THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2026-0089

Appeal of the New Hampshire Department of Energy

APPEAL PURSUANT TO RULE 10 FROM AN ORDER

OF THE PUBLIC UTILITIES COMMISSION

OFFICE OF THE CONSUMER ADVOCATE
RULE 10(8) NOTICE OF CROSS-APPEAL FROM ADMINISTRATIVE AGENCY
(PUBLIC UTILITIES COMMISSION)

By its attorneys,

Donald M. Kreis
Consumer Advocate
N.H. Bar No. 12,895

Matthew J. Fossum
Assistant Consumer Advocate
N.H. Bar No. 16,444

Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, New Hampshire 03301
(603) 271-1172
donald.m.kreis@oca.nh.gov
matthew.j.fossum@oca.nh.gov

February 6, 2026

TABLE OF CONTENTS

Pursuant to RSA 541:6 and New Hampshire Supreme Court Rule 10(8), the Office of the Consumer Advocate ("OCA"), in its capacity as the officially designated representative of the interests of the state's residential utility customers under RSA 363:28, seeks review of three decisions of the New Hampshire Public Utilities Commission ("Commission" or "PUC"). Consistent with Supreme Court Rule 10(8), the OCA seeks the Court's review of the Commission's Order No. 28,170 (July 25, 2025), the Commission's decision on motions for rehearing of Order No. 28,170 in Order No. 28,201 (December 31, 2025), and the Commission's decision of January 30, 2026 dismissing as "moot" the OCA's motion for rehearing of Order No. 28,201.

I. PARTIES AND COUNSEL

The OCA adopts and incorporates by reference the list of Parties and Counsel appearing on pages 3 through 5 of the Notice of Appeal filed by the New Hampshire Department of Energy ("Department") in this docket on January 30, 2026.

II. ADMINISTRATIVE AGENCY'S ORDERS AND FINDINGS SOUGHT TO BE REVIEWED

The OCA adopts and incorporates by reference the list of documents, and citations to the Appendix submitted by the Department, as the list of Orders and Findings of the Commission for which review is sought, with the addition of the Commission's Procedural Order of January 30, 2026 in which the agency "dismissed" the OCA's motion as "moot." This Procedural Order, along with other documents germane to this cross-appeal that do not appear in the Appendix submitted by the Department, appear in the OCA Appendix submitted herewith.

III. QUESTIONS PRESENTED

1. Whether the Commission acted unlawfully on December 31, 2025 when it allowed an alternative regulation plan to go into effect that had been approved by, at most, one member of the Commission?

2. Whether the Commission acted unreasonably and unlawfully when it rejected the reasonable return on shareholder equity proposed by the OCA, based on an irrational credibility determination that lacks record support and a plainly incorrect interpretation of witness testimony?

3. Whether the Commission acted unlawfully by "dismissing" as "moot" an RSA 541:3 rehearing motion that challenged a prior order on rehearing that introduced new grounds and determinations in support of the Commission's decision?

IV. PROVISIONS OF CONSTITUTION, STATUTES, ORDINANCES, RULES AND REGULATIONS

The OCA adopts and incorporates by reference the list of constitutional provisions, statutes, and rules involved in this case as provided by the Department in its Notice of Appeal (including the citations to the Department's Appendix) with the addition of

RSA 363:16	OCA Appendix at 57
RSA 363:20	OCA Appendix at 58
RSA 541:3	OCA Appendix at 59
RSA 541:4	OCA Appendix at 60
RSA 541:5	OCA Appendix at 61
RSA 541:6	OCA Appendix at 62
RSA 541:13	OCA Appendix at 63

V. OTHER DOCUMENTS

OCA Motion for Rehearing (August 22, 2025)	OCA Appendix at 3
OCA Motion for Rehearing (January 30, 2026)	OCA Appendix at 34
PUC Procedural Order of January 30, 2026	OCA Appendix at 54
Excerpt from Wiebusch on New Hampshire Civil Practice and Procedure	OCA Appendix at 64

VI. CONCISE STATEMENT OF THE CASE

1. Background

The Statement of the Case furnished by the Department at pages 7 to 16 of its Notice of Appeal is lucid and suitably comprehensive. We adopt it and incorporate it by reference here, supplementing the Department's Statement only as necessary to explain the separate bases for the OCA's cross-appeal.

