

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 15-251**

**EVERSOURCE ENERGY**

**Complaint by Robert Fisher against Eversource Energy**

**Order Denying Complaint**

**ORDER NO. 25,807**

**September 2, 2015**

In this order, we find that PSNH did not violate N.H. Admin. Rule Puc 1203.03(i)(1), which requires a guarantor to be a “customer in good standing of the utility,” when it rejected Robert Fisher’s brother’s offer to guarantee Mr. Fisher’s account. Based on a comprehensive review of N.H. Admin. Rule Puc 1203.03, we find to be reasonable Eversource’s interpretation of “customer in good standing of the utility” as describing a customer who has not had “any disconnect notices in the last 12 months” of service with Eversource. Because Mr. Fisher’s brother had been an Eversource customer for only two months, the brother was not a “customer in good standing” for the purpose of acting as a guarantor.

**I. PROCEDURAL HISTORY**

After exhausting the informal complaint resolution process available under Puc 1200, Robert Fisher filed a formal complaint with the Commission alleging Eversource Energy used an unreasonable interpretation of the phrase “customer in good standing of the utility” as it appears in Puc 1203.03(i)(1). The Commission forwarded the complaint to Eversource pursuant to Puc 204.02, and Eversource responded as required by Puc 204.03. By secretarial letter dated June 8, 2015, the Commission concluded that “it is reasonable for Eversource to define

‘customer in good standing’ as a customer with a history of twelve timely payments without arrearages before accepting that customer’s personal guarantee as surety for another customer’s account.” The Commission thus “declined to conduct an independent investigation or to commence an adjudicative proceeding” and considered the case “resolved.”

Mr. Fisher filed a Motion for Reconsideration, which the Commission treated as a motion for rehearing pursuant to RSA 541:3. Mr. Fisher argued that the phrase “customer in good standing” should carry its “common understanding” and cited several definitions of “good standing” that do not contain a time requirement like the 12 months in Eversource’s interpretation. Eversource objected, stating the motion raised no new issues that the Commission overlooked or misapprehended. The Commission granted Mr. Fisher’s motion and scheduled a hearing. Puc 204.05.

At the August 10, 2015, hearing, Mr. Fisher presented exhibits and the testimony of three witnesses, including his brother, Sam Fisher, the proposed guarantor. Eversource introduced exhibits related to Robert Fisher’s payment history, Eversource’s policy on written guarantees, and the testimony of Janice Johnson, the Supervisor of Eversource’s Credit and Collection Department. All filings in this docket are posted to the Commission’s website at <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-251.html>.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Robert Fisher**

Mr. Fisher does not contest the following facts and law giving rise to the disputed issue over the guarantee provision of Puc 1203.03(i)(1). Transcript of August 10, 2015, hearing (Tr.) at 4-5. Eversource may request a deposit from an existing customer when the customer receives at least four disconnect notices for nonpayment within a 12 month period.

Puc 1203.03(e)(1)(a). Mr. Fisher received 11 disconnect notices for nonpayment during the 12 months preceding Eversource's request for a deposit. Exhibit 4, Attachment 1.<sup>1</sup> Eversource requested a \$680 deposit, which amount is based on the second and third highest bills during that 12 month period. Puc 1203.03(l)(1); Exhibit 4, Attachment 3. In lieu of paying the deposit, the rules allow a "responsible party" to sign an "irrevocable written guarantee" for the customer's account. Puc 1203.03(i)(1). One type of acceptable responsible party under the rules is a "customer in good standing of the utility." *Id.* Mr. Fisher's brother, Sam Fisher, offered to sign a guarantee. Eversource rejected the offer, however, because Sam Fisher had been an Eversource customer for only two months when the offer was made. Tr. at 18. The phrase "customer in good standing of the utility" is not defined in the rules. Eversource interprets it to describe someone who has been a customer for twelve months who has not had "any disconnect notices in the last 12 months." Exhibit 4, Attachment 5, at 3 (Eversource Letter of Guaranty policy); *see* Tr. at 43 ("Q. [W]hat's required of them? A. Twelve months of consecutive good credit with us"). Mr. Fisher disputes this interpretation of "customer in good standing" as applied to his brother, specifically the 12 month requirement.

