

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Order Denying Terry Cronin's Motion for Reconsideration

O R D E R N O. 25,846

December 3, 2015

In this Order, the Commission denies Mr. Cronin's motion to reconsider Order No. 25,831 (October 28, 2015), which granted his petition to intervene in this proceeding on a limited basis. The Commission makes this ruling because Mr. Cronin did not offer good reason for the Commission to reconsider the Order as required by RSA 541:3 and 541:4.

I. PROCEDURAL BACKGROUND

This docket was opened in 2011 to investigate the prudence of costs and cost recovery related to the installation of a wet flue desulfurization system (Scrubber) at Merrimack Station by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource). The Order of Notice required motions to intervene to be filed by December 8, 2011. Parties to the docket engaged in extensive pretrial discovery and motion litigation, seven days of hearings on the merits, and the filing of post-hearing briefs in November 2014, whereupon the evidentiary record of the docket was closed, and the subject matter was taken under advisement by the Commission. The full procedural history and record of the docket can be viewed at <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-250.html>.

On December 26, 2014, Eversource filed a motion to stay the proceedings to explore the possibility of settling myriad outstanding issues, including recovery of Scrubber costs. The Commission granted the motion in Order No. 25,755 (January 15, 2015). On June 10, 2015,

Eversource, on behalf of itself and other settling parties, filed the “2015 Public Service Company of New Hampshire Restructuring Stabilization Agreement” (2015 Settlement Agreement). The 2015 Settlement Agreement includes a provision related to recovery of Scrubber costs by Eversource and the resolution of all issues in the instant proceeding.¹

On July 7, 2015, Terry Cronin filed a petition to intervene in this docket, stating that he has been an Eversource default energy service customer since 1994. Mr. Cronin stated that he wished to participate in this docket because he opposes the 2015 Settlement Agreement. In addition, Mr. Cronin said that he objected to many decisions made by Eversource related to the Scrubber project.

On October 28, 2015, the Commission granted Mr. Cronin’s petition to intervene, along with the petition to intervene in this docket filed by Senators Jeb Bradley and Dan Feltes, on a limited basis. *See* Order No. 25,831. The Commission limited the interventions to allow the Senators and Mr. Cronin to offer comment on whether the 2015 Settlement Agreement is in the public interest as a resolution to the Scrubber docket. In its order, the Commission said:

Specifically, we impose the following conditions to ensure “the orderly and prompt conduct” of the balance of this docket: First, neither Mr. Cronin nor the Senators may conduct discovery or present testimony on the underlying issues in this docket, which generally relate to the prudence of the Company’s decisions to build the Scrubber and the prudence of the associated costs. Second, Mr. Cronin and the Senators may file comments on the Settlement Agreement that relate to the prudence of the Scrubber costs, if they so choose, but those comments must be grounded in the existing record that is before the Commission and available on the Commission’s website.

Order No. 25,831 at 4.

¹ The 2015 Settlement Agreement was also filed in Docket No. DE 14-238, *Determination Regarding PSNH’s Generation Assets*, and is currently being litigated in that proceeding.

Mr. Cronin filed a motion for rehearing of Order No. 25,831 on November 6, 2015. Eversource and the Office of Energy and Planning (OEP) filed timely objections. Mr. Cronin replied to the objections on November 17, 2015.

II. POSITIONS OF THE PARTIES

A. Terry Cronin

In his motion, Mr. Cronin claims that the limitations in Order No. 25,831 substantially impair his rights as an intervenor. He argues that “the evidence available in the [Scrubber] docket casts substantial doubt regarding the prudence of the scrubber costs.” Cronin Motion at 1. Mr. Cronin further alleges that, during the installation of the Scrubber, Eversource improperly increased the generating capacity at Merrimack Station. Mr. Cronin claims that the existing record before the Commission is deficient because “the only evidence before the Commission regarding the scrubber project and cost overruns is secret. *Id.* at 3. Mr. Cronin refers to the report of Jacobs Consultancy, which is part of the Scrubber docket record, and claims that the report “does not address the specifics of the cost overruns [and] there is no item by item analysis of the actual work done that caused the overruns.” *Id.*

In his reply, Mr. Cronin alleges that Eversource “has engaged in a multi-year effort to conceal the facts of the scrubber project from public scrutiny,” referencing the replacement of a turbine at Merrimack Station in 2008. Reply at 2. To illustrate his point, Mr. Cronin recites a 6 year- history of proceedings before the Air Resource Council (ARC) at the New Hampshire Department of Environmental Services and the Commission, all of which are closed, except for the instant docket. *Id.* at 2-6.

B. Eversource

In its objection, Eversource says that Mr. Cronin's motion merely reasserts unsupported allegations and speculation espoused by Mr. Cronin and/or his counsel in various proceedings over the past six and one-half years. According to Eversource, Mr. Cronin's motion fails to state any good reason for the requested relief, fails to identify any specific matters that were "overlooked or mistakenly conceived" by the Commission, fails to state any other legal basis for the relief requested, and simply requests a different outcome in those proceedings,. Objection at 1. To support its argument that Mr. Cronin is doing nothing other than looking for a different outcome in previously litigated proceedings, Eversource recites statements made by Mr. Cronin's counsel in various proceedings before the ARC and the Commission. *Id.* at 2-5.