The OCA is tasked pursuant to RSA 363:28 with representing the interests of residential utility customers before the Commission and all other tribunals where those interests are implicated. Because the Commission's job pursuant to RSA 363:17-a is to serve as the arbiter between the interests of utility shareholders and the interests of utility customers, and because utilities are typically well-represented (at ratepayer expense) by lawyers, executives, and experts in PUC proceedings, the General Court created the OCA to advocate specifically for the residential ratepayer interests in order to assist the Commission in discharging its arbiter role.

Residential customers make up more than half of the customer base of the state's largest electric utility, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"). Eversource's distribution service charges – comprised of a fixed monthly charge and a volumetric charge assessed per kilowatt-hour consumed, and paying for the network of poles, wires, substations, transformers and other equipment that connect customers to the electricity grid – are a significant portion of every residential customer's bill. Therefore, on May 12, 2024 – one day after Eversource filed its petition with the Commission seeking both temporary and permanent increases to its distribution charges – the OCA entered its appearance, actively participating thereafter as a statutory party to the proceeding.

Unlike the Department, which had the resources to undertake a comprehensive analysis of nearly all if not all aspects of Eversource's proposal – including a plan to become the first utility to implement a so-called alternative form of regulation as authorized by RSA 374:3-a,[1] the OCA took a more targeted approach to the rate case. We focused our attention, and ultimately most of our

[1] The Department refers in its notice to both a "PBR" (performance-based ratemaking) plan proposed by Eversource and an "alternative regulation" plan. In reality, there is only one plan, initially proposed by Eversource and ultimately modified significantly by the Commission. Though there are potentially subtle conceptual differences between a PBR plan and an alternative regulation plan, such distinctions are not material to the pending appeal or cross-appeal. Both PBR and alternative regulation reflect a departure from the traditional approach – setting rates based on a retrospective assessment of the cost of providing service – in favor of mechanisms that adjust rates based on performance metrics and/or capital expenditures. Typically, when state utility regulators consider alternative regulation plans, they first conduct an old-fashioned cost-of-service rate case to establish what is referred to in the Department's notice (and throughout the underlying record) as "cast-off" rates – i.e., the baseline from which rates are varied based on the adjustment mechanisms comprising the alternative regulation plan.

expert testimony, on three questions. One question was the propriety of Eversource's request for a massive increased to its fixed monthly charge – a charge that is regressive in nature and that customers cannot avoid in any way through energy conservation or other cost-saving measures. The second question was the extent to which the proposed alternative regulation plan, with its focus on rewarding Eversource for additional capital investment, was just and reasonable. And the third was the appropriate return on equity ("ROE") – shareholder profit, driven by how risky Eversource is from an investor perspective – to embed in rates.

When the PUC issued its initial order on July 25, 2025, the OCA did not prevail on the question of fixed monthly charges. *See* Order No. 28,170, Appendix at 61-62. Inclusive of the increase from the temporary rates phase of the docket, the fixed monthly charge for residential customers increased from slightly less than $14 to nearly $20, and the Commission went so far as to approve automatic annual increases of $2 to this charge until it reached nearly $43. *Id.* at 62. On rehearing, via Order No. 28,201, a quorum of the Commission walked back the annual automatic increases but otherwise left the fixed monthly charge intact. *Id.* at 189-90. The OCA is not challenging this determination on appeal.

