

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 15-090

NORTHERN UTILITIES, INC.

2015 Summer Period Cost of Gas Adjustment

Order Denying Energy Express's Motion for Rehearing

ORDER NO. 25,832

October 28, 2015

In this order, we deny Energy Express's motion for rehearing of Order No. 25,816 (Sept. 22, 2015), which approved the method for Northern to return a refund from PNGTS.

I. PROCEDURAL HISTORY

On March 17, 2015, Northern Utilities, Inc. (Northern) filed its proposed cost of gas (COG) rate adjustments for the summer period May 1 through October 31, 2015. *Northern Utilities*, Order No. 25,816 at 1 (Sept. 22, 2015). Northern's filing included a proposal to distribute a \$10.5 million refund that Northern received from Portland Natural Gas Transmission System (PNGTS) pursuant to a Federal Energy Regulatory Commission order. *Id.* at 1. Northern's initial proposal was to distribute the refund in equal amounts over three years through reduced demand charges. *Id.* Two retail gas marketers, Global Montello Group Corp. and Sprague Operating Resources LLC (the Marketers),¹ intervened and requested a one-time payment of the PNGTS refund, rather than Northern's three year proposal. The Commission approved Northern's 2015 summer period COG rates, but scheduled a second hearing to determine how to distribute the PNGTS refund. *Northern Utilities*, Order No. 25,783 at 9 (Apr. 30, 2015).

¹ Both Global Montello Group Corp. and Sprague Operating Resources LLC are registered competitive natural gas suppliers.

At the second hearing the parties presented an oral settlement of the PNGTS issue by which Northern would distribute the refund to both sales and delivery service customers over three years, with 50% being refunded through reduced demand charges over the first year (May 1, 2015, through April 30, 2016), 30% over the 2016-17 year, and 20% over the 2017-18 year (the 50-30-20 proposal). Order No. 25,816 at 2. The Parties adopted the settlement at the hearing and the Commission directed the parties to file a written agreement memorializing its terms. *Id.* at 3.

The Marketers refused to sign the written Settlement Agreement because, in their words, “there arose a *bona fide* question of whether Northern actually does not have the ability to protect sales customers.” *Id.* at 4. The Marketers alleged that they accepted the settlement because of Northern’s supposed inability to track migration. *Id.* The Commission granted leave for further litigation on this issue, which resulted in a number of filings by the parties through August 2015. *Id.*

Energy Express, d/b/a Metromedia Energy, Inc. (Energy Express), another retail gas marketer that formerly did business in New Hampshire,² filed a petition to intervene on August 10, 2015, at the very end of the process described above. Energy Express’s interests in this docket are similar to those of the Marketers. Energy Express argued that the 50-30-20 proposal means, “Energy Express will not recover any of the estimated \$600,000 in overpayments it made to Northern,” and, like the Marketers, Energy Express preferred a single payment from Northern for the total amount that it allegedly overpaid. Petition to Intervene at 2. Energy Express acknowledged that its petition was untimely, explaining that it “did not recognize the potential impact of the Commission’s contemplated course of action until it

² Energy Express is a registered competitive natural gas supplier, but discontinued service in September 2014.

became aware of Northern's proposed refund methodology through Maine PUC Docket No. 2015-00041." *Id.* Staff objected to Energy Express's petition to intervene as untimely, and Staff challenged Energy Express's assertion that it was unaware of this docket and of Northern's refund proposals.

On September 22, 2015, in Order No. 25,816, the Commission overruled the Marketers' objections and approved the Settlement Agreement: "The 50-30-20 proposal embodied in the Settlement Agreement reflects a reasonable balance of competing interests and results in just and reasonable rates as to both sales and delivery service customers." *Id.* at 11. The following day, the Commission denied Energy Express's petition to intervene by secretarial letter, stating that the petition was untimely and finding that "the reasons given for the late filing" were "insufficient." The Commission also found Energy Express's petition to be moot because Order No. 25,816 had been issued the day before.

Energy Express filed a motion for rehearing pursuant to RSA 541:3.

