

STATE OF NEW HAMPSHIRE
before the
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Petition for Increase to Short Term Debt Limit and to Issue Long Term Debt

Docket No. DE 09-033

OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO CONSERVATION LAW FOUNDATION'S
MOTION FOR REHEARING REGARDING MOTION TO COMPEL

Pursuant to Rule Puc 203.07(f), Public Service Company of New Hampshire (“PSNH”) hereby objects to Conservation Law Foundation’s (“CLF”) “Motion for Rehearing on the Commission’s Order Denying Conservation Law Foundation’s Motion to Compel PSNH’s Responses to Data Requests” (the “Motion for Rehearing”). The basis for this objection is that the decision complained of is neither unlawful nor unreasonable. RSA 541:4. In support of this objection, PSNH states the following:

1. In its Motion for Rehearing, CLF effectively seeks rehearing of the Commission’s earlier scope determination that “in this financing docket we will consider the economic impact of the proposed financing, its effect on PSNH’s capital structure, and its potential impact on rates but it is not within the scope of our authority to consider whether the use of the financing proceeds for the scrubber is for the public good or whether there are reasonable alternatives to the scrubber” (Order 24,979, *slip op.* at 18) and again argues the Commission is obligated to consider whether installation of the so-called scrubber as mandated by the New Hampshire Legislature is in the public interest given its potential, hypothetical rate impact.

2. It should be noted that CLF apparently had no issues with any construction project proposed by PSNH other than the Merrimack scrubber. The installation of a scrubber at Merrimack Station and its environmental impacts have been clearly

determined by the Legislature to be in the public good, as this Commission has correctly recognized. Once again CLF wrongly cites *Appeal of Easton*, 125 N.H. 205 (1984), in support of its position, rather than *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062 (1982), which is clearly applicable.¹ PSNH has been ordered by the Legislature to install scrubber technology and the Legislature has authorized the recovery of prudent costs associated with such installation. It cannot be in the public good to withhold from PSNH routine financing that will, among other things, support its compliance with the Legislature's clear directive.

3. CLF argues that the information it seeks to compel from PSNH relates to factors and assumptions (i.e. reduced demand, decreasing customer load) that may influence rates in the future and that this potential obligates the Commission to try PSNH's 2012 rate case in this finance proceeding. There is no basis for CLF's demand. The relevant facts of this case are substantially different from the fact situation in both *Easton* and *Appeal of Conservation Law Foundation*. In those cases the respective investments in Seabrook Station were discretionary, and the cost of the associated financings was substantially more than the embedded cost of capital. In this case, the installation of the scrubber at Merrimack Station is mandated by law, and the cost of this particular financing will have a barely perceptible impact on PSNH's weighted average cost of capital going forward.

4. Contrary to CLF's assertion, Mr. Shoop clearly indicated in response to Data Request Q-NOCA SET 1-010 (Exhibit 3, pp. 24-27) and testified on the witness stand that the impact of this financing on PSNH's revenue requirement (weighted average cost of capital times rate base), all other things being equal, is a total of \$163,000 on forecasted sales of approximately 7.9 billion kilowatt hours, or approximately two one-

¹ "In *Appeal of Public Service Company of New Hampshire supra*, we held that the PUC, as a matter of law, misinterpreted the scope of its authority to define the public good when it prohibited the expenditure of capital received in a routine stock issuance on the construction of Seabrook Unit II. Our conclusion was based on the fact that the PUC's determination contravened Public Service Company of New Hampshire's "vested right" to construct Unit II." *Appeal of Easton*, 125 NH 205, 212 (1984). RSA 125-0:13, et seq. is more than a vested right to construct the scrubber; it is a mandate from the Legislature.

thousandths of a cent per kilowatt hour. Even if PSNH's sales assumptions were halved, spreading this same \$163,000 over approximately 4 billion kilowatt hours would result in a rate impact of only four one-thousandths of a cent per kilowatt hour. Despite CLF's protestation to the contrary, an impact of this limited magnitude in a worst case scenario cannot and does not justify a comprehensive review of all actual and potential construction projects and the projection of future rates based on contested assumptions, estimated data and hypothetical cost recovery options.

