

Robert Fisher  
58 Adams Street  
Laconia, NH 03246-3732  
802 727 0441 (cell)

July 29<sup>th</sup>, 2015

Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

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**RE: DE 15-251 - Hearing Notification**  
Complaint of Robert Fisher v. Eversource

Dear Ms. Howland:

On July 20<sup>th</sup>, 2015, The Public Utilities Commission granted the hearing of this matter in a written order and provided a number of requirements for submissions to be made in advance. I am providing my responses to the matters described in Paragraph 1 of the order. Further, I will provide my exhibits by August 7, 2015, consistent with the requirements of the order.

Item 1(a) requires "a list of witnesses they intend to call at the hearing, identifying each witness by name and business or home address."

Robert Fisher intends to call:

Robert Fisher  
58 Adams St.  
Laconia, NH 03246

Sam Fisher  
261 Pine St. Apt 42  
Manchester, NH 03103

Representative Nick Zaricki  
11 Hoyt Rd.  
Goffstown NH 03045

Josh Youssef  
Same Day Computer  
397 Union Ave.  
Laconia, NH 03246

Janice Johnson  
Credit Supervisor  
73 West Brook St.  
Manchester NH 03101  
603-621-6802

Item 1(b) requires "a short written summary of each witness's position, which summary should provide the witness's account of the facts and any other relevant topic about which the witness is expected to testify." Each witness's summary is provided in attachments to this letter. Robert Fisher's summary is in Attachment 1, Sam Fisher's summary is in Attachment 2, Josh Youssef's summary is in Attachment 3, and Representative Zaricki's summary is in Attachment 4.

Item 1(c) provides “The parties may also provide a summary of the legal issues involved in this case.” My summary of the legal issues is provided as Attachment 5 to this letter.

Thank you for your consideration in this matter.

A handwritten signature in black ink that reads "Robert Fisher". The signature is written in a cursive style with a large, stylized initial 'R'.

Rep. Robert Fisher

802-727-0441

## **Summary of Events and Position of Robert Fisher**

### **DE 15-251 - Complaint of Robert Fisher Against Eversource Energy**

#### **Summary of Events:**

- On March 4, 2015, Eversource requested a deposit for \$680.00.
- On March 10, 2015, Mr. Fisher called and requested that the deposit be waived. He was advised by the representative of the options available to him to have the deposit request waived and was also advised that the deposit could be paid in installments over 3 months. Mr. Fisher could not afford to pay the deposit and asked to speak with a supervisor.
- On March 10, 2015, Mr. Fisher spoke with a credit supervisor and stated his dissatisfaction with the deposit request. He then contacted the Commission to discuss the deposit and rules.
- On March 10, 2015, Mr. Fisher received a call from the Commission stating that Eversource agreed to reduce the deposit request to \$380.00. This amount was still more than Mr. Fisher could afford, so he decided to investigate alternative options.
- On March 18, 2015, Mr. Fisher contacted Eversource to find out details for potentially having a third party write a guarantee in lieu of a deposit.

- On April 13, 2015, Sam Fisher called and spoke with Eversource about the possibility of writing a guarantee on behalf of Mr. Fisher. His offer was declined because his account with Eversource was young, albeit in good standing.
- On April 29, 2015, Eversource Representatives, Commission Representatives, and Mr. Fisher met to discuss the issue. Eversource continued to decline Sam Fisher as a guarantor, despite his status of good standing with the utility.
- On May 6th, a formal complaint was lodged with the Commission about Eversource's application of the deposit rules.
- On May 19th, Eversource disconnected Mr. Fisher's service against the order of the Commission to postpone any disconnect actions pending a judgement on the pending complaint. Mr. Fisher suffered damages to his computer equipment – equipment he uses to manage his business - which was powered on at the time of the shutoff, equipment that he typically turns off during storms or other events that may cause potential outages. His computer's power supply, hard drive, and the data within were damaged. Repair and recovery estimates have so far totaled approximately \$3,500. Eversource later claimed the shutoff was in error and apologized and applied a small, one-time credit to the account.
- On June 8th, the Commission issued an order finding that Eversource's interpretation of the rules was "reasonable."

