

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

Docket No. DE 17-160

RESPONSE OF EVERSOURCE TO STAFF RECOMMENDATION

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “the Company”) submits this response to the New Hampshire Public Utilities Commission (“Commission”) relative to the January 24, 2018 recommendation of the Commission Staff for a disallowance of certain costs incurred by the Staff and the Office of Consumer Advocate (“OCA”) and charged to Eversource. In addition to representing a material shift from Staff’s prior position in the docket, the recommendation seeks relief that is contrary to both the law and policy of the State. Accordingly, the Commission should reject the recommendation. In support of this submission, Eversource says the following:

1. By a petition dated October 20, 2017, Eversource sought recovery of certain costs relating to both the amended level of the Commission’s assessment to Eversource, as well as costs of consultant services for consultants retained by the Staff and OCA. The assessment costs are not in issue here. Relative to the consultant costs, and with reference to RSA 365:38-a and RSA 363:28, Eversource sought to recover \$430,569 in costs for consultants hired and used by the Staff and the OCA in Docket Nos. IR 15-296 and DE 16-576, the Grid Modernization and Net Metering dockets, respectively.

2. On December 19, 2017, the Commission held a hearing on the Company’s request. During that hearing, the Staff requested that the Commission order an audit of the consulting costs. In response to the Staff’s request, the Chair of the Commission asked of Staff, “I’d like you to address what you have in mind for an audit. Because, while you asked the question of Mr. Goulding, Eversource didn’t incur these costs, the Staff and the

OCA did. So, I'm interested in understanding what an audit -- what the audit would mean in this context.” Transcript of December 19, 2017 hearing at 24. In response, the Staff stated “I think it is true, that I believe Mr. Chagnon reviewed the bills and determined that they were all accurately accounted for, and just to double check on that by Staff. I don't think there will be any discrepancies found. But, you know, a confirmation is always appropriate, and it probably wouldn't take much time.” *Id.* at 24-25. Accordingly, the Commission acknowledged that the costs were incurred by the Staff and OCA, and the Staff acknowledged that the audit was for the purpose of “double checking” or confirming the accuracy of the calculations of the Staff's analyst.¹

3. On December 27, 2017, the Commission issued Order No. 26,091 in this proceeding where it concluded that:

The Commission has reviewed the proposed adjustment to Eversource's distribution rates to allow full recovery of the Commission's assessment from the time the rate was established through the most recent assessment, and to recover costs associated with the Commission's investigation into Grid Modernization and Net Metering. We conclude that these adjustments are in the public interest and result in just and reasonable rates.

Order No. 26,091 at 5. Accordingly, the Commission authorized “full recovery” of the Staff and OCA consultant costs.

4. On January 24, 2018 the Commission's audit division released its final audit of the costs which recommended a disallowance of nearly half of the consultant costs, \$200,904, based upon its assessment that the costs from calendar year 2016 should have been booked to a different account than the one to which they were booked. On January 30, 2018, the Staff filed its recommendation supporting the audit division recommendation for a disallowance and requesting that the Commission order the Company to adjust its

¹ At hearing, Eversource agreed that it would abide by the results of a Staff audit. Transcript of December 19, 2017 Hearing at 15. That agreement, however, was premised on an understanding that the purpose of the audit was as Staff described – to confirm the relevant calculations. It was not, and could not credibly be interpreted as, an agreement that any and every potential result of an audit, regardless of scope, would be adopted without question by the Company.

rates to account for the recommended disallowance. Eversource objects to the Staff's recommendation.

5. First, as a procedural matter, because the Commission has authorized full recovery of the consultant costs through Eversource's rates, the Staff's recommendation is requesting that the Commission amend its prior order. In that Order No. 26,091 was issued following a hearing, to the extent the Commission is inclined to adopt the Staff's recommendation, it may only do so following notice and a hearing as required by RSA 365:38.

