THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE SITE EVALUATION COMMITTEE

DOCKET NO. 2024-02

PETITION REQUESTING JURISDICTION AND OVERSIGHT OF EVERSOURCE PROPOSED X-178 TRANSMISSION LINE REPLACEMENT PROJECT

OBJECTION TO EXPANSION OF SCOPE OF PROCEEDING

The Towns of Easton and Bethlehem, New Hampshire ("Towns") filed a petition on June 3, 2024, asking the New Hampshire Site Evaluation Committee ("SEC" or "Committee") to assume jurisdiction over replacement work planned by Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") on its X-178 electric transmission line between Campton and Whitefield, New Hampshire. On July 29, 2024, the SEC issued an Order and Notice of Public Hearing and Meeting ("Notice") that, among other things, set a deadline of September 3, 2024, for the filing of petitions for intervention. The Office of Consumer Advocate ("OCA") filed a motion to intervene on August 15, 2024 ("Motion"), as did the Maine Office of the Public Advocate ("MOPA") on August 29, 2024. In addition, Counsel for the Public, through the New Hampshire Office of the Attorney General, filed a motion to intervene on August 30, 2024.

The scope of the proceeding is set forth in the Notice, which indicates that the Committee must determine whether the X-178 transmission line replacement ("X-178 Project") is a sizeable change or addition, or that it may, alternatively, determine whether to exempt the project from the approval and certificate requirements of RSA 162-H. The Notice also scheduled a public meeting for September 23, 2024, at which time "the Committee will consider motions to intervene…and…may deliberate on the merits of the Petition or may determine that further proceedings are necessary."

As set forth below, Eversource objects to the expansion of the scope of the proceeding to entertain the rate-related issues raised by the OCA in its motion for intervention because this is not the forum for addressing such issues.[1] While the OCA serves a valuable statutory role in rate-related proceedings, the Legislature has seen fit to create the statutory role of Counsel for the Public for siting proceedings. Insofar as the SEC determines that the OCA does not have an interest affected by this proceeding, or lacks the authority to intervene, Eversource objects to its motion for party status as an intervenor. Alternatively, Eversource asks that the SEC limit the OCA's participation appropriately. Finally, Eversource has no objection to the intervention of Counsel for the Public.

I. OCA MOTION

The OCA moves for intervention pursuant to RSA 541-A:32, II and RSA 162-H:7-a, as well as Site 202.11.[2] Further, the OCA says that, pursuant to RSA 363:28, II, it is "tasked by statute with the 'power and duty' to represent the interests of New Hampshire's residential utility customers 'before *any* board, (Emphasis in the original.) commission, agency, court or regulatory body' *when those interests are implicated.*" (Emphasis added.) Motion at p. 4.

Among other things, the OCA explains that transmission rates are subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") and the ISO New England Inc. ("ISO-NE") superintends a transmission planning and oversight process, but it contends that there is no meaningful review process for the replacement of existing transmission facilities at either ISO-NE or the FERC.[3] The OCA expresses concern that residential customers will be

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[1] In a separate pleading, Eversource objects as well to the similar stance taken by MOPA.
[2] Site 202.11 essentially repeats the substantive language of RSA 541-A:32.
[3] In an August 16, 2024 letter to Eversource from the Consumer Advocates of New England ("CANE"), signed by the OCA and MOPA, CANE expressed a contrary opinion, i.e., that recourse was available in the form of a challenge at FERC to the prudence of Eversource's expenditures on the X-178 transmission line. See Attachment.

forced to pay for projects that in its view have not been adequately justified, and it seeks intervention to protect "ratepayer interests which the OCA is required to represent." Motion at p. 5.

II. DISCUSSION

A. SEC Jurisdiction and Authority

As declared by the Legislature in RSA 162-H:1, the SEC's authority concerns the "selection of sites for energy facilities" and its jurisdiction relates to "the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities." Within the ambit of that jurisdiction, the instant proceeding focuses on the specific question of whether the replacement work planned by Eversource on the X-178 transmission line falls under the SEC's siting jurisdiction.

