filed Testimony**

Pursuant to New Hampshire Code Admin. Rule Puc 203.07, the New Hampshire Department of Energy (“Department” or “DOE”) hereby moves the Public Utilities Commission (“PUC” or “Commission”) to accept the Department’s testimony filed in the above-captioned proceeding on February 7, 2025, after the January 24, 2025, due date, consistent with the manner in which the Commission accepted testimonies filed on or before January 24, 2025.

In support of this Motion, the Department states as follows:

1. On June 11, 2024, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “Company”) filed a Petition for Approval of Temporary and Permanent Rates seeking a permanent rate increase for effect August 1, 2025.
2. On October 14, 2024, Eversource filed a proposed procedural schedule which was assented to by the majority of parties to this proceeding. The parties to the proceeding are Eversource, the Department, the Office of the Consumer Advocate (“OCA”), Clean Energy New Hampshire (“CENH”), Community Power Coalition of New Hampshire (“CPCNH”), Conservation Law Foundation (“CLF”), Mary Ellen O’Brien Kramer, New England Connectivity and Telecommunications Association, Inc. (“NECTA”), Walmart, Inc. (“Walmart”), AARP New Hampshire (“AARP”), Aleksandar Milosavljevic-Cook, the Rate LG Customer Consortium

(representing Hancock Lumber Company, Inc., Monadnock Paper Mills, Inc., Pike Industries, Inc., and the University System of New Hampshire), and Standard Power of America (“Standard Power”) (hereinafter referred to as the “Parties”). The schedule included a due date of January 24, 2025, for the filing of DOE, OCA, and Intervenor Testimony.

3. On January 10, 2025, the DOE filed a Request to Amend Procedural Schedule, requesting the Commission allow two weeks of additional time for the DOE and any other intervenors to submit testimony in this proceeding, and requesting to amend certain other parts of the procedural schedule to accommodate this.¹ The Department explained it needed time to review significant additional information Eversource had indicated at the January 7, 2025, Prehearing Technical Conference in this proceeding that it would provide; time to review and incorporate into its testimony any applicable findings from the Final Audit Report that had not yet been finalized; and more time overall to prepare its testimony.
4. The OCA, CENH, CPCNH, Mary Ellen O’Brien Kramer, Walmart, NECTA, the Rate LG Customer Consortium, and AARP all assented to the Department’s request. Eversource indicated it did not assent due to scheduling conflicts, and the Department had not received a response from CLF, Aleksandar Milosavljevic-Cook, or Standard Power.
5. On January 13, 2025, Eversource filed a response to the DOE’s request to amend the procedural schedule, further explaining it did not assent. In its response, Eversource indicated that it would have no objection to parties supplementing their testimony based on follow-up information to the January 7, 2025, Commission technical session, as long as supplementary testimony pertained only to that follow-up information.²

¹ See Docket No. DE 24-070, Tab 113, New Hampshire Department of Energy Request to Amend Procedural Schedule

² See Docket No. DE 24-070, Tab 114, Eversource Energy Letter Regarding the Department of Energy’s Request to Amend the Procedural Schedule

6. On January 16, 2025, the Department filed a letter notifying the Commission and other parties that the Department would not be filing testimony before February 7, 2025, at which time it would also submit a Request to Accept Late-Filed Testimony, if needed.³ In the letter, the Department again emphasized the reasons why it needed additional time to file its testimony.
7. On January 17, 2025, the Commission issued a Procedural Order Re: Department of Energy's Motion to Modify Procedural Schedule.⁴ The Commission rejected the Department's January 10, 2025, request to modify the procedural schedule but amended the procedural schedule to allow the Department to file supplemental testimony by February 7, 2025, limited to any updates necessary after reviewing the Department's final audit.
8. On January 24, 2025, the Department filed three testimonies, noting in its filing that its four remaining testimonies would be filed by February 7, 2025, as it had committed to in its January 16, 2025, letter.⁵
9. On February 5, 2025, Eversource filed a Request to Amend Procedural Schedule for Department of Energy Supplemental Testimony.⁶ Eversource requested certain amendments to the procedural schedule to accommodate any supplemental testimony from the Department related to the final Audit Report, while noting that it would likely object to the inclusion of any DOE testimony on issues beyond those specifically listed in the Audit Report.
10. As of the date of this filing, Eversource still has not submitted the information it committed to providing at the January 7, 2025, Prehearing Technical Conference held in this proceeding,

³ See Docket No. DE 24-070, Tab 115, Department of Energy's Response to Eversource Letter Opposing the Department's Request to Amend Procedural Schedule

⁴ See Docket No. DE 24-070, Tab 116, Procedural Order Re: Department of Energy's Motion to Modify Procedural Schedule

