

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 20-060**

**RETAIL ENERGY SUPPLY ASSOCIATION**

**Motion for Rehearing of Order No. 26,344**

**Order Dismissing Motion for Rehearing**

**ORDER NO. 26,359**

**May 22, 2020**

In this order, the Commission dismisses the Motion for Rehearing of Order No. 26,344 filed by the Retail Energy Supply Association.

**I. PROCEDURAL BACKGROUND**

On March 13, 2020, Governor Christopher T. Sununu issued Executive Order 2020-04 declaring a State of Emergency due to the novel coronavirus (COVID-19) and invoking emergency powers under Part II, Article 41 of the New Hampshire Constitution and RSA 4:45 and RSA 4:47. Paragraph 18 of that Executive Order stated that “additional temporary orders, directives, rules and regulations may be issued either by the Governor or by designated State officials with written approval of the Governor.”

On March 17, 2020, the Governor issued Emergency Order #3 pursuant to Executive Order 2020-04 (Emergency Order #3), which imposed temporary prohibitions on disconnection or discontinuance of certain essential services. Under Emergency Order #3, “[a]ll providers of” certain essential services are temporarily “prohibited from disconnecting or discontinuing service for non-payment for the duration of the State of Emergency declared in Executive Order 2020-04.” Essential services subject to Emergency Order #3 include “public utilities” under

RSA 362:2 (*e.g.*, electric distribution companies and natural gas local distribution companies) as well as service providers that are not public utilities (*e.g.*, heating oil, cable, cellular, and internet providers).

Emergency Order #3 further directed that customers having arrearages accrued during the State of Emergency must be provided the opportunity to make a reasonable payment arrangement over no less than a six-month period and may not be charged any fees for late payment for arrearages accrued during the State of Emergency. Customers are not, however, relieved of their obligation to pay bills for receipt of any service covered by that order.

Emergency Order #3 also directed the Commission to provide assistance and guidance to public utilities in implementing the provisions of that order. Emergency Order #3 further stated that the Commission shall have the authority to enforce the Order through any method provided by current law.

On March 31, 2020, the Commission issued Order No. 26,344, confirming that the plain language of Emergency Order #3 applies to competitive electric power suppliers (CEPS) and competitive natural gas suppliers (CNGS) and stating that it has regulatory and enforcement authority over CEPS and CNGS entities from RSA 374-F:7 and RSA 365:8-a, respectively, as well as the New Hampshire Code of Administrative Rules, Puc chapters 2000 and 3000, respectively.

On April 24, 2020, the Retail Energy Supply Association (RESA) filed a Motion for Rehearing of Order No. 26,344 (Motion). On April 28, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket as well as an Objection to RESA's Motion (Objection).

## II. RESA'S MOTION FOR REHEARING

RESA identified itself as a non-profit trade association whose members are active participants in retail competitive markets for electricity and gas in New Hampshire. Motion at 1. RESA stated that the comments in its motion represent RESA as an organization but may not represent the views of any particular member. *Id.* According to RESA, its members include companies that are currently licensed to supply, and currently do provide, energy to residential, commercial, and industrial customers in New Hampshire. *Id.* at 2. RESA sought rehearing of Order No. 26,344 on the grounds that (1) the Commission's conclusions regarding the applicability of Emergency Order #3 to CEPS and CNGS are mistakenly conceived, (2) the Commission issued Order No. 26,344 without providing stakeholders the opportunity for input, thereby not considering evidence of the impact its order might have on CEPS or CNGS, and (3) Order No. 26,344 is unlawful and unreasonable because the application of Emergency Order #3 to CEPS and CNGS could violate the Contracts Clause of the United States Constitution and could also result in an unconstitutional regulatory taking. *Id.* at 3-4.

## III. OCA'S OBJECTION

The OCA objected to RESA's Motion on the grounds that (1) RESA lacks standing to challenge Order No. 26,344, (2) the Commission is not the proper forum for RESA's claims, which are really directed at the Governor's Emergency Order #3, and (3) each of RESA's specific claims fails on its merits.

The OCA's first argument challenged RESA's standing to seek rehearing on the grounds that it is neither a party to the action nor directly affected by the action as required under RSA 541:3. Objection at 3. According to the OCA, as a trade association, RESA has not made the threshold showing that it has suffered or will suffer an injury in fact. *Id.* The OCA

highlighted the fact that RESA's Motion also did not state that any of its members has or will suffer an injury, instead disclaiming that the Motion may not represent the views of any particular member. *Id.*

The OCA next argued that RESA's claims were brought before the wrong forum. *Id.* at 5. According to the OCA, RESA's grievances are with the Governor and the terms of the Emergency Order. *Id.* The OCA stated that Emergency Order #3 unambiguously applies to all providers of electric and gas service, including CEPS and CNGS. *Id.* at 5-6. According to the OCA, the Commission in fact lacks authority to interpret, constrain, modify, or countermand an emergency gubernatorial order issued pursuant to RSA 4:45. *Id.*

The OCA's remaining arguments addressed the merits of RESA's individual claims. *Id.* at 7.

#### **IV. COMMISSION ANALYSIS**

RESA brings its motion for rehearing pursuant to RSA 541:3, RSA 365:21, and Puc 203.33. Because Order No. 26,344 was not the result of an investigation, complaint or other proceeding, RSA 365:21 does not apply and there is no right under RSA chapter 541 to seek rehearing. We dismiss RESA's Motion as improperly filed.

RSA chapter 541 provides a right to seek rehearing and appeal in certain cases "[w]hen so authorized by law." RSA 541:2; *see New England Household Moving & Storage, Inc. v. Pub. Utilities Comm'n*, 117 N.H. 1038, 1040 (1977) (noting that "RSA chapter 541 does not provide a method of appeal from the determination of every administrative agency, but only where an appeal is specifically 'authorized by law'").

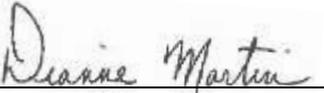
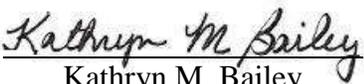
Order No. 26,344 was issued under the authority of Emergency Order #3 and the Governor's emergency powers under RSA 4:45, III(e) and RSA 4:47, III. Nothing in Emergency

Order #3, nor RSA 4:45 or RSA 4:47, specifically authorizes an appeal from an order implementing Emergency Order #3. Accordingly, RSA chapter 541 does not apply to Order No. 26,344, and there is no right to seek rehearing or appeal under RSA chapter 541. RESA's reliance on RSA 365:21 and Puc 203.33 is therefore misplaced. Order No. 26,344 was not issued as part of an adjudicative, investigatory, or other proceeding before the Commission subject to the rehearing provisions of RSA 365:21 or Puc 203.33. Rather, Order No. 26,344 was issued in response to Emergency Order #3 without other proceeding. Because RESA's Motion for Rehearing was not authorized by law, there is nothing properly before the Commission to decide.

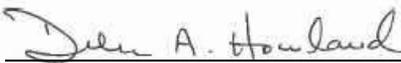
**Based upon the foregoing, it is hereby**

**ORDERED**, that the Motion for Rehearing filed by the Retail Energy Supply Association is dismissed as improperly filed.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of May, 2020.

		
Dianne Martin Chairwoman	Kathryn M. Bailey Commissioner	Michael S. Giaimo Commissioner

Attested by:

  
Debra A. Howland  
Executive Director

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