



780 N. Commercial Street
P.O. Box 330
Manchester, NH 03105-0330

Jessica A. Chiavara
Senior Counsel

Phone: 603-634-2972
Jessica.Chiavara@eversource.com

May 24, 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 sur-reply to complainants' reply to Eversource objection to complainants' motion to amend its complaint

Attorney Lynch:

Pursuant to Puc 203.05, please find the attached sur-reply to the reply of Kearsarge Solar LLC, et al., to the objection filed by Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") to the motion filed by the complainants to amend their complaint in this docket, for filing with the New Hampshire Department of Energy on behalf of the Company.

Consistent with current policy this filing is being made with the Department electronically only; paper copies will not follow. If you have any questions, please contact me. Thank you for your assistance with this matter.

Thank you,

A handwritten signature in black ink, appearing to read "J. Chiavara", written over a white background.

Jessica A. Chiavara
Senior Counsel, Eversource Energy

Attachment

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

STATE OF NEW HAMPSHIRE
before the
DEPARTMENT OF ENERGY

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

**EVERSOURCE SUR-REPLY TO COMPLAINANTS' REPLY TO OBJECTION
TO COMPLAINANTS' MOTION TO AMEND COMPLAINT**

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) hereby submits this sur-reply to the reply (“Reply”) filed by Kearsarge Solar, LLC, ReWild Renewables, LLC, and Lodestar Energy LLC (collectively, the “Complainants”) with respect to Eversource’s objection (“Objection”) filed pursuant to Puc 203.07(e) to the motion and supporting materials submitted by the Complainants to the New Hampshire Department of Energy (the “Department” or “DOE”) in this DOE complaint docket on May 6, 2024 (the “Motion”). The Company will not reiterate here every point covered in its Objection, nor refute every point raised in the Reply. Rather, the Company submits this sur-reply to clarify certain material misstatements in the Complainants’ Reply and to preserve its rights in this proceeding. At bottom, the Complainants’ complaint, whether amended or not, is and remains facially invalid because: (1) citing to two chapters of the Revised Statutes Annotated lacks sufficient specificity to support any valid allegations; (2) breach of contract claims are outside the purview of the Department’s jurisdiction and are exclusively a matter for the courts; and (3) all of the allegations that are specific, citing three provisions of the Puc 900 rules, were deemed not to apply to any of the 28 project applications listed in the complaint. The Complainants should not be allowed to try to rehabilitate the complaint through an amendment after Eversource has demonstrated the invalidity of their original filing. But even if they were allowed to so try, the amendment the Complainants propose

would still not result in a facially valid complaint, and therefore the Motion should be denied, and the complaint dismissed in its entirety with prejudice. In support, Eversource states as follows:

1. The Reply is a combination of error and mischaracterization. Regarding the validity of the claims, as noted above, citing to two full chapters of the RSAs does not support a sufficient allegation of any violation, as a matter of law. Accordingly, the complaint lacks even a *prima facie* claim of any violation of an applicable law, rule, or other legally binding standard. The Department cannot practically investigate a claim of violation of all of RSA 362-A and RSA 362-F, all or nearly all of which contain no utility compliance obligations in any event. If the Complainants are alleging a violation for which they seek relief, then they must be able to state clearly what specific law or rule they allege has been violated.

2. The Reply also states that no determination has been made regarding the Complainants' breach of contract claims, and that Eversource cannot simply declare such claims not to be a part of this matter, but that assertion is clearly in error. The courts' jurisdiction over claims of contractual breach – and the Department's lack of such jurisdiction – is not an issue in dispute; it is an indisputable conclusion of law and must be recognized as such by the Department.

3. Moreover, the Complainants do not have to concede their complaint is meritless for that too to be the inescapable conclusion, as the fact that every allegation of a violation of the Puc 900 rules in the original complaint has been found not to apply to any project listed in the complaint is what renders it without merit. Amending the complaint to add citations to two new provisions would not change that fact, but it would be inappropriate to do so for the reasons stated in the Objection.¹

¹ Paragraph 11 of the Reply asserts that the Motion is intended to “simply update[] the complaint to formally assert violation of the rules, in addition to already asserting violations of the statutes.” But that is patently false, because

4. Similarly, the Complainants assert in Paragraph 5 of their Reply that they have made allegations and Eversource has provided defenses to such allegations, but that is inaccurate and a gross mischaracterization. The Company's position is that there is nothing in the complaint that comprises a valid allegation that merits investigation, much less adjudication. That is not a defense against any claim made in the complaint; rather, it is an assessment of the legal sufficiency of the complaint as filed. Eversource has provided no defenses, because there are no legally sufficient allegations of any violation to defend against. The Company's responses have simply analyzed the legal insufficiency of the complaint, and then provided supplemental information regarding the project applications referenced in the complaint and the interconnection application process, generally and for informational purposes, as requested by its regulators.

5. In essence, the complaint raises no contested issue of fact or law and contains no valid allegation of a violation of any specific law or rule. Therefore, the complaint should not be permitted to be amended and it must be dismissed. The Complainants' assertion in Paragraph 12 of the Reply that Eversource is "woefully, unlawfully" behind in processing interconnection applications is of no legal consequence, in the absence of any legally binding deadline or timeline for processing such applications, none of which is cited either in the complaint or in the Reply, as no such deadline or timeline exists. The Complainants can provide no specific definition for what a "delay" is or what "behind" means, because there is no applicable standard to apply. A bald claim with no articulated legal standard or facts supporting the alleged violation of that standard is insufficient as a matter of law and fails to meet the requirements for a valid complaint under the

the Complainants did formally assert rules violations in their original complaint, they just failed to assert any valid rules violations. Attempting to "update" the complaint with entirely different rules provisions after the three originally cited were demonstrated not to apply is not an "update" under any reasonable understanding of that word.

Department's standards; therefore, the Motion should be denied and the complaint must be dismissed, whether or not it is amended.

WHEREFORE, Eversource respectfully requests that the Department:

1. Grant leave to file and consider this sur-reply to the Complainants' Reply; and
2. Deny Complainants' Motion as contrary to Puc 203.10, dismiss the complaint with prejudice, and close the docket, as there is no valid allegation of a violation of any law, rule, Commission order, or Company tariff; or, in the alternative,
3. If the Department grants the Motion, dismiss the complaint with prejudice and close the docket, because even with the amendment sought by the Motion, the complaint is facially deficient, as it fails to make a valid allegation of a violation of any law, rule, Commission order, or Company tariff that is supported by any relevant facts.

Respectfully submitted this 24th day of May, 2024

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A
EVERSOURCE ENERGY**



By:
Jessica A. Chiavara
Senior Counsel
Public Service Company of New Hampshire d/b/a Eversource Energy
780 N. Commercial Street
Manchester, NH 03101
603-634-2972
Jessica.chiavara@eversource.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

Dated: May 24, 2024



Jessica A. Chiavara