Referring to guiding decisions by the New Hampshire Supreme Court regarding standards for a successful motion for rehearing, Eversource says that a good reason for rehearing could be the existence of new evidence that could not have been presented in the underlying proceeding, or the identification of specific matters that were overlooked or mistakenly conceived by the deciding tribunal. Eversource argues that a successful motion for rehearing "does not merely reassert prior arguments and request a different outcome." Objection at 5. Because, in Eversource's view, Mr. Cronin's motion fails to demonstrate any good reason for the relief requested, Eversource urges the Commission to deny the motion. *Id.* at 7.

C. Office of Energy and Planning²

The OEP asserts that Mr. Cronin fails to cite any reason in his motion to support a rehearing of Order No. 25,831. The OEP states that Mr. Cronin appears to argue that the Commission overlooked or misconstrued evidence regarding the prudence of the Scrubber in the

² The OEP represents that the designated Settling Staff, a party to the 2015 Settlement Agreement, join in its objection.

instant docket, but because the Commission has yet to make a determination regarding the prudence of the Scrubber and associated costs, OEP believes Mr. Cronin's argument has no merit.

The OEP agrees with Eversource's argument that Mr. Cronin has failed to offer good reason for the Commission to reconsider the Order, as required by RSA 541:3. The OEP believes the Commission should deny the motion for reconsideration.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (Nov. 21, 2011). A successful motion must establish "good reason" by showing that there are matters the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309,311 (1978) (quotation and citations omitted), or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision," *Hollis Telephone Inc.*, Order no. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (Sept.8, 2015).

Mr. Cronin's motion does not present new information nor does it suggest that the Commission overlooked or misunderstood issues in the Scrubber proceeding. He merely argues that his "rights as an intervener have been substantially impaired by the limitations imposed" in Order No. 25,831. We disagree.

The essence of Mr. Cronin's motion appears to be a theory that the 2008 turbine upgrade at Merrimack Station was unlawful. Mr. Cronin says that he has been a default energy service

customer of Eversource since 1994. As an Eversource customer, he had the right to participate in Docket No. DE 08-145, a proceeding related to the turbine replacement at Merrimack Station, but he chose not to, and that proceeding is now long closed. He also had the right to intervene at the outset of the Scrubber proceeding, which was duly noticed when it commenced in November 2011. Again, it was his choice not to intervene in the docket until well after the evidentiary record was closed.

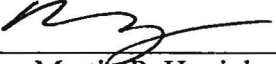
Pursuant to RSA 541-A:32, III, the Commission can grant a motion to intervene at any time if it finds that it would be in the interests of justice; and the Commission may limit the scope of an intervener's participation, as we did in Order No. 25,831. Mr. Cronin's late request to intervene in the Scrubber docket stems from his participation in the 2015 Settlement Agreement, which is the subject of Docket No. 14-238 and in which Mr. Cronin is also an intervenor. We granted limited intervention rights to Mr. Cronin in the Scrubber docket because settlement of the Scrubber docket is a component of the 2015 Settlement Agreement. On that basis, we gave him the opportunity to offer comment in the Scrubber docket relative to whether the Scrubber recovery provisions in the 2015 Settlement Agreement are a reasonable resolution of the Scrubber docket. He must do so based on the existing record.

We find that Mr. Cronin's pleading does not meet the statutory requirements for a successful motion for rehearing as articulated in RSA 541:3 and :4. We thus deny Mr. Cronin's request for rehearing.

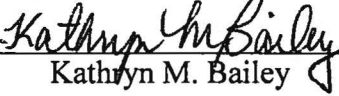
Based upon the foregoing, it is hereby

ORDERED, that the petition by Terry Cronin for reconsideration of Order No. 25,831 is hereby DENIED.

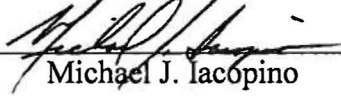
By order of the Public Utilities Commission of New Hampshire this third day of
December, 2015.



Martin P. Honigberg
Chairman

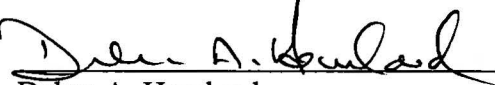


Kathryn M. Bailey
Commissioner



Michael J. Iacopino
Special Commissioner

Attested by:



Debra A. Howland
Executive Director

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Subject: DE 11-250, Public Service Company of New Hampshire d/b/a Eversource Energy - Order Issued
Attachments: 25-846.pdf

An Order was issued today in Docket No. DE 11-250, Public Service Company of New Hampshire d/b/a Eversource Energy. It is an Order Denying Terry Cronin's Motion for Reconsideration.

A copy of Order No. 25,846 is attached.

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