2. Procedural Anomalies in the Alternative Regulation Determination

On the questions presented by the Department on page 6 of its Notice of Appeal related to the Commission-approved alternative regulation plan, our

substantive concerns align with those described by the Department.[2] We are cross-appealing on this issue because the manner in which the Commission addressed this issue in its rehearing order of December 31, 2025 (Order No. 28,201, Appendix at 149-196) is contrary to New Hampshire law. It is not simply that the alternative regulation plan is flawed; the Commission's decision-making process (or lack thereof) contravenes the agency's enabling statutes and requires correction by this Court.

To place this problem in its proper context, it is necessary for the Court to understand that the Commission has been in transition since it first addressed the merits of this case on July 25 of last year. On that date, Chairman Daniel Goldner was in "holdover" status, his term of office having expired on June 30, 2025. He led a PUC consisting of himself, Commissioner Pradip Chattopadhyay, and Commissioner Mark Dell'Orfano. All three signed Order No. 28,170. No commissioner dissented.

On September 15, 2025, the Governor terminated Chairman Goldner's "holdover" status effective that day at 5:00 p.m. and designated Commissioner Dell'Orfano as Interim Chairman of the agency. One week later, on September 22, the Commission issued a "Procedural Order" signed by the two remaining Commissioners (Dell'Orfano and Chattopadhyay) summarily granting our pending rehearing motion (alongside those of several other parties) without explanation, and

[2] We likewise concur with the second of the Department's questions presented, related to whether the Commission made adequate factual findings with respect to its approved revenue requirement for Eversource of $519 million, but our cross-appeal does not involve or implicate this question.

requesting additional briefing on certain points. Appendix at 145-48. At that point, a quorum of the Commission (i.e., both sitting commissioners) agreed to reconsider Order No. 28,170. These events are accurately described at page 11 of the Department's Notice of Appeal. Then, on December 31, 2025, the Commission issued Order No. 28,201, again signed by Interim Chairman Dell'Orfano and Commissioner Chattopadhyay, which (as noted by the Department at pages 11-12 of its Notice) disclosed that the two remaining Commissioners were divided on the "threshold question" of whether it was lawful for the Commission to have approved the alternative regulation plan adopted the preceding summer while then-Chairman Goldner was still in office. Appendix at 186-88.

Certain aspects of this "threshold question" determination of December 31 are very difficult to understand. As explained by the Department at page 12 of its Notice, citing the Appendix at 187, the December 31 Order

> noted that one commissioner would affirm the alternative regulation plan established by the Commission in Order No. 28,170 with modifications, and would find, among other things, that the Commission's alternative regulation plan[] is consistent with legislative intent embedded in the alternative regulation focused statute (RSA 374:3-a), and results in a just and reasonable outcome . . . [while] the other commissioner would find that Order 28,170 does not establish a valid alternative regulation lan that conforms to the requirements of RSA 374:3-a (2009) and, accordingly cannot result in just and reasonable rates and would set aside Order No. 28,170 in favor of a new two-year rate order based on traditional ratemaking principles.

Notice at 12 (internal quotation marks omitted). Since one commissioner would only approve the alternative regulation plan with additional modifications and the other would reject it outright, the result was an anomalous situation in which the Commission appears to have endorsed the outcome from July even though *no sitting*

member of the Commission agreed with that outcome. Indeed, Order No. 28,201 does not explain why either of these two Commissioners – each of whom signed Order No. 28,170 issued in July – changed his mind on rehearing. But Order No. 28,201 is clear that the alternative regulation plan subject to rehearing was not approved by a quorum of the Commission.

The Commission rationalized the anomalous outcome of letting the prior alternative regulation plan go in effect anyway by analogizing to the well-established tradition that when an appellate judicial tribunal is evenly divided the determination of the lower court is allowed to stand. Appendix at 188. This was an error of law that must be reversed by this Court. The Commission is *not* a court of appeals. It is, rather, an administrative tribunal subject to this explicit statutory command: "A majority of the commission shall constitute a quorum to issue orders or adopt rules." RSA 363:16. In our respectful opinion, because Interim Chairman Dell'Orfano and Commissioner Chattopadhyay agreed that the alternative regulation plan approved in July did not result in just and reasonable rates as required by law, but could not agree on a resolution for adjustments to that plan on rehearing, the Commission lacked the necessary quorum to issue an order allowing the alternative regulation plan to stand on rehearing.

