

**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 for Rehearing on Procedural Order Re: Department of Energy's Motion to Modify Procedural  
Schedule**

Pursuant to RSA 541:3, RSA 365:21, and New Hampshire Code Admin. Rule Puc 203.07(b)(7), the New Hampshire Department of Energy ("Department" or "DOE") hereby moves the Public Utilities Commission ("PUC" or "Commission") for rehearing on the Commission's Procedural Order Re: Department of Energy's Motion to Modify Procedural Schedule ("Order") issued in this docket on January 17, 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 request.<sup>1</sup> 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.<sup>2</sup>
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.<sup>3</sup> 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 ("Order").<sup>4</sup> The Commission rejected the Department's 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.<sup>5</sup>

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

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

<sup>3</sup> 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

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

<sup>5</sup> The Commission's Order on p. 1 references procedural orders of the Commission issued on September 27, 2024, and November 5, 2024. However, the ordering clauses on p. 4 reference only the September 27 procedural order. The Department requests clarification on whether the Commission meant to include both dates in its ordering clause.

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, filing.<sup>6</sup>
9. On February 7, 2025, the Department submitted its four remaining testimonies and a Motion to Accept Late-Filed Testimony.<sup>7</sup>
10. The Department notes that, due to extended processing time, its testimony was filed between approximately 4:45 and 6:30 pm on February 7, 2025, which is after the Commission's business hours.<sup>8</sup> According to the Commission's new procedural rules adopted on January 24, 2025, filings submitted after the Commission's business hours are deemed to have been filed on the next business day.<sup>9</sup> At the time the Department filed its request for an extension to the testimony filing due date, (January 10, 2025), the referenced new procedural rule had not been adopted and the practice had been that materials filed after close of business but before end of day would be considered timely. Given the new rule, the Department requests that, for purposes of this Motion, the Commission consider the Department's two-week extension request of January 10, 2025, to extend to February 10, 2025, which was the next business day following February 7, 2025.
11. The Department now seeks rehearing of the Commission's January 17, 2025, Procedural Order Re: Department of Energy's Motion to Modify Procedural Schedule.
12. Per RSA 541:3, the Commission may grant rehearing if, in its opinion, "good reason" is established by the moving party. A successful motion may establish "good reason" by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision," by presenting new evidence that could not have been presented at the original hearing, or by any other means that demonstrates the order is unlawful or unreasonable.<sup>10</sup>
13. The Commission's Order appears to overlook the fact that the Department had requested not only an extension for itself, but for the other parties as well. The Commission explains that adjusting the procedural schedule dates, "even without moving the final hearing date, is unreasonable because it predisposes all

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<sup>6</sup> See Docket No. DE 24-070, Tab 128

<sup>7</sup> The Department filed a Revised Motion to Accept Late-Filed Testimony on February 10, 2025. See Docket No. DE 24-070, Tab 140

<sup>8</sup> See Docket No. DE 24-070, Tab 140, Cover Letter to the Department's Revised Motion to Accept Late-Filed Testimony

<sup>9</sup> Puc 203.08

<sup>10</sup> See *Dumais v. State Pers. Comm'n*, 118 N.H. 309, 311 (1978); *Appeal of Gas Serv., Inc.*, 121 N.H. 797, 801 (1981); and RSA 541:4.

parties' availability."<sup>11</sup> The OCA, CENH, CPCNH, Mary Ellen O'Brien Kramer, Walmart, NECTA, the Rate LG Customer Consortium, and AARP all assented to the adjusted procedural schedule the Department proposed in its request, which would have also allowed them an additional two weeks to submit their testimony. CLF, Standard Power, and Aleksandar Milosavljevic-Cook had not responded by the time the Department submitted its request, but did not file objections. Eversource was the only party opposed to the proposed new procedural schedule, citing "other commitments and regulatory proceedings that were scheduled around the already approved procedural schedule in this docket."<sup>12</sup> By overlooking the fact that the majority of parties had assented to a proposed schedule that allowed them an additional two weeks to file testimony, the Commission's Order did not sufficiently balance the due process rights of the other parties against those of Eversource. The Commission explained it was, "cognizant that Eversource, the petitioner in this matter, has the burden of proof and its interest in adhering to the previously approved procedural schedule is persuasive" and referenced *Appeal of Morin*, 140 N.H. 515, 517 (1995).

