

## STATE OF NEW HAMPSHIRE

## PUBLIC UTILITIES COMMISSION

June 29, 2010 - 1:41 p.m.  
Concord, New Hampshire

NHPUC JUL15'10 AM 9:43

RE: DE 10-122  
PUBLIC SERVICE CO. OF NEW HAMPSHIRE:  
Petition for Approval of Issuance  
of Long and Short-Term Debt.  
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding  
Commissioner Clifton C. Below  
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:  
Catherine E. Shively, Esq.

Reptg. New Hampshire Sierra Club:  
Arthur B. Cunningham, Esq.

Reptg. Residential Ratepayers:  
Meredith Hatfield, Esq., Consumer Advocate  
Kenneth E. Traum, Asst. Consumer Advocate  
Office of Consumer Advocate

Reptg. PUC Staff:  
Suzanne G. Amidon, Esq.  
Steven E. Mullen, Asst. Dir./Electric Div.

Court Reporter: Steven E. Patnaude, LCR No. 52

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# I N D E X

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## P R O C E E D I N G

CHAIRMAN GETZ: All right. Good afternoon, everyone. We'll open this prehearing conference in docket DE 10-122. On May 3, 2010, Public Service Company of New Hampshire filed a petition seeking authority to issue up to \$600 million in principal amount of long-term debt through December 31, 2012; to mortgage its property in connection with the issuance of long-term debt; to enter into interest rate transactions to manage interest risk; to engage in long-term borrowing pursuant to an unsecured revolving credit agreement; and to extend its current short-term debt limit of 10 percent of net fixed plant plus a fixed amount of \$60 million. An order of notice was issued on June 1 setting the prehearing conference for this afternoon. I'll also note for the record that the affidavit of publication has been filed. That we have the OCA's Notice of Participation. We have a Petition to Intervene from the Sierra Club. And, we also have filed an objection by PSNH to that Petition to Intervene.

So, can we take appearances please.

MS. SHIVELY: Good morning, Mr. Chairman, Commissioners. Catherine Shively, for Public Service Company of New Hampshire.

1 MR. CUNNINGHAM: Arthur B. Cunningham,  
2 for New Hampshire Sierra Club. With me is Catherine  
3 Corkery, Chapter Director of the Sierra Club.

4 CHAIRMAN GETZ: Good afternoon.

5 MS. HATFIELD: Good afternoon,  
6 Commissioners. Meredith Hatfield, for the Office of  
7 Consumer Advocate, on behalf of the residential  
8 ratepayers. And, with me from the office is Ken Traum.

9 CHAIRMAN GETZ: Good afternoon.

10 MS. AMIDON: Good afternoon. Suzanne  
11 Amidon, for Commission Staff. And, with me today is Steve  
12 Mullen, who is the Assistant Director of the Electric  
13 Division.

14 CHAIRMAN GETZ: Okay. Good afternoon.  
15 I think it's a little difficult to segregate out the  
16 statements of the positions of the parties and the  
17 intervention request and the scope of this proceeding.  
18 So, rather than try and do several rounds and breaking  
19 down those topic-by-topic, I think we'll start with the  
20 Petitioner, and let everyone address all of those issues  
21 in turn.

22 So, Ms. Shively, do you want to state  
23 the Company's position and any arguments it has with  
24 respect to the Sierra Club's Petition to Intervene and

1 your position as to the appropriate scope of this  
2 proceeding, if you could take all of those issues on  
3 please?

4 MS. SHIVELY: Okay. I believe you have  
5 accurately summarized the Company's petition, so I'm not  
6 going to repeat that. In this proceeding, we have  
7 requested authority to issue \$600 million worth of  
8 long-term debt from about the last quarter of 2010 through  
9 December 31st, 2012, which is roughly a two-year period.  
10 We're requesting authority over a two-year period due to  
11 the continuing volatility of the financial markets.  
12 Having the financing approval in place provides the  
13 Company with an opportunity to capitalize on favorable  
14 market conditions. Such authority has been previously  
15 granted by this Commission, and similar authority has also  
16 been granted by other New England commissions. We're also  
17 requesting this authority because any further request to  
18 issue debt closely resemble this request and would avoid a  
19 duplication of expense and effort on behalf of all the  
20 parties.

21 Regarding some of the specifics of the  
22 request, we're asking that the interest rate on the  
23 long-term debt will not exceed a rate equal to the  
24 applicable index, plus a credit spread of up to 400 basis

1 points, or 4 percent, which is consistent with prior  
2 approvals granted by this Commission. The exact  
3 structure, terms and conditions, amount, documentation,  
4 and the interest rate would be determined at the time of  
5 issuance, based on the prevailing market conditions. As  
6 usual, in making the financing decisions, the Company will  
7 continue to take into account the need to maintain its  
8 credit ratings, and also the need to maintain its  
9 ratemaking capitalization.