- On June 10th, Representative Nick Zaricki called and spoke to a representative about the possibility of acting as a guarantor. His offer was declined as Eversource indicated he was not a customer of the Utility.

**Statement of Position:**

Over the past year, as a customer with electric heat, my electric bills have varied greatly depending on the temperature outside, raising electric rates, and the harshness of the winters. It has been difficult to anticipate precisely what each bill may come to, as my electric bills have reached record highs this year. Because of this, it has sometimes taken me longer than usual to procure the amount due to Eversource, resulting in disconnect notices.

Although I have received a number of disconnect notices, I have nevertheless been able to make the payments to prevent a disconnect, and have not had my service disconnected once due to non-payment over the life of the account, which spans many years.

When Eversource made the demand for a deposit, it was not a matter of whether I wanted to pay it or not, but rather it was a matter that I did not have additional funds available to do so- which is evidenced by the late payments themselves.

Paying an additional deposit on top of such high electric bills would cause an undue financial burden on me, and would make it harder to afford my on-going bills, which I had already been struggling but was able to pay.

Upon review of the Commission's administrative rules, specifically 1203.03 (i), I was relieved to find a reasonable alternative to making the payment of the deposit. Instead, my brother, Sam Fisher, who is a customer in good standing, would be able to make a guarantee on my behalf. He was happy to do so as he did not see me as a credit risk and knew my history of making payments to PSNH/Eversource over the years.

Eversource has determined to use a definition of good standing, however, that does not match my own common understanding of the phrase. I have asked many friends, co-workers, and colleagues in the state legislature, and they have all agreed that the phrase "good standing" is commonly understood to mean "current on bills" or "all accounts paid." Nobody I had asked understood it to imply a time requirement, and certainly not one of an arbitrary twelve months. It is my belief that for a definition to be considered a "common understanding" it must be understood commonly by a reasonable person of the public. Despite this, not one member of the public that I had asked shared Eversource's view of the definition. This would indicate that Eversource's definition is not common, and therefore it cannot apply in this matter.

My position is that the Commission has a responsibility to uphold and enforce the rules as written, and that requires Eversource to accept a written guarantee from any responsible party, such as a Customer in good standing of the utility, regardless of Eversource's internal policies of said phrase or such a customer.

## **Summary of Events and Position of Sam Fisher**

### **DE 15-251 - Complaint of Robert Fisher Against Eversource Energy**

#### **Summary of Events:**

- On April 13, 2015, Sam Fisher, called and spoke to a representative about the possibility of acting as a guarantor. His offer was declined as Eversource indicated that although he had paid his bills on time and had no arrearages, he did not qualify as a customer in good standing.

#### **Statement of Position:**

Sam Fisher's position in this matter is that he believes to be a customer in good standing, despite having had the account for less than twelve months.

#### **Additional Facts:**

- Sam has communicated with his landlord and has determined he is a customer in good standing of the landlord, having had his rental lease for the same amount of time as his account with Eversource Energy, and being current on his contractual rent payment obligations.

## **Position of**

**Josh Youssef**

### **DE 15-251 - Complaint of Robert Fisher Against Eversource Energy**

#### **Statement of Position:**

As a small business owner in New Hampshire, the term “good standing” comes up and is used frequently during the course of business. As this hearing is related to finding the common understanding, it is important to note how it is used within the context of this New Hampshire business (Same Day Computer.) In this industry, and many others, “Good standing” refers to a customer who has paid all outstanding bills and is current. There is no time requirement or history of payments required, and a customer who has been previously late on his or her payments, or has not been in good standing, can rectify this by paying all outstanding or late bills and would then be again considered a customer in “good standing” regardless of payment history.

## **Summary of Events and Position of Representative Nick Zaricki**

### **DE 15-251 - Complaint of Robert Fisher Against Eversource Energy**

#### **Summary of Events:**

- On June 10th, Representative Nick Zaricki called and spoke to a representative about the possibility of acting as a guarantor. His offer was declined as Eversource indicated he was not a customer of the Utility.

