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**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 3, 2022

His Excellency, Governor Christopher T. Sununu
And the Honorable Council
State House
Concord, New Hampshire 03301-6397

Your Excellency and Members of the Council:

REQUESTED ACTION

Authorize the Department of Justice to enter into a Memorandum of Understanding with the Public Utilities Commission, Concord NH (Vendor #177914-B001), in the amount of \$33,824, for State Fiscal Year 2022, and \$115,738, for State Fiscal Year 2023, for the purpose of providing a dedicated temporary Assistant Attorney General, position #9U697, for the Public Utilities Commission to support adjudicative and administrative functions regulating utilities upon approval of the Governor and Executive Council through July 1, 2023. 100% Transfers From Other Agencies.

Funding is available as follows with the ability to adjust amounts, through the Budget Office, if needed and justified:

02-20-20-201010-2620	<u>FY 2022</u>	<u>FY2023</u>
Civil Law		
059-500117, Salary Temporary Employees	\$23,072	\$78,921
02-20-20-201010-2620	<u>FY 2022</u>	<u>FY2023</u>
Civil Law		
060-500601, Benefits	\$10,752	\$36,817

EXPLANATION

The Department of Justice seeks approval to enter into an MOU with the Public Utilities Commission in order to dedicate a temporary Assistant Attorney General dedicated to providing

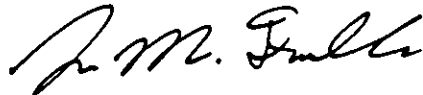
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And the Honorable Council
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legal and administrative support for all functions pertaining to regulating utilities. This position shall perform tasks as directed by the Chair of the Public Utilities Commission.

The creation of the temporary position request is scheduled to go before the January Fiscal Committee of the General Court and the subsequent Governor and Executive Council meeting for approval. This is a vital position resource to provide legal aid to the Public Utilities Commission.

Please let me know if you have any questions concerning this request. Your consideration is greatly appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Formella". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John M. Formella
Attorney General

#3417666

State of New Hampshire

Interagency Memorandum of Understanding

between the

New Hampshire Public Utilities Commission

and the

New Hampshire Department of Justice

Whereas, the New Hampshire Public Utilities Commission [*PUC*] is a duly constituted agency of the State of New Hampshire;

Whereas, the New Hampshire Department of Justice [*DOJ*] is a duly constituted agency of the State of New Hampshire;

Whereas, pursuant to Chapter 90 of the New Hampshire Laws of 2021 (2022 – 2023 Biennial State Budget), the *PUC* received an appropriation to fund an attorney position in the *DOJ*;

Whereas, the attorney position is to be funded through monies raised from the Utilities Assessment established in RSA 363-A and the individual hired into the position shall work to support the *PUC* in its adjudicative and administrative functions regulating utilities;

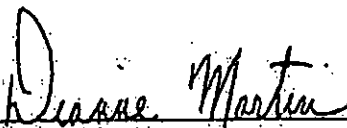
Whereas, the hiring of an attorney to support the *PUC* does not alter the *DOJ's* continuing obligation to represent and to provide legal services to the *PUC* as a state agency consistent with RSA 7:8; and

Whereas, the attorney hired by the *DOJ*, shall be an employee of the *DOJ* and perform work as assigned by the Attorney General. In the attorney's work to support the *PUC* he or she shall perform tasks as directed by the Chair of the Commission. The Chair of the Commission shall be the attorney's primary point of contact.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding to their mutual benefit, the benefit of the State, and in furtherance of constitutional or statutory authority and objectives.

1. The New Hampshire Public Utilities Commission [*PUC*] agrees to perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.
2. The New Hampshire Department of Justice [*DOJ*] agrees to perform the services described in the attached MOU Exhibit A, which is hereby incorporated by reference.