10 Regarding the ratemaking capitalization,  
11 our original projections were for about a \$210 million  
12 issuance as early as the first quarter of 2011, and  
13 225 million during the first quarter of 2012. In light of  
14 the increased equity that's resulting from the recent rate  
15 case settlement, we're going to be taking a look at that  
16 to see if that request can be reduced somewhat. We're  
17 still looking into that.

18 As discussed in Susan Weber's testimony,  
19 the funds obtained through the financings will be used to  
20 take out short-term debt incurred in the ordinary course  
21 of business, to support transmission, distribution, and  
22 generation activities, to pay issuance costs, and for  
23 working capital. If market conditions allow, any  
24 additional amounts over and above the short-term debt

1 levels would also be used for ongoing capital  
2 expenditures.

3 As you noted, we also seek authority to  
4 mortgage our property, execute interest rate transactions,  
5 issue long-term debt to the parent, NU, or under an  
6 unsecured revolver, and to extend our short-term debt  
7 authorization at the current levels.

8 We believe the financing activities as  
9 proposed are in the public good. And, we respectfully  
10 request that the Commission issue an order approving the  
11 proposed transactions no later than September 30th, 2010.

12 Regarding the issue of intervention, we  
13 do object to the intervention of the New Hampshire Sierra  
14 Club. Basically, I think that the petition recites a  
15 number of their activities in environmental dockets, and  
16 then concludes that, because of that, they're entitled to  
17 intervene in this case. And, I don't see any substantial  
18 interests. And, I'm concerned that their intervention  
19 will likely impact the orderly conduct of these  
20 proceedings, as they have specifically indicated that they  
21 want to investigate our compliance with the environmental  
22 permit requirements applicable to the scrubber.

23 And, regarding the scope of the  
24 proceeding, I think the Commission spent quite a bit of

1 time in our last financing proceeding in an effort to  
2 determine the appropriate scope. I think that you did a  
3 very good job of that, and that the scope of this docket  
4 should be the same as the scope of our prior financing.

5 CHAIRMAN GETZ: Okay. Thank you.  
6 Mr. Cunningham.

7 MR. CUNNINGHAM: Yes, Mr. Chairman.  
8 Thank you very much, members of the Commission. By my  
9 calculation, this docket seeks authorization for somewhere  
10 in the neighborhood, and considering the long-term  
11 financing, the short-term financing, the revolving credit,  
12 somewhere in the neighborhood of \$959 million. That's a  
13 lot of money. And, if we look at RSA 369:1, it's required  
14 that the financing be approved if it serves a lawful  
15 corporate purpose. So, to reiterate the arguments that I  
16 made yesterday, that Ms. Shively is quite right, that we  
17 have some serious ongoing concerns and ongoing litigation  
18 with respect to the environmental compliance of projects  
19 at Merrimack Station.

20 The Commission is probably aware of the  
21 exhibits and the reports that we've been able to find  
22 during our investigation into those cases, including the  
23 Burns & McDonnell report, the GZA report, and the Sargent  
24 & Lundy report. For example, the Burns & McDonnell report



1 suggests that -- that not only the turbine be changed out,  
2 but the boiler be replaced on MK2. The GZA report  
3 suggests that, if emissions increase even less --  
4 emissions for plant upgrade projects increase even less  
5 than one percent, that NSR permitting responsibilities are  
6 invoked. The Sargent & Lundy report is even more telling,  
7 because it suggests that PSNH investigated serious  
8 projects to upgrade the generating capacity of the plant  
9 and life extension projects to increase generation output  
10 in excess of 20 megawatts, without even mentioning the  
11 installation of the new turbine at MK2. So, we have  
12 serious, ongoing concerns about compliance. And, we think  
13 that we should be able to participate in this docket to  
14 ensure that these funds are going to proper corporate  
15 purposes, and not in violation of the Clean Air Act or the  
16 New Hampshire Multiple Pollutant Control Act.

17 CHAIRMAN GETZ: Well, excuse me right  
18 there. What evidence do we have that such a violation  
19 occurred? Because doesn't your Petition to Intervene set  
20 forth that these issues have been litigated or are being  
21 continued to be litigated in other forums? And, as far as  
22 I can tell, it sounds like there is no court of competent  
23 jurisdiction that says that they can't be doing what  
24 they're doing. And maybe, in fact, we have the opposite

1 from the Air Resources Council. So, how do you make the  
2 link? What would you propose that we do in this  
3 proceeding with respect to environmental compliance?

