

**STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

PENNICHUCK EAST UTILITY, INC.

2020 Qualified Capital Project Adjustment Charge

Docket No. DW 20-019

Motion for Clarification

NOW COMES the Department of Energy (Department), a party to this docket under RSA 12-P:9, and respectfully requests that the New Hampshire Public Utilities Commission (Commission) clarify or reconsider its prior order in the above-referenced matter, Order No. 26,546 (November 9, 2021), pursuant to RSA 365:28, RSA 365:21, and RSA 541:3, and remove any reference to “Staff Advocate” or Commission Staff as a party contained within. In support of this request, the Department states as follows:

1. On November 9, 2021, the Commission issued Order No. 26,546 (Order), granting in part and denying in part Pennichuck East Utility, Inc.’s motion for reconsideration or modification of Order No. 26,525.
2. The Department is not contesting any of the substantive decisions that the Commission made in this Order.
3. The Commission, however, labelled the Commission Staff participating in this docket, later to become part of the Department, as “Staff Advocates” within the Order. Order at 1, 5-6.
4. The Department disagrees with this characterization as Commission Staff’s participation does not meet the statutory definition of “Staff Advocate.” *See* RSA 363:30, VIII (“‘Staff advocate’ means any staff member who is specifically assigned to advocate as a party with

respect to issues arising in an adjudicative proceeding, whether by written or oral testimony, comments or otherwise, in accordance with this subdivision.”

5. The Department, furthermore, contends that no Commission employee involved in this docket, prior to transfer to the Department, was designated as staff advocate pursuant to any of the provisions of RSA 362:32.<sup>1</sup>

6. The Commission has the authority “to alter, amend, suspend, annul, set aside, or otherwise modify” its prior orders pursuant to RSA 365:28. *Northern Utilities, Inc.*, Order No. 26,510 (August 20, 2021) at 3. The authority granted under this provision is to be “liberally construed.” *Id.*, citing *Appeal of the Office of the Consumer Advocate*, 134 N.H. 651, 657 (1991); *Meserve v. State*, 119 N.H. 149, 152 (1979).

7. The Commission, furthermore, may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. *Public Service Company of New Hampshire D/B/A Eversource Energy*, Order No. 26, 528 (September 27, 2021) at 3 (citing RSA 541:3; RSA 541:4; and *Rural Telephone Companies*, Order No. 25,291 (November 21,

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<sup>1</sup> RSA 363:32:

I. Whenever the commission conducts an adjudicative proceeding in accordance with the provisions of RSA 541-A:31 through RSA 541-A:35, the commission shall designate one or more members of its staff as a staff advocate, as defined in RSA 363:30, VIII, if requested by a party with full rights of participation in the proceeding, or upon its own initiative, when the commission determines that such members of its staff may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding.

II. Whenever the commission conducts an adjudicative proceeding in accordance with the provisions of RSA 541-A:31 through RSA 541-A:35, the commission may designate one or more members of its staff as a staff advocate, as defined in RSA 363:30, VIII, if requested by a party with full rights of participation in the proceeding, or upon its own initiative, at any time for good reason, including that: the proceeding is particularly controversial and significant in consequence; the proceeding is so contentious as to create a reasonable concern about staff's role; or it appears reasonable that such designations may increase the likelihood of a stipulated agreement by the parties.

III. Whenever the commission conducts an adjudicative proceeding in accordance with the provisions of RSA 541-A:31 through RSA 541-A:35, the commission may designate one or more members of its staff as a decisional employee, as defined in RSA 363:30, III, when the commission determines that such designation will contribute to the prompt and orderly conduct of the proceeding or is otherwise in the public interest.

IV. Unless the commission provides otherwise, any such designations shall only be applicable to a specified adjudicative proceeding. The commission shall make a list of all current designations available to the public.

2011). “A successful motion must establish ‘good reason’ by showing that there are matters that the Commission ‘overlooked or mistakenly conceived in the original decision.’” *Id.* (citing *Dumais v. State*, 118 N.H. 309, 311 (1978)).

8. Without a finding or designation of Staff advocacy by the Commission, the Department contends that the Order should be corrected to remove all references to Staff participation as “Staff Advocates” pursuant to RSA 365:28, RSA 365:21, and RSA 541:3.

9. In the Order, the Commission further noted that “Staff Advocates appeared as parties before the Commission and now [the Department] performs that function.” Order at 6.

10. As an additional matter, the Department acknowledges that as of its creation on July 1, 2021, it is automatically a party to all proceedings before the Commission. RSA 12-P:9. Prior to the Department’s creation, however, those same employees participated in Commission proceedings as Commission Staff, unless designated as an advocate per RSA 362:32, which is a nuanced distinction from that as participation as a party. *See* N.H. Admin. R, Puc 203.01, “Staff Participation – When participating in an adjudicative proceeding, commission staff shall be subject to the rules in this part *in the same manner and to the same extent as a party*” (emphasis added).

11. As such, the Department disagrees with the Commission’s classification of Commission Staff’s participation in this docket as a party prior to the Department’s creation and requests similar correction of that reference pursuant to RSA 363:28, RSA 363:21, and RSA 541:3.

WHEREFORE, the Department respectfully requests that this honorable Commission:

- A. Correct any reference of “Staff Advocate” or reference to Commission Staff as a party from Order No. 26,546; and
- B. Grant such other and further relief as may be appropriate under the circumstances.

December 3, 2021

N.H. DEPARTMENT OF ENERGY

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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.

/s/ Christopher R. Tuomala

Christopher R. Tuomala, Esq.