

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-160

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

Motion for Reconsideration of Order No. 26,108

Order Denying Motion

ORDER NO. 26,127

May 1, 2018

In this order, the Commission denies Eversource's motion to reconsider Order No. 26,108, which denied Eversource recovery of \$200,904 in consultant costs that Eversource expensed in 2016 and then sought to include in a 2017 deferral.

I. PROCEDURAL HISTORY

This matter arises out of a request by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company) to recover, among other things, certain consultant costs incurred by Commission Staff (Staff) and the Office of the Consumer Advocate (OCA) and paid by Eversource, in connection with Commission investigations. Order No. 26,091 (December 27, 2017) approved some recovery through rates, subject to the results of an audit to be conducted by the Commission's Audit Division.

Staff filed the Audit Division's Report (Report) on January 30, 2018. In sum, the Report concluded that Eversource did not defer \$200,904 in 2016 consultant costs as required by Federal Energy Regulatory Commission (FERC) accounting rules, and instead treated those costs as an expense. As a result, Audit Staff recommended that the Commission find that \$200,904 is ineligible for recovery as a deferral. Eversource responded to Staff's recommendation on February 6, 2018.

Eversource maintained that it should be allowed recovery of the disputed amount and disagreed with Audit Staff's conclusion that it had not followed the correct accounting practice.

The Commission adopted Audit Staff's recommendation in Order No. 26,108 (March 2, 2018) (Order). Eversource filed a timely Motion for Reconsideration. Staff and the OCA objected.

The orders, motions, objections, and other documents in this matter, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-160.html>.

II. POSITIONS OF THE PARTIES AND STAFF

A. Eversource

In its Motion for Reconsideration, Eversource claimed that the Commission "overlooked or mistakenly conceived important factual, legal, and policy matters in the Order, and that reconsideration is therefore appropriate." Motion at 1. First, Eversource claimed that the Commission mistakenly concluded that Eversource agreed with the Audit report's conclusion that the consultant costs that had been expensed could not later be deferred based on Eversource's comment that it would defer such expenses in the future. *Id.* at 2. Eversource said it did not agree that its treatment of costs was inappropriate and that the accounting treatment of the consultant costs was consistent with FERC accounting rules. *Id.* at 2-3.

Eversource also argued that Order No. 26,091 authorized Eversource full recovery of the consultant costs and that before the Commission could order Eversource to comply with the Audit Report, the Commission should have issued a separate order of notice and conducted another hearing. Because the Commission did not take such action, Eversource argued that the Commission failed to

comply with RSA 365:28.¹ *Id.* at 3. Consistent with this argument, Eversource asserted that for Eversource to understand that the Company would have to comply with the Audit Report, the Commission should have included specific ordering language in Order No. 26,091 to that effect. *Id.*

Eversource next referred to RSA 363:28, III, which provides that the Commission shall allow for the timely recovery of expenses such as consultant costs. According to Eversource, the Order is contrary to that statute. *Id.* at 4. In addition, Eversource claims that Unitil Energy Systems, Inc. (Unitil), was allowed to recover similar consultant costs without a similar examination by the Commission's Audit Staff. *Id.* Finally, Eversource claims that the Order requiring Eversource to comply with the Audit Report constitutes a taking under Part I, Article 12, of the State Constitution and of the Fifth Amendment of the United States Constitution. *Id.* at 5.

B. OCA

According to the OCA, Eversource's motion asks the Commission to "ignore clear and well-established accounting rules by including in a 2017 deferral—the basis of the requested rate recovery—expenses that were actually incurred in 2016." *Id.* at 2.

The Consumer Advocate agrees that RSA 363:28, III, allows the Commission to permit utilities to use a special assessment to recover expenses such as consulting costs incurred by Staff and the OCA, but the provision "does not mean utilities are free to disregard the accounting rules that apply to rate mechanisms." *Id.* The Consumer Advocate also agreed with Staff's arguments for opposing the motion. *Id.* at 1.

¹ Eversource's Motion cites the statute as "RSA 365:38" which is a statute related to rate proceedings. We assume this was a typographical error and Eversource meant to cite RSA 365:28, the statute that provides requirements for the Commission to modify one of its prior orders.

C. Staff

Staff said that Eversource's arguments have no merit. First, Staff argued that whether the Commission approves or disapproves recovery of certain costs for other utilities is irrelevant to Eversource's accounting treatment of consultant costs in this docket. Staff's Objection at 3-4.

