STATE OF NEW HAMPSHIRE

BEFORE THE

SITE EVALUATION COMITTEE

Petition Requesting Jurisdiction and Oversight of Eversource's Proposed X-178 Transmission Line Replacement Project

Docket No. 2024-02

Reply of the Office of the Consumer Advocate to
Public Service Company of New Hampshire "Objection to Expansion of Scope of Proceeding, " "Objection to Maine Office of the Public Advocate's Intervention," and "Reply to Towns of Easton and Bethlehem Petition Requesting Jurisdiction and Oversight of Eversource Proposed X-178 Transmission Line Replacement Project"

NOW COMES the Office of the Consumer Advocate ("OCA"), the state agency tasked with representing the interests of New Hampshire's residential utility customers, and interposes the following reply to two pleadings submitted on September 10, 2024 by Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH"), captioned, respectively, "Objection to Expansion of Scope of Proceeding" and "Objection to Maine Office of the Public Advocate's Intervention" as well as a September 16, 2024 pleading from PSNH captioned "Reply to Towns of Easton and Bethlehem Petition Requesting Jurisdiction and Oversight of Eversource Proposed X-178 Transmission Line Replacement Project."

Taken together, these misleadingly titled pleadings seek to advance one notion: that ratepayer interests have no place in a proceeding before the Site Evaluation Committee ("SEC") – even when, as here, a public utility is seeking to embark upon a major transmission project that will impose nearly $400 million in

costs on the region's electric ratepayers without being accountable for the prudency of the decision to move forward with the project.

Similarly, what Eversource styles as an objection to expanding the scope of the instant proceeding is manifestly an effort to exclude the OCA – regardless of what issues are within or beyond the scope of the docket. According to PSNH, the OCA is limited by the terms of its enabling statute solely to participating in "rate proceedings." Objection to Scope Expansion at 5.

This is incorrect for multiple reasons. Initially, it bears noting that PSNH's submission itself mistakenly defines the scope of the proceeding. According to PSNH, "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.'" Objection to Scope Expansion at 6. What PSNH is describing, however, is merely the initiation of the proceeding – that is, PSNH is describing only the determinations the SEC would make in deciding whether to exercise jurisdiction as requested by the Towns of Easton and Bethlehem. Should the SEC determine that it will exercise jurisdiction, then the scope of the proceeding turns on whether PSNH can demonstrate that the X-178 project is entitled to a certificate consistent with the goals of RSA 162:H:1 and meeting the requirements of RSA 162-H:16, IV, including that issuing the

certificate "will serve the public interest." In brief, PSNH is attempting to exclude the OCA by artificially bounding the scope of the proceeding.

Additionally, PSNH cites no authority for the proposition that "the OCA's authority is limited to proceedings that concern the rates of residential customers". Objection to Scope Expansion at 5. In fact, there is no such authority, but there is a litany of proceedings currently pending at the Public Utilities Commission ("PUC") where rates are not directly at issue and in which the OCA is an active participant without any objection from the subject utility or utilities. *See, e.g.*, DE 24-093 (Electric Assistance Program budget); DE 24-088 (energy efficiency program budget adjustments); DE 24-073 (OCA-initiated request for investigation of utility tree-trimming program compliance); DG 24-050 (gas pipeline ownership transfer); DE 24-032 (review of Burgess BioPower bankruptcy settlement); DT 23-103 (sale of incumbent local exchange carrier); DW 23-101 (proposed merger of affiliated water utilities); and DG 23-087 (review of gas utility capacity purchase agreements), covering only proceedings commenced over the past 12 months.[1] Also of note is DE 24-087, concerning a petition by PSNH to have the PUC override decisions of a municipal planning board related to two asset condition transmission projects – one of which is the same X-178 project at issue here. So far as the OCA is aware, there would be no greater or different impact on customer rates from the PUC's decision

[1] Of note, while PSNH contends that the Legislature "created the OCA to participate in rate proceedings," it does not bother to explain or define what, in its view, a "rate proceeding" is or where the bounds of a "rate proceeding" begin or end. The X-178 project, if built, will generate significant costs that will be included in customer's rates, and this very proceeding could determine if that project will be built. Thus, while not essential to the SEC's decision to approve the OCA's intervention, it only small step to conclude that this is a "rate proceeding" where the OCA is, even by PSNH's standard, permitted to intervene.

in DE 24-087 than there would be from the SEC's decision in this docket and PSNH's objection in this proceeding should not stand.

