

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 14-238

Determination Regarding PSNH's Generation Assets

**Motion to Compel Public Service Company of New Hampshire (Eversource Energy)
and Other "Settling Parties" to Answer the Data Requests of Intervener Terry Cronin**

Procedural History

Intervener, Terry Cronin, timely filed Data Requests on Public Service Company of New Hampshire (Eversource Energy) and the other "Settling Parties". (Exhibit 1 attached hereto.) Eversource Energy objected to Data Requests 1, 2, 3, 6 and 7 and did not provide answers to Data Requests 4 and 5. Eversource Energy objected to Data Request 1, which was directed to all the "Settling Parties", including Eversource Energy, for itself and on behalf of all the "Settling Parties". (Exhibit 2 attached hereto).¹

Motion

Intervener Terry Cronin respectfully moves the Commission for an Order requiring Eversource Energy to promptly and fully answer each of his Data Requests.

Memorandum in Support of Motion to Compel

A. 1. Intervener Cronin, as a residential rate payer, has the statutory right pursuant to RSA 374-F: 3, XII (d) to demand that Eversource Energy only recover its lawfully incurred costs for the scrubber project upon proof by Eversource Energy that the charge is calculated on a net basis, be verifiable, nonbypassable, nondiscriminatory appropriately structured charge fair to all customer classes, lawful, constitutional, limited in duration, consistent with the promotion of fully competitive markets and consistent with these principles.

Therefore, Intervener Cronin's Data Request 1 appropriately asks Eversource Energy to quantify the costs it

¹ On August 12, 2105, Intervener Terry Cronin, by his attorney, contacted Robert Bersak via email seeking to resolve the discovery matter in the spirit of Puc 203.09(i)(4). Attorney Bersak did not respond.

expects to recover as stranded costs for the installation of the scrubber together with an explanation of how the company booked those costs.

The Eversource Energy recovery of stranded costs is the essence of this docket.² The Commission has been charged by the New Hampshire legislature in SB 221 to determine whether the “divestiture of PSNH’s generation plants and securitization of any resulting stranded costs...is in the public interest.” See page 1, Supplemental Order of Notice.

The Commission must, in its assessment of the public interest, ensure that the Eversource Energy stranded cost claim is compliant the restructuring policy principles set for in RSA 374-F: 3, XII (a) that the Commission must determine rates which are equitable, appropriate, and balanced.

2. RSA 374-F: 4, V expressly imposes the burden of proof of for any stranded cost recovery claim on Eversource Energy.

The Commission cannot issue an Order compliant with the legislative mandate without a quantification of the costs of the scrubber. Those costs, supported by evidence, have to be presented in this docket. The costs have to be subject to discovery. The costs must be presented under oath with proper documentation and be subjected to cross-examination.³

The direct testimony of William J. Quinlan, President and Chief Operating Officer of Eversource Energy (PSNH) filed with the Commission on July 6, 2015, asserts, at page 7 of his testimony, that the eventual cost of the scrubber was \$422,000,000 and that it became operational in September, 2011. At page 10, of his testimony, Mr. Quinlan, asserts that “the

² Stranded costs are defined in RSA 374-F: 2.

³ Eversource Energy, in violation of RSA 374-F:3, XII(d) that the charge be lawful, justifies its objection to Cronin Data Request 1 by referring him to PUC docket DE 11-250, the scrubber docket. The Commission, in that docket, never rendered findings of fact on the costs of the scrubber. The Commission never made the prudence determination required by RSA 125-O: 18. Rate payer Cronin, and all other rate payers, are entitled to the RSA 125-O: 18 prudence determination before any scrubber costs are entitled to recovery as stranded costs. Indeed, it was Eversource Energy that asked the Commission not to make findings of fact or issue the statutorily required prudence determination.

precise level of stranded costs cannot be accurately calculated at this time” because such a calculation would have to rely on educated guesses regarding the fair market value of the generating assets to be divested. This assertion obscures the facts and demonstrates a lack of candor regarding the largest single cost that Eversource Energy will ask to recover as stranded costs.⁴

The Quinlan testimony does not satisfy the burden of proof imposed by RSA 374-F: 4, V for the recovery of stranded costs. His assertion that the scrubber cost was \$422,000,000 has not been adjudicated by the Commission as fact. His claim that the scrubber was used and useful in September, 2011, has not been adjudicated by the Commission as fact. Mr. Quinlan offered no testimony that the claim that the scrubber costs were lawfully incurred, nor has the Commission made that determination.