#### **Statement of Position:**

The PUC previous ruling states that the “common understanding” of the term ‘customer in good standing’ is the how the term must be interpreted, given that it is not defined anywhere in the PUC rules. The common understanding of customer in “good standing” is not in line with the definition Eversource hopes to apply. ‘Customer in Good Standing’ is not commonly understood to include a length of time requirement by most businesses, individuals or government agencies, including the NH Bar association or Secretary of State. Indeed, Eversource’s definition is not even common among New Hampshire Utility companies. The reasonableness of the way Eversource would like to define the contents of the PUC rules is a matter to be debated in the legislature and a moot point to this hearing. What is at issue is

whether Eversource is allowed to set their own non common definition for the term ‘Customer in Good Standing’.

**Additional Facts:**

- Representative Nick Zaricki, as a New Hampshire small business owner and state legislator, believes he is a “responsible party” and should be considered for a written guarantee, as he meets the criteria outlined in PUC 1203.03 (i)(1):

“Accept the irrevocable written guarantee of a responsible party such as a social service organization, a municipal welfare agency, a bank, or a customer in good standing of the utility as a surety for a customer service account, provided that any such guarantee shall:

- a. Be in writing;
- b. Include the maximum amount guaranteed; and
- c. Specify that the utility shall not hold the guarantor liable for the sums in excess of the maximum amount guaranteed unless agreed to in a separate written agreement; or”

The criteria listed above suggests that a customer in good standing of the utility is an example of a responsible party, but the list itself is not exhaustive and should also include any party considered “responsible.” Other examples include a “social service organization, a municipal welfare agency, a bank.”

- Representative Nick Zaricki has contacted other New Hampshire Utilities to determine their policies and definitions of “good standing,” and will be testifying on these findings, which will be submitted as exhibits by August 7<sup>th</sup>, in accordance with the Commission’s order.
- Representative Nick Zaricki intends also on testifying on his experience as a State Legislator with the application and wording of rules and laws, and his common understanding of the phrase “Good Standing.”

DE 15-251

Complaint of Robert Fisher Against Eversource Energy

**Robert Fisher's Summary of Legal Arguments in Advance of the  
August 10<sup>th</sup>, 2015 hearing**

On July 20<sup>th</sup>, 2015, the Commission issued a letter order granting a hearing on August 10<sup>th</sup>, 2015. In this order, the Commission stated that the parties may "provide a summary of the legal issues involved in this case". Following the Commission's recommendation, Robert Fisher herein provides his summary of the legal issues in this case.

On April 13, 2015, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") denied a written guarantee of Sam Fisher, who at the time had been a customer of Eversource for two months, and had been making timely payments on his account.

The Public Utilities Commission ("PUC") Administrative Rules outlines regulations regarding deposits, and under what circumstances a utility must take a written guarantee in lieu of a cash deposit.

PUC Administrative Rules 1203.03 (i) states:

- i. In lieu of a deposit, a utility shall:
  1. Accept the irrevocable written guarantee of a responsible party such as a social service organization, a municipal welfare agency, a bank, or a customer in good standing of the utility as a surety for a customer service account, provided that any such guarantee shall:
    - a. Be in writing;
    - b. Include the maximum amount guaranteed; and
    - c. Specify that the utility shall not hold the guarantor liable for the sums in excess of the maximum amount guaranteed unless agreed to in a separate written agreement;  
or
  2. With the agreement of both the utility and the customer, establish a direct debit account whereby the customer's payment shall be automatically debited from his/her bank account each month.

On April 13<sup>th</sup>, 2015, Sam Fisher called Eversource to offer a written guarantee in lieu of the deposit they had requested of Robert Fisher.

Sam Fisher had only been a customer for two months at the time, but had paid all his bills in a timely manner, and by all accounts was what would normally be considered a customer in good standing.

The wording of PUC Administrative Rule 1203.03 (i) states that a utility shall accept the written guarantee of a responsible party such as a customer in good standing. As stated in the rule, if a customer was found in good standing, the utility does not have the option to decline such a guarantee. Therefore, the purpose of this hearing must be to find the definition of "good standing."