II. POSITIONS OF PARTIES

A. Energy Express

Energy Express makes three arguments in support of its motion for rehearing. First, Energy Express complains that the Commission's denial of its intervention request was invalid because it was made by secretarial letter rather than a formal order, and that the denial was improper because Energy Express satisfied the standards for intervention and had good cause for its late filing.

Second, Energy Express makes a due process argument, arguing it did not receive notice of the proceeding and did not have an opportunity to be heard. Energy Express faults Northern for the due process violations: "Despite the amount of money involved and the small number of

gas marketers impacted by the case, Northern never provided Energy Express notice of the proceeding [and] never provided Energy Express a copy of the settlement agreement This process is entirely inadequate” Motion for Rehearing at 3.

Third, Energy Express claims the Commission’s order was wrong on the merits because it violated “the basic purpose of refunds: to make those ratepayers that paid an improper rate whole.” *Id.* at 4. Energy Express cites New Hampshire Supreme Court precedent that “the Commission has implied statutory authority to order a gas company to issue direct refunds to its customers.” *Id.* at 3 (citing *Granite State Gas Transmission, Inc.*, 105 N.H. 454 (1964)). Energy Express also notes that the Maine Public Utilities Commission reached a different decision on how Northern must distribute the Maine share of the PNGTS refund, ordering “direct refunds only to Delivery Service customers.” Motion at 5. Energy Express argues that it “must receive a direct cash refund because it is no longer participating in the natural gas market in New Hampshire and will therefore not benefit from lower prospective rates.” *Id.*

B. Other Parties

No parties responded to Energy Express’s motion for rehearing.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for “good reason” when the moving party demonstrates that the decision is “unlawful or unreasonable.” RSA 541:3; RSA 541:4; *see Public Serv. Co. of N.H.*, Order No. 25, 671 at 3 (May 29, 2014). The “good reason” standard may be met with a demonstration that there were “matters” that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citation omitted), or if the movant presents new evidence not previously available, *Hollis Telephone, Inc.*, Order No. 25,088 at 14 (Apr. 2, 2010). A

motion for rehearing that merely restates prior arguments and asks for a different outcome will fail. *Public Service Co. of N.H.*, Order No. 25, 168 at 10 (Nov. 12, 2010). We find that Energy Express did not present new evidence and did not identify matters that we overlooked or mistakenly conceived.

A. Intervention

The decision to deny Energy Express's petition to intervene is sound. Although Energy Express likely satisfies the standards for intervention, the statute allowing for mandatory intervention requires a Commission determination "that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." RSA 541-A:32, I(c). The section governing permissive intervention similarly requires a finding that "such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II. Energy Express's petition came after both hearings were held, more than two months after the parties reached a settlement agreement, and during the time when the parties were filing their last pleadings in the docket. It was reasonable to conclude that Energy Express's filing was too late and that granting intervention would impair the conduct of the proceedings.

Energy Express's reason for its admittedly late filing remains unpersuasive. Energy Express wrote in its petition that it "did not recognize the potential impact of the Commission's contemplated course of action until it became aware of Northern's proposed refund methodology through Maine PUC Docket No. 2015-00041." Petition to Intervene at 2. The Maine docket, however, reflects that Northern proposed a three year refund in April 2015,³ and that Energy

³ Northern's filing in the Maine docket is here: <https://mpuc-cms.maine.gov/COM.Public.WebUI/Common/ViewDoc.aspx?DocRefId=%7bBC5C7766-2156-48DC-9CA3-27FB9957F368%7d&DocExt=pdf>.

Express took a similar risk before the Maine PUC, filing its petition to intervene after months of litigation and only when “the Examiner’s Report dated August 3, 2015 was issued.” Maine Petition to Intervene at ¶6.⁴ The Maine Examiner’s Report recommended a 50-30-20 proposal similar to that ordered in this docket.⁵ Energy Express did not allege here (or in its Maine petition to intervene) that it was unaware of the PNGTS refund or of Northern’s obligation to distribute the refund. Energy Express simply chose not to participate in this docket until the very end when its preferred outcome was not the one adopted in the Settlement Agreement.

