BEFORE THE NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY PETITION FOR ADJUSTMENT OF STRANDED COST RECOVERY CHARGE FOR EFFECT ON FEBRUARY 1, 2025	:	DOCKET NO. DE 24-112

POSITION STATEMENT OF NRG RETAIL COMPANIES

Direct Energy Services LLC; Direct Energy Business, LLC d/b/a NRG Business; NRG Business Marketing, LLC (f/k/a Direct Energy Business Marketing LLC); Reliant Energy Northeast LLC d/b/a NRG Home; and XOOM Energy New Hampshire, LLC (collectively, the "NRG Retail Companies") hereby submit this Position Statement[1] regarding the Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource," "PSNH" or "Company") Petition for Adjustment of Stranded Cost Recovery Charge for Effect on February 1, 2025 in the above-captioned proceeding.

BACKGROUND

On June 20, 2024, in response to a recommendation from Eversource, the New Hampshire Public Utilities Commission ("Commission") directed Eversource to "prepare a proposal for the integration of the ES [Energy Service] Reconciliation Adjustment Factor charges into collection through the SCRC [Stranded Cost Recovery Charge] to be filed thirty (30) days in advance of the Company's next SCRC petition filing."[2] Eversource did not make the required submission in the timeframe directed.

[1] By filing this Position Statement, the NRG Retail Companies do not waive the arguments raised in the January 13, 2025 Joint Motion for Rehearing of Orders in this Docket and for a Prehearing Conference.

[2] Order No. 27,022 (Jun. 20, 2024), at 9.

Instead, on November 20, 2024, Eversource filed an initial Petition for Adjustment of Stranded Cost Recovery Charge for Effect on February 1, 2025,[3] which it updated on January 10, 2025.[4] Both the Petition and Updated Petition contain a proposal to include an ES Reconciliation Adjustment Factor rate as part of the SCRC to be collected from all Eversource distribution customers ("Proposal").[5]

On December 12, 2024, the Commission issued a Commencement of Adjudicative Proceeding and Notice of Hearing requesting that parties file position statements regarding the issues identified, including "whether the proposed Energy Service Reconciliation SCRC rate feature is just and reasonable, and allowed under the terms of RSA Chapter 374-F, RSA Chapter 369-B, the 2015 Agreement, and all other applicable law."[6] The NRG Retail Companies now hereby submit this Position Statement.

POSITION STATEMENT

The Proposal contravenes the 1996 Electric Utility Restructuring Act,[7] violates the well-accepted cost causation principle, represents a major deviation from long-standing Commission precedent, and will unduly harm the development of competitive markets and consumers. Moreover, the Restructuring Act specifically provides that "[t]he burden of proof for any stranded cost recovery claim shall be borne by the utility making such claim."[8] However, Eversource has failed to meet this burden. Thus, for the reasons set forth more fully below, the

[3] Petition for Adjustment of Stranded Cost Recovery Charge for Effect on February 1, 2025 (Nov. 20, 2024) ("Petition").

[4] Updated Petition For Adjustment of Stranded Cost Recovery Charge for Effect on February 1, 2025 (Jan. 10, 2025) ("Updated Petition").

[5] *See* Petition, at ¶¶ 9-10, 12; Updated Petition, at ¶¶ 9-10, 12.

[6] Commencement of Adjudicative Proceeding and Notice of Hearing (Dec. 12, 2024), at 5-6.

[7] RSA 374-F ("Restructuring Act").

[8] RSA 374:F-4,V.

NRG Retail Companies request that the Commission reject the Proposal and order Eversource to continue to recover all default service-related costs from default service customers.

I. THE PROPOSAL CONTRAVENES THE RESTRUCTURING ACT

The New Hampshire legislature explicitly stated that "[t]he most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets."[9] In order to accomplish this, the Restructuring Act required "***unbundling*** of prices and services and at least functional separation of centralized generation services from transmission and distribution services."[10]

Moreover, the Restructuring Act recognizes that "[c]ompetitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with ***appropriate price signals***, and improve public confidence in the electric utility industry."[11] In order to provide appropriate price signals, the Restructuring Act requires that

- "services and rates . . . be unbundled to provide customers ***clear price information*** on the cost components of generation, transmission, distribution, and any other ancillary charges."[12]
- "Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements . . . be recovered through the default service charge."[13]
- "The allocation of the costs of administering default service . . be borne by the customers of default service in a manner approved by the commission."[14]
- "Costs . . . not be shifted unfairly among customers."[15]

[9] RSA 374:F-1,I.
[10] *Id.* (emphasis added).
[11] RSA 374:F-1,II (emphasis added).
[12] RSA 374:F-3,III.
[13] RSA 374:F-3,V(c).
[14] *Id.*
[15] RSA 374:F-3,VI.

