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April 22, 2024

**Via Electronic Mail Only**

New Hampshire Department of Energy  
Molly M. Lynch, Esq.  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

RE: **CPT 2024-005** Complaint of Kearsarge Solar LLC, ReWild Renewables, LLC, and Lodestar Energy LLC against Public Service Company of New Hampshire d/b/a Eversource Energy  
PSNH d/b/a Eversource response to complaint

Attorney Lynch:

On March 18, 2024 Kearsarge Solar LLC, ReWild Renewables, LLC, and Lodestar Energy LLC (the “Complainants”) filed a complaint (the “Complaint”) against Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) with the New Hampshire Department of Energy (“DOE” or “Department”). On March 21, 2024 the Department issued a letter<sup>1</sup> to the Company requesting that Eversource either satisfy the matters complained of, or provide an answer to the charges in writing noting whether the Company disputes the complaint within ten business days of the DOE’s letter, which was later extended to thirty calendar days to April 22 upon Eversource’s request.

By this response, Eversource disputes that there are any valid claims of Puc 900 rule violations or any violations of any of the statutes cited in the Complaint, and likewise disputes the general claims of “non-compliance” with the Company’s own interconnection guidelines; and while outside the jurisdiction of the Department, Eversource also disputes the validity of all breach of contract claims in the Complaint. Accordingly, there are no damages or harm, proximate or otherwise, arising out of Eversource’s actions in processing the Complainants’ distributed generation (“DG”) interconnection applications (“Applications”) for which reparations or any other corrective actions are warranted, and the Complaint should be dismissed in its entirety.

Eversource has acted in good faith and due diligence regarding the processing of the Complaint’s subject Applications, oftentimes going above and beyond any legal or regulatory requirements by conducting proactive outreach to the Complainants to try to find ways to expedite various projects in the interconnection queue (“Queue”) belonging to the Complainants without showing any preference to Complainants over any other applicant, which would violate the general

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<sup>1</sup> Eversource notes that the DOE’s March 21 letter refers to the wrong complainants. The letter refers to GNM Solar 17, LLC and Bright Spot Solar, LLC, which are the subject complainants of CPT 2024-004. Eversource assumes this is a copy/paste error and the letter intended to reference Kearsarge, ReWild, and Lodestar.

regulatory obligation under the Puc 900 rules and the Company tariff to treat all projects in a non-discriminatory manner and take each project on a first-come, first-served basis.<sup>2</sup> Additionally, Eversource has been in regular contact with the Complainants through appropriate channels<sup>3</sup> since DOE docketed the Complaint. These conversations with the Complainants have been candid and constructive. Ultimately however, while the Company notes and understands the Complainants' frustration with the amount of time it is taking to process some of the Complaint's project Applications, Eversource is doing everything within its capabilities to process the project Applications as expeditiously as possible and meeting all legal and regulatory requirements while doing so. Therefore, there is no valid claim against the Company in the Complaint.

Eversource has been able to provide meaningful insight to the Complainants regarding the interconnection process and Queue, giving the Complainants a more complete picture of and context surrounding the Queue and of Applications generally as well as those specific to the Complaint. Eversource also had a detailed discussion with the Complainants about what actions were possible and appropriate given the overall Queue position of the projects in the Complaint. All of the actions taken with regard to the Complainants have been consistent with Company guidelines for interconnection, the Company tariff, and the Company obligations under Puc 903.01(b) to comply with Puc 900 in a non-discriminatory manner and not unreasonably withhold its permission to interconnect a customer-generator's facility, and Puc 903.02(b) to make net metering eligibility available on a first-come, first-served basis. In no way did the filing of the Complaint result in preferential or discriminatory treatment of the Complainants compared with any other project applicant in the Queue.