Even if Energy Express had been allowed to intervene, the outcome would have been the same. Energy Express shared the same interests as the Marketers; they wanted the Commission to order a single payment for their claimed share of the PNGTS refund. Energy Express’s lack of participation in this proceeding did not affect the outcome, and thus caused no prejudice to Energy Express, because the Marketers ably argued the position. We approved the Settlement Agreement not just because the parties reached an agreement, but also because we independently found that the Settlement Agreement resulted in “just and reasonable rates,” satisfying our obligation to “provide the public with the assurance that a just and reasonable result has been reached.” Order No. 25,816 at 8 (quotation, citation omitted).

Finally, we reject Energy Express’s argument that the denial of its petition to intervene via secretarial letter was inadequate because the statute says the “presiding officer shall render an order granting or denying each petition for intervention.” RSA 541-A:32, V. The Commission has long spoken through secretarial letters. *See, e.g., New Hampshire Electric Cooperative,*

⁴ Energy Express’s Petition to intervene in Maine is available here: <https://mpuc-cms.maine.gov/COM.Public.WebUI/Common/ViewDoc.aspx?DocRefId=%7bE3C6EC97-0E6B-4F42-9C0D-743F19CEDD82%7d&DocExt=pdf>.

⁵ The Examiner’s Report is available here: <https://mpuc-cms.maine.gov/COM.Public.WebUI/Common/ViewDoc.aspx?DocRefId={FC550FDE-2B2B-44B8-B6AA-75922E93E191}&DocExt=pdf>.

Order No. 20,383, 77 NH PUC 53, 53 (Feb. 4, 1992) (“The Commission approved the selection of the consultant by secretarial letter dated April 30, 1990.”); *Public Serv. Co. of N.H.*, Order No. 17,861, 70 NH PUC 787, 794 (Sept. 13, 1985) (“The Commission granted the PSNH Motion by Secretarial letter dated August 26, 1985.”). Secretarial letters embody and communicate Commission decisions and thus constitute an “order” for purposes of RSA 541-A:32.

B. Due Process

Energy Express’s second argument is that it was denied due process. “Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Central Water Co.*, Order No. 23,386 at 7 (Jan. 7, 2000) (citing *City of Claremont v. Truell*, 126 N.H. 30, 35 (1985)). The Commission provided notice in this docket through the Order of Notice, which was posted on the Commission’s website and published in the *Union Leader*. See RSA 91-A:2, II (“a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation”). Such publication is an established process that is provided for in Commission rules and which satisfies constitutional standards. N.H. Admin. Rules Puc 203.12; *O’Neil v. Public Utilities Commission*, 119 N.H. 930, 933 (1979) (“In the context of regulatory proceedings such as these, notice by publication is a reasonable method of notifying interested parties and that is all that due process requires.”).

Energy Express also had actual notice. As described above, Energy Express acknowledged that it knew of the PNGTS refund and of Northern’s obligation to refund that refund through the Maine docket. As for an opportunity to be heard, the Commission held two public hearings and accepted written filings over a number of months. Had Energy Express

timely intervened, the opportunity to be heard was there; Energy Express chose not to participate.


C. The Merits

Energy Express's third argument is that the Commission reached the wrong conclusion on the merits, violating "the basic purpose of refunds," which is to make customers whole. Although Energy Express does not have the standing to make this argument because it was not allowed to intervene, we will respond briefly. After thorough litigation and careful examination of the record, we concluded that the "50-30-20 proposal embodied in the Settlement Agreement reflects a reasonable balance of competing interests and results in just and reasonable rates as to both sales and delivery service customers." This conclusion represents our judgment of how best to make customers whole in this complex situation. Energy Express provides no basis to reconsider that judgment.

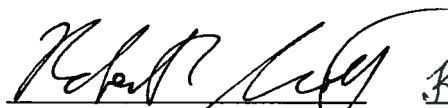
Based upon the foregoing, it is hereby

ORDERED, that Energy Express's Motion for Rehearing is DENIED.

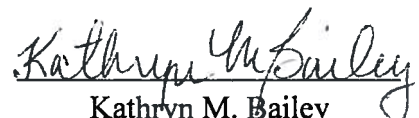
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of October, 2015.



Martin P. Honigberg
Chairman




Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director