RSA 162-H:5, I provides: "No person shall commence to construct any energy facility within the state unless it has obtained a certificate" and "certificates are required for sizeable changes or additions to existing facilities." Recognizing that the determination of whether a particular change or addition is sizeable is fact-driven, the SEC has interpreted sizeable to mean "having considerable size" and in turn has interpreted considerable to mean "large in amount, extent or degree" or "worthy of consideration, important." See Docket No. 2012-02, Granite State Gas Transmission Company, Order Granting Motion for Declaratory Ruling (July 5, 2012) at p. 4.

As set forth most recently in Docket No. 2021-05, New Hampshire Transmission, LLC, the SEC considers five factors when determining whether a change or addition is sizeable. First, the existing size of the energy facility and the size of the proposed change. Second, whether the project requires the acquisition of new land. Third, whether the project changes the capacity of the existing facility. Fourth, whether the proposed change is a replacement of existing

components as opposed to an expansion or increase in the size of those components. Fifth, whether the proposed addition or change will cause disruption in the existing environment. See Order on Petition for an Exemption, for a Declaratory Ruling that this Project is not a Sizeable Addition, or for Expedited Review (September 12, 2022) at p. 9.

B. OCA Authority

The OCA cites to its enabling statute, RSA 363:28, II, as the basis for its intervention, stating that it is tasked with the power and duty to represent residential utility customers before any board, commission, agency, court or regulatory body. The OCA, however, omits explicit language limiting its authority. As shown below, the Legislature expressly restricted the types of proceedings in which the OCA may intervene, to those concerning "rates, charges, tariffs, and consumer services." The determination of whether the proposed X-178 Project is a sizeable change and jurisdictional to the SEC is clearly not such a proceeding.

> **363:28 Office of the Consumer Advocate. –**
> II. Except as pertains to any end user of an excepted local exchange carrier or services provided to such end user, the consumer advocate shall have the power and duty to petition for, initiate, appear or intervene ***in any proceeding concerning rates, charges, tariffs, and consumer services*** before any board, commission, agency, court, or regulatory body in which the interests of residential utility consumers are involved and to represent the interests of such residential utility consumers. (Emphasis supplied.)

At the same time, the OCA acknowledges that its responsibility is distinct from those assigned to the Counsel for the Public pursuant to RSA 162-H:9, which responsibilities are set forth below.

> **162-H:9 Counsel for the Public. –**
> I. The chair or the administrator shall notify the attorney general of all administrative proceedings. The attorney general may appoint an assistant attorney general as counsel for the public in administrative proceedings. Upon notification that an application for a certificate has been filed with the committee in accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a counsel for the public. ***The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.*** The counsel shall

be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action and shall serve until the decision to issue or deny a certificate is final. (Emphasis supplied.)

The Legislature established clear, and separate, lanes when it created the Counsel for the Public to participate in SEC proceedings and it created the OCA to participate in rate proceedings, which this is not.

C. Intervention as a Party and Scope of Proceeding

The SEC must grant intervention under subsection I of RSA 541-A:32 when a party demonstrates that its, rights, duties, etc. may be affected by a proceeding, or the petitioner qualifies under a provision of law. The SEC may grant intervention under subsection II when it would be in the interests of justice and would not impair the conduct of the proceeding.

541-A:32 Intervention. –
I. The presiding officer *shall grant* one or more petitions for intervention if:
(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
(b) The petition *states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law*; and
(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.
II. The presiding officer *may grant* one or more petitions for intervention at any time, upon determining that such intervention *would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings*. (Emphasis supplied.)

The analysis of the OCA's rights, duties, etc. to intervene necessarily reverts to the scope of the OCA's legal authority. Because the OCA's authority is limited to proceedings that concern the rates of residential customers, it therefore follows that the OCA does not have a right, duty, etc. that may be affected by this proceeding and, correspondingly, that it does not qualify as an intervenor under that provision of law.