⁵ See Docket No. DE 24-070, Tab 128

⁶ See Docket No. DE 24-070, Tab 134, Eversource Energy Request to Amend Procedural Schedule

which the Department has explained several times is important to review and incorporate into its testimony.⁷

11. Eversource had indicated, in its January 13, 2025, response to the Department's request for additional time to submit testimony, that it would not object to parties filing supplemental testimony related to the content of the information it committed to provide. However, it subsequently argued in its February 5, 2025, motion that it would be prejudiced even if the Department only filed supplemental testimony related to its Final Audit Report, per the Commission's January 17, 2025, Procedural Order. Specifically, the Company argued that it would be prejudiced by the Department not participating in settlement discussions until its testimony is filed, that it will need an opportunity to ask data requests of the Department, that there is a short timeframe between the Department filing its additional testimony and when rebuttal testimony is due and it requested an extension of its rebuttal filing deadline from February 18, 2025, to February 20, 2025, if the Department's testimony is related only to issues in the Audit Report. The Company further noted that if the Department's testimony went beyond the "limited" issues in the Audit Report, "the Company will likely object to the inclusion of such testimony and, if needed, request further extension of the deadlines for issuing data requests and rebuttal testimony."⁸

12. While part of the Department's original request for an extension to the testimony due date was the desire to review and incorporate into its testimony the additional Eversource information referenced above, the Department files its remaining testimonies on this date, February 7, 2025, without being able to address the as yet unfiled Eversource information. The

⁷ See Docket No. DE 24-070, Tab 113, New Hampshire Department of Energy Request to Amend Procedural Schedule; Tab 115, Department of Energy's Response to Eversource Letter Opposing the Department's Request to Amend Procedural Schedule; and Tab 128, Cover Letter to the Department's Testimony filed on January 24, 2025

⁸ See Docket No. DE 24-070, Tab 134, Eversource Energy Request to Amend Procedural Schedule at p.3

Department's testimony addresses, among other issues, the findings of the Final Audit Report which was issued January 31, 2025. The Department requests that the Commission accept this late-filed testimony consistent with its acceptance of testimony filed on or before January 24, 2025.

13. RSA 541-A:31, IV, provides all parties an opportunity to, “respond and present evidence and argument on all issues involved” in adjudicative proceedings. Puc 204.14(a) states that, “[t]he parties entitled to offer evidence at hearing in an adjudicative proceeding shall be the petitioner, the department, the OCA when it has entered an appearance, and intervenor subject to any limitations imposed by RSA 531-A:32, III.” The Department, as other parties, has the right to present evidence at hearing in this proceeding. Whether or not its pre-filed testimony is accepted, neither statute nor administrative rules of the Commission prohibit the Department from offering the evidence contained in its pre-filed testimony at hearing. Indeed, the Department has the due process right to do so.
14. Further, RSA 541-A:33, II, states that, “any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.” The Department believes that presenting this testimony in written form before hearing will not prejudice the interests of the parties – indeed, giving the other parties an opportunity to review the Department's testimony well before hearing allows parties a greater opportunity to examine the evidence offered by the Department and protect their due process right to cross-examination.
15. The law governing evidence in administrative proceedings allows the presiding officer to, “exclude irrelevant, immaterial, or unduly repetitious evidence.”⁹ The Department believes its

⁹ RSA 541-A:33, II. See also Puc 204.14(d).

testimony is relevant to the noticed issues in this proceeding, is material evidence regarding Eversource's request for change in distribution rates, and is not repetitious of other evidence in the proceeding.

16. The Department has a unique role among parties to adjudicative proceedings, in that it is the only entity automatically a party to all proceedings before the Commission by statute.¹⁰ The Department does not take this role lightly and strives to the best of its ability to participate thoughtfully and thoroughly in all proceedings. In this case, as noted in the Department's letter filed on January 16, 2025, that means that the Department has had to balance its involvement in other complex proceedings before the Commission and with developing its testimony in this proceeding.¹¹

17. Further, the Department has, "the authority to investigate any matter that may come before the public utilities commission and to appear before the commission to advocate for the department's position..."¹² Part of the purpose of this authority is the Department's role in "providing a complete record for consideration by the commission."¹³ The Department's late-filed testimony fulfills its statutory role in this proceeding and enables the Commission to fulfill its statutory role.¹⁴ The Department notified the Commission as soon as it became clear that it would not be able to meet the testimony deadline, and provided information regarding

¹⁰ RSA 12-P:3, III. "The department shall have the authority to petition for any proceeding before the public utilities commission and shall automatically be a party to all proceedings before the commission."