To the extent that the Complainants feel that the projects listed in the Complaint should be processed faster, this is understandable given that the profitability of their business is directly impacted by the time it takes for any given project to come online, and the Company is sensitive to these business interests. However, larger projects such as all the Applications in the Complaint require a nuanced approach that takes significant time. The amount of time that the projects in the Complaint have been in the Queue is not akin to delay and is in no way wrongful or illegal, but reflective of due diligence and best practices. These longer timelines can also be of benefit to developers as they allow for more cost-effective solutions to be developed, and those solutions can be the tipping point for a developer being able to obtain an interconnection agreement ("IA") that can be financed and result in a profitable project.

Notwithstanding Eversource's regulatory and legal compliance, good faith and due diligence regarding the projects in the Complaint and all projects in Eversource's interconnection Queue, Eversource offers the information that follows regarding the Complaint and the Company's interconnection processes and policies. This information should conclusively demonstrate to the Department that the Company is indeed compliant with all rules, laws, and tariffs, and provide a more complete picture regarding the complexities of Applications with projects the size of those contained within the Complaint. This information should also clarify for the Department that the Complaint incorrectly characterizes the ordinary due course of processing these applications as

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<sup>2</sup> See Puc 903.01(b) and 903.02(b).

<sup>3</sup> Eversource notes that only Kearsarge is represented by counsel; ReWild and Lodestar appear pro se. Eversource counsel and Eversource staff contact with all three Complainants has been through or at least in the presence of Kearsarge's attorney, though the pro se litigants have at all times been welcome to contact Eversource counsel directly should they have desired to do so. Any references to "Counsel for Complainants" should be read to account for the fact that while technically only Kearsarge is represented by counsel, Kearsarge's counsel has, throughout the complaint process, made all representations on behalf of all three Complainants.

“wrongful conduct” and “delay” of the Company, without providing any support, amounting to unsubstantiated conclusions, and should therefore be dismissed with prejudice. In support of this response Eversource states the following:

**Violations Of Puc 904.04(b); 904.05(q); 904.05(y) And Supplemental Rule Violation Claims Are Inapplicable or Unsupported**

Eversource counsel and Eversource staff first met with Complainants and counsel for Complainants on March 26, 2024, to discuss the Complaint. In that meeting, Counsel for Eversource requested that Complainants provide sufficiently specific allegations so that the Company could properly respond. Specifically, the Company needed to know for which rule provisions Complainants were alleging were violated for which of the 28 projects. After further review, Counsel for Complainants confirmed that of the 28 projects listed in the Complaint, “none of the projects are subject to the current rules 904 through 908.”<sup>4</sup> Eversource takes this to mean that there are presently no allegations of any violations of the provisions Puc 904.04(b), 904.05(q), and 904.05(y), as listed in the Complaint. But assuming for the moment that the Complaint made specific allegations as to the 28 projects regarding the three aforementioned rule provisions, Eversource verified the timing of the processing of the applications of all 28 projects, and found no violations of Puc 904.04(b), 904.05(q), or 904.05(y) pertaining to these 28 projects.

Complainants on April 5, 2024, provided a supplemental excel file with a list of the 28 projects and a corresponding column listing provisions Puc 903.01(a-e) and 903.02(a-b) for each project. To the extent the Complainants are, by this list, alleging that Eversource is in violation of these provisions, the Company disputes these allegations in their entirety and reiterates that at all times the Company has been processing Applications in a non-discriminatory manner and has not been unreasonably withholding its permission to interconnect a customer-generator’s facility and has been making net metering available to projects on a first-come, first-served basis, consistent with the mandates of Puc 903.01(a-e) and 903.02(a-b). All the Complainants have done is list the projects from the Complaint along with listing the rule provisions: this does not comprise an allegation of sufficient specificity to which the Company can respond any further beyond what has already been asserted here.

