

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No.

Appeal of the New Hampshire Department of Energy

APPEAL PURSUANT TO RULE 10 FROM AN ORDER  
OF THE PUBLIC UTILITIES COMMISSION

**RULE 10 NOTICE OF APPEAL FROM ADMINISTRATIVE AGENCY  
(NH PUBLIC UTILITIES COMMISSION)**

By its attorneys,

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Pursuant to RSA 541:6 and New Hampshire Supreme Court Rule 10, the New Hampshire Department of Energy (“Department”) seeks review of two decisions of the New Hampshire Public Utilities Commission (“Commission”). The Department seeks this Court’s review of the Commission’s Order No. 28,170 (July 25, 2025) and its decision on motions for rehearing of Order No. 28,170 in Order No. 28,201 (December 31, 2025).

## **I. PARTIES AND COUNSEL**

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

Copies of the following documents are included in the Appendix to this Notice of Appeal:

Order No. 28,170 Establishing Permanent Rates and Alternative Regulation Through July 31, 2029 (July 25, 2025)	Appendix at 4
New Hampshire Department of Energy Motion for Rehearing (August 22, 2025)	Appendix at 85
Public Service Company of New Hampshire d/b/a Eversource Energy Opposition to AARP New Hampshire's Motion for Rehearing; Department of Energy's Motion for Rehearing; and the Office of the Consumer Advocate's Motion for Rehearing (September 2, 2025)	Appendix at 110
Procedural Order Re: Motions for Rehearing (September 22, 2025)	Appendix at 145
Order No. 28,201 Order Communicating Affirmance of Order No. 28,170, With Certain Limited Modifications (As Requested by the Parties) (December 31, 2025)	Appendix at 149

### **III. QUESTIONS PRESENTED**

1. Whether the “Alternative Regulation Framework” established by the Commission in Order No. 28,170 under RSA 374:3-a is an unlawful alternative form of regulation because it allows the inclusion of “any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful” in distribution rates paid by electric customers in direct contravention of the prohibition in RSA 378:28?
2. Whether the Commission acted unlawfully by failing to make findings of fact necessary to understand how its approved revenue requirement of \$519 million was derived?
3. Whether the Commission acted unlawfully in establishing a form of alternative regulation without making specific findings as to each of the required factors in N.H. Code of Admin. Rules Puc 206.06(b) as required by N.H. Code of Admin. Rules Puc 206.07(c)?

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

The constitutional provisions, statutes, and rules involved in this case are:

RSA 363:17-b	Appendix at 197
RSA 374:3-a	Appendix at 198
RSA 378:27	Appendix at 199
RSA 378:28	Appendix at 200
RSA 378:29	Appendix at 201
RSA 541-A:31	Appendix at 202
RSA 541-A:33	Appendix at 204
RSA 541-A:35	Appendix at 205
N.H. Code of Admin. Rules Puc 204.21	Appendix at 206
N.H. Code of Admin. Rules Puc 206.06	Appendix at 206
N.H. Code of Admin. Rules Puc 206.07	Appendix at 207
N.H. Code of Admin. Rules Puc 1604.05	Appendix at 207

## **V. OTHER DOCUMENTS**

Copies of the following are included in the Appendix to this Notice of Appeal:

Eversource Energy Petition for Approval of Temporary and Permanent Rates (June 11, 2024)	Appendix at 209
Procedural Order Re: Tariff Non-Compliance (September 10, 2025)	Appendix at 217
Eversource Energy Corrected Tariff Pages (September 25, 2025)	Appendix at 222
Procedural Order Re: Tariff Compliance (November 13, 2025)	Appendix at 357
PSNH and DOE Stipulation to Certain Facts Regarding the Company's 2024 Capital Additions (December 15, 2025)	Appendix at 361

## **VI. CONCISE STATEMENT OF THE CASE**

### **1. Background and Alternative Regulation**

On May 3, 2024, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or "Company") filed a Notice of Intent to File Rate Schedules, pursuant to RSA 378:27 and N.H. Code of Admin. Rules Puc 1604.05. This filing provided notice of Eversource's intent to file rate schedules on or about June 3, 2024, for temporary rates that would generate an overall increase in annual distribution revenue of approximately \$185 million.