The mere fact that the OCA seeks to become a party to this proceeding does not have the effect of, nor is it intended to, expand the scope of the issues the SEC would be required to resolve. Further, in seeking to limit the OCA's participation to proceedings that directly or explicitly concern rates, PSNH ignores the explicit authorization (and OCA duty) to participate in cases where "consumer services" are at issue. Given the intensity with which Eversource argues elsewhere that its ever-escalating portfolio of asset condition projects are essential to the achievement of its reliability objectives, it is difficult for the Company to suggest here that transmission services – to say nothing of the reliability-related optical ground wire that is part and parcel of the X-178 project – do not fall within the ambit of "consumer services" as the Legislature used that phrase in RSA 378:28.

PSNH further contends that the OCA is not entitled to party status because it does not meet the standard in the Administrative Procedure Act for mandatory intervenor status, i.e., that the intervention request "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." RSA 541-A:32, I(b). In so arguing, Eversource is invoking the wrong standard. Although RSA 162-H:7-a, VI provides that a state agency "may intervene is a party in any committee proceeding in the same manner as other persons under RSA 541-A" (emphasis added), the standard

for intervenor status in the Administrative Procedure Act does *not* apply. Rather, under a later-adopted[2] and more specific[3] statute a state agency such as the OCA (i.e., one not vested with "permitting or other regulatory authority") may intervene in an SEC proceeding when the presiding officer "determines that a material interest in the proceeding is demonstrated." RSA 162-H:7-a, III. Applying plain-language interpretative principles, it is obvious that "material interest" as specified in RSA 162-H is a less exacting standard than "substantial interests" as that phrase appears in RSA 541-A.

Even if the RSA 541-A intervention standard applied, and even if one accepted the implicit premise of PSNH's argument – that the OCA exists solely to address rate impacts upon residential utility customers – the plain language of RSA 541-A:32, I(b) allows parties to gain intervenor status to address indirect effects. In this instance, PSNH plans to spend nearly $400 million to rebuild a 50-mile transmission line; the company plans to recover every cent of that cost via transmission charges that are plugged automatically into customer bills via so-called "formula" rates under a system approved by the Federal Energy Regulatory Commission ("FERC"). This $400 million will be 'socialized' across the New England region, with New Hampshire's ratepayers footing roughly ten percent of the bill. Forty million dollars is a "substantial interest[]" within the meaning of the

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[2] "When a statute specifically permits what an earlier statute prohibited . . . the earlier statute is (no doubt about it) implicitly repealed." Antonin Scalia and Bryan Garner, *Reading Law: The Interpretation of Legal Texts* (2012) ("Scalia & Garner") at 327 (citing *Federalist* No. 78 by Alexander Hamilton).

[3] "If there is a conflict between a general provision and a specific provision, the specific provision prevails (*generalia specialibus non derogant*)." Scalia & Garner at 183.

Administrative Procedure Act. By any conceivable standard, the OCA is entitled to participate in this proceeding and its intervention should be granted.

PSNH's opposition to the participation of the Maine Office of the Public Advocate ("Maine OPA") is more forthright, at least insofar as the Company has captioned its pleading as an unambiguous opposition to intervenor status for our counterpart agency from the state to our east. The Maine OPA is every bit as entitled to intervenor status as the OCA is. Like New Hampshire ratepayers, Maine electric customers will bear their ratable share of the X-178 project if it moves forward. Though Maine utility customers have little if any cognizable interest in the land-use implications or other physical effects of the proposed transmission line rebuild, the scope of the SEC's authority under RSA 162-H is broad and inclusive of issues that are of concern in Maine: the cost of the project and the need for it.

Finally, PSNH invokes RSA 541-A:32, III(a), which authorizes an administrative tribunal to limit the participation of an intervenor to "designated issues in which the intervenor has a particular interest demonstrated by the petition." The utility offers no justification for imposing such a limitation on the OCA behind, apparently, its (understandable) wish that our office have as little influence and input here as possible. In reality, the OCA's interest in this proceeding is plenary because every aspect of the X-178 asset condition project has direct rate implications. This is not a project like Northern Pass, in which costs would have been borne by out-of-state interests and there were no significant

negative impacts to be imposed on New Hampshire electric customers. More to the point for purposes of this pleading, however, is the fact that any such request is, at best, premature. According to the SEC's notice of the September 23, 2024 meeting, "[t]he SEC notes that the hearing on the merits in Docket 2024-02 will not occur on September 23, 2024. The September 23, 2024 hearing will be limited to addressing the intervention requests and outlining the procedural schedule." SEC Notice (tab 3) at n.1. Accordingly, in that the actual scope of issues is not under consideration at present, there is no cause for the SEC to limit the scope of our office's intervention.