**General Claims of Unlawful Delays Are Unfounded**

The Complaint, in the “Facts Common to Counts” section, refers to the 28 projects included in the Complaint, and states that “[i]n spite of the passage of over nineteen months and missing legally required deadlines, and in spite of the state laws about energy independence and renewable generation, Defendants have not executed one single interconnection service agreement with Plaintiffs for any of the twenty-eight projects.” (Complaint at 6). This statement, while technically correct regarding the issuance of IAs for the Complaint’s Applications, omits most relevant facts on which a conclusion of law could be based and are discussed more fully below, and gives an erroneous impression that the Company has done nothing with the 28 projects for nineteen months. Nor is it true that all 28 projects have been waiting for nineteen months like the statement implies. While the oldest of the projects was filed in July of 2022 (and is currently being issued an IA), the

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<sup>4</sup> The relevant excerpt of email thread between Jessica Chiavara (counsel for Eversource) and Amy Manzelli (counsel for Complainants) where counsel for Complainants confirms no violations of the provisions cited to in the complaint is included with this response as Attachment A.

rest were filed more recently, four of which were filed as recently as November 2023. But these factual distinctions are not the only misrepresentations in the Complaint.

Setting aside the factual mischaracterizations for the moment, the Complaint is devoid of any support for its claims that the Company “missed legally required deadlines” and acted “in spite of state laws about energy independence and renewable generation”. Without such support, these allegations are fatally non-specific and unsupported and amount to an unfounded disparagement of the Company despite the efforts that Eversource has made and continues to make to accommodate the Complainants priorities to the extent it can without treating the Complainants any more favorably than any other DG applicant or deviating from the requirements for interconnection in the Puc 900 rules. Regarding the statutes referenced in the Complaint, the Complaint summarizes those statutes accurately as articulating state policies. But that is all those statutes do – they create no obligation for the utilities. In fact, the only statute cited in the Complaint that describes any sort of obligation is RSA 12-P:2, VI, which pertains to the responsibility of the Department to provide leadership on energy efficiency and sustainable energy, though it does not detail what that leadership should entail. RSA 12-P:2, VI, like the other cited statutes, contains no obligatory conditions for the utility.

After noting the policy statements in RSA 362-A:1, RSA 362-F:1, the Complaint proceeds to reference the “wrongful” or “unlawful delays” of the Company. But at no point does the Complaint provide support for the conclusion that the delays are wrongful or unlawful, or even support demonstrating that Eversource’s conduct comprises a delay. The passage of time—even nineteen months—while not insignificant, does not amount to a delay, let alone a wrongful or unlawful one. The only possible support for a claim of delay to be found in the Complaint would reside with the deadlines contained within Puc rules 904.04(b), 904.05(q), and 904.05(y). However, as previously stated, the Complainants have conceded that none of those rule provisions apply to the 28 Applications in the Complaint. Simply put, it is undisputed that there have been no wrongful or unlawful delays on the part of the Company in processing the Applications in the Complaint. The Complainants’ dissatisfaction with the time it is taking to process these applications does not amount to an actionable claim, nor does it warrant any reparations or favorable treatment compared with any other applicant in the Queue, as doing so would be discriminatory in violation of Puc 903.01(b).

Nonetheless, Eversource takes seriously its responsibility to the DG industry in its role administering and processing Applications and interconnecting clean energy projects to the grid, which is why the Company has been making extraordinary efforts to address the processing times for Applications on its own initiative. Eversource sees process improvement for interconnecting distributed energy as a component part of its larger, primary responsibility as the steward of the distribution grid to provide safe and reliable electric service to all customers. But as already discussed and detailed more fully below, Eversource is not only meeting, but exceeding the legal and regulatory obligations for processing Applications, including those that are the subject of the Complaint.

