

Before the New Hampshire Public Utilities Commission

DOCKET NO. DE 24-070

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

Request for Change in Distribution Rates

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY
OBJECTION TO LATE FILED TESTIMONY BY THE DEPARTMENT OF ENERGY

Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”) hereby submits this motion to the New Hampshire Public Utilities Commission (“Commission”) pursuant to Puc 203.07(c) respectfully objecting to the motion filed by the New Hampshire Department of Energy (“DOE” or the “Department”) on February 7, 2025 (“Motion”), requesting that the Commission accept its late-filed testimony. Above all else, DOE’s request to submit late-filed testimony is in direct conflict with the Commission’s January 17 Procedural Order denying DOE’s request to extend the deadline to file intervenor testimony. The interests of administrative efficiency and fundamental fairness counsel against allowing a filing that was expressly ruled out by the Commission after hearing an earlier motion for additional time. The late filing is also without sufficient justification and would be violative of due process, which right is obviated by the late filing due to the deadlines existing in the approved schedule for the proceeding.

Thus, in support of this motion, the Company states the following:

1. On June 11, 2024, the Company filed a Request for Change in Distribution Rates with the Commission. The procedural schedule was established by the Commission in part by Order No. 27,029 and then by procedural orders of the Commission issued on September

27, 2024 and January 17, 2025 (collectively, the “Orders”)¹. As stated in the Orders, the approved date for DOE, OCA and Intervenor Testimony was January 24, 2025. Notably, the January 24, 2025 deadline for Intervenor Testimony was established at the insistence of the DOE.² The Company had concerns that having a January 24, 2025 deadline for intervenor testimony late in the procedural schedule would require -- *and ultimately did require* -- the Company to make several procedural compromises, including reviewing intervenor testimony and issuing data requests in an abbreviated timeframe and requiring the Company to simultaneously prepare rebuttal testimony while processing the responses from parties to the Company’s data requests and engage in settlement discussions.³

2. On January 10, 2025, the DOE filed a request to Amend the Procedural Schedule (“Request”) in the above-captioned proceeding. DOE requested to postpone the deadline for intervenor testimony by two weeks and the deadline for settlement and rebuttal testimony by three weeks, as well as to reschedule the settlement conferences and deadlines for data requests proportionate to the proposed changes in the deadlines for testimony.⁴
3. On January 17, 2025, the Commission denied DOE’s motion in a procedural order, while permitting DOE to supplement its timely filed testimony *based on the DOE’s Audit Report*.⁵
The Audit Report was issued on January 31, 2025. On January 24, 2025, DOE filed

¹ The September procedural order approved the procedural schedule with certain modifications of the Commission. The January procedural order denied the Department’s request for an extension and allowed it to file supplemental testimony to account for the final report of DOE’s audit division.

² PSNH Letter Regarding Proposed Procedural Schedule and Request to Set Hearing Dates at page 2 (September 20, 2024).

³ *Id.*

⁴ The Department followed the initial request with a letter declaring it would not file testimony until February 7. Docket No. DE 24-070, Tab 115.

⁵ Procedural Order Denying the Department of Energy’s Motion to Modify the Procedural Schedule, at 4 (January 17, 2025).

testimony related to performance-based ratemaking (“PBR”), the allocated cost of service study, decoupling, rate design, return on equity, and weighted average cost of capital.

4. On February 10, 2025⁶, DOE untimely filed four additional sets of testimony. These testimonies are entirely new and are not in any way “supplemental.” Specifically, the DOE submitted the Joint Testimony of Jay E. Dudley, Utility Analyst, Ronald D. Willoughby, Consultant to the DOE, and Joseph J. DeVirgilio, Consultant to the DOE (addressing capital expenditures, vegetation management, storm cost recovery, performance-based ratemaking, and audit issues); Testimony of Donna H. Mullinax, Consultant to the DOE, (addressing revenue deficiency and revenue requirement), Testimony of Stephen R. Eckberg, Utility Analyst, (addressing depreciation, lead/lag study analysis, fee free credit/debit card payment option, and the New Start program); and Joint Testimony of Elizabeth R. Nixon, Electric Director, and Jacqueline M. Trottier, Utility Analyst, (addressing an overview of testimonies, decoupling, and other issues).
5. In the Motion, DOE acknowledges that its testimony is *not* supplemental testimony to its preliminary testimony, aimed at addressing issues raised in the Audit Report; but, rather, is new testimony. In that regard, DOE’s Motion fails to establish a sufficient justification for the late filing, effectively arguing the same points raised in its January 10, 2025, request to extend the procedural schedule. First, DOE states it “needed time to review significant additional information PSNH had indicated at the January 7, 2025, Prehearing Technical Conference in this proceeding that it would provide”.⁷ As the Company previously stated,

⁶ The Department originally filed its motion on February 7, 2025; however, the filing was made after the filing deadline under Puc 203.08 and so was deemed filed on February 10, 2025.