- "Any recovery of stranded costs . . . be through a nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all customer classes, lawful, constitutional, limited in duration, consistent with the promotion of fully competitive markets and consistent with these principles."[16]

The Proposal fails to satisfy each of these statutory requirements. As a consequence, adoption of the Proposal would contravene the Restructuring Act.

First, the Proposal would undermine the "most compelling reason" for restructuring because it would increase the costs of all customers and reduce the opportunities for customers to decrease their costs. As the Commission is aware, only the supply portion of electric service is subject to competition. Thus, when a customer chooses a competitive electric power supplier ("CEP") it can avoid paying the incumbent electric utility's default service rates but it must still pay all costs recovered in the delivery rates. As a consequence, allowing Eversource to recover costs associated with the supply of default service in delivery rates will reduce the amount of the bill that the customer can avoid by choosing a CEP offering a lower price and will increase the amount of the bill that all customers must pay.

Second, adoption of the Proposal would undermine the Restructuring Act requirements that rates and services be unbundled,[17] customers be provided with "clear price information" on the various cost components of electricity,[18] and buyers of electricity receive "appropriate price signals."[19] Default service is defined, in pertinent part, as "electricity supply that is available to

[16] RSA 374:F-3,XII(d).

[17] RSA 374:F-1,I (requiring "unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services."); RSA 374:F-3,III (requiring "services and rates . . . be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges.").

[18] RSA 374:F-3,III (requiring "services and rates . . . be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges.").

[19] RSA 374:F-1,II ("Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.").

retail customers who are otherwise without an electricity supplier . . . and is provided by electric distribution utilities . . . ."[20] As the Commission is aware, the supply of electricity is provided by generators. Thus, allowing Eversource to recover costs associated with the provision of default service from "distribution customers,"[21] by its very nature, results in an improper bundling of generation and distribution costs and services. Furthermore, permitting recovery of costs associated with the provision of default service in delivery rates will result in default service rates that do not accurately reflect the cost of providing that service and, concomitantly, in distribution rates that include an artificially inflated SCRC. As a consequence, customers will not receive "clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges" as specifically required by the Restructuring Act.[22] Without this price information, customers also will not receive appropriate price signals about the cost of electricity in contravention of the requirements of the Restructuring Act.[23] Without accurate price signals, customers cannot make informed decisions about the value of competitive supply options; thereby, hindering customer choice. Without meaningful customer choice, CEPs do not have incentives to offer products that further the State's clean energy goals or new and improved products further contravening the principles of the Restructuring Act.[24]

Third, approval of the Proposal would violate the explicit requirements regarding the recovery of stranded costs set forth in the Restructuring Act. As noted above, the Restructuring Act provides, in relevant part: "Any recovery of stranded costs should be through a

[20] RSA 374-F:2,I-a.

[21] Updated Petition, at ¶ 10 ("The Company proposes that the new Energy Service Reconciliation Adder be recovered from all distribution customers through the SCRC, as described in the joint testimony.").

[22] *See* RSA 374:F-3,III.

[23] RSA 374:F-1,II.

[24] *Accord id.* ("Competitive markets should provide electricity suppliers with incentives to operate ***efficiently and cleanly***, open markets for ***new and improved technologies***, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.") (emphasis added).

nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all customer classes, lawful, constitutional, limited in duration, consistent with the promotion of fully competitive markets and consistent with these principles."[25] However, if adopted, the Proposal would violate this provision. The Proposal does not provide for a date by which Eversource would stop recovering default service-related costs from distribution customers.[26] In fact, the Proposal was recommended by Eversource "[a]s a longer-term alternative solution."[27] Thus, adoption of the Proposal would result in stranded cost rates of infinite duration in direct violation of the Restructuring Act. Adoption of the Proposal would also harm the continued development of competitive markets. Reconciliations distort the relationship between the actual cost of providing default service during a particular period and the market price of power. Allowing Eversource to recover reconciliations associated with the provision of default service in delivery rates will only further distort the accuracy of default service pricing. As a consequence, default service customers will never know the actual cost of default service. Only when customers know the true cost of their power supply can they make appropriate decisions regarding their preferred supplier. In contrast, if customers do not know the true cost of their power supply, they are discouraged from adopting new solutions to meet their energy needs, including solutions that the competitive market can provide that offer customers prices that may be lower than the default service rate, provide longer term price stability, and/or offer other value-added products and