On June 11, 2024, the Company filed a Petition for Temporary and Permanent Rates ("Petition"), pursuant to RSA 378:27, 378:28, N.H. Code Admin. Rules Part Puc 1604, Puc 1603.08, Puc 203.06, and Puc 206. Appendix at 206-207. In its Petition, the Company requested, in part, a temporary increase of \$77 million in annual distribution

revenue for effect with service rendered on and after August 1, 2024, with a permanent rate increase of \$181,898,881 effective August 1, 2025, and the ability to recoup the difference between temporary rates and permanent rates pursuant to RSA 378:29.

In its Petition, the Company also requested that the Commission approve a proposed performance-based ratemaking (“PBR”) plan, which it presented as an alternative form of regulation under RSA 374:3-a. Prior to this case, the Company’s distribution revenue requirements were established using the traditional ratemaking methodology.

However, the Company’s proposal went beyond the traditional method of setting distribution rates based on cost of service, rate base, and rate of return (“Traditional Ratemaking”), by proposing a formulaic annual increase to the revenue requirement each year through 2029, with the option to then continue the PBR plan for an additional number of years. Part of the Company’s rationale behind its PBR proposal was that it needed revenue support for a substantial amount of capital expenditures it planned to make over the next several years, and it presented evidence of those planned expenditures. The Company stated that its proposed PBR Plan was, “designed to support the Company’s planned capital infrastructure improvements, as discussed in the Distribution Solutions Plan (‘DSP’).” Appendix at 212.

The parties subsequently engaged in months of discovery and review of the Company’s rate case filing concerning permanent rates. The Department, along with several other parties, filed testimony in the proceeding on January 24, 2025. The Department filed additional testimony on February 10, 2025.



Although the Company's rate increase request was based on a 2023 test year, the Company's proposed rate increase included forecasted 2024 capital additions, to be updated later in the proceeding when actual amounts were known. On March 10, 2025, the Company filed rebuttal testimony that included the actual amounts for the 2024 capital projects, accompanied by more than 15,000 pages of documentation.

Final hearings in this matter began on May 6, 2025, and concluded on June 12, 2025. On July 25, 2025, the Commission issued Order No. 28,170 Establishing Permanent Rates and Alternative Regulation Through July 31, 2029 ("Order" or "Original Order").

The Order established a revenue requirement and alternative regulation framework that differed from what any of the parties to the proceeding had proposed, but which was substantially similar to the Company's proposal. Under the Commission's alternative regulation adjustment framework ("ARAF"), the Commission established a \$519 million cast-off revenue requirement effective August 1, 2025. Similar to the Company's PBR proposal, this revenue requirement was subject to annual increases based on a formula. While the Commission's formula varied slightly from the formula the Company had proposed, it still provided annual revenue support for increasing capital expenditures throughout the duration of the ARAF term. The Commission noted specifically that, "[u]sing alternative regulation, the Company receives an annual inflation increase for capital and overhead..." Appendix at 7.

The Commission's Order further tied the ARAF to support for the Company's planned capital expenditures by stating that its framework, "requir[es] the Company to

meet aggressive capital and overhead targets to keep the alternative regulation synchronized with actual spending ...” *Id.* Under the Commission’s framework, no prudence review of the Company’s capital expenditures during the PBR term would take place until the next distribution rate case unless the Company spent more than \$250 million on capital additions in a given year. In establishing the \$250 million threshold for prudence review the Commission referred to a chart provided by the Company summarizing its planned capital spending over a three-year period. Appendix at 52. The Commission also noted that the \$519 million revenue requirement effective August 1, 2025, incorporated the costs associated with the 2024 plant additions, which had not yet been reviewed for prudence. Appendix at 72.

According to the Commission, the prudency review of the 2024 investments, with the hearing on the merits scheduled for October 16, 2025, would still take place – but that, “no discrete surcharge to the Company’s rates shall issue as a consequence of this review...[a]ny finding of imprudence would result in a modification of the Company’s rate base, but no adjustment to the Alternative Regulation framework revenue requirement would result.” *Id.* Thus, any projects included in the 2024 capital additions that were ultimately found imprudent, or not used or useful, would none-the-less be in the Company’s distribution rates through the revenue requirement established by the Commission’s alternative regulation framework.