Staff pointed out that the Commission has plenary authority under RSA 374:18 to examine the books and records of any utility. In this case, the Commission directed Audit Staff to examine Eversource's accounting of the consultant costs and required Eversource to comply with the results of this audit. In addition, Staff noted that, at the hearing, Eversource's witness testified that the Company would comply with the audit results. In addition, Staff observed that Order No. 26,091 specifically said that Staff would review Eversource's accounting treatment of consultant's expenses. According to Staff, to now allow Eversource to ignore the results of the audit would render such audits meaningless. *Id.* at 4-5. Staff also argued that no additional order language, or supplemental notice, was required to direct Eversource to comply with the audit because Eversource testified that it would comply with the audit results. *Id.* at 4-5.

Staff reaffirmed that the Audit Report appropriately interpreted the FERC accounting rules regarding deferred accounts, and that the Commission was correct in directing compliance with the audit results. *Id.* at 5-6. The audit report referenced FERC account 182.3 which states "[t]he amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts," and emphasized that recording amounts to be deferred for recovery must be properly recorded in the current year, not the subsequent year.

Finally, Staff said that Eversource did not present any evidence to support its argument that the Company was denied due process, appropriate notice, or an opportunity to argue its position. Staff

concluded that the Commission did not mistakenly interpret its authority and responsibility under New Hampshire law, and that the Commission should deny the motion for reconsideration.

III. COMMISSION ANALYSIS

RSA 541:3 provides that rehearing or reconsideration of an order may be granted when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that could not have been presented in the underlying proceeding, or that were overlooked or mistakenly conceived by the deciding tribunal. *See Public Service Company of New Hampshire*, Order No. 25,361 at 4-5 (May 11, 2012). To prevail, a party filing a motion for reconsideration should not merely reassert prior argument and request a different outcome. *Id.* at 5. Having reviewed Eversource's argument and the arguments of the Staff and Consumer Advocate, we find that Eversource failed to meet its burden.

In its motion, Eversource did not present any facts that were "mistakenly conceived" by the Commission. In its February 6, 2018, response to Staff's recommendation, Eversource referred to Unitil's recovery of consultant costs in connection with its most recent distribution rate case. *See Unitil Energy Systems, Inc.*, Order No. 26,007 (April 20, 2017). We did not consider this argument because Unitil's recovery of the costs has no bearing on Eversource's failure to properly account for the recovery of the consultant costs incurred in 2016. This argument is irrelevant and has no merit.

We also disagree with Eversource's argument that we "mistakenly" relied on the results of Staff's Audit Report. Eversource is the largest public utility in the State of New Hampshire, and given its affiliates it is the largest utility in New England. We expect all utilities, particularly large utilities such as Eversource which has experienced employees, to be familiar with all regulatory requirements, including general accounting rules and those promulgated by FERC. We do not consider the failure to record a regulatory asset in the proper account to be good utility practice. Eversource's comment in

response to page 7 of the Audit report did not dispute Staff's interpretation of the FERC accounting rules. The comment, in part, says "the costs were deferred once we received certainty of recovery." The fact is the costs should have been booked in the deferral account in 2016 when the costs were incurred. Eversource's argument ignores that basic fact. We include the rule governing FERC account 182.3 below in its entirety.

182.3 Other Regulatory Assets

A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. (See Definition No. 30.)

B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, regulatory credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407.4 shall be charged to account 407.3, regulatory debits, concurrent with the recovery in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

Finally, we previously ruled that a supplemental order of notice and hearing on this issue was not required. *See* Order No. 26,108 at 4. Eversource at hearing testified that it would comply with the results of the Audit Report. We find that we gave Eversource adequate notice and an opportunity to be

heard with respect to the Audit Report, and that we made no mistake of law in reaching our decision that Staff's Audit Report is correct and that Eversource must comply with its conclusion.

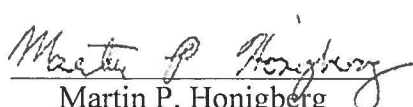
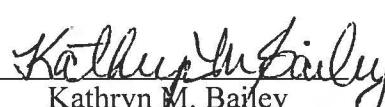
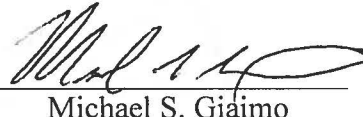
Given the fact that Eversource booked the consultant costs as an expense, we find no merit in the Company's claim that its constitutional rights were violated.

Based upon the foregoing, it is hereby

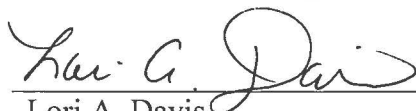
ORDERED, Eversource's Motion for Reconsideration is hereby DENIED; and it is

FURTHER ORDERED, that Eversource shall comply with Commission Order No. 26,108 and adjust rates to reflect the disallowance as ordered herein.

By order of the Public Utilities Commission of New Hampshire this first day of May, 2018.

		
Martin P. Honigberg Chairman	Kathryn M. Bailey Commissioner	Michael S. Giaimo Commissioner

Attested by:


Lori A. Davis
Assistant Secretary

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-160-1 Printed: May 02, 2018

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**