3. Flawed Factual Findings in the Return on Equity Determination

On the question of what return on equity (ROE) to embed in Eversource's distribution rates (whether or not viewed as "cast-off" rates), the Commission heard from three expert witnesses at hearing. Eversource's expert witness, Vincent Rea,

recommended an ROE of 10.3 percent. The Department's expert witness, Randall Woolridge, adopted 9.5 percent.[3] On behalf of the OCA, expert witnesses Aaron Rothschild and Marc Vatter proposed a return on equity of 8.1 percent.

In its Order of July 25, 2025, the Commission adopted the Department's middle-ground proposal of 9.5 percent but made only sparse and cursory factual findings to explain why it settled on that outcome, without explaining why it rejected the OCA's recommendation. Appendix at 45-46. Naturally, the OCA did not object to the Commission disregarding Eversource's expert and his shareholder-generous proposal but we did argue on rehearing that the Commission was obliged to identify which record evidence justified the rejection of our experts' recommendation.

On rehearing, the Commission implicitly agreed that further fact-finding was necessary. Via a section of Order No. 28,201 labeled a "clarification[]," Appendix at 189, the Commission accused one of the OCA witnesses, independent consultant Aaron Rothshild, of having "intentionally chose[n]" to conceal errors in his computations and exhibits from both the OCA and the Commission. *Id.* at 192. "But for the thorough cross-examination of Mr. Rothschild by the Company's counsel . . . the Commission might never have learned the truth," according to the Commission. *Id.* The Commission then stated that it "further elucidated flaws in

[3] A fourth witness, Lisa Perry, testified on behalf of intervenor Walmart, Inc. and urged the Commission to examine Eversource's proposed ROE closely, but she did not represent herself as an ROE expert and it does not appear that her general observations about ROE figured in the outcome. *See* Appendix at 46 (referring to a graph in Ms. Perry's testimony, the only reference to her in the July 25, 2025 Order).

Mr. Rothschild's testimony through our independent bench inquiries of Mr. Rothschild at the hearing," *id.*, without providing any description of these alleged flaws.

The record does not support these adverse determinations as to Mr. Rothschild's credibility. As Mr. Rothschild explained on the record, the errors in question were minor, he did not affirmatively disclose them because he viewed them as such, and to the extent the errors were material they would have reduced his recommended return on equity even lower. In other words, his error was favorable to the party that cross-examined him. Critically for present purposes, the Commission did not address the merits of Mr. Rothschild's testimony in Order No. 28,201, which relied upon a somewhat novel application of the Capital Asset Pricing Model frequently used to estimate reasonable utility ROE. The PUC simply found that Eversource's cross-examination "successfully impeached Mr. Rothschild's direct testimony, damaged his credibility, and cast doubts upon the efficacy of his cost-of-capital, rate-of-return, and return on equity testimony, written and oral, calculations, conclusions, and recommendations to the Commission." *Id.*

Although the OCA acknowledges that the Commission is entitled to make credibility determinations about witnesses even to the point of completely rejecting a witness's testimony, we contend that such determinations must have some rational basis in the record. Such a rational basis is lacking here.

