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Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to appropriate the sum of \$4,632,500 from June 30, 2021 Certified Free Cash to Acct # 01C10701-576300 ATB Interest to hold in reserve for a potential liability for an Appellate Tax Board Case filed by Eversource.

Historically, utility companies had been valued for tax purposes according to their "Net Book Value." Net Book Value is essentially an accounting method based upon the original cost of the property when the property is new, less its annual depreciation.

In the 1990's, the Massachusetts Department of Public Utilities (DPU) had a change in their regulatory policy that eroded the presumption of Net Book Value as the method of valuation. Essentially, the DPU endorsed a different valuation approach. This evolved from the case in 1997 of *Stow Municipal Electric Department v. Department of Public Utilities (1997)*. In the Stow case, the DPU relied upon a blended approach of 50% Net Book Value and 50% Reproduction Cost when the property is new, less its annual depreciation. This blended valuation approach increases the valuation and thus the taxes owed by the utility company compared to the Net Book Value approach.

In 2011, the SJC heard the case of *Boston Gas Co. v. Assessors of Boston*. The City of Boston used this blended method to value the Boston Gas property for tax purposes and the Massachusetts Supreme Judicial Court (SJC) agreed with the use of this valuation method rather than Net Book Value.

Based upon these two court rulings, beginning in FY2012, the Assessing Department in Newton and a few other communities (Boston, Brookline, Cambridge, Springfield) all started valuing utility companies using this blended methodology. In turn, the utility companies began appealing their assessed values every year since FY2012.

In 2019, in *NSTAR Electric Co. v. Assessors of Boston*, the Appeals Court upheld the assessment of utility property that was based upon the blended valuation, again supporting the City's decision to use this blended methodology.

Recently, Eversource lost yet another court case, this time against the City of Springfield. This case also supported the blended methodology, and subsequently the Eversource appeal was

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denied. Eversource has appealed against a higher court. We are currently waiting for the final decision on Springfield. Oral arguments were made in February 2022.

Based upon all these various court rulings supporting this blended valuation methodology, the Massachusetts Department of Revenue (DOR) has now made this blended methodology the valuation standard statewide, effective Fiscal Year 2022.

Eversource has been appealing their assessed value from the City of Newton since FY2012. During these years, Eversource had withheld a total of just over \$8 million in Personal Property Taxes. Per Mass General Law, interest is accrued beginning at midnight on each due date for the utility company. There is no grace period. Interest is charged at the rate of **14% per annum** by the City of Newton. Consequently, this non-payment of taxes by Eversource had accrued approximately \$4.6 million in interest charges on top of the just over \$8 million owed.

On April 14, 2022, the City received full payment of principal and interest for Fiscal Years 2013 through 2021 from Eversource for approximately \$11.8 million. Subsequently, the City received a payment to fully payoff Q4 of FY 2022 of \$890,000 plus one day's overpayment of interest due of \$2,746.

While all of this appears to be very positive, Eversource has not withdrawn their appeals against the City of Newton. Therefore, their case will continue to move forward. Should Eversource prevail, the City of Newton will be responsible for returning all payments in this case plus interest at the rate of 8% per annum beginning on the date of receipt of their payment. Therefore, the full amount of this payment is, in actuality, a liability for the City until the appeal is adjudicated.

The City has the authority to hold the value of the principal (approximately \$8 million) in its Overlay account which we are doing. Hence, the City is prepared to return it to Eversource if they prevail in their appeal. However, the \$4.6 million in interest is not as straightforward.

Members of city staff met with representatives of the Department of Revenue. Our DOR representatives explained that there is no provision in Mass General Law that would allow the City to set the \$4.6M aside as a liability. Rather, the Eversource interest received must be considered General Fund revenue and will drop to Free Cash in the fall. DOR understands our concern, but MGL does not allow us to treat it as a liability.

Several years ago, the City established a Reserve Account for Interest on Property Tax Refunds. Therefore, I am requesting that we appropriate \$4.6 million from our current free cash to this reserve fund.

The Eversource payment of \$4.6 million will be recognized as a general fund revenue, which will be reclassified to free cash in the fall. In the meantime, I ask the City Council to set aside \$4.6 million in our currently available free cash for this potential liability if Eversource prevails.

We look forward to discussing this very unusual situation with members of the Finance Committee. Thank you for your consideration of this matter.

Sincerely,



Ruthanne Fuller
Mayor