

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-817

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Auction of Electric Generation Facilities

Order Denying Joint Motion to Designate Staff

ORDER NO. 25,954

October 18, 2016

I. PROCEDURAL HISTORY

This docket considers the auction design and related recommendations put forward by the Commission's auction advisor, J.P. Morgan ("JPM"), for the divestiture of the generation assets of Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"). A procedural schedule for this proceeding was established by an Order of Notice issued on September 7, 2016. The City of Berlin and the Town of Gorham were granted intervention by the Commission at the prehearing conference for this docket. On September 30, Berlin and Gorham (together, the "Moving Parties") filed joint written comments regarding the JPM auction design proposal, which included a request that the Commission designate General Counsel Anne Ross and Electric Division Director Thomas Frantz as Staff Advocates pursuant to RSA 363:32, II. On October 4, the Commission issued a secretarial letter indicating that the Moving Parties' request would be treated as a motion to designate Staff, with an invitation for parties to respond by October 6, 2016.

II. POSITIONS OF THE PARTIES

A. Berlin and Gorham

The Moving Parties' comments regarding the JPM auction design included the following statement: "Finally, [Berlin and Gorham] respectfully request that Attorney Ross and Mr. Frantz be designated as 'Staff Advocates' pursuant to RSA 363:32 (II) as was the case in the Divestiture Docket." Moving Parties' Comments, September 30, 2016, at 14. That was the full extent of the Moving Parties' argument.

B. Eversource

Eversource filed the only objection. Eversource's objection identified a number of problems with the Moving Parties' request, including: a lack of factual allegations supporting designation; the Moving Parties' past assent to the 2016 Litigation Settlement in Docket No. DE 14-238, as approved by Order No. 25,920 (July 1, 2016), in which Ms. Ross' and Mr. Frantz's non-designation for this instant docket was specifically contemplated; the adverse impacts on the orderly conduct of the instant proceeding if the motion to designate were granted; and the lateness of the Moving Parties' request in light of the issuance of Order No. 25,920 at the beginning of July.

III. COMMISSION ANALYSIS

A. Applicable Law

The Commission is a statutorily created agency charged with being "the arbiter between the interests of the customer and the interests of the regulated utilities." RSA 363:17-a. To carry out that duty the Commission may employ "such regular staff, including experts, as it shall deem necessary." RSA 363:27, I. Staff's expert role takes two forms, often in the same case. On one hand, Staff is "expected to...develop [] proposals for resolution of issues before the

Commission, and to promote those proposals ... where possible.” *Verizon New Hampshire*, 87 NH PUC 11, 19 (2002). On the other hand, Staff is “to advise the Commission fairly and neutrally as to the positions of the parties, the status of the docket, the law applicable to the situation, the policy considerations that should be taken into account, and other aspects of the case.” *Id.*; *see also Public Service Company of New Hampshire*, Order No. 25,630 (February 14, 2014) at 5-7. Staff continues to “have this duty of neutral advice even when they hold a particular conflicting view, and even when it is clear the Commission is seriously entertaining a contrary position.” *Id.* To avoid designation in every case in which it takes a position, Staff is “entitled to the presumption that they are ‘of conscience and capable of reaching a just and fair result.’” *Verizon New Hampshire* at 17-18 (2002) (*quoting Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991); *Public Service Company of New Hampshire* at 6 (2014)). The presumption of fairness “should not be lightly overcome.” *Id.*

This presumption of fairness is not the same as a presumption that Staff will remain impartial. Although Staff must “observe the same standards of fidelity and diligence that apply to the Commissioners,” Staff need not “observe the same duty of impartiality.”

Professional staff do not have to be impartial in order to be able to fairly and neutrally advise, and we will not impose such a requirement. Thus, even if there were facts alleged that were sufficient to demonstrate lack of impartiality, that alone would not have been sufficient to rebut the presumption that [Staff] is able to fairly and neutrally advise the Commission.

Verizon New Hampshire at 19; *Public Service Company of New Hampshire* at 6.

We turn to the controlling statute at issue with the presumption of fairness in mind.

RSA 363:32, I governs mandatory designation:

[T]he commission *shall* designate one or more members of its staff as a staff advocate ... when the commission determines that such members of its staff may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding.

RSA 363:32, I (emphasis added). Paragraph II of the same section allows discretionary designation “for good cause shown” and suggests three factors to consider:

[T]he commission *may* designate one or more members of its staff as a staff advocate ... at any time for good reason, including that: the proceeding is particularly controversial and significant in consequence; the proceeding is so contentious as to create a reasonable concern about staff’s role; or it appears reasonable that such designations may increase the likelihood of a stipulated agreement by the parties.

RSA 363:32, II (emphasis added).

Under RSA 363:32, I we must designate only if Staff “may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding,” otherwise we may designate Staff “for good cause shown” while considering the factors in RSA 363:32, II.

B. Discussion


We find that the Moving Parties did not establish any case for either mandatory or discretionary designation. The complete argument put forward by the Moving Parties in favor of designating Ms. Ross and Mr. Frantz is, verbatim: “Finally, the City [of Berlin] and the Town [of Gorham] respectfully request that Attorney Ross and Mr. Frantz be designated as ‘Staff Advocates’ pursuant to RSA 363:32 (II) as was the case in the Divestiture Docket.” Moving Parties’ Comments at 14. This cursory statement does not provide any facts that support a finding of discretionary designation. The mere fact that Ms. Ross and Mr. Frantz were designated in the “Divestiture Docket” (Docket No. DE 14-238) does not form such a basis. That is especially true here, as Ms. Ross and Mr. Frantz were designated in the Divestiture Docket because of their involvement in negotiations at the Legislature for the 2015 Settlement Agreement, not due to any concern about impartiality. *See* Secretarial Letter, March 23, 2015. As noted by Eversource, the 2015 Settlement Agreement specifically contemplated that the designations would end when the Divestiture Docket was closed and that Ms. Ross and

Mr. Frantz would participate in this docket. That Agreement was approved on July 1, 2016. The Moving Parties have presented no evidence that Ms. Ross and Mr. Frantz are unable to advise the Commission fairly and neutrally in the instant proceeding. Therefore, we deny the motion to designate.


Based upon the foregoing, it is hereby

ORDERED, that the Joint Motion for Designation of Commission Staff is DENIED.

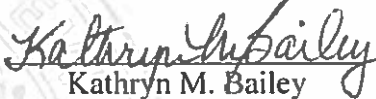
By order of the Public Utilities Commission of New Hampshire this eighteenth day of October, 2016.



Martin P. Honigberg
Chairman

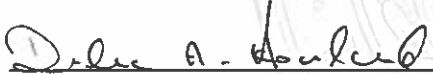


Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