Furthermore, the OCA points to RSA 162-H:7-a, VI as grounds for its intervention, which provides that a state agency may intervene in the same manner as a party, and RSA 162-H:7-a, III, which provides that an agency must demonstrate a "material interest" in the proceeding.

> **162-H:7-a Role of State Agencies. –**
> III. Within 30 days of receipt of a notification of proceeding, a state agency not having permitting or other regulatory authority but wishing to participate in the proceeding shall advise the presiding officer of the committee in writing of such desire and be allowed to do so *provided that the presiding officer determines that a material interest in the proceeding is demonstrated* and such participation conforms with the normal procedural rules of the committee.
> VI. *A state agency may intervene as a party in any committee proceeding in the same manner as other persons under RSA 541-A.* An intervening agency shall have the right to rehearing and appeal of a certificate or other decision of the committee. (Emphasis supplied.)

The OCA's argument in this regard leads to the same end. The OCA does not appear to have a material interest that may be affected by this proceeding because its authority is restricted to proceedings concerning rates, charges, tariffs, and consumer services, which does not include a proceeding to determine if the X-178 Project is a sizeable change and jurisdictional to the SEC.

Finally, in its Notice, the SEC clearly prescribed the scope of this proceeding as pertaining to "whether the construction and operation of the transmission line replacement constitutes a sizable change or addition to an existing energy facility requiring a certificate of site and facility under RSA 162-H:5, II'' or, alternatively, "whether the project should be exempt under RSA 162-H:4, IV." Within those confines, the SEC may, pursuant to RSA 541-A:32, III, (a), if a petitioner qualifies for intervention, limit "the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition." In the event that the SEC concludes that the OCA qualifies for intervention, Eversource asks that its participation be limited to issues within the scope of this proceeding with respect to which the OCA can demonstrate a particular interest.

III. CONCLUSION

The pivotal issue here goes to the question of whether there is any intersection between, on the one hand, the scope of the SEC's jurisdiction and the scope of this proceeding, and, on the other hand, the scope of the OCA's authority and the breadth of the issues that it has raised, which there does not appear to be. The SEC is required to grant intervention to a party when such party demonstrates an interest affected by the proceeding, which here involves the determination of whether the X-178 Project constitutes a sizeable change or addition requiring a Certificate of Site and Facility. The scope of this proceeding and the factors the SEC considers in making its decision, however, do not include rate-related issues.

At the same time, the OCA has only those powers expressly delegated to it by the Legislature and the plain language of the OCA's enabling statute does not include the authority to intervene in this proceeding at the SEC. Such authority, i.e., to represent the interests of the public, however, has been granted to Counsel for the Public. Therefore, the scope of this proceeding does not extend to the issues raised by the OCA, nor does the OCA have a cognizable interest in this proceeding.

WHEREFORE, Eversource respectfully asks that the Committee:

A. Determine that the scope of this proceeding is limited to the issues set forth in its Notice, namely, whether the X-178 Project constitutes a sizeable change or addition pursuant to RSA 162-H:5 or, alternatively, whether to exempt the X-178 Project from SEC jurisdiction pursuant to RSA 162-H:4;

B. Find that that the Office of Consumer Advocate has not demonstrated a right, duty, privilege, immunity or other substantial interest, or material interest, that may be affected by this proceeding; or, alternatively,

C. Limit the Office of Consumer Advocate's participation, consistent with RSA 541-A:32, III (a), to designated issues in which it has demonstrated a particular interest, and which are within the scope of the SEC's jurisdiction in this proceeding; and

D. Grant such additional relief as the Committee deems just and appropriate.

Respectfully submitted,

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

By Its Attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: September 10, 2024

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CONSUMER ADVOCATES OF NEW ENGLAND