[25] RSA 374:F-3,XII(d).
[26] *See generally*, Petition; Updated Petition.
[27] Order No. 27,022 (Jun. 20, 2024), at 5.

services, such as renewable energy content that exceeds the mandatory requirements;[28] thereby unduly harming the competitive market[29] and consumers.

Fourth, adoption of the Proposal may also violate the explicit requirements of the Restructuring Act regarding the method by which specific default service-related costs must be recovered. Because of the procedural schedule established for this proceeding, the NRG Retail Companies have not had time since being granted intervention to obtain responses to discovery from Eversource.[30] Thus, it is unclear exactly what costs will be included in the ES Reconciliation Adjustment Factor. However, if the ES Reconciliation Adjustment Factor would recover any costs associated with compliance with the renewable portfolio standard for default service or costs of administering default service, it would further violate the requirements of the Restructuring Act.[31]

Finally, the Proposal would also violate the Restructuring Act because it would shift costs "unfairly among customers."[32] If Eversource is permitted to recover default service-related costs in delivery rates, customers that chose competitive supply run the risk of paying twice for the energy incorporated into their rates - once from their chosen competitive supplier and once as a distribution customer paying a portion of the cost of default service (even though the customer has chosen not to use it) in delivery rates; thereby, improperly shifting costs among customers.

[28] *See, e.g.*, https://www.energy.nh.gov/engyapps/ceps/ResidentialCompare.aspx?choice=Eversource (reflecting residential competitive supply offers in the Eversource service territory) (last visited Jan. 15, 2025).

[29] *Accord* Order No. 24,511 (Sep. 9, 2005), at 13 ("In addition, because competitive suppliers must recover their administrative costs through market prices, we believe the proposal will create a more level playing field and, as a result, help promote the development of retail competition."); Order No. 24,577 (Jan. 13, 2006), at 12-13 (same).

[30] *See* Joint Motion for Rehearing of Orders in this Docket and for a Prehearing Conference (Jan. 13, 2025).

[31] RSA 374:F-3,V(c) ("Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge."); *Id.* ("The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission.").

[32] RSA 374-F:3,VI.

II. ADOPTION OF THE PROPOSAL WOULD VIOLATE THE COST CAUSATION PRINCIPLE

As the Commission is aware, the cost causation principle is "well-accepted."[33] In fact, the Commission has relied on this principle in setting default energy supply rates for decades.[34] Notably, even in circumstances where "the percentage increases are very high for some classes," the Commission has continued to apply the cost causation principle because "the resulting rates better approximate the cost to serve each customer class . . . ."[35] If adopted, the Proposal would violate the cost causation principle by requiring customers receiving competitive supply to pay for the cost of services they are not using and have specifically chosen to avoid by selecting a CEP. As a consequence, both the default service rate and the stranded cost rate charged by Eversource would no longer be just and reasonable.[36]

Eversource claims that the recovery of default service costs in delivery rates is appropriate because of the "backstop" nature of default service.[37] However, this assertion is inconsistent with the Restructuring Act, which specifically authorizes the Commission, if it is in

[33] Order No. 24,540 (Oct. 31, 2005), at 15.

[34] *See* Order No. 24,511 (Sep. 9, 2005), at 13 ("The inclusion of administrative costs in the DS [default service] rate will result in the recovery of those costs from DS customers only, which is consistent with the Restructuring Act and with the principle of cost causation."); Order No. 24,577 (Jan. 13, 2006), at 12 (same); *see also* Order No. 26,120 (Apr. 18, 2018), at 4 ("The increase is the result of efforts by Northern to assess, on the basis of cost causation, the component of supply-support service that could reasonably be assessed to competitive natural gas suppliers relying on Northern's distribution system, under difficult operational conditions such as those experienced in late December and early January."); Order No. 24,627 (Jun. 1, 2006), at 17 ("[W]e find that the capacity costs that Northern seeks to recover from New Hampshire customers through its COG [cost of gas] filings are no longer the result of a cost allocation methodology that is based on sound cost causation principles. Moreover, because the extent of the cost shift is now significant, as demonstrated by the change in New Hampshire's annual allocation factor over the past several years, we find that the PR Allocator no longer achieves the 'just and reasonable' ratemaking standard required under RSA 378:7.") (footnote omitted).