14. In the case cited by the Commission, the petitioner was an employee seeking worker's compensation for a disease resulting from exposure to toxins in his workplace, who was denied a continuance of his hearing before the compensation appeals board when his attending physician was scheduled to be out of town at the time of the scheduled hearing.<sup>13</sup> In overturning the board's ruling, the New Hampshire Supreme Court emphasized that "an agency should not lose sight of its 'paramount objective' of rendering justice." See *Appeal of Morin*, 140 N.H. 515, 518 (1995), citing *Allegro v. Afton Village Corp.*, 9 N.J. 156, 87 A.2d 430, 432 (N.J. 1952). The Court noted that an agency must follow fair procedures and provide due process, and that, "[o]ne element of this requirement is the opportunity to present one's case – to attempt to meet one's burden of proof – in a fair manner before an impartial fact-finder." See *Morin* at 419, citing *Appeal of Lathrop*, 122 N.H. 262, 265 (1982). The Court further noted that, while it gives deference to an agency's interpretation of its regulations, its interpretation must still be "consistent with the language of the regulation and with the purpose which the regulation is intended to serve" and the agency must "comply

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<sup>11</sup> Id. at p. 3

<sup>12</sup> See Docket No. DE 24-070, Tab 114, Eversource Energy Letter Regarding the Department of Energy's Request to Amend the Procedural Schedule at p. 2

<sup>13</sup> See *Appeal of Morin*, 140 N.H. 515 (1995).

with the governing statute, in both letter and spirit.” See *Morin* at 519, referencing *Appeal of Alley*, 137 N.H. 40, 42 (1993) and *Sturman v. Socha*, 463 A.2d at 53 (1983).

15. The fact that Eversource has the burden of proof and an interest in adhering to the previously-approved procedural schedule is only one element of ensuring fair procedures and providing due process. One of the Commission’s governing statutes requires that it be, “the arbiter between the interests of the customer and the interests of the regulated utilities as provided by this title and all powers and duties provided to the commission by RSA 363 or any other provisions of this title shall be exercised in a manner consistent with the provisions of this section.”<sup>14</sup> Thus, the Commission must also consider the interests of the customer – including other parties representing customers in this case, such as the OCA, CPCNH, Mary Ellen O’Brien Kramer, Walmart, the Rate LG Customer Consortium, AARP, Aleksandar Milosavljevic-Cook, and Standard Power.<sup>15</sup> By focusing on the needs of Eversource as the petitioner, the Commission, in the Department’s view, did not fully balance the interests of the customers.
16. Additionally, the Commission must consider the interests of the parties in this case who intervened on the basis that their “rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding.”<sup>16</sup> When granting the petitions to intervene in this matter, the Commission found that they met the criteria for intervention under both RSA 541-A:32 and Puc 203.17.<sup>17</sup> Thus, the Commission must also consider the due process rights and interests of the other parties in this proceeding as well as those of Eversource. When emphasizing the importance of Eversource having the burden of proof in this matter and its interest in adhering to the previously approved procedural schedule as persuasive, the Commission did not demonstrate how it concluded that the inconvenience to Eversource resulting from the proposed, limited adjustments to the procedural schedule outweighed the due process rights of the Department and the other parties who either assented to, or did not object to, the requested extension. The Department thus

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<sup>14</sup> RSA 363:17-a

<sup>15</sup> See Docket No. DE 24-070, Tab 4, OCA Letter of Participation; Tab 10, Standard Power of America Petition for Intervention; Tab 16, Walmart, Inc. Petition to Intervene; Tab 19, Community Power Coalition of New Hampshire Petition to Intervene; Tab 21, Rate LG Customer Consortium Petition to Intervene; Tab 22, Petition for Intervention of Mary Ellen O’Brien Kramer; Tab 46, AARP Petition for Leave to Intervene; and Tab 47, Aleksandar Milosavljevic-Cook Petition for Intervention

<sup>16</sup> See RSA 541-A:32, I(b)

<sup>17</sup> See Docket No. DE 24-070, Tab 44, Order No. 27, 054 Granting Petitions to Intervene and Tab 49, Procedural Order Re: Late-Filed Motions to Intervene, Related Waivers

requests that the Commission grant further consideration to the rights of all parties to this proceeding and how scheduling considerations affect those rights.

