

MANDATE

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Allyson R. Gere 11/21/14
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THE STATE OF NEW HAMPSHIRE

DE 12-292

SUPREME COURT

NHPUC 12DEC14AM8:56

In Case No. 2013-0307, Appeal of PSNH Ratepayers, the court on November 7, 2014, issued the following order:

Having considered the briefs and oral arguments of the parties and the record submitted on appeal, the court concludes that a formal written opinion is unnecessary in the case. The appellants (the ratepayers), customers of appellee Public Service Company of New Hampshire (PSNH), appeal an order of the New Hampshire Public Utilities Commission (PUC) approving PSNH's request to increase its default energy service rate, effective January 1, 2013. The ratepayers argue that the PUC was precluded from approving the rate increase because PSNH had not filed a least cost integrated resource plan "at least biennially," as required by RSA 378:38 (2009) (amended 2014), and because the PUC had not granted PSNH a waiver from that requirement pursuant to RSA 378:38-a (2009) (amended 2014). See RSA 378:40 (2009) (amended 2014). We affirm.

The PUC found, or the record establishes, the following facts. In 2007, PSNH filed a plan that the PUC found adequate approximately three years later, in 2010. As ordered by the PUC, PSNH filed its new plan on September 30, 2010. The PUC completed its review of PSNH's 2010 plan on January 29, 2013.

In September 2012, while its 2010 plan was still under review, PSNH filed a proposal with the PUC to increase its default energy service rate effective January 1, 2013. As required by RSA 378:41 (2009) (repealed 2014), the PUC reviewed the proposed increase against PSNH's 2007 plan and concluded that the proposed rate "conform[ed] to the most recent [plan] filed and found adequate by the [PUC]." The ratepayers moved for rehearing, arguing that the PUC lacked authority to raise PSNH's default energy service rate because, although PSNH had filed a plan in September 2010, and although that plan was still under review, PSNH had not filed a plan in 2012, and, thus, had failed to comply with the requirement in RSA 378:38 that a new plan be filed "at least biennially." See RSA 378:40. In denying the ratepayers' motion for rehearing, the PUC stated that it interpreted RSA 378:38 "to require a filing within two years of a [PUC] decision on the prior filing." That interpretation, the PUC reasoned, was "the best approach from a practical and regulatory standpoint" because "[t]he time for a utility to prepare a thorough [plan] and for the [PUC] to review and analyze a utility [plan] makes it impractical to require filings two years from the utility filing date." The PUC observed that "[s]uch a filing schedule could cause wasteful expenditure of utility resources in instances

where [PUC] guidance on future filings did not arrive early enough in the utility's [planning] process." This appeal followed.

On appeal, the ratepayers first argue that the PUC improperly interpreted the biennial filing requirement set forth in RSA 378:38. RSA chapter 541 governs our review of PUC decisions. See Appeal of Northern New England Tele. Operations, LLC, 165 N.H. 267, 270 (2013). A party seeking to set aside an order of the PUC has the burden of demonstrating that the order is contrary to law or, by a clear preponderance of the evidence, is unjust or unreasonable. RSA 541:13 (2007). Findings of fact by the PUC are presumed prima facie lawful and reasonable. Id. In reviewing the PUC's factual findings, our task is not to determine whether we would have found differently or to reweigh the evidence, but rather, to determine whether the findings are supported by competent evidence in the record. See Appeal of Dean Foods, 158 N.H. 467, 474 (2009).

We review the PUC's statutory interpretation de novo. Appeal of Union Tel. Co., 160 N.H. 309, 314 (2010). We are the final arbiters of the legislature's intent as expressed in the words of the statute considered as a whole. Appeal of Northern New England Tele. Operations, LLC, 165 N.H. at 271. We interpret statutes not in isolation, but in the context of the overall statutory scheme. Id. Our analysis must start with the plain meaning of the relevant statutes, construing them, when reasonably possible, to effectuate their underlying policies. Id. Insofar as reasonably possible, we will construe the various statutory provisions harmoniously. Id. "We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." State Employees' Assoc. of N.H. v. State of N.H., 161 N.H. 730, 738 (2011). "Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole." Id. "This enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." Id. at 738-39.

