

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 22-004

CLEAN ENERGY FUND

Order Granting Joint Motion for Rehearing by the Office of the Consumer Advocate, Public Service Company of New Hampshire d/b/a Eversource Energy, and Allied Parties

O R D E R N O. 26,600

March 31, 2022

This order approves a motion for rehearing of the Commission's Order No. 26,577 relating to the administration of the Clean Energy Fund, and schedules a hearing for May 19, 2022 regarding the issues presented.

I. PROCEDURAL HISTORY

On March 21, 2022, the Office of the Consumer Advocate (OCA), the New Hampshire Department of Energy (Energy), Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), Clean Energy New Hampshire, and the Conservation Law Foundation, (collectively, Moving Parties) jointly filed a Motion for Rehearing of Order No. 26,577 (Motion), which had been issued by the Commission in Docket Nos. DE 11-250 and DE 14-238 on February 4, 2022 on a *nisi* basis with an effective date of March 4, 2022. (Order No. 26,577 closed the consolidated DE 14-238 and DE 11-250 dockets and opened the DE 22-004 proceeding for consideration of the matters arising from the Clean Energy Fund).

The Motion incorporated by reference a series of comment letters filed by the OCA (on February 15, 2022), Energy (February 18, 2022), and Eversource (February 24, 2022), which also addressed the matters presented in the Motion, and generically requested a hearing by the Commission.

The Motion and associated docket filings are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-004.html>

II. POSITIONS OF THE MOVING PARTIES

In their Motion, the Moving Parties outlined an argument regarding what they view to be the proper role for the Commission with respect to the oversight of the Clean Energy Fund established by the "2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement" (2015 Settlement) considered by the Commission in Docket Nos. DE 14-238 and DE 11-250. Subpart V. of the 2015 Settlement established a \$5 million Clean Energy Fund, to be funded by Eversource shareholders, and "such amount not to be recovered from customers." Furthermore, the 2015 Settlement, Subpart V. stipulated that "[d]etails regarding the Clean Energy Fund will be established via a collaborative process overseen by Commission Staff and the Office of Energy and Planning." This arrangement for the Clean Energy Fund, and the 2015 Settlement as a whole, were approved by the Commission in Order No. 25,920 (July 1, 2016).

According to the Moving Parties, "[e]vents have overtaken this language [of the 2015 Settlement] to a significant degree." Motion at 4. "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. The Department also absorbed the personnel and functions of what had previously been known as the 'Staff' of the Commission." *Id.* (internal citations omitted).

In light of these changes, the Moving Parties contend that "[t]he plain language of the [2015 Settlement, Subpart V.] is to the effect that the parties to the [2015 Settlement] 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 [Clean Energy] Fund to one or more initiatives and then overseeing the actual

deployment of the money. The settling parties neither expected nor intended that the [Clean Energy] 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 [2015 Settlement] agreement." Motion at 4-5.

The Moving Parties further argue that, as "there are no ratepayer funds at issue here," the Clean Energy Fund being funded by Eversource shareholders, "...there is no occasion in this proceeding for the Commission to exercise its 'arbiter' function with all of the regulatory rigor that responsibility implies." Motion at 6. "Rather, this is a situation in which the Commission can and should defer to the carefully developed and unanimous views of the relevant stakeholders, including [Energy], about the deployment and management of the Clean Energy Fund." Motion at 6-7. Furthermore, the Moving Parties request that "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 [Clean Energy] Fund is the responsibility of [Energy]." Motion at 7.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration 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, *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the Commission, *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Abenaki Water Company, Inc.*, Order No. 26,312 at 8-9 (November 27, 2019).

Upon reviewing the parties' motions and applicable dockets, the Commission believes that the record is not as clear-cut as the parties have represented it to be. Prior to the creation of the Department of Energy, the Commission Staff charged with administering the Clean Energy Fund collaborative process repeatedly sought approval for various aspects of that process through the Commission's adjudicative process in the docket. *See, e.g.*, Docket No. DE 14-238 Tab 238 (asking Commission to direct Eversource to deposit Clean Energy Fund monies in an interest-bearing account), Docket No. DE 14-238 Tab 242 (seeking, *inter alia*, Commission approval of Clean Energy Fund allocation); Docket No. DE 14-238 Tab 256 (requesting Commission approval of fund allocation and program proposal). If, as the parties now contend, the 2015 Settlement Agreement vested Commission Staff (who are now employees of the Department of Energy) with the authority to finally approve Clean Energy Fund programs, it is unclear why they would have sought these approvals in the adjudicative docket.

Moreover, all the parties now endorsing the Motion for Rehearing participated in the Commission's adjudicatory proceeding regarding the Clean Energy Fund from the time that the Department of Energy was founded in July 2021 through February 2022. Throughout those nearly eight months prior to the issuance of Order No. 26,577, no attempt was made to retract the pending April 14, 2021, request for Commission approval. In addition, beyond cursory references to the Renewable Energy Fund and speculative concerns about the Commission's obligation to avoid *ex parte* communications, the parties' motion for rehearing provides little basis from which the Commission can conclude that the authority to approve Clean Energy Fund programming was transferred to the Department of Energy.

The Commission, therefore, recognizes a need for stakeholder input and clarification of the important questions of jurisdiction, authority, and oversight

presented in the Motion regarding the \$5.2 million currently at stake in the Clean Energy Fund.¹ Thus, the Commission believes that a hearing is warranted to further develop the record and hear from the parties with respect to jurisdictional matters regarding the Clean Energy Fund adjudicated in Docket Nos. DE 11-250 and DE 14-238, the predecessor dockets of Docket No. DE 22-004.

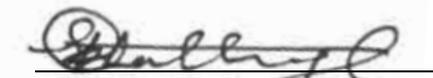
To this end, we hereby order rehearing of this matter at the Commission on May 19, 2022, at 9:00 a.m. to resolve the aforementioned questions and any other related matters necessary to determine the appropriate oversight of the Clean Energy Fund. Furthermore, we inform all interested parties that after this hearing, at a date that is practicable for all parties, leave for the filing of legal briefs regarding the issues presented will be afforded.

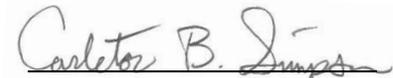
Based upon the foregoing, it is hereby

ORDERED, that the Moving Parties' Motion for Rehearing of Order No. 26,577 is GRANTED, with a hearing to be held at the Commission's offices located at 21 S. Fruit Street, Suite 10, Concord, New Hampshire on May 19, 2022, at 9:00 a.m. Three hours shall be allotted for this hearing.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 2022.


 Daniel C. Goldner
 Chairman


 Pradip K. Chattopadhyay
 Commissioner


 Carleton B. Simpson
 Commissioner

¹ As referenced in Order No. 26,577, page 3, on February 4, 2020, Eversource agreed to increase the Clean Energy Fund balance to \$5.2 million as a resolution to stakeholder concerns regarding interest accrual.

Service List - Docket Related

Docket# : 22-004

Printed: 3/31/2022

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