17. In its Order, the Commission appears to have mistakenly characterized the substantial amount of information Eversource committed to provide at the January 7, 2025, Commission-Attended Prehearing Technical Conference held in this matter. On p. 2 of its Order, the Commission characterizes this information as, “additional Commission record requests in this docket that arose from the Commission-led technical session on January 8, 2025.” However, the Commission did not request the information via record requests – rather, Eversource volunteered to provide information in response to questions at the January 7, 2025, session.<sup>18</sup> Eversource did not state specifically when it would provide the information, and Eversource did not indicate that it would take a substantial amount of time and effort to do so.<sup>19</sup> To date, Eversource has not provided such information. The Department anticipated when it requested the extension to February 7, 2025, that it would have that information available. By characterizing the outstanding information as additional Commission record requests, the Commission overlooked the fact that some of the information was requested by the Department and that Eversource had committed to providing information not only to the Commission but to other parties as well, including the Department.
18. The Commission’s Order also appears to mistakenly conceive the availability of the Department’s audit in preparing its testimony. The Order states that, “the Commission does agree that with only a preliminary audit available to prepare its testimony, the DOE requires the ability to update its testimony after review of the final audit.”<sup>20</sup> Yet, the Department witnesses preparing testimony did not have a preliminary audit when preparing testimony, as referenced in the Commission’s Order.<sup>21</sup> If the Department were required to file testimony on January 24, it would not know how the audit findings may impact its testimony and whether its testimony may have required more significant updates than the Commission may have anticipated. Further, if the Department’s testimony was filed before the Final Audit Report was issued, the other parties would be disadvantaged by not knowing how much of the Department’s testimony may change and how

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<sup>18</sup> See, e.g., Docket No. DE 24-070, Tab, Transcript at p. 111, question from Mr. Dudley from the DOE as to whether Eversource could provide certain information to the Commission and the DOE.

<sup>19</sup> Id. at p. 161. Eversource stated that it planned to provide certain documentation through the third quarter of 2024 by the end of January.

<sup>20</sup> See Order at p. 4

<sup>21</sup> The Department’s witnesses only saw the Final Audit Report when it was issued on January 31, 2025.

much time they should dedicate to reviewing the Department's testimony before its updated testimony was filed. Additionally, the current schedule provided no opportunity for discovery on any updated testimony from the Department.

19. The Commission's Order also seems to mistakenly presuppose that the parties will reach a settlement in this proceeding. The Order refers to "the filing of the settlement" and states that it, "requires that the settlement agreement be filed on February 18, 2025 to allow time for the Commission and its staff to review and prepare for March hearings."<sup>22</sup> The Commission's Order appears to be partially based on an understanding that the Commission would receive a settlement agreement to review on February 18, but did not factor in the possibility that a settlement might not be reached – in which case the Commission would not need time to review a settlement agreement. Yet the Order would deprive the parties of the benefit of extra time to file testimony and conduct discovery and for Eversource to file its rebuttal testimony even if no settlement is reached. The Order thus failed to balance the possibility that the Commission may need time to review a settlement against the possibility that the parties' time to file testimony and engage in further discovery may be limited only to end up without a settlement and over a month left until final hearings start in this matter.
20. The approved procedural schedule provides the Commission with nearly four months after the close of hearings to issue a final order in this matter.<sup>23</sup> The Department's requested two-week testimony filing extension addressed the Department's expressed need for time to file fully-prepared testimony while maintaining the already scheduled hearing dates, and thus also maintaining the nearly four months the Commission will have after hearings to issue a final order in this matter.
21. The Department's agreement to the currently approved procedural schedule in this matter, with the January 24, 2025, deadline for intervenor testimony, was constrained by dates that the Commission laid out at the beginning of this proceeding as well as in a September 27, 2024, order that it said could not be changed.

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<sup>22</sup> See Order at p. 3

<sup>23</sup>See RSA 378:6, I(a) "Pending any investigation of a rate schedule which represents a general increase in rates and the decision thereon, the commission may, by an order served upon the public utility affected, suspend the taking effect of said schedule and forbid the demanding or collecting of the rates, fares, charges or prices covered by the schedule for such period or periods, not to exceed 12 months in all, as in the judgment of the commission may be necessary for such investigation, except as provided in paragraph II." In this instance, as Eversource's request is for a permanent rate increase with an effective date of August 1, 2024, the Commission must issue a final order before August 1, 2025.

These included final hearing dates starting on March 25, 2025, and concluding on April 9, and a settlement agreement filing deadline of February 17, 2025.<sup>24</sup> From the outset, the Department was concerned about whether it could perform a thorough review of Eversource's case and submit testimony by January 24, 2025.