RSA 378:38 is one of the provisions comprising the "New Hampshire Energy Policy." RSA 378:37 (2009) (amended 2014). As set forth in RSA 378:37, that policy is "to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources" and to protect "the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities." Id. To comply with this policy, "each electric utility shall file a . . . plan" with the PUC "at least biennially" that must contain certain statutorily enumerated components. RSA 378:38. The PUC must then review a utility's plan and evaluate its adequacy. RSA 378:39 (2009) (amended 2014). RSA 378:40 governs rate changes and least cost integrated resource plans. It provides:

No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39. However, nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

RSA 378:40. RSA 378:38-a empowers the PUC to “waive any requirement to file least cost integrated resource plans by an electric utility under RSA 378:38, except for plans relating to transmission and distribution.”

The parties dispute the meaning of RSA 378:38. The ratepayers argue that the statute requires an electrical utility to file a new plan every two years, regardless of whether the PUC has completed its review of the utility’s prior plan. The PUC argues that the statute requires a utility to file a new plan two years after the PUC completes its review of the utility’s prior plan.

Reading the language of RSA 378:38 as a whole and in context with RSA 378:40, we conclude that the PUC’s interpretation is most consistent with the plain meaning of the language and with the apparent intent of the legislature. Although RSA 378:38 requires an electric utility to file a plan “at least biennially,” we cannot construe this language in isolation. RSA 378:40 specifically provides that “nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.” RSA 378:40. We interpret this sentence to allow the PUC to approve a rate change while its review of a utility’s plan “is proceeding in the ordinary course but has not been completed.” *Id.* Although we are not bound by the PUC’s statutory interpretation, “it is well established in our case law that an interpretation of a statute by the agency charged with its administration is entitled to deference,” when, as in this case, it does not clearly conflict with the statutory language and is not “plainly incorrect.” Appeal of Town of Seabrook, 163 N.H. 635, 644 (2012). Accordingly, we interpret the biennial filing requirement to run from the date of the PUC’s decision on the utility’s prior plan.

Although the ratepayers argue that the language of RSA 378:38 is plain and unambiguous, both parties have provided legislative history for our review. The relevant history here confirms that our interpretation of RSA 378:38 is consistent with legislative intent. In 2014, the legislature amended RSA 378:38 so that it now provides that a utility must file a plan “within 2 years of

the [PUC]’s final order regarding the utility’s prior plan, and in all cases within 5 years of the filing date of the prior plan.” Laws 2014, 129:1. The purpose of the 2014 amendment was to “clarif[y] the timetable for utilities’ submission of plans.” House Bill 1540, 36 House Record 1433 (March 25, 2014) (report of House Committee on Science, Technology and Energy). Subsequent history, though not controlling, may be considered when interpreting a statute. Franklin v. Town of Newport, 151 N.H. 508, 512 (2004). We have held that when a former statute is clarified by amendment, “the amendment is strong evidence of the legislative intent concerning the original enactment.” Blue Mountain Forest Ass’n v. Town of Croydon, 119 N.H. 202, 205 (1979). Therefore, we conclude that PSNH complied with RSA 378:38 because it filed its new plan within two years of the PUC’s approval of its 2007 plan, and accordingly hold that the PUC did not err by approving PSNH’s rate increase.

The ratepayers next argue that the PUC erred because it failed to rule upon their motion for rehearing within 10 days, as required by RSA 541:5 (2007). But see Laws 2014, 24:1 (“Notwithstanding RSA 541:5, upon the filing of a motion for rehearing, the [PUC] shall within 30 days either grant or deny the motion”). In light of our determination that the PUC did not err when it approved PSNH’s rate increase, the ratepayers have failed to demonstrate material prejudice from the PUC’s alleged procedural error. See Appeal of Concord Natural Gas Corp., 121 N.H. 685, 690-91 (1981).

Affirmed.

DALIANIS, C.J., and HICKS, CONBOY, and LYNN, JJ., concurred.

**Eileen Fox,
Clerk**

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