STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy

Clean Energy Fund

Docket No. DE 22-004

Motion for Rehearing of Order No. 26,577

NOW COME the Office of the Consumer Advocate ("OCA"), Clean Energy New Hampshire, Conservation Law Foundation, the Department of Energy ("Department"), and Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") (collectively, the "Moving Parties"), parties to this docket, and move pursuant to RSA 541:3 and N.H. Code Admin. Rules Puc 203.33, for rehearing of Order No. 26,577 as issued on a *nisi* basis on February 4, 2022 and effective on March 4, 2022. In support of this request, the Moving Parties state as follows:

I. Introduction

This proceeding concerns an uncontested proposal filed almost a year ago for the deployment of the $5 million Clean Energy Fund that Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") agreed to create as a part of the 2015 agreement through which Eversource completed the generation asset divestiture process originally set in motion in 1996 via the adoption of RSA

374-F, the Electric Industry Restructuring Act, and as approved in Docket Nos. DE 11-250 and DE 14-238. *See* Order No. 25,920 (2016) (approving generation asset divestiture plan, and related securitization proposal for recovery of stranded costs). On February 4, 2022, the Commission issued Order No. 26,577, in which the Commission (a) noted that the Clean Energy Fund now amounts to $5.2 million because Eversource had agreed to increase its contribution by $200,000, (b) approved the proposed equal allocation of the Fund to programs supporting Eversource residential customers and programs supporting other Eversource customers, (c) approved the proposed $1.1 million on-bill financing and battery rebate program for Eversource residential customers, the proposed $750,000 battery rebate program for Eversource residential customers, and a $1.0 million energy storage rebate program for commercial and industrial ("C&I") customers of Eversource, and (d) denied, without prejudice, the proposal to the extent it sought approval for a $750,000 program to benefit low- and moderate-income ("LMI") residential customers of Eversource and a $1.6 million financing program for Eversource C&I customers. The Commission also ruled that further proceedings related to the Clean Energy Fund would take place in this newly opened docket, indicating that there would be annual reviews of the prudence of Fund expenditures. Finally, the Commission ordered that the balance of the Fund should earn interest at the prime rate, with accrued interest added on a quarterly basis.

The Commission issued Order No. 26,577 on a *nisi* basis and established February 15, 2022 as the deadline by which interested persons could request a

hearing. The OCA tendered such a request on the appointed date. Thereafter, Eversource (tab 7) and the Department (tab 8) made filings in support of the OCA request for hearing. The Commission took no action in response and, accordingly, Order No. 26,577 went into effect, by its terms, on March 4, 2022. This motion for rehearing is timely pursuant to RSA 541:3 because it is made within 30 days of the effective date of Order No. 26,577.

II. Legal Standard

The Commission may grant rehearing for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3. A successful motion demonstrates that there are matters that the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted). For the reasons that follow, the Commission mistakenly conceived issues related to the allocation and deployment of the Clean Energy Fund in Order No. 26,577. Therefore, the Order is unreasonable and rehearing pursuant to RSA 541:3 is appropriate.

III. Analysis

As explained in the OCA's letter of February 15, 2022 (tab 6) requesting a hearing, creation of the Clean Energy Fund occurred pursuant to terms appearing at pages 24 and 25 of the 2015 Restructuring and Rate Stabilization Agreement ("2015 Restructuring Agreement") approved by the Commission in 2016 in DE 11-250 and DE 14-238.[1] According to the 2015 Restructuring Agreement, the "details"

[1] The 2015 Restructuring Agreement appears as tab 73 in DE 14-238.

of how to deploy the Fund were to be "established via a collaborative process overseen by Commission Staff and the Office of Energy and Planning."

Events have overtaken this language to a significant degree. The Office of Energy and Planning became the Office of Strategic Initiatives, which was consolidated by the General Court into the newly created Department of Energy effective on July 1, 2021. *See* 2021 N.H. Laws, ch. 91:187 and :200 (codified as RSA ch. 12-P and various amendments to RSA Title 33). The Department also absorbed the personnel and functions of what had previously been known as the "Staff" of the Commission. *See id.* at :187, adopting RSA 12-P:9, which established the Department's Division of Regulatory support and provided that the Division "shall automatically be a party to all proceedings before the public utilities commission."

Principles of contract law govern the interpretation of the 2015 Restructuring Agreement. *Moore v. Grau*, 171 N.H. 190, 194 (2018). One such principle is that an agreement must be given "the meaning intended by the parties when they wrote it." *Monadnock Regional Sch. Dist. v. Monadnock Dist. Educational Ass'n*, *NEA-NH*, 173 N.H. 411, 420 (2020 (citation omitted). The plain language of the 2015 Restructuring Agreement is to the effect that the parties to the agreement expected the Office of Energy and Planning and the Staff of the Commission to superintend an informal process that would apply to both allocating the Fund to one or more initiatives and then overseeing the actual deployment of the money. The settling parties neither expected nor intended that the Fund would be spent or overseen through the sort of formal, quasi-judicial administrative proceedings contemplated

by Order No. 26,577; had they deemed that level of formality and prudence scrutiny to be necessary, they would have so stated in their agreement.

