

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 18-049

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY**

Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions

Order Regarding Rate Effects from Tax Reform

ORDER NO. 26,177

September 27, 2018

APPEARANCES: Matthew J. Fossum, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; the Office of the Consumer Advocate by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

In this order, the Commission recognizes the federal and state corporate tax reductions as a 2018 “Exogenous Event” within the meaning of the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement approved in Docket No. DE 14-238. The Commission directs Eversource to address the rate effects of the tax reductions by March 31, 2019, and request a rate for effect July 1, 2019, that is designed to provide customers with the full benefit of the tax reductions when Eversource files its certification of 2018 Exogenous Events, if, by that time, Eversource has not already done so in a rate case filing. If Eversource files its next rate case for rates effective on or after July 1, 2019, Eversource shall design any requested rate so that it continues to provide customers with the full benefit of the tax reductions. In this manner, the excess revenue under the current rate structure attributable to the tax reductions, will be credited to customers with interest and will begin to be credited no later than July 1, 2019.

I. PROCEDURAL HISTORY

Effective January 1, 2018, the federal corporate income tax rate decreased from 35 percent to 21 percent, and the New Hampshire Business Profits Tax rate was reduced from 8.2 percent to 7.9 percent. In *Investigation to Determine Rate Effects of Federal and State Corporate Tax Reductions*, Order No. 26,096 (January 3, 2018), the Commission directed each public utility to file a proposal addressing the effects of those changes no later than April 1, 2018, and to include financial information sufficient to establish a revenue requirement reflecting the impact of those changes on customer rates. As directed, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or Company) filed a technical statement on March 30, 2018. The Office of the Consumer Advocate (OCA) filed a letter of participation on April 9, 2018. The Commission issued an Order of Notice on May 30, 2018, scheduling a prehearing conference on June 18.

On June 26, 2018, Eversource filed a supplemental technical statement presenting two alternative proposals to its initial technical statement. The Commission issued a Supplemental Order of Notice on June 28, 2018, which scheduled a hearing for July 11.

The technical statements, including the attachments and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at <http://puc.nh.gov/Regulatory/Docketbk/2018/18-049.html>.

II. POSITIONS

A. Eversource

Eversource's initial technical statement contained: (1) the calculation of the Company's over-collection of tax liability resulting from the reduced tax rate;¹ (2) a preliminary estimate of the excess deferred income taxes (EDIT); and (3) Eversource's plans to refund the over-

¹ The Company's technical statement refers to this as a deferred tax liability.

collection and EDIT to customers. Eversource determined the tax rate reductions reduced the annual revenue requirement by \$12.281 million, or \$1.023 million per month. The Company said it would continue to accrue, with interest, \$1.023 million per month to be returned to customers until it files a rate adjustment as part of the Company's next distribution rate case. Eversource stated it was appropriate to consider the reduced revenue requirement of the income tax rate change in the forthcoming distribution rate case where it would propose to balance the income tax rate change effect with other changes in the revenue requirement. The Company proposed that the EDIT amounts also be addressed as part of the Company's next distribution rate case. Finally, Eversource proposed to report the status of the EDIT no later than June 1 of each year for the prior calendar year identifying the then current levels of EDIT and the estimated forecast of the EDIT amortizing into the future.

Eversource anticipated filing a distribution rate case in 2018, as contemplated in the Commission-approved 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement (2015 Agreement). *See Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,920 (July 1, 2016) (Eversource's next distribution rate case cannot take effect prior to July 1, 2017). The Company, however, chose to complete its divestiture of New Hampshire generation assets before filing a distribution rate case. On June 26, 2018, in lieu of a rate case filing, the Company submitted a supplemental technical statement proposing two alternatives to pass the tax benefits collected prior to the rate case along to ratepayers.

At hearing, Eversource reiterated the two alternatives submitted in its supplemental technical statement and stated that, as a result of delayed asset divestiture, it had postponed the filing of its next distribution rate case and would not be requesting temporary rates effective

August 1, 2018. Alternative one would set aside the monthly \$1.023 million in tax savings for storm costs incurred since March 2016. In Docket No. DE 18-058, Eversource petitioned to recover storm costs incurred through March 2016. If approved by the Commission, the recovery of those costs would wholly deplete the Major Storm Cost Reserve. Eversource estimated an additional \$60 million in storm costs, plus interest, have accrued since March 2016.