In Eversource's letter dated May 22nd, 2015 titled "RE: Complaint of Robert Fisher Response of Eversource," Eversource has taken upon itself to interpret and define "good standing":

As an initial matter, while the rule states that an irrevocable written guarantee of a customer in good standing is to be accepted in lieu of a deposit, the rule does not define what it means for a customer to be in good standing. Therefore, the utility must determine which customers can be considered to be "in good standing" and which cannot. By the standard set out in the complaint, any customer who is current on his or her bills would be deemed to be "in good standing." By that interpretation, a customer who had requested service today would be deemed to be "in good standing" and could provide a guarantee for

another immediately, though the utility would have no reasonable means of verifying whether that customer was a credit or payment risk. Further, by the standard set out in the complaint a customer current on his or her bills could be deemed to be "in good standing" regardless of that customer's payment history. It could be that a customer who is current is only current because he or she had received a notice of disconnection for nonpayment one day prior. In essence, under the interpretation in the complaint the utility would have no greater assurance of being able to recover its money than it would absent the deposit. That is not a reasonable interpretation of the rule. Accordingly, and based upon the rules, Eversource has implemented a reasonable, objective standard for verifying whether a customer is "in good standing" for purposes of deposit requests and payment guarantees.

Pursuant to Puc 1203.03(IX5) all deposits requested and retained by a utility must be refunded, with interest, when all bills have been paid, without arrearage, for 12 months. Thus, the rules set out a standard for determining when a customer will not, and should not, be considered a sufficient risk to justify retaining a deposit. After making 12 months of payments without arrearages the utility can be assured that the customer will pay the bills rendered, and a deposit is no longer necessary. Eversource has adopted this same standard as the standard for determining when a customer is "in good

standing" for purposes of being able to provide a guarantee on behalf of another customer. This standard is objective, reasonable, uniform to implement, and builds upon rules already in place.

Eversource defines "good standing" as a customer with twelve timely payments. The measure by which they determine that this should be the definition that applies is not whether it is written in the administrative rule, and not whether they are interpreting the plain language as presented, adding and imputing no additional language to the rule as written. Instead, Eversource has determined that the measure by which they have determined this definition and applied it is that it is "objective, reasonable, uniform to implement, and builds upon rules already in place."

It is important to note that in matters of law, laws may be *written* to be objective, reasonable, uniform to implement, and build upon rules already in place. But the interpretation of a law cannot and does not hinge on reasonability or in which ways it may benefit a business entity's interests. Instead, the interpretation of a law first and foremost hinges on plain meaning of the text that is written within that regulation, and must fairly apply, not only to businesses that it governs, but to the people who interact with those businesses.

If Eversource was making a recommendation to the Commission to adopt or change a rule, their rationale provided above might be relevant to provide insight on how to better write

regulations that would meet the needs of the utility. However, this hearing is not intended to suggest a better or different regulation, but instead to find the meaning and interpretation of current regulation. As such, we cannot consider Eversource's rationale for their desired application of their policies. Instead we must only consider the plain language of what is currently written in the administrative rule without adding or imputing additional words, meaning, or intent.

Using a definition that only one party decides midstream is unfair and discriminatory towards the other parties who have not had the luxury of inventing their own definitions for terms and phrases within the law. This is why rules, laws, and regulations must be interpreted using the plain language of the law and disagreements of interpretation must be arbitrated by neutral third parties such as the PUC or New Hampshire Courts.

Despite this, in the PUC's response to Robert Fisher's complaint dated June 8<sup>th</sup>, 2015, the PUC determined that not only does the PUC have no definition for "customer of good standing," but that instead of the PUC defining this term, they have allowed Eversource, who is only one party governed by this regulation, to define it themselves:

The Commission's rules do not define the term "customer of good standing of the utility." Instead, the Commission applies the common understanding of that term to determine whether a utility's practices are reasonable. The Commission found that it is

reasonable for Eversource to define “customer in good standing” as a customer with a history of twelve timely payments without arrearages before accepting that customer’s personal guarantee as surety for another customer’s account.

In the PUC’s response of June 8<sup>th</sup>, 2015, the PUC stipulates that in cases where a term is not defined in regulation, they must resort to using the “common understanding of that term to determine whether a utility’s practices are reasonable.” Therefore, the finding of this hearing cannot be to determine whether a utility is acting reasonably in the context of their business practices and interests as Eversource has tried to claim, but rather it must be to determine the common understanding and interpretation of the phrase and greater regulation to determine the reasonability of the utility’s actions in context of the regulation and law.