5. The impact of this financing on rates is limited because once issued, the payment of principal and interest associated with a financing are "below the line" that is, they are not directly reflected in the ratemaking formula as additional, recoverable expense. Thus, a financing at an interest rate equal or substantially similar to the weighted average cost of debt has virtually no direct impact on the Company's revenue requirement. The Company's return on rate base is determined by multiplying rate base times a weighted average cost of capital (including the cost of debt), which remains substantially the same unless the cost of a new financing is in excess of average embedded costs. When the change in cost of capital is limited, the rate effect is similarly limited - even if demand and load drops, as noted by Mr. Shoop.

6. In its original Order on CLF's Motion to Compel, the Commission indicated it conducts an *Easton* inquiry in every financing proceeding, but that the scope of the *Easton* review in this instance is limited by the Legislature's finding that the scrubber is in the public interest. The Commission determines the appropriate scope of its inquiry utilizing the applicable facts and its considerable expertise. The only construction project at issue is the Merrimack scrubber. This construction project was mandated by the Legislature. The Legislature recently declined to modify its clear directive. Finally, all other aspects of the financing are routine. Under these circumstances, it is well within the Commission's discretion to limit its inquiry to "the economic impact of the proposed financing, its effect on PSNH's capital structure and its potential impact on rates" and to decline speculation regarding future conditions, and to what extent, when and how the costs associated with the Merrimack scrubber will ultimately be reflected in PSNH's rates.

7. CLF's argument that the rate impact of the Merrimack scrubber justifies denial of PSNH's requested financing authority is outside the scope of the proceeding established by the Commission. Denial of the proposed financing on such grounds would override of the Legislature's directive of RSA 125-O:11 *et seq.*, and be unjust, unreasonable and unconstitutional as discussed in *Appeal of Public Service Company of New Hampshire*.

8. CLF offered no witnesses and no evidence in support of its allegations that this financing will adversely impact rates, or that in a later ratemaking proceeding the Commission will be unable to set a reasonable rate that will support the capitalization resulting from the use of the proceeds of this financing. Based on scope of this proceeding as established by the Commission and the record evidence in this case, it is clear that the economic impact of the proposed financing, its effect on PSNH's capital structure and its potential impact on rates are minimal and support approval of PSNH's request.

9. Many of CLF's other allegations contained in its Motion are equally specious and unsupported. For instance, in para. 13, CLF alleges that "PSNH's current energy service rate is 9.92 cents per kilowatt hour, while ISO New England reports that the average real time locational marginal price for the New Hampshire Zone in June, 2009, was 3.4 cents per kilowatt hour." This statement is not only incorrect, but it amounts to the proverbial apples-to-oranges comparison. As the Commission is aware, PSNH's "current energy service rate" is 9.03¢/kWh – nearly a penny-per-kilowatt-hour less than that stated by CLF.² Furthermore, using the ISO locational marginal price as a benchmark for comparison is just plain misleading. PSNH's energy service offering is an all-in, load-following, cost of service retail price; the locational marginal price is a spot market wholesale price. The locational marginal price does not include capacity costs,

² Order No. 24,991, July 24, 2009.

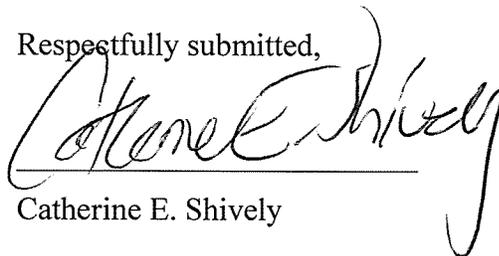
other ancillary services, and the costs of environmental attributes (such as renewable portfolio standard [RPS] costs) – a fact that CLF should know.

10. The Commission's decision in Order No. 25,001 rejecting CLF's discovery questions relating to the scrubber project was neither unlawful nor unreasonable. Hence, pursuant to RSA 541:4, there is no basis to grant CLF's Motion, and that Motion should be denied. Moreover, to the extent that CLF is actually challenging the Commission's June 19, 2009, decision in Order No. 24,979 that "it is not within the scope of our authority to consider whether the use of the financing proceeds for the scrubber is for the public good or whether there are reasonable alternatives to the scrubber," the Motion for Rehearing is untimely, having been filed 77 days after the issuance of that decision – well past the 30-day statutory deadline set forth in RSA 541:3.

WHEREFORE, PSNH respectfully requests that the Commission deny CLF's Motion for Rehearing and promptly issue its Order in this proceeding authorizing the financing proposed by the Company.

September 11, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this date I caused PSNH's Objection to Motion for Rehearing Law to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

September 11, 2009

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