Mr. Fisher argues that the meaning of the phrase "customer in good standing" should be its "common understanding" using "any layman's standards." Tr. at 11. The definition "would need to be commonly understood to the average citizen, to a reasonable person, who would do business or have other dealings with any of these [non-utility] entities." Tr. at 12. Mr. Fisher supported his argument that such a definition does not include a time element with other definitions of "customer in good standing," most of which merely require the customer to be

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<sup>1</sup> Several exhibits marked at the hearing contain a number of documents labeled "exhibit." For example, Exhibit 4 cited in the text contains attachments that were labeled as Exhibits 1 through 5. To avoid confusion, this Order will refer to the "exhibit" numbers as marked during the hearing and will refer to the individual documents as "attachments."

“current” or to have “all outstanding bills paid.” Tr. at 10. For example, according to Mr. Fisher, the New Hampshire Secretary of State defines good standing for corporations as having “filed all reports and fees,” without regard to time. Exhibit 2, Attachment E (citation omitted). The New Hampshire Bar Association considers attorneys to be in good standing if they have paid all dues and fees and are current on other obligations, without regard to any number of months. Exhibit 2 at Attachment F (citation omitted). Sam Fisher’s landlord considers him to be “in good standing” because he “has lived here from 2/18/2015 to present and he has never paid late.” Exhibit 2 at Attachment G; Tr. at 19; *see* Mr. Fisher’s Motion for Reconsideration (citing definitions of “good standing” from Wikipedia, uslegal.com, Oxforddictionaries.com, thelawdictionary.org, and howtowritealetter.net).

Mr. Fisher presented evidence of how other utilities define “good standing.” Nick Zaricki testified that he called Liberty Utilities (Liberty), said he was “doing some research for a hearing and was wondering if you can help me out with what Liberty considers a ‘customer in good standing.’” Exhibit 2 at Attachment A. Liberty’s customer service representative said, according to Mr. Zaricki, “it looks like we consider a customer in good standing as long as they haven’t missed or been late on more than three payments.” *Id.*; Tr. at 26. Mr. Fisher separately asked Liberty for its interpretation of the phrase. Although Mr. Fisher’s request is not in the record, Michael Licata, Liberty’s Director of Government Relations, responded by email that “should such a request [for a written guarantee] be made of Liberty Utilities we would define ‘customer in good standing’ as one without late payments or disconnections for a period of 12 months.” Exhibit 2 at Attachment D; Tr. at 27. Mr. Zaricki called Unitil and asked a customer service representative, “if a customer required a letter of good standing from Unitil to get approval on a loan, what criteria would that customer need to meet ...?” After checking with

her manager, the representative told Mr. Zaricki that “a customer in good standing would be if a customer is current on their payments and paid on time.” Exhibit 2 at Attachment B; Tr. at 24. Mr. Zaricki spoke with another Unitil customer service representative on another day and received the same answer. Exhibit 2 at Attachment B; Tr. at 25. Mr. Zaricki emailed the New Hampshire Electric Cooperative (NHEC), saying “I’m researching some legislation for the upcoming session year and I was wondering ... how the co-op defines a customer in good standing?” Exhibit 2 at Attachment C. NHEC responded that members must have “at least 12 consecutive months without an arrearage to qualify for election to NHEC’s Board of Directors,” and that “member deposits are credited to current member electric bills when there has been 24 consecutive months without an arrearage.” *Id.*; Tr. at 23. Mr. Fisher presented language from Southern California Gas Company. To establish credit or waive a deposit, its customers can provide a Credit Reference Letter from any other utility, which letter must demonstrate “twelve months of continuous service within the past two years” and that “the account was maintained in good standing within those 12 months with no closes for non-payment, no returned items and two or less overdue notices.” Exhibit 1, Attachment 5, at 12 (citation omitted).