On August 22, 2025, the Department filed a Motion for Rehearing on Order No. 28,170 Establishing Permanent Rates and Alternative Regulation Through July 31, 2029 (“Motion for Rehearing”). Appendix at 85. AARP New Hampshire (“AARP”) and the

OCA also filed motions for rehearing on that date. On September 2, 2025, Eversource filed Public Service Company of New Hampshire d/b/a Eversource Energy Opposition to AARP New Hampshire’s Motion for Rehearing; Department of Energy’s Motion for Rehearing; and the Office of the Consumer Advocate’s Motion for Rehearing. Appendix at 110.

On September 22, 2025, the Commission issued a Procedural Order Re: Motions for Rehearing, in which it granted the parties’ various motions for rehearing and requested further legal briefing on three points. Appendix at 145. The Department, Eversource, the OCA, and AARP filed briefs on October 10, 2025. The Department, Eversource, and the OCA filed sur-reply briefs on October 24, 2025.

On December 31, 2025, the Commission issued Order No. 28,201 Order Communicating Affirmance of Order No. 28,170, With Certain Limited Modifications (As Requested by the Parties) (“Rehearing Order”). Appendix at 149. In its Rehearing Order, the Commission affirmed in part, modified in part, vacated in part, and clarified Order No. 28,170. While the Rehearing Order addressed several concerns raised by parties that filed motions for rehearing and clarification, the Commission affirmed its alternative regulation framework and failed to address all requests for rehearing and clarification raised by the Department.

The Rehearing Order explained that the two Commissioners were divided on the “threshold question” of “whether [the Commission] erred by establishing and adopting a modified version of Eversource’s performance-based ratemaking proposal under its alternative regulation authority for distribution rates, effective August 1, 2025, through

July 31, 2029,” as well as on “certain other key issues raised for rehearing or clarification by the Rehearing Parties.” Appendix at 186-187. The Rehearing 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.” Appendix at 187. The Rehearing Order further noted that the other commissioner would, “find that Order 28,170 does not establish a valid alternative regulation plan 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. *Id.* As the two commissioners were split, the Commission ultimately affirmed its prior Order, “in keeping with the New Hampshire Supreme Court’s settled practice when evenly split on the disposition of an appeal...” Appendix at 188.

Nevertheless, the Rehearing Order slightly modified the alternative regulation framework established by the Commission, with the modification that a prudency review of the Company’s 2025 and 2026 capital additions would be conducted in mid-2027, “the results for which would be streamed into modifications of the Company’s rates, as warranted, in the future.” Appendix at 188-189. In other words, because the Commission established an alternative form of regulation designed to provide annual rate increases to support future capital investments, these increased rates would include costs to support these 2025 and 2026 capital additions before any determination that these capital

additions were prudent, used, and useful. The Commission did not provide any mechanism for a prudency review that would precede increases to rates, and did not address how or when the 2027 and 2028 capital additions would be reviewed for prudence, thus violating RSA 378:28.

Indeed, the Department has identified \$1.8 million in capital investments that should not be included in rates because they include costs for projects that were either reimbursed to Eversource by third parties or were not completed and therefore are not used and useful. However, the \$1.8 million the Department and Eversource agree is not used and useful is being recovered from customers through rates because it is included in the alternative regulation revenue requirement approved by the Commission, and these costs will be part of the annually increasing revenue requirement throughout the term of the alternative regulation plan. Contrary to RSA 378:28, ratepayers are paying and will continue to pay for capital expenditures that are not used and useful and for which the Company will receive reimbursement from third parties.

## 2. Lack of Supporting Findings for \$519 Million Revenue Requirement

As for the development of the \$519 million cast-off revenue requirement upon which distribution rates are based, the Department had requested clarification on how exactly the Commission derived that amount. In pre-filed testimony and in hearings, both the Company and the Department presented proposed revenue requirements and submitted evidence to support their proposed revenue requirements, including live testimony and supporting calculations. None of the parties proposed a \$519 million revenue requirement as set by the Commission in its Order. Thus, when the Commission

issued its Order, there were no supporting calculations in the record that produced a revenue requirement of that amount.