⁷ Motion at 2.

while a good deal of material was covered at the Prehearing Technical Conference, nothing discussed at that conference fundamentally, or even minorly modified the Company's request for rate relief or PBR proposal, nor did the Company suggest that it would be making any changes to its proposal or request for relief – and it has not. This means that nothing submitted in response to record requests following that session would or should have a determinative effect on the DOE's testimony or any of the positions taken therein. Second, DOE needed to review the final Audit Report. Thus, the Commission agreed to allow DOE to supplement its preliminary testimony based on the results of that report. Lastly, DOE provided a general assertion for “more time overall” – the same assertion raised during the establishment of the procedural schedule. Hence, there is no further justification for the late filing than what was last considered by the Commission.

6. In its discretion, the Commission may allow late-filed testimony where a party has not had adequate time to develop its case.⁸ However, this is not applicable here. The procedural schedule was agreed to by DOE, and the deadline for intervenor testimony was set at the Department's insistence for its own reasons.⁹ DOE has had the Company's filing for nearly eight months prior to the deadline for intervenor testimony. The Company responded to over 260 data requests propounded during the discovery period by DOE, with all responses submitted on a timely basis, by the December 6, 2024 deadline set forth in the procedural schedule.¹⁰ The Commission fully considered DOE's arguments and rejected the DOE request to extend the deadline for intervenor testimony.

⁸ *Compare City of Nashua*, 90 N.H. P.U.C. 619 (2005).

⁹ *See* Eversource's September 20, 2024 Proposed Procedural Schedule and Request to Set Hearing Dates, at 2.

¹⁰ The Company also engaged in technical session on December 11 and 12, 2024, and the Company agreed to an *additional* technical session on December 19, 2024.

7. The Commission noted in its January 17, 2025 Procedural Order Re: Department of Energy's Motion to Modify Procedural Schedule that the petitioner's (PSNH) interest in adhering to the previously approved procedural schedule is persuasive.¹¹ As the Commission stated, PSNH has relied on the schedule long agreed to by the Parties and approved by the Commission for reaching settlement, planning litigation, and managing workflow, and has dedicated considerable resources to do so.¹² If the Commission allows DOE's late-filed testimony into the docket and into the record at hearing, further modifications to the procedural schedule will be required.

8. The Company does understand that the Commission is faced with a significant decision here as to whether it is appropriate to exclude certain positions of the State in a distribution rate proceeding. The Commission must balance the Department's reasons for its late filing against the Company's due process rights, as well as the Commission's decision not to extend the deadline in the first place and the precedent the Commission may set for allowing DOE's self-awarded extension, following a Commission decision that precisely considered that extension and denied it. The establishment of a procedural schedule and procedural rules for modifying the schedule are designed to ensure the efficient conduct of the proceeding and fair treatment of all parties, consistent with the Administrative Procedure Act. Parties should be able to rely on the finality of the Commission's procedural rulings during the conduct of the proceeding to prevent the need for time-consuming pleadings, general confusion, and so all parties can manage resources effectively throughout the proceeding.

¹¹ January 17 Procedural Order at 3 (*citing Appeal of Morin*, 140 N.H. 515,517).

¹² *Id.*

9. Therefore, in the event the Commission deems it appropriate to allow DOE's self-executing extension and accepts the late-filed testimony, which it may, the Company respectfully requests modifications of the procedural schedule. The burden of reviewing and processing new testimony on approximately eight new issues filed two weeks late while still complying with the existing procedural schedule is infeasible without compromising the Company's due process rights. Accordingly, the Company respectfully requests extensions to issue data requests and submit rebuttal testimony.¹³
10. Specifically, the Company requests the deadline to issue data requests to DOE be extended to February 14, 2025, with responses due no later than February 24, 2025. This timeline will provide the Company with some limited ability to analyze DOE's late-filed testimony and prepare data requests, while also simultaneously conducting settlement negotiations and preparing rebuttal testimony. The Company also further requests that the deadline for Company rebuttal testimony be extended to March 7, 2025, to provide the Company an opportunity to analyze DOE's testimony and responses to data requests and incorporate into the Company's rebuttal testimony. These proposed extensions of deadlines are necessary, because in the absence of an extension of time, DOE's late-filed testimony will fatally impair the Company's due process rights. The Company's right to make its case to the Commission must be preserved and should not be compromised due to DOE's late-filed testimony.

¹³ On February 5, 2025, the Company filed a motion to amend the procedural schedule to review DOE's supplemental testimony on issues identified in the final Audit Report. If the Commission denies DOE's Motion and allows only testimony directly addressing the issues raised in the Audit Report. The Company requests the Commission grant its February 5, 2025 motion.

11. Lastly, the Company respectfully requests an expedited decision on DOE's motion and this objection given the abbreviated deadlines that will be affected by the Commission's decision.

WHEREFORE, the Company respectfully requests the Commission:

- A. Deny the Department of Energy's Motion to Accept Late-Filed Testimony and strike the testimony from the record; and
- B. Grant such further relief as it deems appropriate.

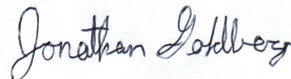
Respectfully submitted,

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d/b/a Eversource Energy

By its Attorneys,



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Date: February 10, 2025

Certificate of Service

I hereby certify that on February 10, 2025, a copy of this Motion has been forwarded to the service list for docket DE 24-070.

A handwritten signature in cursive script, appearing to read "Michael B. Hershberg".

Michael B. Hershberg, Esq.