The parties' course of conduct, subsequent to entering into the 2015 Restructuring Agreement, is consistent with an expectation that informal collaboration rather than formal Commission proceedings would govern the Fund. Nearly three years elapsed between the creation of the Fund (in 2018, triggered by the closing of the generation asset divestiture and securitization transactions involving Eversource) and the submission to the Commission in 2021 of a consensus plan for Fund allocation that enjoyed the approval of the Commission Staff, the Office of Strategic Initiatives, and other interested signatories to the 2015 Restructuring Agreement. Had the parties believed that questions related to Fund allocation were the province of the Commission ruling on a *de novo* basis, they would not have waited three years to request such a determination.

From a practical standpoint, the only significant change as the result of chapter 91 of the 2021 New Hampshire Laws is that the former Office of Energy and Planning and the former Staff of the Public Utilities Commission now operate as one unified instrumentality of state government, the Department of Energy. Just as the Department is now in charge of administering the Renewable Energy Fund (the revenue source of which is alternative compliance payments tendered pursuant to the state's Renewable Portfolio Standard), *see* RSA 362-F:10, the annual revenue stream of which has often been roughly comparable to the entire corpus of the Clean Energy Fund, so too is it reasonable, appropriate, and

consistent with the intentions of the parties to the 2015 Restructuring Agreement to consign the oversight of the Clean Energy Fund to the Department.

This course of action is also optimal as a matter of public policy. Commissioners and other employees of the Commission certainly have the requisite expertise and insight to oversee the Clean Energy Fund, but because they are behind an *ex parte* wall and must operate with a high degree of formality, the necessary channels of communication are closed and the needed degree of flexibility is missing. Moreover, the degree of oversight described in Order No. 26,577, involving annual reports and prudence reviews, risks subjecting the Clean Energy Fund to a degree of oversight complexity and cost that are out of proportion to the relatively small size of the Fund and would inevitably diminish its effectiveness.

Pursuant to RSA 363:17-a, the Commission is designated as "the arbiter between the interests of the customer and the interests of the regulated utilities." The General Court left this framing of the Commission's purpose undisturbed in the course of reforming the Commission and creating the Department effective on July 1, 2021. Because there are no ratepayer funds at issue here (that question having been resolved in the 2015 Restructuring Agreement, which made ratepayers responsible for some $400 million in stranded cost payments), there is no occasion in this proceeding for the Commission to exercise its 'arbiter' function with all of the regulatory rigor that responsibility implies.[2] Rather, this is a situation in which

[2] In fact, it is unclear what the effect of any "disallowance" following a Commission prudency review would be, as that usually means shareholders will bear a cost that otherwise would have been recovered from ratepayers and here the Fund was created with shareholders' money and no ratepayer funding is involved.

the Commission can and should defer to the carefully developed and unanimous views of the relevant stakeholders, including the Department, about the deployment and management of the Clean Energy Fund.

IV. Conclusion

For the reasons stated above, the Commission should grant rehearing of Order No. 26,577 and issue an order stating that the proposed allocation of the Clean Energy Fund is approved and that further oversight of the Fund is the responsibility of the Department of Energy.

Sincerely,

OFFICE OF THE CONSUMER ADVOCATE

Donald M. Kreis
Consumer Advocate
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1174
donald.m.kreis@oca.nh.gov

CLEAN ENERGY NEW HAMPSHIRE

/s/ Chris Skoglund

Chris Skoglund
Director of Energy Transition
Clean Energy NH
14 Dixon Ave., Suite 202
Concord, NH 03301
(603) 918-8353
Chris@cleanenergynh.org

CONSERVATION LAW FOUNDATION

/s/ Nicholas Krakoff

Nicholas Krakoff
Staff Attorney
Conservation Law Foundation
27 North Main Street
Concord, NH 03301-4930
(603) 369-4787
nkrakoff@clf.org

N.H. DEPARTMENT OF ENERGY

/s/ David K. Wiesner

David K. Wiesner, Legal Director
N.H. Department of Energy
21 South Fruit Street, Suite 10
Concord, NH 03301
(603) 271-3670
david.k.wiesner@energy.nh.gov

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

/s/ Jessica A. Chiavarra

Jessica A. Chiavara
Counsel, Eversource Energy
780 N Commercial Street
Manchester, NH 03101
315-313-3264
Jessica.chiavara@eversource.com

March 21, 2022

Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.

Donald M. Kreis