¹¹ See Docket No. DE 24-070, Tab 115, Department of Energy's Response to Eversource Letter Opposing the Department's Request to Amend Procedural Schedule

¹² RSA 12-P:2, IV

¹³ Id.

¹⁴ The Commission has previously highlighted the importance of the Department's involvement in providing a complete evidentiary record, such as providing audit information. See, e.g., Docket No. DE 24-035, Tab 14, Procedural Order Re: Proposed Procedural and Audit Report at p. 1 and Tab 22, Order No. 27,044 Retaining Audit Requirement and Rescheduling Hearing at pp. 3-4 ("The Commission acknowledges it has approved rate adjustments in the past without first receiving an audit. However, while the Commission may have found such evidence sufficient in past dockets, it does not mean that the Commission is precluded from seeking a more complete evidentiary record in either this or future dockets.") See also Docket No. DG 22-015, Tab 14, Order No. 26,615 Suspending Proposed Tariffs, and Rescheduling Hearing at pp. 2-3

the substance of the testimony it planned to file. See the Department's January 10 and 16, 2025, letters in this docket (DE 24-070) and cover letter accompanying the Department's January 24, 2025, testimony.¹⁵ See also the Commission's Order No. 27,029 in this docket requesting "to keep the Commission informed of the progress of the matter in a timely and orderly fashion," including informing the Commission "what areas the DOE will exercise its investigatory authorities in order to provide a complete record for consideration by the Commission in this matter."¹⁶

18. The Department must also balance its role as a party to proceedings before the Commission with its supervisory role over public utilities and its duty to keep informed as to all public utilities in the state.¹⁷ As noted in the Department's January 10, 2025, Request to Amend Procedural Schedule, the Department does not take lightly testifying regarding the utilities it regulates. The Department believes that submitting informed testimony is both important as a party and consistent with its statutory duty. The Department believes that its testimony in this matter, which contains a substantial amount of information provided by the Company that was not contained in its initial filing as well as additional analysis beyond that offered by the Company, will aid the Commission in fulfilling its statutory roles.
19. All of that said, the Department recognizes the seriousness of filing testimony late, especially in a case as complex as a full distribution rate case. The Department recognizes filing its testimony late conflicts with the approved procedural schedule as well as the Commission's Procedural Order issued on January 17, 2025, and that this creates additional work for other parties. The Department would not be filing late if it could have been avoided. Importantly,

¹⁵ Docket No. DE 24-070, Tabs 113, 115, and 128

¹⁶ Docket No. DE 24-070, Tab 11

¹⁷ See RSA 374:3 and RSA 374:4

the Department is not attempting to establish a precedent wherein it can routinely ignore procedural schedules.

20. The Department also appreciates the significant effort and the give and take that went into developing the procedural schedule in this proceeding. However, this late-filed testimony will not disrupt the schedule beyond repair. The late-filed testimony comes only two weeks after the due date and can be accommodated without moving the hearing dates, and there are still more than four months left of the twelve-month tariff suspension period.¹⁸
21. The Department also recognizes the Commission's authority over the timing and process of an adjudicatory proceeding.¹⁹ However, the Department requests that in this instance, the Commission consider the due process rights of the Department to present evidence and its ability to adjust the schedule to provide an opportunity for the other parties' rights to respond to that evidence, and that it adjust the schedule as needed to accept the Department's late-filed testimony. This result would, in the Department's view, strike a reasonable balance between the Commission's need for time to make a decision in this proceeding with the parties' due process rights in this proceeding.

The Department contacted the other parties to this proceeding to obtain their positions on its request. CPCNH and NECTA assent. Eversource does not assent. The OCA, Mary Ellen O'Brien Kramer, CENH, and CLF have indicated they do not take a position at this time. As of filing, the Department

¹⁸ See Docket No. DE 24-070, Tab 11, Order No. 27,029 Commencement of Adjudicative Proceeding and Notice of Prehearing Conference and Hearing

¹⁹ See RSA 541-A:31, Puc 204.04, and Puc 204.07; see also *Complaint by Residents of Colonial Drive, Moultonborough against Agape Community Church Sewer System*, Order No. 26,841 at p. 7 (June 8, 2023)

has not heard back from Walmart, AARP, Aleksandar Milosavljevic-Cook, the Rate LG Customer Consortium, or Standard Power.

WHEREFORE, the Department respectfully requests that the Commission:

1. Accept the Department's late-filed testimony in this matter; and
2. Grant such further relief as is just and required.

Dated: February 7, 2025

Respectfully submitted,
New Hampshire Department of Energy
By its Attorneys,

/s/ Paul B. Dexter
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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 in the Commission's service list for this docket on this date, February 7, 2025.

/s/ Paul B. Dexter
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