The New Hampshire Supreme Court has described its review of disputes in the interpretation of agency rules:

We use the same principles of construction in interpreting administrative rules as we use with statutes. When interpreting agency rules, where possible, we ascribe the plain and ordinary meanings to the words used. We also construe rules in their entirety, rather than in segments. Further, the administrative intent of the issuing authority is important where that intent can be ascertained. While an agency's interpretation of its regulations is to be accorded deference, our deference is not total because we still must

examine the agency's interpretation to determine if it is consistent with the language of the regulation and with the purpose which the regulation is intended to serve. Where language is ambiguous or where more than one reasonable interpretation exists, we must look beyond the rule itself to determine its meaning. In such cases, we will consider regulatory history to determine administrative intent.

*Vector Mktg. Corp. v. N.H. Dep't of Revenue Admin.*, 156 N.H. 781, 783-84 (2008)

It's important to note that the Supreme Court agrees that agency rules should be interpreted using the "plain and ordinary meanings to the words used." Further, they state that the rules shall be construed "in their entirety, rather than in segments." Using the greater context of the PUC Administrative rules, there is no text or modifying language to suggest that "good standing" in rule 1203.03 (i) should be interpreted with any time constraint, let alone twelve months of timely payments.

Additionally, the Court has stated:

[W]e interpret disputed language of a statute or regulation in the context of the overall statutory or regulatory scheme and not in isolation. We seek to effectuate the overall legislative purpose and to avoid an absurd or unjust result. We can neither ignore the

plain language of the legislation nor add words which the lawmakers did not see fit to include.

*Boviardv. N.H. Dep't of Admin. Svcs., 166N.H. 755,759 (2014)*

The Court has made it clear that additional words that the “lawmakers did not see fit to include” should not be considered when interpreting said rules. There is absolutely no text in the PUC Administrative Rules suggesting that the definition of “a customer in good standing of the utility” should be considered to be a customer with any number of timely payments, let alone the arbitrary number of twelve. If we were to adopt Eversource’s proprietary definition of the phrase, we would need to add words to the regulation that were not originally included by the lawmakers. This is in stark contradiction to the Court’s statement.

In the PUC’s response to Robert Fisher’s Complaint dated June 8<sup>th</sup>, 2015, the PUC summarized Eversource’s definition of a “customer in good standing” as a customer with “twelve timely payments without arrearages.”

The Commission found that it is reasonable for Eversource to define “customer in good standing” as a customer with a history of twelve timely payments without arrearages before accepting that customer’s personal guarantee as surety for another customer’s account.

This definition, a customer with twelve timely payments without arrearages does not match a common understanding of the phrase “good standing.”

In order to find a common understanding, we must find an understanding that would be common to not only the utility, but to all parties which this regulation serves to govern, which includes not only the utilities but also the general public which must interact with these utilities.

Defining “good standing” as “twelve timely payments” would be a very specific definition based on specific rules that Eversource has adopted, but would not serve as an understanding that is common to all parties that this regulation serves to govern.

In the context of the greater public, “good standing” is most often defined as *current, or all outstanding bills paid*. There is no time constraint on good standing in common usage, and timeliness of payments is not inherently factored in the common definition.

There are many uses of the phrase “good standing” in common usage. It is these general uses that take a standard definition of a phrase and make it a “common understanding.”

- The New Hampshire Bar Association defines good standing for their members in Section III: “good standing (all dues & fees paid; CLE invoices paid; MCLE credits up to date; and nothing pending at the Attorney Discipline Office) to be eligible.” It is important to note that this does not require any number of months, let alone the arbitrary number of twelve months.

Source: <https://www.nhbar.org/for-members/change-membership-status.asp>

- The New Hampshire Secretary of State defines good standing for corporations as: “Entity that has filed all reports and fees.” Again, it is important to note that this does not have a time requirement, let alone one of an arbitrary twelve months. Additionally, the Secretary of State defines “not in good standing,” not as a member who has less than twelve months of timely payments, but instead as an “Entity that owes reports and/or fees and/or agent has resigned.”

Source: [https://www.sos.nh.gov/corporate/status\\_definitions.html](https://www.sos.nh.gov/corporate/status_definitions.html)

Looking at a definition being used by another utility, SoCalGas has a policy for residential customers to establish credit or possibly waive a deposit by providing a “Credit Reference Letter” from another utility company, as long as it meets the following criteria:

In order to establish credit or possibly waive a deposit for your gas account, residential customers may provide a Credit Reference Letter from another utility company such as gas, electric, water, telephone or cable.