The Company notes that about halfway through 2022, the Company experienced a profound spike in Applications, a trend that continues to this day. In 2022, Eversource received nearly 2.7 times the number of Applications received the previous year. And for 2023 the upward trend continued with Eversource receiving 4,719 Applications, compared with 1,513 Applications received just two years prior in 2021. When this uptick occurred, the Company was not equipped to handle an exponential increase, and a bottleneck of Applications resulted. But Eversource

redoubled its efforts, not just to process the applications in the Queue, but to implement improved processes and deploy additional resources to ensure that the Company could meet the needs of the growing New Hampshire DG industry for the long term. While it did take some time, today over 90 percent of all Applications are fully processed and issued an IA within three days. Eversource has also been adding resources and adopting new fast-track screening methodologies that have enabled the Company to provide IAs for projects between 100 kW and 500 KW that pass the necessary screens to interconnect to the grid. Eversource is addressing this portion of the application Queue at a pace of issuing an average of five new IAs per week. Projects that cannot pass these fast-track screens will require further study and time. The projects requiring additional study and time are generally proposals from developers with project sizes beyond that which could be supported safely and reliably by existing electric service, transformers and electric circuits feeding the existing load. These larger projects inherently require more time and effort to develop accurate cost and timing estimates for necessary system upgrades included in the subsequent IA. Providing complete and accurate information during the Application process is essential for developers and customers to make sound decisions on the economics and financial return on their investments.

A crucial step in Application processing – particularly with projects the size of those in the Complaint – is the System Impact Study (“SIS”), which is a detailed assessment of the extent to which upgrades to the distribution system, and possibly the transmission system as well, are needed and the costs for such upgrades are estimated. The SIS is a critical step for both the utility and the project applicant, and oftentimes provides the information needed for a project applicant to decide whether to move forward with the Application. Eversource can only conduct the SIS for a limited number of projects of this size at one time, as each project has the potential to directly and significantly impact the cost and scope of work for every other project behind it in the Queue at the same substation. Because of this dynamic, Eversource takes the general approach of only processing an SIS for the first project at any given substation before beginning those behind it at the same substation. And this is of course applied while also adhering to the first-come, first-served principle of the order of projects in the overall Queue.

One possible exception to this approach, which could expedite processing time for larger Applications is for developers with Applications located on the same substation as the Application next up in the Queue to voluntarily agree to a group study, where SIS costs are shared and projects on that substation are studied together. Group studies would be executed under the assumption that all projects being studied will eventually interconnect to the grid, and that they would do so according to their order in the Queue. But the group study approach is not without risk for the project applicants. Since applicants may withdraw their Applications based on the results of the group SIS, projects that enter a group study run the risk of their project cost and scope of work estimates changing significantly depending on the actions of those applicants in the group with projects further ahead in the Queue. But if a group of applicants is aware of these risks and willing to proceed with a group study—including reaching agreement on sharing the costs of the SIS—Eversource is willing to execute group studies as a measure to process more Applications at one time, possibly expediting the overall timeline of some Applications. While details would need to be further fleshed out, this is one example of Eversource using its expertise and best efforts to exercise best practices and implement process improvements that develop based on cumulative

experience with the sustained growth in the DG industry and ever-increasing rates of Applications in New Hampshire.<sup>5</sup>

Overall, Eversource's process improvements have resolved nearly 95 percent of all Applications in its service territory—from families installing solar to defray energy costs or reduce their carbon footprint, to developers both local and national installing commercial solar on a larger scale. Eversource's commitment to both the DG developer community and Eversource customers has been proven through these efforts, but even in the face of this progress the Company will continue to seek ways to make further improvements for an overall better experience for all interested parties while maintaining the highest standards for ensuring safe and reliable electric service for everyone.