August 16, 2024
Via electronic mail

Eversource Energy
56 Prospect St.
Hartford, CT 06103

Re: Eversource Energy's X-178 Asset Condition Project

Consumer Advocates of New England (CANE) – the informal organization representing the statutorily designated ratepayer advocates of Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island – joins with NESCOE in strongly encouraging Eversource to reconsider its plan to move forward with a full rebuild of the X-178 line in New Hampshire. As NESCOE eloquently stated in its August 1 memo,[1] the evidence that Eversource has offered to stakeholders in its two presentations on this project[2] at the ISO-NE Planning Advisory Committee ("PAC") does not demonstrate that this project is a "reasonable use of consumer dollars."[3] CANE echoes that sentiment. Eversource has fallen well short of showing that this massive expenditure of ratepayer money to pursue these supposed improvements to the X-178 line will result in reasonable pool transmission costs.

As voting members of the NEPOOL Participants' Committee, CANE's representatives have participated in the PAC meetings, have reviewed Eversource's presentations and response to stakeholder feedback,[4] and

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[1] *See* NESCOE Memo to Eversource Regarding New Hampshire Line X-178 Rebuild (August 1, 2024) ("NESCOE Memo"), https://www.iso-ne.com/static-assets/documents/100014/2024_08_02_nescoe_memo_x178_asset_condition_project.pdf.

[2] *See* Eversource, New Hampshire Line X-178 Rebuild (February 28, 2024), https://www.iso-ne.com/static-assets/documents/100008/a05_2024_02_28_pac_line_x178_rebuild_presentation.pdf; Eversource, New Hampshire Line X-178 Rebuild Follow-Up (June 20, 2024) ("Eversource Follow-Up Presentation"), https://www.iso-ne.com/static-assets/documents/100012/a04_line_x178_follow_up_presentation.pdf.

[3] *See* NESCOE Memo, at 2.

[4] Eversource Memo Regarding Stakeholder Feedback on Eversource's Proposed X-178 Rebuild Project (June 12, 2024) ("Eversource Stakeholder Feedback Memo"), https://www.iso-ne.com/static-assets/documents/100012/eversoruce_x178_stakeholder_feedback_memo.pdf.

have raised both oral and written concerns with the scope, cost, and necessity of the project.[5] Although Eversource has "answered" some questions we have posed, the company has largely ignored us and other stakeholders by failing to revise, in any substantive manner, the magnitude or cost of the X-178 project. Instead of providing requested information,[6] or scaling back or significantly altering the project, Eversource used its second presentation on the X-178 project to offer new justifications for the scope of the project as it was initially presented in February. Eversource's disregard for the legitimate concerns raised by many stakeholders in the PAC process – including from consumer advocates who represent the individuals and companies who will ultimately pay for the X-178 project – lays bare the problems with the way that asset condition projects appear before ISO-NE and the lack of meaningful oversight over improvements to the privately owned facilities that make up the regional electric system.

We hope that our objections, coupled with those from NESCOE and others, will make clear how seriously we take the significant issues that Eversource's X-178 project raises. In our view, the X-178 project and Eversource's handling of the valid criticisms that stakeholders raised to it perfectly exemplifies the inadequacy of the asset condition oversight process in New England. If Eversource decides to move forward with the project as currently formulated, CANE's members – the undersigned consumer advocates in Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island, who represent roughly 96 percent of New England's ratepayers – stand ready to use our collective and individual resources to challenge this project through necessary avenues.

We remain open to discussing with you what we hope to see in amendments to the X-178 project that might

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[5] Eversource's preferred solution would remove 583 existing structures and install 580 new steel structures, replace 49 miles of existing conductor, and replace existing shield wire with Optical Ground Wire, for an estimated cost of $360.8 million (-25%/+50%, in current dollars, without escalation). Eversource Follow-Up Presentation, at 15.

[6] CANE underscores NESCOE's call for Eversource to respond to outstanding information requests regarding the project.

forestall the need for challenges to the prudence of these expenditures before the Federal Energy Regulatory Commission.

Sincerely,

Claire Coleman
Consumer Counsel, State of Connecticut

William Harwood
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Elizabeth Anderson
Chief, Energy & Ratepayer Advocacy Division, Massachusetts Office of Attorney General

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