Mr. Fisher also presented the testimony of Josh Youssef, a small business owner. Mr. Youssef testified that, for his business purposes, one only needs to have paid all outstanding bills to be in good standing, even if the customer had a poor payment history. “[A] customer who has previously been late ... or has not been in good standing, can rectify this by paying all outstanding or late bills and would then be again considered a customer in ‘good standing’ regardless of payment history.” Exhibit 1, Attachment 3; Tr. at 20-21. Mr. Youssef testified that his definition of “good standing” is “commonly accepted [among those] doing business in

New Hampshire.” *Id.*

Mr. Fisher argues these examples prove that the phrase “good standing,” by itself, does not imply a time element. Mr. Fisher suggests that the common understanding of good standing allows a customer to come into compliance on one day and be considered “in good standing” the next. Mr. Fisher thus asks the Commission to reject Eversource’s definition that imposes the twelve-month requirement and direct Eversource to accept Sam Fisher’s offer to be a guarantor.

### **B. Eversource Energy**

Eversource presented its written guaranty policy and Ms. Johnson’s supporting testimony. The written policy states, “[a]cceptable credit history is not having any disconnect notices in the last 12 months.” Exhibit 4, Attachment 5, at 3. Ms. Johnson said for a customer guarantee, a customer in good standing is required to have had “[t]welve months of consecutive good credit with us,” and that this policy has been in effect for 20 years. Tr. at 43. Ms. Johnson testified that she has applied this definition ten to fifteen times per week for the past 20 years without comment or objection from the Commission. *Id.*

Eversource notes that utilities are sometimes confronted with rule language that is not specifically defined. In such cases, Eversource argues that the law requires it to interpret such words “through a review of their plain meaning within the context of the overall scheme in which the regulations exist, and in light of the purpose the regulation is intended to serve.” Exhibit 3, Attachment 2, at 3-4. Applying that standard, Eversource argues, for purposes of acting as a guarantor, its definition of “customer in good standing of the utility” as “not having any disconnect notices in the last 12 months” is reasonable and consistent with the overall scheme of Puc 1203.03, as follows.

First, Eversource argues that other subsections of Puc 1203.03, titled “Deposits,” contain 12-month requirements similar to Eversource’s interpretation of Puc 1203.02(i)(1).

Puc 1203.03(e)(1) looks at a 12-month period to determine whether the customer has enough disconnect notices for nonpayment to authorize a deposit request. Guarantors “shall be released from liability and no further deposit shall be required . . . when all bills have been paid without delinquency for 12 consecutive months,” and Puc 1203.03(j) requires that the utility return any deposit “when bills have been paid without arrearage for 12 consecutive months.” Tr. at 51-52.

Second, Eversource pointed to the evidence from the other utilities presented by Mr. Fisher. Liberty has the same interpretation of “customer in good standing of the utility,” Tr. at 27, the policy of Sothern California Gas Company is similar, Exhibit 1, Attachment 5, at 12, and NHEC’s policy on the return of deposits after 24 months is closer to Eversource’s policy than that suggested by Mr. Fisher, Tr. at 53. Finally, Eversource argued through its cross-examination of Sam Fisher that utilities are different from unregulated private businesses in that utilities cannot refuse to provide services. Tr. at 35.

Eversource argues these facts support its interpretation of “customer in good standing of the utility” to require a clean 12-month payment history. Eversource thus asks the Commission to deny Mr. Fisher’s complaint because its definition of “customer in good standing of the utility” is reasonable.

### **C. Commission Staff**

Commission Staff did not actively participate in this docket, but at hearing agreed with Eversource’s statement of the law and that Eversource’s interpretation of “customer in good standing of the utility” is reasonable. Tr. at 49-51.