The record also does not support the treatment of OCA witness Marc Vatter, the PhD economist who serves as the OCA's director of economics and finance. In its entirety, Order No. 28,201 had this to say about witness Vatter:

> Due in no small part to Dr. Vatter's written and oral testimony, explaining and criticizing the Company's cost of capital, rate-of-return, and return on equity testimony, calculations, conclusions, and recommendations to the Commission, the Commission found the [Department's] unencumbered recommendations on cost of capital, rate-of-return, and return on equity, supported by Dr. Woolridge's unimpeached testimony,[4] to be the most competent, most creditable, and the most likely to result in rates that fall within the zone of reasonableness, based on a [sic] allowed 9.5 percent return on equity within a range with an upper bound of an allowed 10.3 percent return on equity, and a lower bound of an allowed 8.63 percent return on equity, as supported by Dr. Vatter's analysis and testimony.

Appendix at 192-93 (specifically citing Mr. Vatter's written testimony submitted on January 23, 2025). This is a patently incorrect interpretation of the written Vatter Testimony. Though Mr. Vatter did indeed disagree with Eversource's expert, at the other end of the ROE spectrum 8.63 percent was simply not the "lower bound" of the Vatter analysis. Rather, Mr. Vatter's reference to 8.63 percent concerned PSNH's Connecticut-based *parent* company, which has additional lines of business that warrant a different (and higher) ROE than what is appropriate for the electric New Hampshire-based electric distribution system at issue in this case. Therefore, the Commission's comprehensive and total rejection of the OCA cost-of-capital witnesses' recommendations was arbitrary and capricious.

[4] This is a reference to Randall Woolridge, the Department's expert witness who recommended a 9.5 percent ROE.

4. Rejection of Supplemental Rehearing Motion as "Moot"

The OCA sought to bring the problems, errors, and concerns identified above, manifested for the first time Order No. 28,201, to the attention of the Commission via a supplemental rehearing motion submitted on the morning of January 30, 2026. OCA Appendix at 34-53. Approximately five hours later, a single commissioner issued a one-paragraph procedural order declining to address the merits of the motion.[5] Instead, the supplemental motion for rehearing was "dismissed" as "moot." *Id.* at 54.

In eschewing the submission of a Notice of Appeal to the Court on January 30 in favor of a second motion for rehearing under RSA 541:3, the OCA was relying on advice from the New Hampshire Department of Justice as well as guidance from the well-regarded treatise, Wiebusch on New Hampshire Civil Practice and Procedure. *See* OCA Appendix at 64-67. We contend that it was legal error for the Commission to refuse to entertain the OCA January 30, 2026 supplemental rehearing motion, to the point of not actually denying it substantively but simply dismissing it on mootness grounds.

VII. JURISDICTIONAL BASIS FOR APPEAL

The jurisdictional bases for the cross-appeal are RSA 541:6 and RSA 365:21.

[5] These two events – the OCA's submission of its supplemental rehearing motion and the issuance of the Procedural Order dismissing the motion – both occurred before the Department filed its Notice of Appeal in the late afternoon of January 30, 2026. Thus, when the OCA filed its supplemental rehearing motion, there was no clear path for the OCA to pursue in seeking redress – in particular, there was no basis for either the Commission or the OCA to assume that the PUC proceeding had been removed to the Court such that any further pleadings submitted to the Commission were truly moot. Guidance from the Court on how to avoid similar situations in the future would be most helpful.

VIII. A SUBSTANTIAL BASIS EXISTS FOR A DIFFERENCE OF OPINION ON THESE QUESTIONS, AND ACCEPTANCE OF THE CROSS-APPEAL WOULD PRESENT AN OPPORTUNITY TO DECIDE, MODIFY, OR CLARIFY AN ISSUE OF GENERAL IMPORTANCE IN THE ADMINISTRATION OF JUSTICE.

1. The "Evenly Divided Commission" Problem

A substantial basis exists for a difference of opinion on whether RSA 363:16, with its requirement of "[a] majority of the commission" constituting a "quorum to issue orders," precluded the Commission from approving an alternative regulation plan (or any other proposal) that enjoyed, at most, the approval of only one commissioner.[6] In so contending, we acknowledge the existence of several uncertainties.