The one remaining vestige of the bottleneck of Applications that began in mid-2022 is a queue of 91 projects sized 999 kW and greater. These projects are inherently complex and so do not meet the criteria for the fast-track process which the Company was able to implement for smaller projects. These projects almost always require an SIS, and any project of 1 MW or more may require additional time for review and further study by ISO-NE, over which the Company has no control. Even on the rare occasion when an Application requires no correction or supplementing and experiences no complications outside the Company's control (complications which are explained more fully below), the SIS scoping, cost estimating, and execution all take time. But that does not mean that Eversource has resigned itself to the status quo. The Company is actively seeking any possible efficiencies to harness, including the group study option discussed above. The Company is also in the process of bringing on an additional contractor to focus on processing these large projects, specifically the SIS process. It should also be noted that the Company does not execute one SIS at a time; currently Eversource is conducting 16 SISs. But the Company's actions are not the only relevant factors contributing to this queue of 91 Applications and the time it is taking to process them. In the context of the Complaint, the Complainants' actions have had a material impact on the amount of time the Applications in the Complaint have been waiting and will take to eventually interconnect.

### **Complainants Contributory Actions**

The following information is not intended to engage in finger pointing or assigning blame to anyone. It is offered simply as a relevant contributing component to the overall picture regarding the status of the Queue and the Applications in the Complaint. Of the 28 projects, the Complainants changed the size of six projects, some multiple times. Changing the size of the projects within an Application renders any projected timeline the Company may have had for that Application effectively meaningless, as it is akin to submitting a new Application. In fact, other New England states have policies that either allow for or require a project get removed from the Queue and require a new application be submitted should certain material changes to the project be made by the applicant. Eversource tries to work to the greatest extent possible with all applicants and so does not remove applications from the Queue for changes to the Application. Whether this approach is best practice, or if it is preferable to have a policy of requiring a new

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<sup>5</sup> The New Hampshire Electric Utilities have also proposed modest Application fees in Docket No. DE 22-060 that would allow the utilities to acquire scalable resources in the event of future unanticipated spikes in the influx of applications, without increasing the costs of DG and net metering for all customers by having applicants pick up the costs, as they benefit most directly from DG. Hearings for Docket No. DE 22-060 are anticipated to take place in early August, so any possible implementation of Application fees would follow a final order in the docket after hearings have concluded.

Application and receiving a new Queue position should an applicant wish to materially change a project application is a salient policy consideration that the Company is actively contemplating, with an eye to adopting the practice that is most efficient and equitable for all applicants. The Complainants have regularly made numerous changes to their Applications, including the 28 projects included in the Complaint beyond changing the project size, which has made a material contribution to the processing time of the Applications in the Complaint.

Another contributing factor to the status of the Complaint Applications are projects that have been withdrawn instead of completing an IA. During the nineteen-month period cited in the Complaint, Kearsarge submitted ten project Applications over a five-month period (October 2022-March 2023) that have been withdrawn. All efforts that were spent on these Applications necessarily impacted all projects behind them. With the exception of the first project in the Complaint submitted in July of 2022, all of the 28 projects were submitted after October of 2022, and 19 of them were filed March 2023 or later, after all of the ten projects were withdrawn, meaning the timeline for 19 of 28 projects was to some degree affected by the ten withdrawn project Applications.<sup>6</sup>

These two significant contributory actions of the Complainants aside, projects of the size of those contained within the Complaint frequently must wait on necessary action of the Applicant, which the Company has no control over. Eversource does not have records of every time the 28 Complaint Applications had to wait for the action by the Complainant, and Eversource is not alleging that the Complainants are solely responsible for processing times due to their own inaction. The Company simply notes that pausing to wait for action on the part of the applicant is part of the ordinary course of any Application processing, and particularly with projects of the size and complexity of those in the Complaint. Overall, when taking all relevant factors into account, while nineteen months may not be an ideal time by the developer's standards to wait for a particular project to interconnect, it is not unheard of for large project proposals that are materially changed, sometimes multiple times by the applicant, nor is it necessarily unreasonable given the factors described in this response. But the Company isn't taking a position on whether nineteen months is reasonable or not, as this is not a determination that must be made to reach a conclusion that Eversource is compliant with all laws, rules and regulations regarding the Applications in the Complaint. These contributing factors and actions are simply additional information so that the Department may have a more complete picture of the considerations the utility faces with Application processing, which could be particularly salient information for future rulemaking on interconnection standards.