Nor did the Commission include any supporting calculations in its Order. The Commission listed various disallowances of capital expenditures and other factors that factored into the ultimate revenue requirement of \$519 million but did not provide any supporting spreadsheets or disclose calculations or documentation showing how each finding factored into the \$519 million revenue requirement.

The only calculation the Commission showed in its Order was adding a number to the temporary rate revenue requirement that summed to \$519 million. Appendix at 56. Without sufficient findings, explanation, or math demonstrating how that amount was calculated, it is not possible to tell whether assumptions that were used to set temporary rates but are no longer applicable when setting permanent rates were carried forward into permanent rates, whether the Commission correctly calculated the effects of its findings on various components of the Company's revenue requirement, whether the alternative regulation adjustment included any amounts beyond the revenue requirement increase associated with the 2024 capital additions, or whether the amount is simply arbitrary.

The Department requested rehearing and clarification on how the Commission arrived at the \$519 million revenue requirement in its Motion for Rehearing filed August 22, 2025. In its objection to the Department's Motion for Rehearing, Eversource argued that "the Order contained sufficient findings and basis for the revenue requirement" and that the detail provided by the Commission allowed the Company to, "calculate the revenue requirement and recoupment included in its August 1<sup>st</sup> and 11<sup>th</sup> compliance

filings.” Appendix at 126. However, on September 10, 2025, the Commission issued a Procedural Order Re: Tariff Non-Compliance in which it explained that Eversource’s recoupment calculation was incorrect and that, “the Commission requires Eversource to provide supporting schedules that justify the calculation of the rates in the August 11, 2025 compliance tariff filing, including any formulas used to derive the updated rates, as it is unclear how the adjustments delineated in Order No. 28,170 have updated the originally proposed rates.” Appendix at 219.

On September 25, 2025, Eversource submitted an updated recoupment calculation but noted in response to the Commission’s request for the Company to provide supporting schedules that justify the calculation of the rates in the August 11, 2025, compliance tariff filing that the Company had previously provided these supporting schedules on August 1, 2025. Appendix at 222. However, these supporting schedules simply itemized and summed the impacts of various findings from the Commission’s Order and noted the difference between that sum and \$519 million as a \$30,275,083 “Alternative Regulation Adjustment.” Appendix at 243. The \$30,275,083 was simply an amount derived by the Company in its calculations performed according to the Commission’s Order, rather than an amount expressly stated or explained in the Order.

On November 13, 2025, the Commission issued a Procedural Order Re: Tariff Compliance, in which it found Eversource’s compliance tariff, with revised tariff pages, consistent with Order No. 28,170. The Commission noted that it was accepting the compliance tariff, “on a partially provisional basis, with issues in this docket pending further review and hearing by the Commission.” Appendix at 357. The Commission

authorized Eversource to use the tariff, “as the authorized version of the tariff for its records, until the Commission finalizes its review and confirms the permanent rates in effect, subject to reconciliation.” *Id.*

In its Rehearing Order, the Commission ordered Eversource to submit revised tariff pages implementing the modifications in the Rehearing Order and overall affirmance of Order No. 28,170. Appendix at 194. Eversource did so on January 21, 2025. However, no further supporting calculations were given in either the Rehearing Order or Eversource’s compliance tariffs for the \$519 million revenue requirement.

### 3. Lack of Findings Under Puc 206 Rules

Finally, prior to approving an alternative form of regulation, the Commission is required by Puc 206.07(c) and Puc 206.06(b) to determine that the alternative regulation “[s]erves the public interest in light of” a set of nine enumerated considerations. In its Order, the Commission cited part of the rule but did not explicitly make a public interest determination and only explicitly addressed one of the nine considerations. In its Motion for Rehearing, the Department requested that the Commission clarify its determinations regarding those factors. The Commission’s Rehearing Order noted the Department’s argument in a section summarizing party positions but did not provide the further clarification requested by the Department.

## **VII. JURISDICTIONAL BASIS FOR APPEAL**

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



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

1. Alternative Regulation

A substantial basis exists for a difference of opinion on whether RSA 378:28 and RSA 374:3-a should be read together as part of the overall statutory ratemaking scheme so that the requirements of RSA 378:28 still apply to any rates established under an alternative form of regulation pursuant to RSA 374:3-a. This is an issue of first impression that presents the opportunity for the Court to interpret RSA 374:3-a in the context of setting utility rates and whether the rate plan approved in this case qualifies as a form of alternative regulation under RSA 374:3-a.