Eversource argued the recovery of additional storm costs could result in rate shock and allocating the monthly \$1.023 million in tax savings towards payment of the additional storm costs and interest would mitigate that shock. Eversource claimed that using the tax savings in this manner would provide both short- and long-term benefits to ratepayers and the Company. Customers would benefit from a lower storm balance and a lower amount of interest on any resulting deferred storm costs.

Alternative two provides for a distribution rate adjustment as governed by the “Exogenous Events” provision (Section III.G) of the 2015 Agreement. Section III.G states:

For any of the events defined as State Initiated Cost Change, Federally Initiated Cost Change, Regulatory Cost Reassignment, or Externally Imposed Account Rule Change [Eversource] will be allowed to adjust distribution rates upward or downward (to the extent that the revenue impact of such event is not otherwise captured through another rate mechanism that has been approved by the Commission) if the total distribution revenue impact (positive or negative) of all such events exceeds \$1,000,000 ... in any calendar year beginning with 2015, until [Eversource’s] next general distribution rate case.

Exh. 3 at 3. Eversource argued the change in federal and state corporate income tax rates explicitly qualifies as an Exogenous Event within the meaning of the 2015 Agreement.

Section III.G further states that:

No later than March 31 of each year until [Eversource’s] next distribution rate case filing, [Eversource] shall file with the Commission, Staff and OCA a Certification of Exogenous Events for the prior calendar year. ... Staff and the OCA may make a filing requesting an Exogenous Event rate decrease or contesting an Exogenous Event rate increase proposed by Eversource.

Id. Revenue requirement adjustments pursuant to Exogenous Events must be reviewed and approved by the Commission; implemented on and after July 1 after Certification of the Exogenous Event; and allocated proportionally among Eversource's rate classes based on total distribution revenue by class in effect at the time of the adjustment. *Id.* at 4-5.

The Company asserted that the 2015 Agreement, particularly Section III.G, remains effective until the distribution rate case filing, which was postponed due to slower than anticipated approvals from FERC relative to asset divestiture. The Company believes the delay in approval of its asset divestiture is an event outside of its control. The Company contended that the Commission should not modify the underlying order approving the 2015 Agreement, Order. No. 25,920. The 2015 Agreement terms are binding upon all parties, including the OCA, and modification of the 2015 Agreement would undermine its purpose and possibly invite unknown consequences.

Eversource argued that the tax rate change is a 2018 Exogenous Event, because the monthly tax benefit of \$1.023 million would be realized in 2018, despite the statutory change having occurred in 2017. As such, the appropriate time to include the event in a Certification of Exogenous Events would be March 31, 2019. Eversource noted that neither Staff nor the OCA filed any claims for reduction in Eversource's rates by the May 1, 2018, deadline for a 2017 Exogenous Event, as would have been required by the 2015 Agreement.

Eversource argued that the full impact of the exogenous changes for 2018 is unknown and additional exogenous events may possibly affect the final amount, altering the total sum included in the certification. Eversource believes that once 2018 has concluded, the final amount can be certified. If Eversource files a rate case, rates can be established to properly account for the new tax rate. If a rate case is not filed, exogenous changes can be reviewed and implemented

on July 1, 2019. Eversource stated that customer benefits would be preserved by accruing, with interest, the monthly \$1.023 million in tax benefits. Ratepayers would realize the benefit when rates are ultimately adjusted.

While Eversource acknowledged that it is currently paying a corporate income tax rate of 21 percent while the rate paid by customers was set based on a 35 percent tax rate, the Company argued the disparity does not render the rates unjust or unreasonable. Eversource claimed that other similar obligations, like the Company's property taxes and other expenses, increase and decrease over time. Those fluctuations do not cause there to be changes in customer rates, and also do not result in unjust or unreasonable rates. According to Eversource, this is consistent with the 2015 Agreement and would not harm ratepayers because the revenue collected will be repaid with interest when rates are ultimately adjusted. Exh. 2 at 4-6.