In its most recent pleading, captioned "Eversource Reply to Towns of Easton and Bethlehem Petition Requesting Jurisdiction and Oversight of Eversource Proposed X-178 Transmission Line Replacement Project" ("PSNH Reply"), PSNH offers up 13 pages of argument that reduce to one proposition: The SEC should decline to exercise its jurisdiction over the X-178 replacement project because it is not a "sizeable" change to the existing transmission line. In so arguing, PSNH asks the SEC to ignore facts that are plain, clear, and uncontested.[4]

The description of the project contained in the PSNH Reply confirms that what this utility is undertaking here is sizable in absolute terms and, more saliently, not simply a replication of what may have gained approval (or been

[4] In so arguing, PSNH invokes language from the SEC's "Order and Notice of Public Hearing and Meeting" entered on July 29, 2024 (tab 3). To the extent the SEC believes the focus at this juncture is exclusively or primarily on the "sizable changes or additions" standard it should reconsider. Similarly, PSNH's extensive reliance on prior decision's of the SEC is inapposite inasmuch as the Site Evaluation Committee is not bound by its own precedents, particularly given the extensive changes in recent years to the composition of the SEC and its enabling statute.

constructed at a time when no site approvals were required). According to its own presentations to the Planning Advisory Committee[5] and the Town of Bethlehem,[6] PSNH proposes to replace close to six hundred towers with new structures that are significantly taller than the existing facilities, to replace nearly 50 miles of conductor, and add an entirely new system (optical ground wire) to the project that will add extensive new communications capabilities. More importantly, taking jurisdiction of this project would advance rather than undermine the declared purposes of SEC review as articulated in RSA 162-H:1, particularly the need to assess "significant impacts on and benefits to . . . the *welfare of the population*, private property, the location and growth of industry, [and] the *overall economic growth of the state*" (emphasis added).

There exists here the very real possibility that PSNH is plowing forward with this project and replacing an entire 50-mile transmission line purely because the economic incentives (in the form of lucrative return on equity as awarded by the FERC, but without meaningful review by the federal regulators) are too tempting for the utility's management even if a much smaller project would address identified needs for repair and replacement.[7] RSA 162-H:1 calls for "all

[5] https://www.iso-ne.com/static-assets/documents/100012/a04_line_x178_follow_up_presentation.pdf

[6] https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-087/INITIAL%20FILING%20-%20PETITION/24-087_2024-06-21_EVERSOURCE_ATT-TESTIMONY-HARRIS.PDF

[7] PSNH's reference in footnote 3 of its objection to a recent letter from CANE (Consumer Advocates of New England, the informal organization comprised of OCA and its counterparts around the region) regarding the potential for federal review bears only brief mention. First, any indication by members of CANE that they might pursue some action before FERC if the project moves ahead is irrelevant to whether the SEC can or should exercise jurisdiction here. Second, FERC review, if any, is limited in scope and occurs only after the project has been sufficiently completed that it enters into

environmental, economic, and technical issues" involving energy facilities to be "resolved in an integrated fashion." In reality, SEC review is the only opportunity for these issues to be resolved in *any* fashion, because federal regulators look to state decisionmakers to determine whether replacement projects such as this one – known in regulatory parlance as "asset condition" projects – should move forward. As Commissioner Mark Christie memorably wrote in connection with a major FERC proceeding:

> [A]s a former state regulator who sat on scores of local-project cases, I would point out that no local project is going to be built unless a state agency approves a certificate or its equivalent. While the commenters note that procedures differ greatly from state to state, and some state utility commissions have more authority than others, there is no question that states have within their inherent police powers the authority to regulate utilities and that includes the power to vet local projects both as to need and cost *before* approving them, just as states have the siting authority. If states are not using these powers to vet fully such local projects, they should review their own state laws and procedures.

Concurrence of Commissioner Marc C. Christie in FERC Docket No. RM21-17-000 (April 21, 2022) (citations omitted).

I. Conclusion

For the reasons stated above, the Office of the Consumer Advocate respectfully requests that the Site Evaluation Committee reject the unpersuasive arguments advanced by Public Service Company of New Hampshire that would have the effect of disenfranchising electric ratepayers with an interest in the

customers' rates. By contrast, the SEC has the opportunity to address this project before any such harm occurs, Thus, the possibility of any FERC activity is, at best, a poor substitute for review by the SEC and should form no part of the SEC's decisions in this case.

outcome of this proceeding – and/or would shut down the proceeding entirely and allow this project to go forward with no regulatory scrutiny whatsoever.

WHEREFORE, the OCA respectfully request that this honorable tribunal:

A. Grant the motions to intervene submitted by the Office of the Consumer Advocate and the Maine Office of Public Advocate;

B. Determine that the proposed X-178 rebuild project warrants the exercise of the Site Evaluation Committee's discretionary jurisdiction pursuant to RSA 162-H:2, and

C. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,

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September 18, 2024

Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Site Evaluation Committee's service list for this docket.

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