

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Investigation of Scrubber Costs and Cost Recovery**

**Order Granting Petitions to Intervene**

**ORDER NO. 25,831**

**October 28, 2015**

In this Order, the Commission lifts the stay imposed in Order No. 25,755 (Jan. 15, 2015), and grants the limited intervention of Terry Cronin, and of Senators Bradley and Feltes. We limit their intervention because the underlying issues in this docket have been developed and the evidentiary record is closed. The Commission will not allow further discovery or accept additional evidence regarding the prudence of Eversource's decision-making related to the Scrubber. The Commission will allow Mr. Cronin and the Senators to file comments on the prudence issues related to the Scrubber, and will allow them to fully participate in proceedings related to the reasonableness of the 2015 Settlement Agreement.

**I. PROCEDURAL HISTORY/POSITION OF THE PARTIES**

This docket considers the prudence of the costs and cost recovery for the wet flue gas desulfurization system (Scrubber) installed at Merrimack Station by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or the Company). In December, 2014, after more than three years of pretrial discovery and litigation, hearings, and the filing of post-hearing briefs, Eversource requested a stay of proceedings. The purpose of Eversource's request

was to allow time for the parties to explore settlement. The Commission issued a stay in Order No. 25,755 (Jan. 15, 2015).

During the winter and spring of 2015, PSNH, certain other parties to this docket, and certain parties to Docket No. DE 14-238 (Settling Parties) developed an agreement which, in the opinion of the Settling Parties, adequately resolves both cases. In June 2015, the Settling Parties filed the “2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement” (2015 Settlement Agreement) in both dockets. In a Secretarial Letter issued July 14, 2015, the Commission approved a procedural schedule in DE 14-238. Pursuant to that schedule, the parties to DE 14-238 have filed testimony and are engaged in discovery over whether the Settlement Agreement’s “terms and conditions are in the public interest.”

In July 2015, Terry Cronin and, separately, Senators Bradley and Feltes (the Senators) filed petitions to intervene in both dockets. The Commission orally granted their petitions to intervene in DE 14-238 during a prehearing conference in that docket. Transcript of July 9, 2015, prehearing conference in Docket No. DE 14-238 at 10. The Commission did not act on the petitions to intervene in this docket because of the stay ordered in January 2015.

## **II. COMMISSION ANALYSIS**

### **A. The Stay**

The Commission granted the stay in this docket to allow the parties additional time to work toward a settlement agreement and to grant the Legislature the opportunity to pass the laws necessary to carry out any settlement. “[T]he Legislature passed the law that is at the center of this litigation, RSA 125-O:11-:18, [and it is] reasonable to allow the Legislature time to address and possibly resolve the important issues related to the Scrubber.” Order No. 25,755 at 4. During the stay, the Settling Parties executed the 2015 Settlement Agreement that may resolve

both this docket and DE 14-238, and the Legislature passed SB 211, which enables parts of the 2015 Settlement Agreement and directs the Commission to review the Settlement Agreement. *See* 2015 SB 221, amending RSA 369-B:3-a, II (“the commission shall review the 2015 settlement proposal and determine whether its terms and conditions are in the public interest”). The Governor signed SB 221 into law on July 9, 2015. Therefore, the reasons for the stay are no longer operative. We thus lift the stay to consider the petitions to intervene.

### **B. Petitions to Intervene**

The statute governing intervention provides that the Commission “shall” grant intervention if the petitioner’s “rights duties, privileges, immunities or other substantial interest may be affected by the proceeding.” RSA 541-A:32, I(b). Mr. Cronin satisfies this standard because he is a default service customer of Eversource and this docket may affect his electricity rates. The Senators meet this standard because they are parties to the Settlement Agreement.

Even though Mr. Cronin and the Senators satisfy RSA 541-A:32, I(b), we are not required to grant intervention unless we also find that “the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32, I(c). The statute also grants authority to condition or limit the new parties’ participation:

If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor’s participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

- (a) Limitation of the intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.
- (b) Limitation of the intervenor’s use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.

(c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

RSA 541-A:32, III.

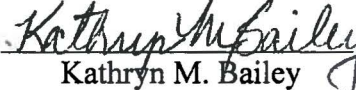
Following more than three years of discovery and litigation, the underlying issues in this docket are well-developed and the evidentiary record related to the prudence of the Scrubber is closed. We will therefore grant limited intervention to the Senators and Mr. Cronin. In limiting the intervention, we emphasize that we will not accept additional evidence on the prudence of Eversource's decision-making related to the installation and operation of the Scrubber, or the expenses incurred. Mr. Cronin and the Senators may only file comment on those prudence issues. Otherwise, Mr. Cronin and the Senators may fully participate as we consider the reasonableness of the 2015 Settlement Agreement's proposed resolution of the Scrubber issues. Specifically, we impose the following conditions to ensure "the orderly and prompt conduct" of the balance of this docket: First, neither Mr. Cronin nor the Senators may conduct discovery or present testimony on the underlying issues in this docket, which generally relate to the prudence of the Company's decisions to build the Scrubber and the prudence of the associated costs. Second, Mr. Cronin and the Senators may file comments on the Settlement Agreement that relate to the prudence of the Scrubber costs, if they so choose, but those comments must be grounded in the existing record that is before the Commission and available on the Commission's website. Finally, Mr. Cronin and the Senators may participate in proceedings in this docket that are related to the 2015 Settlement Agreement, which proceedings parallel the activity in DE 14-238 and are governed by the procedural schedule in DE 14-238.

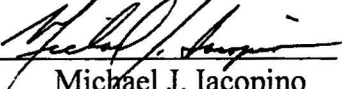
**Based upon the foregoing, it is hereby**

**ORDERED**, that petitions to intervene of Terry Cronin and of Senators Bradley and Feltes are granted on a limited basis under the conditions listed above.

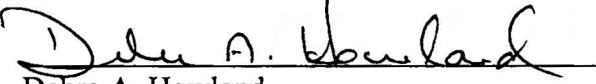
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 2015.

  
\_\_\_\_\_  
Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Kathryn M. Bailey  
Commissioner

  
\_\_\_\_\_  
Michael J. Iacopino  
Special Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director