The Quinlan testimony does not address what, if any, claim Eversource Energy will make to an equity return on the scrubber costs. Mr. Quinlan did not identify a rate of return by quantity or a commencement date for such an equity return. Mr. Quinlan did not offer testimony on what economic basis an equity rate of return should be calculated on the scrubber costs.⁵

Mr. Quinlan offered no testimony whatever regarding the legal basis for recovering as stranded costs an equity return on the scrubber costs for a project without an adjudicated used and

⁴ Intervener Cronin has no objection to the divestiture of the generation assets. The divestiture should occur promptly, on transparent terms, to a bona fide third party for value. The issue of what stranded costs are recoverable does not have to occur first. Indeed, the cost claim has been intentionally obfuscated by the assertion that the cost recovery cannot be known until the generation assets are sold.

⁵ The Commission, in Order No. 25, 346, Order Granting Temporary Rates, April 10, 2012, noted that the analysis for the allowance for temporary rates is “less stringent than the standard for permanent rates” (page 20, Order). The Commission goes on to note that “Any collection under temporary rates is reconciled against the rate ultimately approved for permanent rate recovery” (page 21, Order) The Commission definitively (at Order, Page 26) states that “...The actual costs allowed to be recovered, as well as the time period during which those costs accrued for future recovery, will depend upon the findings made at the conclusion of the permanent rate portion of this proceeding.” The Commission never made the required findings.

useful date, without an adjudicated cost basis and without adjudication that the costs were lawfully incurred.⁶

Most importantly, the Commission has not made the prudence determination required by RSA 125-O:18. Therefore, Eversource Energy has no basis to claim an equity return as stranded costs.

B. 1. Cronin Data Requests 2, 6 and 7 address the issue of whether or not Eversource Energy increased the generating capacity of Merrimack Station beyond that authorized by RSA 125-O:13, IV in violation of RSA 369-B:3a. If Eversource Energy increased Merrimack Station generating capacity unlawfully, it cannot recover the costs as stranded costs.

RSA 369-B: 3-a required that Eversource Energy to seek Commission approval before it modified its generation assets. The Commission had to find that the modification was in the public interest of its retail customers.

The scrubber law recognized that the operation of the scrubber would impose a significant parasitic load on Merrimack Station generating capacity. The enactment of RSA 125-O:13, IV allowed Eversource Energy to upgrade the generating capacity of Merrimack Station to off-set the parasitic load of the scrubber.

The unresolved issue before the Commission in this docket (that it must decide before allowing Eversource Energy to recover scrubber costs) is whether Eversource Energy expanded Merrimack Station generating capacity beyond that permitted by RSA 125-O:13, IV. In other words, did Eversource Energy violate RSA 369-B: 3-a as part of the scrubber project? The substantial increase in scrubber costs over the original \$250,000,000 representation to the legislature during the enactment of the scrubber law coupled with the increase in winter and

⁶ The matter of lawfulness will be discussed in more detail in the next paragraph in the context of RSA 369-B: 3-a.

summer MW, particularly for MK2 in 2010, 2011, 2012, 2013 and 2014 (detailed in Cronin attachment TC-1) raise substantial concern that all the costs were lawful scrubber costs.

2. Intervener Cronin is entitled to discover the facts regarding the increases in Merrick station generating capacity between 2009 and 2104 and the parasitic load, based on real time data, during that period.

Cronin Data Request 2 focuses on Docket No. DE 08-145 in which the Commission examined the installation of the new turbine at MK2. Eversource argued in that docket that the installation of the new MK2 turbine had already been completed at the time of the filing of the DE 08-145 Petition, that the turbine was used and useful and that whether the modification to restore the diminution of capacity resulting from the scrubber are in the public interest would be determined in reconciliation docket DE 09-09. (Order No. 25,008, page 8).

Eversource Energy argued that RSA 369-B: 3-a does not require the prospective approval of capital projects that do not materially impact the capacity or footprint of the plant. (Order No. 25,008, page 10).

The problem with the Eversource Energy argument is that the actual parasitic load of the scrubber could not have been quantified in DE 09-091 because the scrubber was not up and running until September, 2011, (Quinlan testimony, page 7), therefore, no prudence or public interest determination could have been made in that docket. The Commission, in DE 08-145, agreed that Eversource Energy did not have to seek pre-approval of the MK2 turbine replacement. (Order No. 25,008, page 13). The Commission, however, specifically noted that the turbine replacement and any increase in capacity is subject to prudence review and traditional retrospective review. (Order No. 25,008, Page 12).