### III. COMMISSION ANALYSIS

The facts are not in dispute. Tr. 4-5. Eversource requested a deposit or guaranty from Mr. Fisher based on his history of disconnect notices for nonpayment, and Eversource denied Sam Fisher's offer to be a guarantor pursuant to Eversource's policy. The question is whether Eversource may enforce its interpretation of "customer in good standing of the utility" as a customer "not having any disconnect notices in the last 12 months" when the specific subparagraph Puc 1203.03(i)(1) does not contain a 12-month requirement.

It is impossible for all rules to define every term and anticipate every situation to which they will be applied. When disputes arise over how to interpret particular rule language, the courts direct us to examine the entire rule and its intent.

[W]e interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result.

*Boviard v. N.H. Dep't of Admin. Svcs.*, 166 N.H. 755, 759 (2014).

It therefore follows that where terms or phrases in an administrative agency rule are not specifically defined, we may look to provisions not only within the statute, but within other rules promulgated pursuant to the statute for guidance.

*State v. Elementis Chemical*, 152 N.H. 794, 803 (2005).

We do not agree with Mr. Fisher that the disputed phrase should be examined outside the utility context to determine its "plain meaning" or "common understanding" through references to other settings. The rule at issue expressly applies to utilities and not to the broader business community through the phrase "of the utility," and case law directs us to consider Eversource's interpretation "in the context of the overall ... regulatory scheme and not in isolation" by looking to "other rules ... for guidance." Regulated utilities are not equivalent to the business community at large. Utilities must accept every customer that asks for service. They do not



have the discretion to reject customers with poor credit histories. Utilities must also answer to the Commission if they are lax or ineffective in collecting payments from customers. Every dollar that Eversource does not collect from one customer must be collected from other customers who do not default on their obligations. These differences between regulated utilities and other private businesses are embodied in Puc 1203.03 and support Eversource's stricter definition of "customer in good standing of the utility."

First, and most telling, the deposit "shall be refunded when all bills have been paid without arrearage for 12 consecutive months." Puc 1203.03(1)(5). This subparagraph strongly supports the interpretation that a 12-month history "without arrearage" is the rule's intended definition of "customer in good standing of the utility," given that is when the utility must return the deposit originally paid because the customer was not in good standing. Second, the utility must determine credit worthiness after reviewing a 12-month payment history.

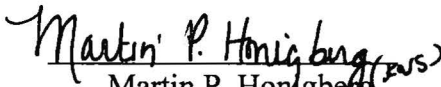
Puc 1203.03(e)(1). Third, it must calculate the amount of the deposit based on the prior 12 monthly bills. Puc 1203.03(1)(1). All these references to 12 months are within the single rule titled "Deposits." Puc 1203.03. Eversource's definition is also consistent with the practice of Liberty, Southern California Gas Company, and, to a lesser degree, NHEC, as described above. We thus find Eversource's interpretation of "customer in good standing of the utility" to be reasonable and its decision not to accept Sam Fisher's offer as a guarantor to be appropriate. To avoid similar disputes in the future, we encourage Eversource to make the requirements of a guarantor easily accessible to the public, perhaps through an appropriate link on its website.

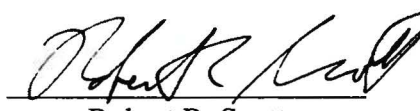
**Based upon the foregoing, it is hereby**

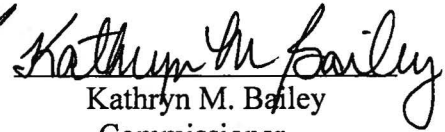
**ORDERED**, that Mr. Fisher's complaint is denied.

By order of the Public Utilities Commission of New Hampshire this second day of


September, 2015.

  
Martin P. Honigberg  
Chairman

  
Robert R. Scott  
Commissioner

  
Kathryn M. Bailey  
Commissioner

Attested by:

  
Kimberly Nolin Smith  
Assistant Secretary