6. With respect to the substance of the audit and the recommendation, the booking of the costs in the manner done by Eversource – as an expense in 2016, rather than as a deferral – does nothing at all to change the nature of the expenses. The consultant costs incurred by the Staff and OCA and billed to the Company were, in fact, billed to and paid by the Company. There is nothing to indicate that the costs incurred by Eversource in paying those bills were improper, imprudent, unreasonable, or in any way contrary to the standards by which cost recovery is judged in New Hampshire. As explained in the Company's response to the audit, the timing of the costs, and the then-uncertain possibility of recovery, made it appropriate to book them as they were booked. Any change to that treatment once recovery was made clear did nothing to alter the costs, did not increase the costs to customers or enrich the Company, and did not otherwise render these costs improper for recovery. In short, the Company's accounting treatment of the consultant costs was reasonable and appropriate and should have no bearing on recovery.

7. Furthermore, denying recovery of these costs runs contrary to New Hampshire law. With respect to the costs of the consultants retained by the OCA, RSA 363:28, III provides:

The consumer advocate shall have authority to contract for outside consultants within the limits of funds available to the office. With the approval of the fiscal committee of the general court and the governor and council, the office of the consumer advocate may employ experts to assist it in proceedings before the public utilities commission, and may pay them reasonable compensation. The public utilities commission shall charge a

special assessment for any such amounts against any utility participating in such proceedings and ***shall provide for the timely recovery of such amounts*** for the affected utility.

(emphasis added). As used in New Hampshire law, the word “shall” is generally interpreted as making a statute mandatory. *See e.g., McCarthy v. Wheeler*, 152 N.H. 643, 645 (2005). Accordingly, in that the law states that the Commission “shall provide” for the recovery of costs incurred by the OCA, that provision should be interpreted to permit recovery of costs incurred by the OCA, and paid by Eversource. To do otherwise runs contrary to this requirement.

8. With respect to the consultant costs incurred by the Staff, RSA 365:38-a states, in relevant part, that the Commission “may allow recovery of costs associated with utility proceedings before the commission, provided that recovery of costs for utilities and other parties shall be just and reasonable and in the public interest.” As noted above, in Order No. 26,091, the Commission specifically concluded that the rate adjustments needed to permit “full recovery” these costs were “in the public interest and result in just and reasonable rates.” Order No. 26,091 at 5. Accordingly, though the use of “may” in this statute would make recovery discretionary rather than mandatory, the Commission’s discretion has been exercised and the recovery has been judged to be just, reasonable and in the public interest. Treating the costs, temporarily, as an expense while recovery was unclear does not render the Commission’s conclusion infirm.

9. Beyond the legal requirements, there are additional reasons to permit recovery of these costs. As noted above, the Staff had contended to the Commission that the purpose of the audit was to confirm the Staff’s calculations, and not for some other purpose. Accordingly, the Staff’s recommendation is one that falls outside the scope of the audit it argued was necessary, and it is contrary to the one the Commission understood would be undertaken based upon Staff’s statements at hearing. Additionally, and as noted in Eversource’s initial filing, the consultant costs in issue here are the same costs for which full recovery has been permitted for Unitil Energy Systems. *See* Order No. 26,007 (April 20, 2017) in Docket No. DE 16-384. In that these are the same costs, there is no good

policy reason to permit recovery for one utility, but deny it for another.² Eversource has not sought to profit from recovery these costs, or to harm customers. Rather it has sought to recover the costs incurred by others as it is entitled to do by law, and in a manner the Commission has determined is just and reasonable. Accordingly, for the reasons stated, the Commission should not adopt the Staff recommendation, but should permit Eversource to recover the costs the Commission has determined Eversource is entitled to collect.

Respectfully submitted,

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

February 6, 2018
Date

By: 

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

February 6, 2018
Date


Matthew J. Fossum

² Moreover, Eversource notes that the expenses incurred by UES were not part of any Staff audit. The audit in Docket No. DE 16-384 concluded prior to UES booking consultant costs from the Grid Modernization and Net Metering dockets, see Attachment JJC-1 to November 16, 2016 Testimony of James Cunningham in Docket No. DE 16-384. Nonetheless, UES was permitted full recovery of consultant costs through its settlement with the Staff and OCA, which the Commission approved in Order No. 26,007. It is unclear how an audit focused on confirming relevant calculations may be used as a basis to deny recovery to Eversource, when no audit of any kind was required of another company seeking identical relief.