B. OCA

The OCA did not object to Eversource's calculation of the approximate \$12 million annual over-collection or the estimated accumulated deferred income taxes. The OCA asserted that Eversource should have filed the tax law change as a 2017 Exogenous Event because that was the year the tax law passed. The OCA argued that Eversource could not claim the tax changes to be an Exogenous Event within the meaning of the 2015 Agreement, to which the OCA is a party, because the Company failed to file certification of 2017 Exogenous Event by the 2015 Agreement's March 31, 2018 deadline.

In support, the OCA noted Eversource's initial technical statement considered a rate case filing in 2018 to address the tax rate change and the Company's resultant decreased revenue requirement. The OCA remarked that the first time Eversource considered the tax changes to be an Exogenous Event was later, at the June 18 prehearing conference, subsequent to

Commissioner questioning on the subject. The OCA argued that use of the Exogenous Events provision in the 2015 Agreement would be “manifestly unfair” as it allows the Company to strategically file a rate case and keep money Eversource does not deserve. Hearing Transcript of July 11, 2018, (Tr.) at 98.

The OCA further stated that the Commission has authority to conclude the 2015 Agreement Exogenous Events provision no longer applies, as its application would result in unjust and unreasonable rates. The OCA, citing RSA 365:28, argued the Commission could modify the underlying order approving the 2015 Agreement, Order No. 25,920, after notice and hearing. According to the OCA, the Company had the required notice and an opportunity to litigate the issue of the tax rate change “windfall” it receives from ratepayers due to changes in the tax law, and the Commission can and should order Eversource to credit this back to customers.

C. Staff

Staff did not object to Eversource’s calculation of the difference between the current and the resultant revenue requirement from the tax rate change. Staff, however, recommended the calculation be audited by Staff. Staff noted that Eversource ratepayers are currently paying a rate structured with a 35 percent corporate income tax while, because of the tax rate change, the Company is paying a corporate income tax rate of 21 percent. Staff argued that, as a result, the rates are not just and reasonable as required by RSA 378:5 and RSA 378:7.

Staff recommended that the Commission require a ratepayer refund of the tax benefit through the Stranded Cost Recovery Charge (SCRC) mechanism. Staff calculated that would result in an approximate permanent decrease in the SCRC of 0.158 cents per kilowatt hour (kWh) and a temporary decrease of about 0.180 cents per kWh. Applying the credit to the SCRC

rate would return the tax rate change benefit as soon as possible. Staff argued that while the decrease would not be uniform among the different customer classes, the rate calculations of the percentage of a penny would not result in a significant impact on the overall SCRC rate.

Staff also stated that it would prefer Eversource postpone its rate case filing until after its asset divestiture to present a “clean test year.” Tr. at 114.

III. COMMISSION ANALYSIS

In Order No. 26,096, the Commission mandated that Eversource file a proposal addressing the effects of changes in corporate tax laws, including financial information sufficient to establish a revenue requirement that reflects the prospective impacts of those changes. The Commission recognized that some utilities had unique circumstances influencing the method and timing of appropriate revenue requirement adjustments reflective of the tax reduction, and indicated that each utility would be considered individually.

As relevant here, Eversource’s unique circumstance is that the Exogenous Events provision in the 2015 Agreement remains in effect until Eversource files its next distribution rate case. Having reviewed the record and the arguments of the parties in this docket, we find that, for Eversource, the change in federal and state corporate income tax rates has caused an Exogenous Event in 2018 within the meaning of the 2015 Agreement. We also find that, despite the foreseeability of the tax rate reduction in 2017, the reductions took effect on January 1, 2018, and affects Eversource’s 2018 revenue requirement. It is reasonable for Eversource to include the calculation of the reduced tax effect for rates effective July 1, 2019, unless it files a rate case for rates effective before that date.

We are not persuaded by the OCA’s argument that Eversource’s late filing of the 2017 Exogenous Events certification impacts the merits of the Company’s proposal. The changes in

corporate income tax rates impact the revenue requirement for calendar year 2018. We also reject the OCA's argument that Eversource is estopped from claiming the tax law change as an Exogenous Event after it first proposed addressing the reduction in a 2018 rate case. We find that Eversource appropriately postponed filing the distribution rate case until after divestiture was complete. Eversource's supplemental filing constitutes a good-faith proposal to address the Commission's directive in Order No. 26,096.