Cronin Data Request 6 asks for data on the power consumption of the scrubber. Real time data on the parasitic demands of the scrubber on Merrimack Station generating capacity should now be available. Eversource Energy claimed in its Petition for Temporary rates that

the scrubber became used and useful in September, 2011. That assertion was repeated by Eversource Energy witness Quinlan in his testimony in this docket. (Quinlan testimony, page7).

Cronin Data Request 7 asks for an explanation of the changes in resource capabilities at Merrimack Station since 2009 as detailed in Cronin attachment TC-1. Of particular note is the generating capacity increase between 2010 through 2014.

3. The matter of the parasitic load and the generating capacity to offset that load was not considered in DE 11-250. The record in that docket is devoid of facts regarding the issue. The faulty record in DE11-250 raises the question whether the increase in costs of the scrubber project was caused by unlawful generating capacity projects.⁷

Intervener Cronin, as a residential rate payer, is entitled to discover the information requested in his Data Requests 2, 6 and 7 to ensure that all the costs of the scrubber project were legally incurred before the costs are included in a stranded cost recovery order by the Commission.

C. Cronin Data Request 3 asks for a quantification of the Eversource Energy legal costs in Commission dockets and other litigation related to those dockets.

Intervener Cronin, in his Petition for Intervention, points out that Eversource Energy has used its ability to endlessly litigate critical issues at rate payer expense in critical dockets including DE 11-250 and DE 14-238 and Clean Air Act enforcement issues in federal court without accountability for the costs of the litigation to rate payers.

The cost and complexity of those dockets frustrates and intimidates ordinary residential rate payers from asserting their rights. The Commission must order Eversource Energy to disclose its litigation expenses and attorney fees for examination by rate payers. The Commission must

⁷ The sole evidence of record in DE 11-250 regarding the project engineering and construction is the Jacobs Consultancy reports. Those reports did not examine generating capacity or the parasitic load the scrubber imposed on that capacity. The Jacobs Consultancy reports are based on confidential documents and secret data responses, responses kept secret not only from the rate payers but PUC staff.

critically examine those costs to determine which should be borne by Eversource Energy shareholders and which should be borne by rate payers.

D. Cronin Data Request¹ addressed to Eversource Energy and the other “Settling Parties” asks for details of donations in cash or in kind from or to the “Settling Parties” to 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement (“Settlement Agreement”) from and after the 1999 Electric Utility Restructuring legislation.

The “Settlement Agreement” is a political deal initiated by Eversource Energy and Senator Jeb Bradley with the support of Senator Feltes and Governor Hassan through her Office of Energy and Planning.

The deal, drafted with very favorable terms to Eversource Energy without quantification of the stranded costs that will be passed on to rate payers, demands that ordinary rate payers know what money or in kind contributions were made to the politicians who orchestrated it.

Ordinary rate payers are entitled to know what contributions were made by the “Settling Parties” and to whom, both politicians and other “Settling Parties” who have a special interest in the “Settlement Agreement”.

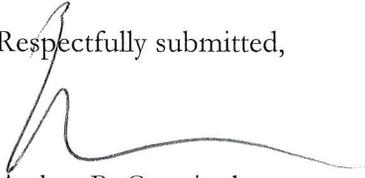
The Commission should take particular note of the fact that ordinary residential rate payers were excluded from the “Settlement Negotiations” and that they were held in secret. The Commission should also take particular note that none of the “Settling Parties” represents residential rate payers. The Office of the Consumer Advocate, a putative rate payer representative, appeared consumed by the powerful politics of the “Settlement Agreement” process and was forced to endure conflicting pressures amongst rate payer classes. The Office of the Consumer Advocate did not adequately represent residential rate payers.

E. Eversource Energy did not object to Cronin Data Requests 4 and 5, therefore the company should be ordered to promptly and fully provide the requested responses. Puc 203.09(h).

Wherefore, Intervener Cronin respectfully demands that this Motion to Compel be granted together with such other relief proper in the matter including relief under RSA365:38-a.

8/19/15

Respectfully submitted,



Arthur B. Cunningham

Bar # 18301

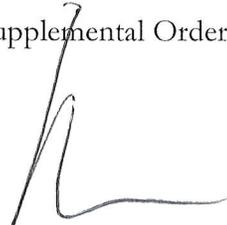
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Certificate of Service

I filed and served notice of this Motion pursuant to Puc 203.11 and the Supplemental Order of Notice.



Arthur B. Cunningham