The letter must be on company letterhead and meet the following criteria:

- Twelve months of continuous service within the past two years from the previous utility, which can include more than one address
- The account was maintained in good standing within those 12 months with no closes for non-payment, no returned items and two or less overdue notices.

Source: [http://custhelp.socalgas.com/app/answers/detail/a\\_id/114/~why-am-i-being-asked-for-a-letter-of-credit](http://custhelp.socalgas.com/app/answers/detail/a_id/114/~why-am-i-being-asked-for-a-letter-of-credit)

SoCalGas specifies that their company policy for waiving a deposit is a reference from another company showing that the customer had been in good standing for twelve months. It's important to note that SoCalGas finds it necessary to stipulate that the account would have to be not only in good standing, but in good standing "within those 12 months." This implicitly demonstrates that their definition of "good standing" has no time requirement. In order to communicate that their rules have a twelve month requirement, they had to stipulate it separately from the phrase "good standing" as the phrase itself does not carry the implication of any time requirement, let alone an arbitrary twelve months. This further proves that the common understanding of "good standing" does not have a time requirement.

It is also worth noting that SoCalGas's requirement of an account in good standing for twelve months can include two or less overdue notices. This demonstrates a commonly understood facet of "good standing:" that the condition of being in good standing can be attained irrespective of timeliness of payments, so long as the payments are current, any fees and/or balances associated with the account are paid and current. If one is to find themselves not in good standing, they can rectify this issue by making immediate payment of all outstanding fees and bills. It was necessary for SoCalGas to restrict their deposit qualifications by stipulating no more than two overdue notices because the phrase "good standing" does not inherently imply this. The definition of "good standing" in this case neither implies a history of payments nor the timeliness of said payments. This is why SoCalGas had to stipulate both separately.

This demonstrates that while socalgas has found it to be a worthwhile business practice to have such stipulations, it does not imply that said stipulations are part of the definition of "Good standing." As the matter of this hearing is to find the definition of "good standing" and not to determine good business tips, we must not consider their regulation to be anything but ancillary to this case. Neither of these stipulations appears in the PUC Administrative rules, and therefore cannot be considered to apply to New Hampshire Utilities.

Additional examples of the common usage of "good standing" will be provided in the exhibits to be submitted by August 7<sup>th</sup>, 2015, as per the Commission's order.

In the PUC's response to Robert Fisher's complaint dated June 8<sup>th</sup>, 2015, the PUC has explained that they currently do not have a specific definition of "good standing" and that they refer to the "common understanding:"

The Commission's rules do not define the term "customer of good standing of the utility." Instead, the Commission applies the common understanding of that term to determine whether a utility's practices are reasonable. The Commission found that it is reasonable for Eversource to define "customer in good standing" as a customer with a history of twelve timely payments without arrearages before accepting that customer's personal guarantee as surety for another customer's account.

Because these rules govern not only the utilities, but also the general public which must interact and do business with these utilities, it is not only reasonable to use the common understanding, but is actually determined by the PUC that the common understanding be used.

Adopting an uncommon understanding of the phrase, specifically one that Eversource has been allowed to define rather than the Commission, after members of the general public have attempted to follow the rules as they are plainly written is changing the rules midstream and is discriminatory to any who were not allowed to define the rules in favor of those who were.

Further, it serves as a retroactive law, punishing those for doing something they did not know they should not have done, which is inequitable and unfair.

In conclusion, Eversource has adopted an uncommon definition of “good standing” in direct conflict with the common understanding. The PUC Administrative Rules plainly state “a customer in good standing” with no additional language to support a non-standard definition of the phrase.

The PUC cannot adopt new rules midstream to apply retroactively. The immediate adoption of Eversource’s interpretation would be unbalanced for certain parties as it would be changing the rules midstream to suit the needs of one party. This would be discriminatory, inequitable, and unfair. If the rules are interpreted in a different way than they are plainly written, it is discriminatory and unfair to the public, and strays far away from the standard of finding the “common understanding.”