We also reject the OCA's argument that notice in this docket constitutes adequate notice to possible amendment of Order No. 25,920, pursuant to RSA 365:28. We note that nothing in the Order of Notice addressed that issue. The 2015 Agreement is a unique document that constitutes a multi-party settlement of all issues related to the divestiture of Eversource's generation assets and its provisions are binding and interdependent in the execution of the agreement. As a policy matter, the Commission will refrain from unilaterally modifying the order approving the 2015 Agreement in any significant respect as such modification would disrupt the divestiture process, contrary to the intentions of the signing parties; and, as Eversource observed, have unknown consequences.

Staff and OCA's argument that the tax rate change leads to unjust and unreasonable rates, contrary to RSA 378:5 and RSA 378:7, is more attractive, but ultimately is unavailing. We find that Eversource is not receiving a "windfall" by waiting until next year to adjust rates to account for a reduced tax obligation. Eversource's second alternative, as explained in its June 26, 2018, supplemental technical statement, achieves the objectives of the OCA and Staff by providing the tax benefit change to customers no later than July 1, 2019. Although delayed, the recalculation of rates and refund of the over-collection accrued with interest will allow customers to receive the full benefit of the changed corporate income tax rate.

We understand that Eversource currently anticipates filing a distribution rate case within the next year, and that it may file that rate case either before or after March 31, for rates effective on a date other than July 1, 2019. Currently, Eversource files for rate adjustments twice per year, for rates effective February 1 and August 1. We find that the Exogenous Events provision requires Eversource to calculate a rate adjustment for effect on July 1, 2019, and that July 1, 2019, is the latest date upon which customers should begin to receive the benefit of the federal and state tax reductions. Consequently, unless Eversource files a rate case for rates effective July 1, 2019, or before, that includes a calculation of the tax reductions, and a downward rate adjustment of some type reflecting over-collections, EDIT, interest, and a reduced revenue requirement, we will direct Eversource to include the same in its Exogenous Event certification to be filed no later than March 31, 2019, for rates effective July 1, 2019. If Eversource files for rates effective after July 1, 2019, we will direct Eversource to calculate rates which will continue to provide customers with the benefits of the tax reductions that customers should then be receiving from the adjustments that were effective July 1, 2019. In this manner, customers will receive the full benefit of the tax reductions, and will begin to receive those benefits no later than July 1, 2019.

Based upon the foregoing, it is hereby

ORDERED, Eversource's proposal to treat the change in corporate income tax rates as a 2018 Exogenous Event under the 2015 Agreement as depicted in Alternative Two of the Company's supplemental technical statement filed on June 26, 2018, and as modified in this order, is hereby APPROVED; and it is

FURTHER ORDERED, that the deferral of the rate adjustment will accrue interest at the stipulated rate of return and Eversource shall include the interest at the time customer rates are adjusted; and it is

FURTHER ORDERED, that, if Eversource files a distribution rate case for rates effective July 1, 2019, or before, Eversource shall include a calculation of the tax reductions, a proposed refund of the over-collection from January 1, 2018, with interest. and a downward rate adjustment of some type reflecting EDIT, and a reduced revenue requirement; and it is

FURTHER ORDERED, that if Eversource files a distribution rate case for rates effective after July 1, 2019, then Eversource shall calculate rates which will continue to provide customers with the benefits of the tax reductions that customers should then be receiving from the adjustments that were effective July 1, 2019; and it is


FURTHER ORDERED, that Eversource shall report the status of the EDIT annually to the Commission no later than June 1; and it is

FURTHER ORDERED, that Eversource shall address any EDIT amounts currently being deferred in its next distribution rate case.

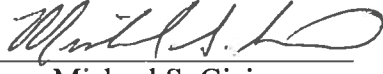
By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of September, 2018.



Martin P. Honigberg
Chairman

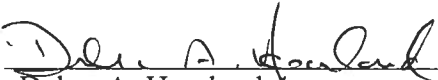


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director