One uncertainty is that, so far as the OCA is able to tell, the issue of what the Commission is permitted to do in the absence of a quorum has not been addressed by this Court. The Court may conclude that to the extent the Commission in December 2025 lacked a quorum and thus the capacity to grant rehearing on the question of alternative regulation, the effect is a summary denial of the rehearing motion. Two considerations militate against such a conclusion.

First, and specific to this case, a quorum of the Commission granted rehearing via its September 22 Procedural Order. Thus, a subsequent lack of a quorum could not undo the lawful act of a quorum of the Commission. Accordingly,

[6] By the plain text of Order No. 28,201, not even a single commissioner agreed to implement the alternative regulation plan approved in July.

once the Commission lawfully granted rehearing, a lack of a quorum cannot later act as a summary denial.

The correct way out of this conundrum, from the perspective of an administrative law rubric that strives for just outcomes and good order, would have been filling the vacancy on the Commission through the conventional avenue of gubernatorial appointment and confirmation by the Executive Council. Instead, the situation languished for several months, and the Commission did not act because it was essentially paralyzed by indecision while Eversource continued to implement a regulatory plan that was no longer approved by the Commission.[7]

The second consideration stems from the purpose of agency rehearing and development of the record prior to appeal. RSA 541:4 precludes a party to an administrative proceeding from pursuing issues on appeal that have not been presented to the administrative tribunal in the first instance via a rehearing motion. "The reason for these requirements is obvious; administrative agencies should have a chance to correct their own alleged mistakes before time is spent appealing from them." *Appeal of White Mountains Educ. Ass'n*, 125 N.H. 771, 774 (1984) (citation omitted). In the case of Commission proceedings, that "time spent" costs money that is ultimately assessed to utility ratepayers because rate case

[7] Another pathway the Commission might have pursued was to seek the appointment of a special commissioner. This pathway is available when "a commissioner shall be disqualified or unable to perform the duties of his office." RSA 363:20. The fact that the Commission elected not to pursue such redress in this case, where it was clear that the commissioners could not perform the duties of the office, should not operate against the OCA and the residential customers it represents. The Court should, therefore, use this appeal to resolve, as a matter of law, the consequences from having a divided or deadlocked Commission or other circumstances in which the Commission might otherwise not have a quorum.

expenses as well as the costs of the Commission, the Department, and the OCA are all assessed to utilities and thence to their customers pursuant to RSA Chapter 363-A. Thus there is more at stake here than the laudable objective of judicial economy. The OCA does not regard the rehearing process as a mere formality. In the instant case it is obvious that the initial round of rehearing motions identified significant flaws in the Commission's original determination. A quorum of the Commission agreed that motions raised enough concern that rehearing was warranted. And the text of the Commission's order on rehearing establishes that both commissioners agree there are flaws. Thus, the Commission's incapacity as a matter of law to rule on the most important issue raised on rehearing is no mere trifle or technicality.

2. Arbitrary and Capricious Evaluation of OCA Expert Testimony

The OCA acknowledges that, by statute, "all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable" and that to overturn such findings the Court must be satisfied "by a clear preponderance of the evidence" that the resulting order of the agency is "unjust or unreasonable." RSA 541:13. We also acknowledge that the Commission "is not compelled to accept opinion evidence of any witness including expert witnesses, and may even reject uncontroverted evidence." *Appeal of Northern New England Telephone Operations, LLC*, 165 N.H. 267, 273 (2013 (citation omitted).

Nevertheless, factual determinations of the Commission are not completely immune to appellate scrutiny. A party seeking to challenge factual findings overcomes the presumption of reasonableness by "showing that there was no

evidence from which the PUC could conclude as it did." *Appeal of Pennichuck Water Works*, 160 N.H. 8, 10 (2010) (citing *Legislative Utility Consumers' Council v. Public Utilities Comm'n*,118 N.H. 93, 99 (1978)). We respectfully contend that in this record there is no evidence from which the Commission could have concluded that OCA witness Rothschild intentionally misled the Commission, thus warranting a finding of non-credibility, or that OCA witness Vatter offered an opinion that supported a range of possibly reasonable ROEs that was higher than the figure recommended by Mr. Rothschild. Because ROE is a critical component of cost-of-service ratemaking, and because the Commission's determination on the ROE was based upon unfounded and unsupported conclusions without evidentiary support, this is a significant flaw in the PUC's resolution of a very consequential proceeding, worthy of appellate review.