[35] Order No. 25,613 (Dec. 23, 2013), at 12.

[36] *Cf.* Order No. 24,627 (Jun. 1, 2006), at 17 ("[W]e find that the capacity costs that Northern seeks to recover from New Hampshire customers through its COG filings are no longer the result of a cost allocation methodology that is based on sound cost causation principles. Moreover, because the extent of the cost shift is now significant, as demonstrated by the change in New Hampshire's annual allocation factor over the past several years, we find that the PR Allocator no longer achieves the 'just and reasonable' ratemaking standard required under RSA 378:7.") (footnote omitted).

[37] Updated Petition, at ¶ 9.

the public interest, to "implement measures to discourage misuse, or long-term use, of default service."[38] If the legislature had intended default service to be a "backstop," it would not have authorized the Commission, if/when appropriate, to adopt measures to discourage its long-term use.

III. THE PROPOSAL IS INCONSISTENT WITH LONG ESTABLISHED PRECEDENT

More than a decade ago, the Commission determined that "[t]he price of . . . default service shall be PSNH's actual, prudent, and reasonable costs of providing such power . . . ."[39] The Commission also concluded long ago that the actual costs that Eversource incurs providing default service should include any over- or under-recoveries associated with providing default service.[40] In fact, the Commission specifically determined that "once [PSNH's] Part 3 Stranded Costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with . . . Default Service would thenceforth be carried forward for reconciliation purposes into the Default Service (i.e., Energy Service) rate."[41] Despite this, the Proposal seeks to recover default service-related costs in delivery rates.[42] If adopted, Eversource's default service rates would not be "PSNH's actual, prudent, and reasonable costs of

[38] RSA 374:F-3,V(c).

[39] Order No. 25,305 (Dec. 20, 2011), at 40.

[40] *See, e.g.*, Order No. 25,380 (Jun. 27, 2012), at 6 (finding that Eversource's actual costs included an estimated over-recovery and denying Eversource's "request to defer the over-recovery in energy service revenues.").

[41] Order No. 24,711 (Dec. 15, 2006), at 2-3; *see also* Order No. 25,466 (Feb. 27, 2013), at 2 ("Previously, the difference between revenues and costs associated with providing . . . default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. Pursuant to the Restructuring Agreement, Part 3 stranded costs were those stranded costs for which PSNH undertook some risk of non-recovery. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs and the Commission approved a reduction to the Company's SCRC to reflect that development. In a prior order, the Commission had determined that once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with transition service and energy service would be reconciled in the energy service rate.") (citations omitted).

[42] Updated Petition, at ¶¶ 9-11.

providing [default service] power . . . ."[43] Thus, the Proposal directly contravenes long standing Commission precedent[44] and should be rejected.

IV. INCREASED CUSTOMER MIGRATION IS NOT AN APPROPRIATE JUSTIFICATION TO SUPPORT ADOPTION OF THE PROPOSAL

The Commission has long recognized that significant customer migration could impact default service rates.[45] Despite this, the Commission concluded that the actual costs of providing default service should include any over- or under-recoveries associated with providing default service.[46] The fact that what was expected to occur has come to pass does not warrant unduly harming consumers and the competitive market by allowing Eversource to adopt default service and stranded costs rates that contravene the Restructuring Act, the "well-accepted" cost causation principle and long-standing Commission precedent.

[43] *Cf.* Order No. 25,305 (Dec. 20, 2011), at 40.