22. Further, allowing updates to the Department's testimony two weeks after the deadline rather than extending the deadline by two weeks would also create confusion and require additional process. It would be confusing to have multiple versions of the Department's testimony in the record. The parties would also likely request an opportunity to ask data requests of the Department's updates and to adjust the procedural schedule to accommodate such. Allowing the Department to enter one set of complete testimony according to an adjusted schedule that the majority of parties have agreed on and that only Eversource objected to, as proposed in the Department's January 10 letter, would avoid the confusion of having multiple versions of testimony to review and having to come up with another adjusted schedule if needed to ask data requests on the Department's new testimony.
23. It would be difficult for the parties and the Department to engage in settlement discussions as provided for in the approved schedule while the Department was actively updating its testimony. It would be unfair for the other parties to not know the full/final contents of the Department's testimony when engaging in settlement discussions.
24. 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 parties have the right to present evidence at hearing in this proceeding. Whether or not an extension to the testimony filing date is granted, neither statute nor administrative rules of the Commission prohibit the parties from offering additional evidence, including evidence contained in its pre-filed testimony at hearing. Indeed, the parties have the due process right to do so.

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<sup>24</sup> See Docket No. DE 24-070, Tab 11, Order No. 27,029 Commencement of Adjudicative Proceeding and Notice of Prehearing Conference and Hearing and Tab 57, Procedural Order Re: Eversource Motion to Modify Procedural Schedule



25. Even considering its commitment to protecting Eversource's rights as the petitioner, the statute governing permanent rates states that, "[n]othing contained in this section shall preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon."<sup>25</sup> The Commission thus has broad discretion in the evidence it receives and considers as related to just and reasonable rates, and the Department believes that allowing it to provide full and comprehensive testimony will allow it to provide more evidence that may be pertinent and material to the determination of a just and reasonable rate base and rate of return than if it were limited to what testimony it is able to file by January 24 and supplemental testimony limited to audit issues.
26. 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.
27. 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.<sup>26</sup> 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.<sup>27</sup> 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..."<sup>28</sup> Part of the purpose of this authority is the Department's role in "providing a complete record for

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<sup>25</sup> RSA 378:28

<sup>26</sup> 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."

<sup>27</sup> 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

<sup>28</sup> RSA 12-P:2, IV

consideration by the commission.”<sup>29</sup> Fully developed and comprehensive testimony from the Department would fulfill its statutory role in this proceeding and enables the Commission to fulfill its statutory role.<sup>30</sup>

28. The Department believes that submitting informed testimony is both important as a party and consistent with its statutory duties and rights. 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.

29. The Commission has also recently extended the settlement filing deadline in this matter to accommodate a hearing on four pending motions.<sup>31</sup> The Commission then adjusted the schedule further in response to a Motion for Clarification regarding the rebuttal testimony deadline, suspending all features of the procedural schedule through February 24, 2025 (while maintaining the February 25, 2025, settlement filing deadline).<sup>32</sup> The Department urges the Commission to continue to adjust the procedural schedule as necessary to balance the rights of all parties to this proceeding, and thus grant rehearing on the Department’s request to adjust the procedural schedule in this matter.

The Department contacted the other parties to this proceeding to obtain their positions on its request. CPCNH assents to the Department’s request. The OCA, CLF, and Mary Ellen O’Brien Kramer have indicated that they take no position on the Department’s request. Eversource does not assent. The Department was unable to receive a response from CENH, NECTA, Walmart, AARP, Aleksandar Milosavljevic-Cook, the Rate LG Customer-Consortium, or Standard Power before filing.

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<sup>29</sup> Id.

<sup>30</sup> 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

<sup>31</sup> See Docket No. DE 24-070, Tab 139, Procedural Order: Scheduling Hearing on Pending Motions and Extending Date to File Settlement Agreement

<sup>32</sup> See Docket No. DE 24-070, Procedural Order Re: Partial Suspension of Procedural Schedule Through February 24, 2025

**WHEREFORE**, the Department respectfully requests that the Commission:

1. Grant rehearing of Procedural Order Re: Department of Energy's Motion to Modify Procedural Schedule issued January 17, 2025; and
2. Issue a revised Order granting the Department's request for an extension to file its testimony in this matter; and;
3. Grant such further relief as is just and required.

Dated: February 14, 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 14, 2025.

*/s/ Paul B. Dexter*  
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