The New Hampshire Supreme Court has previously stated it, “examine[s] a statute in relation to the statutory scheme.” *State v. Taylor*, 132 N.H. 314, 318 (1989). “When interpreting two statutes which deal with a similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute.” *State v. Farrow*, 140 N.H. 473, 475 (1995), citing *Petition of Public Serv. Co. of N.H.*, 130 N.H. 265, 282 (1988). “We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *Doe v. Attorney General*, 175 N.H. 349, 352 (2022).

The legislature established in RSA 378:28 that, “[t]he commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful.” The

language of RSA 374:3-a states that, “the public utilities commission may approve alternative forms of regulation other than the traditional methods which are based upon cost of service, rate base and rate of return,” and requires that any alternative form of regulation, “results in just and reasonable rates and provides the utility the opportunity to realize a reasonable return on its investment.” These two provisions should be read in conjunction with one another as part of the overall statutory ratemaking scheme. RSA 374:3-a requires that a utility be given the opportunity to realize a reasonable return on its investment with rates set under an alternative form of regulation, and RSA 378:28 requires that these investments be found “prudent, used, and useful” before the utility is allowed to include a return on its investment in rates. Setting rates that allow a utility the opportunity to collect a return on investments that have not yet been found prudent, used and useful and allowing RSA 374:3-a to bypass the requirements of RSA 378:28 would be an absurd and unjust result.

The issue itself is important as it sets a precedent for whether the Commission can set rates that are specifically designed to include funding for future capital projects that have not yet been found prudent, used, and useful. The rate plan at issue in this case has the potential to significantly impact the utility and its ratepayers, as the plan provides for formula-based rate increases until at least August 1, 2029.

## 2. Findings Supporting \$519 Million Revenue Requirement

As stated previously, it is unclear how the Commission arrived at the \$519 million cast-off revenue requirement. The Commission did not provide calculations to support its findings or demonstrate that the resulting rates are just and reasonable. Rather, it relied on

the Company to submit calculations. However, the Company's calculations do not explain what is included in the \$30,275,083 "alternative regulation adjustment" or how it was derived, and are not a substitute for Commission's findings on how that number was developed. A substantial basis for a difference of opinion therefore exists on the question of whether the Commission's findings were sufficient to develop the \$519 million revenue requirement, and how specific the Commission's findings must be in supporting its rate decisions.

### 3. Findings Under Puc 206

A substantial basis exists for a difference of opinion on whether the Commission's findings were sufficient to comply with Puc 206 or whether Puc 206 requires the Commission to make more explicit findings on the factors listed in Puc 206 before establishing an alternative form of regulation. The Commission did not make findings as to whether the alternative regulation framework "[s]erves the public interest in light of" the nine factors enumerated in its rules either in its Original Order or its Rehearing Order, despite the Department having raised this issue in its Motion for Rehearing.

This issue presents the opportunity to decide how closely the Commission must adhere to its own rules in establishing an alternative form of regulation that is governed by those rules.

## **IX. ISSUES PRESERVED FOR APPELLATE REVIEW**

Every issue specifically raised by the Department 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 Department's

August 22, 2025, Motion for Rehearing on Order No. 28,170 Establishing Permanent Rates and Alternative Regulation through July 31, 2029. These issues were also presented to the Commission in this docket in the Department's Written Closing Arguments filed on June 19, 2025; the Department's Additional Legal Briefing filed on October 10, 2025; and the Department's Sur-Reply to Legal Brief filed on October 24, 2025.

Respectfully submitted,

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## **Certificate of Service**

January 30, 2026

I hereby certify that this Notice of Appeal was served through the Court's e-filing system and that a copy was sent via electronic mail to the New Hampshire Public Utilities Commission at [ClerksOffice@puc.nh.gov](mailto:ClerksOffice@puc.nh.gov) and to all parties of record and their counsel as set out on the service list for Docket DE 24-070, as recorded in Order No. 28,201 as of this date.

/s/ Christopher G. Aslin

Christopher G. Aslin