3. Supplemental Motion for Rehearing as "Moot"

Finally, this cross-appeal presents the Court with a useful opportunity to fill in a gap that exists in the law of administrative appellate practice. To the best of the OCA's knowledge, the Court has not had occasion to take up the question of when it is appropriate (and, indeed, desirable) for a party to seek rehearing under RSA 541:3 of an agency's prior grant of a rehearing motion, versus immediate recourse to appellate proceedings.

As noted in 5 Wiebusch on New Hampshire Civil Practice and Procedure, RSA 541 does not provide expressly for supplemental motions for rehearing, but

> the statute's policy requiring objections to be presented to the agency for correction before seeking review by the supreme court and the supreme

> court's preference for resolution of disputes by the agency and for avoidance of multiple review on the same proceeding would seem to require the use of a supplemental motion for rehearing and to permit the tolling of the deadline for claiming a review on any issues until the agency has finally spoken on all.

OCA Appendix at 66 (5 Wiebusch on New Hampshire Civil Practice and Procedure § 62.33[4], citing Rule 3 and the note to Rule 10(1) of this Court's rules). This conclusion is supported by the plain language of RSA 541:3 which provides, in pertinent part, that "after *any* order or decision has been made by the commission" rehearing may be sought. (Emphasis added.) Concluding that the Legislature's use of "any order" applies to orders on rehearing, at least when such orders present new or different grounds for a determination, would encourage the kind of agency-level resolutions the Court prefers and would support efficient use of litigants', and the Court's, time and resources.

The OCA relied on the above guidance from the Wiebusch treatise as sensible, particularly in the circumstances of this case: a rehearing order that radically changed the initial determination on alternative regulation (from unanimous approval to unanimous *dis*approval) and also made new (and flawed) factual cost-of-capital findings upon implicitly acknowledging that the lack of any consideration of the OCA witnesses' opinions was problematic. The Commission's dismissive reaction to the good-faith submission of a second rehearing motion is troubling. While the Commission's action arguably reflects a colorable interpretation of RSA 541, the OCA submits that applying the law as the Commission appears to interpret it runs counter to the purposes of RSA 541 and

public policy, and this Court should resolve, as a matter of law, how the Commission (and other agencies) shall apply the law.

IX. ISSUES PRESERVED FOR APPELLATE REVIEW

Every issue specifically raised by the Office of the Consumer Advocate herein has been presented to the Public Utilities Commission and has been properly preserved for appellate review by a properly filed pleading. The issues herein were preserved through the OCA's Motion for Rehearing of August 22, 2025 and the OCA's Supplemental Motion for Rehearing of January 30, 2026.

Respectfully submitted,

Donald M. Kreis, Bar No. 12,895
Consumer Advocate

Matthew J. Fossum, Bar No. 16,444
Assistant Consumer Advocate

Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, New Hampshire 03301
(603) 271-1172
donald.m.kreis@oca.nh.gov
matthew.j.fossum@oca.nh.gov

Certificate of Service

February 6, 2025

I hereby certify that this Notice of Cross-Appeal was served through the Court's e-filing system on the parties of record in Case No. 2026-0089 and was likewise served via electronic mail on the New Hampshire Public Utilities Commission at ClerksOffice@puc.nh.gov as well as all parties of record in the underlying administrative proceeding, and their counsel, as set out in the service list for Docket No. DE 24-070 as recorded in Order No. 28,201 as of this date.

Donald M. Kreis