

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy and
Consolidated Communications of Northern New England Company LLC
d/b/a Consolidated Communications

Joint Petition to Approve Settlement and Pole Asset Purchase Agreement

Docket No. DE 21-020

Motion for Rehearing

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this proceeding, and moves pursuant to RSA 541:3 and N.H. Code Admin. Rules for rehearing and/or clarification of the letter order issued by the Commission in this docket on September 10, 2021. In support of the motion, the OCA states as follows:

I. Background

The instant proceeding concerns a petition filed by Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) and Consolidated Communications of Northern New England Company LLC d/b/a Consolidated Communications (“Consolidated”) seeking permission for Eversource to purchase certain pole assets from Consolidated and recover the applicable costs in electric distribution service rates. At issue is a motion to dismiss the proceeding filed by the OCA on August 4, 2021.

On September 10, 2021, via letter order, the Commission granted the OCA’s request for leave to file a reply to the objections to the dismissal request that had

been tendered by Eversource and Consolidated. Inasmuch as the OCA submitted its reply along with the request, the arguments contained therein are now pending with the Commission alongside the bases for dismissal stated in the original motion. (The arguments made in those filings are incorporated herein by reference.)

The September 10 letter order did not take up the merits of the OCA's request for dismissal. Instead, in response to a separate motion of the Department of Energy to stay the procedural schedule, the Commission extended the deadline for prefiled testimony from the parties (other than Eversource and Consolidated) to November 8, 2021. The Commission voided the remainder of the previously approved procedural schedule and directed the parties to confer prior to November 8 in an effort to develop a new procedural schedule.

II. Implicit and Improper Rejection of Dismissal Motion

The actions in the September 10 letter order can only be understood as a rejection of the OCA dismissal motion notwithstanding the lack of any explicit determination to that effect. The OCA respectfully requests that the Commission either reconsider this implicit ruling or, at the very least, issue an order stating its reasons for declining to dismiss the petition.

An order of the Commission may not be “contrary to law,” lack support by “a clear preponderance of the evidence,” or be “unjust and unreasonable.” *Appeal of Lakes Region Water Co.*, 171 N.H 515, 517 (2018) (citations omitted). A rejection of

a dismissal motion with no analysis or discussion whatsoever is vulnerable on all three grounds.

The Administrative Procedure Act, via RSA 541-A:35, requires decisions and orders of agencies to include “findings of fact and conclusions of law.” There do not appear to be any facts in dispute, at least as to those that would be material to the OCA’s dismissal motion. But it is the respectful view of the OCA that the Commission cannot evade its responsibility to state the legal basis for declining to grant the OCA’s request, which was made in light of obligations undertaken by Eversource in the settlement agreement the Company signed and the Commission approved in Docket No. DE 19-057, the recent Eversource rate case.

RSA 541-A:35 applies by its terms only to “final” orders. The letter order qualifies as “final” because the OCA is entitled as a matter of law to the termination of this proceeding. *Cf. Appeal of Omega Entertainment, LLC*, 156 N.H. 282, (2007) (concluding that an order was not “final” for RSA 541-A:35 purposes because it provided the aggrieved party an opportunity to request a full adjudicatory hearing).

The Commission’s implicit denial of the dismissal motion is obviously not supported by a clear preponderance of the evidence. An agency decision that does not “permit meaningful review” is subject to being vacated on appeal. *In re Town of Seabrook*, 163 N.H. 647 (2012) (citation omitted).

Finally, denying a motion to dismiss without stating any reasons for such a denial is *per se* “unjust” and “unreasonable.” Just days ago, in the context of a *certiorari* proceeding, the New Hampshire Supreme Court reemphasized that an

administrative agency may not act “arbitrarily, unreasonably or capriciously.” *Petition of Whitman Operating Co., LLC*, 2021 WL 4302430 (N.H. Supreme Ct., Sept. 27, 2021) (citing *Petition of Chase Home for Children*, 155 N.H. 528, 532 (2007)). It is difficult to imagine an agency action that could be more arbitrary, unreasonable, or capricious than denying a duly submitted motion of a party without any explanation whatsoever.

III. Conclusion

For the reasons stated herein, the Commission must rule on the motion for dismissal submitted by the Office of the Consumer Advocate. Simply ignoring such a motion transgresses basic notions of fairness and fundamental principles of administrative law

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant the motion for dismissal previously submitted by the Office of the Consumer Advocate, or, in the alternative,
- B. Issue an Order denying the motion and stating the reasons therefor.

Sincerely,



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

September 23, 2021

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