[44] *Id.* ("The price of . . . default service shall be PSNH's actual, prudent, and reasonable costs of providing such power . . ."); Order No. 25,380 (Jun. 27, 2012), at 6 (finding that Eversource's actual costs included an estimated over-recovery and denying Eversource's "request to defer the over-recovery in energy service revenues."); *accord* Order No. 24,682 (Oct. 23, 2006), at 13 ("We deny UES' request to switch to a uniform annual rate for Non-G1 DS customers. While such a rate might reduce the rate impact felt by winter users, with the removal of the under-collection and associated interest expense from the calculation of the Non-G1 DS charge the rate impact benefits of the proposal will be smaller than previously thought. In addition, we are concerned about the implications of UES' proposal for energy conservation during the winter months, for intra-class subsidies, and for creating unnecessary new deferred costs with interest.").

[45] *Accord* Order No. 22,514 (Feb. 28, 1997), at 180 ("The portfolio for default service . . . should be made up of supplies of a short contractual duration which will not create stranded costs regardless of the number of customers that may abruptly choose to acquire their own supplies.").

[46] *See, e.g.*, Order No. 25,380 (Jun. 27, 2012), at 6 (finding that Eversource's actual costs included an estimated over-recovery and denying Eversource's "request to defer the over-recovery in energy service revenues."); Order No. 24,711 (Dec. 15, 2006), at 2-3 ("[O]nce [Eversource's] Part 3 Stranded Costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with . . . Default Service would thenceforth be carried forward for reconciliation purposes into the Default Service (i.e., Energy Service) rate."); Order No. 25,466 (Feb. 27, 2013), at 2 ("Previously, the difference between revenues and costs associated with providing . . . default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. Pursuant to the Restructuring Agreement, Part 3 stranded costs were those stranded costs for which PSNH undertook some risk of non-recovery. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs and the Commission approved a reduction to the Company's SCRC to reflect that development. In a prior order, the Commission had determined that once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with transition service and energy service would be reconciled in the energy service rate.") (citations omitted).

Moreover, Eversource could have avoided a significant portion of the under-recovery that prompted the Proposal by adjusting the load forecasts that it used to support the proposed Large Customer Group ES rates ***in 2023***. For example, when it sought approval in June 2023 for new ES rates, Eversource's own quarterly migration data showed that Eversource was already experiencing substantial customer migration in the Large Customer Group.[47] However, Eversource's projected load failed to adequately account for this migration.[48] Thus, the fact that Eversource experienced substantial customer migration and needed to collect a significant under-recovery due, in part, to Eversource's failure to make timely adjustments to its own load projections to account for that migration should not provide sufficient justification to allow the Proposal to go into effect in violation of the Restructuring Act, the "well-accepted" cost causation principle or Commission precedent.

The Restructuring Act specifically provides that "[t]he burden of proof for any stranded cost recovery claim shall be borne by the utility making such claim."[49] As demonstrated above, Eversource has failed to meet this burden. Thus, the Commission should reject the Proposal and require Eversource to continue to recover default service-related costs from default service customers.

CONCLUSION

As the foregoing demonstrates, the Proposal contravenes the Restructuring Act, violates the well-accepted cost causation principle, represents a major deviation from long-standing Commission precedent, and will unduly harm the continued development of the competitive

[47] Docket No. DE 06-125, PSNH 1st Quarter 2023 Customer Migration Report (showing that 96.4% of Eversource's Large Customer Group load was receiving competitive supply in March 2023).

[48] Docket No. DE 23-043, Direct Testimony of Marisa B. Paruta and Scott R. Anderson (Jun. 15, 2023), Attachment MBP/SRA-2, Page 2 of 4.

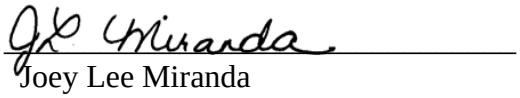
[49] RSA 374:F-4,V.

market and consumers. Thus, for all the foregoing reasons, the Commission should reject the Proposal and order Eversource to continue to recover all default service-related costs from default service customers.

Dated: January 15, 2025

Respectfully submitted,

DIRECT ENERGY SERVICES, LLC; DIRECT ENERGY BUSINESS, LLC D/B/A NRG BUSINESS; NRG BUSINESS MARKETING, LLC (F/K/A DIRECT ENERGY BUSINESS MARKETING, LLC); RELIANT ENERGY NORTHEAST LLC D/B/A NRG HOME; XOOM ENERGY NEW HAMPSHIRE, LLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Position Statement has this day been sent via electronic mail or first-class mail to all persons on the service list.

Joey Lee Miranda

Dated: January 15, 2025