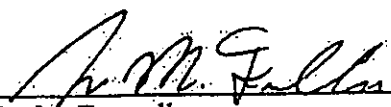
3. The method of payment and payment amount for the above-referenced services, if any is required, is described in the attached MOU Exhibit B; such exhibit being hereby incorporated by reference.
4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
5. The Memorandum of Understanding is effective until July 1, 2023, or the effective date of the next biennial budget, whichever is later, unless amended to continue thereafter.
6. This Memorandum of Understanding may be amended by an instrument in writing signed by the Parties.
7. The Parties agree that the obligations, agreements and promises made under this Memorandum of Understanding are not intended to be legally binding on the Parties and are not legally enforceable.
8. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
9. The parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
10. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this Memorandum of Understanding will remain in full force and effect.
11. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
12. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.
13. For the New Hampshire Public Utilities Commission



Dianne Martin
Chairwoman

10/26/2021
Date

14. For the New Hampshire Department of Justice



John M. Formella
Attorney General

10/26/21
Date

Exhibit A

to the Interagency Memorandum of Understanding between the New Hampshire Public Utilities Commission (PUC), and the New Hampshire Department of Justice (DOJ).

PUC and *DOJ* agree to the following:

1. *DOJ* and the Chair of the *PUC* will jointly agree upon the attorney to provide services to the *PUC* under this MOU. The *PUC* Chair will participate in the interview process. *PUC* shall pay for costs associated with advertising for the position subject to preapproval by *PUC* Chair.
2. The *DOJ* shall consult with the *PUC* Chair prior to the *DOJ* providing an employment offer if the applicant will fill the attorney position that is the subject of this MOU.
3. In the event of any vacancy in the position that is the subject of this MOU, the *DOJ* will immediately take steps to develop a mutually acceptable alternative arrangement to provide services to the *PUC* Chair, on either a permanent or temporary basis, until the *DOJ* can hire another candidate subject to the terms of this MOU.
4. The attorney shall provide legal advice, legal research and writing, and legal support to the *PUC* on a full-time basis. However, to the extent that the attorney has availability, he or she may work on other projects as assigned and directed by the *DOJ*. The *PUC* and the *DOJ* will jointly review the attorney's work product related to the *PUC*. The attorney's ongoing work related to the *PUC* will be supervised by the *DOJ*'s Chief of Client Counseling, or designee, in the Civil Bureau.
5. The *DOJ* and the *PUC* will coordinate their evaluation of the attorney to ensure that the legal services provided by the attorney are satisfactory to both the *PUC* and the *DOJ*. In the event that the *PUC* determines that the services are not provided in a satisfactory manner, the *PUC* shall report its concerns to the *DOJ*, and the *DOJ* shall take appropriate action to address the *PUC*'s concerns.

Exhibit B

to the Interagency Memorandum of Understanding between the New Hampshire Public Utilities Commission (PUC) and the New Hampshire Department of Justice (DOJ).

PUC and *DOJ* agree to the following:

1. Payment of salary and benefits for the attorney shall be based on the actual cost of salary and benefits for the attorney and funded out of the budgeted appropriation to the *PUC* and the budgeted transfer of appropriations to the *DOJ* by a quarterly transfer of funds, via *DOJ* invoice, from the *PUC* to the *DOJ*.
2. The *DOJ* will set up a job code for the attorney to record the hours spent conducting work on behalf of *PUC* on the individual's timecards. *DOJ* shall provide a report of hours worked with each quarterly invoice.
3. No later than 15 days upon the close of the fiscal quarter, *DOJ* shall invoice *PUC* for the salary and benefit costs associated with the attorney.
4. *DOJ* shall break out the salaries and benefits costs billed on all invoices.
5. No later than 15 days upon receiving an invoice, *PUC* shall pay to *DOJ* the amounts billed.
6. Reasonable expenses for travel, meals, and lodging incurred by the attorney while on assignment requested and approved by the *PUC* will be paid directly by the *PUC*.
7. Office space and administrative support shall be provided by the *DOJ*.