Eversource's position is that the Company is meeting or exceeding its legal and regulatory obligations, and equally importantly, is conducting itself in good faith and at all times exercising best efforts to meet the State policy objectives on energy independence and renewable energy using what are in the Company's assessment best practices for responsible interconnection to the grid. For all of these reasons the Complaint should be dismissed in its entirety.

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<sup>6</sup> Eversource is not asserting that an applicant should be certain that every project application they submit will be completed, as that would be an unreasonable expectation to put on any applicant. Again, this is just a relevant factor affecting Application processing time.

## **Breach of Contract Claims**

Eversource will not discuss in detail the Complaint's breach of contract claims, as such claims are not in the purview of the Department's jurisdiction, but rather with the courts. Regardless, Eversource maintains that these claims are unfounded, as they are all based upon Eversource's Interconnection Guidelines, which state they "are provided solely as information for the benefit of prospective Generators seeking to interconnect with Eversource's EPS" and subject to all limitations and provisions of all laws, regulations, rules, Commission orders and the Company tariff. By distinguishing the Guidelines in this way, it is clear that the Guidelines are not binding in the way that laws, regulations, rules, Commission orders or tariffs are, which is why the Guidelines are provided for informational purposes, and do not create binding obligations on the Company.

The breach of contract claims also rely on the SISs, but the timelines and costs provided in the SISs are explicitly provided as estimates. Moreover, these estimates are again equally if not more likely to be impacted by the actions of the applicant as they are the Company. Eversource does not take a position on the allegations that the Company did not meet specific estimated timelines in a particular SIS, as the relevant consideration is that the SIS estimates do not create a binding contractual deadline that merits damages if not met.

As a final note on the breach of contract claims, Eversource does refute that at any time it misled or misrepresented information to the Complainants. At all times, Eversource staff provided the best information staff had available at any given time. The myriad factors simultaneously affecting the Queue—not nearly all of which are addressed in this response—result in a complex and dynamic system that is almost constantly in flux. Applications at the front of the Queue affect all Applications behind them, so information is constantly being updated. This does not mean the Company misled or misinformed anyone about the status of any Application, and the Attachments to the Complaint do not support such a claim.

## **CONCLUSION**

Eversource reiterates that the Complaint contains no valid claim of a violation of law, rule, regulation, Commission order, or tariff, and so should be dismissed in its entirety with prejudice. Generally, the Complaint supplants legal standards and obligations for the Complainants' expectations and desired outcomes. Eversource must remain focused on implementing and executing best practices, the safety and reliability of the distribution and transmission systems, the uniform administration of its tariff, and its legal and regulatory obligations regarding equitable treatment of all Applications and applicants. But to foster development of beneficial DG project development that does not compromise the safety and reliability of the transmission and distribution systems, Eversource has gone to great lengths to work with DG customers and the developer community since applications spiked in 2022 to work through the challenges to best meet the needs of project applicants to the best of the Company's ability. Those efforts continue to this day, and input from stakeholders is valuable for continuous improvement. This is why the Company is not waiting for any statewide interconnection standards to build upon the process improvements it has made over the last two years. Eversource will continue to go above and beyond the requirements of the Puc 900 rules to deliver equitable service to all in the Queue, and robust dialogue with stakeholders is a critical piece in continuous process improvement.



The Company appreciates the Department's consideration of this answer. Eversource intends for this to provide the Department with sufficient information to conclude this matter, so that the staff necessary to address this matter may return their full attention to the business of Application processing and interconnecting DG to the grid. This answer is being submitted electronically only, consistent with the Department's direction; paper copies will not follow.

Thank you,

A handwritten signature in black ink, appearing to read 'J. Chiavara', written in a cursive style.

Jessica A. Chiavara  
Senior Counsel, Eversource Energy

Attachment

cc: Amy Manzelli, ReWild Renewables, LLC; Lodestar Energy LLC; and Office of the Consumer Advocate.