4 MR. CUNNINGHAM: Leave the proceeding  
5 open until these cases are resolved. We have -- there's  
6 three important pending matters, Mr. Chairman. There's  
7 the Air Resources Docket 09-10, Air Resources Docket  
8 10-06, and there's a pending EPA Section 114 data request  
9 that's pending. Each one of these dockets is important,  
10 may lead to important evidence with respect to what's  
11 going on at the plant.

12 One of the things I wanted to say, in  
13 response to Mr. Eaton's remarks yesterday, and I failed to  
14 do that, is he suggested that "the Sierra Club is just  
15 data diving." That's an epithet, and it's not true. We  
16 are not data diving. We are simply trying to follow the  
17 law to get discovery into the potential violations of the  
18 Clean Air Act. One of our frustrations, and it's been  
19 very contentious before the Air Resources Council, is that  
20 we have found --

21 CHAIRMAN GETZ: Can you not get  
22 discovery in those other forums, where you --

23 MR. CUNNINGHAM: We have not been able  
24 to get --

1 CHAIRMAN GETZ: Well, let's try not to  
2 talk both at the same time, because the court reporter  
3 won't be able to put it all into the transcript.

4 MR. CUNNINGHAM: I'm sorry, Mr.  
5 Chairman.

6 CHAIRMAN GETZ: So, you can't get  
7 discovery in those other proceedings, where these issues  
8 are more directly in play. So, you're hoping to get more  
9 information here, in order to pursue your remedies there?

10 MR. CUNNINGHAM: I think that's part of  
11 the financing docket. The Commission has the authority to  
12 investigate the destination of these funds. And, if the  
13 destination of these funds goes to plant projects that  
14 violate the Clean Air Act, that's basically our concern.

15 CHAIRMAN GETZ: And, which -- And, the  
16 plant project you're talking about is the refurbishing of  
17 the turbine?

18 MR. CUNNINGHAM: That's one of them.

19 CHAIRMAN GETZ: Hasn't this Commission  
20 already ruled on that issue in Docket 08-145?

21 MR. CUNNINGHAM: It has. But the  
22 Commission did not -- the Commission did not, in their  
23 ruling on that, address the issue with respect to the  
24 Clean Air Act. In other words, is that turbine or does it

1 -- is that turbine going to increase emissions beyond the  
2 Clean Air Act thresholds that trigger NSR permitting?

3 CHAIRMAN GETZ: Are we a competent forum  
4 to make that kind of decision about whether the Company is  
5 in violation of the Clean Air Act?

6 MR. CUNNINGHAM: No. You are not. My  
7 suggestion to the Commission is that the Commission defer  
8 ruling and determining on the authorities here until those  
9 Clean Air Act issues, those New Hampshire Pollution  
10 Control Act issues are fully and fairly resolved on the  
11 merits.

12 CHAIRMAN GETZ: But isn't this a  
13 slippery slope? That a party could come into this  
14 Commission on any issue, in any -- of state law or federal  
15 law, and say "don't give a utility some kind of relief  
16 that it's requesting, because something might happen  
17 somewhere else"?

18 MR. CUNNINGHAM: Well, let me address  
19 your question about the discovery issue, Mr. Chairman. In  
20 the Air Resources Council case, that's 09-10, the Sierra  
21 Club filed four separate requests for information,  
22 addressing not only the turbine project, but other  
23 projects that we believe may have increased generating  
24 capacity and exceeded the emission thresholds in terms of

1 the Clean Air Act. PSNH has uniformly objected to each  
2 and every one of those information requests. We've gotten  
3 zero documents from PSNH, with save and except, finally,  
4 we got the Sargent & Lundy report. We -- it's been a  
5 major battle there in the Air Resources Council. It's not  
6 been a fair proceeding. It's not been a thorough  
7 proceeding. And, it's not ever going to get on the merits  
8 -- the proceeding is never going to get with the merits on  
9 the substantive Clean Air Act violation issues until such  
10 time as PSNH cooperates on discovery.

11 One of our fundamental issues and one of  
12 our fundamental difficulties with PSNH conduct is this  
13 aura, this -- this culture of confidentiality. I just  
14 talked to the woman, a lady in charge of the Section 114  
15 request at the EPA. That was a massive 114 data request.  
16 PSNH claimed almost blanket confidentiality on this data  
17 request. It went to ask of projects done there that may  
18 have increased the generating capacity of emissions in  
19 future projects. EAP has advised that it's the single  
20 largest data request that they have ever had to deal with.  
21 EAP has hired an expert witness to analyze the documents  
22 and analyze the legitimacy of the PSNH confidentiality  
23 request. As of Monday a week ago, EPA, and this is over a  
24 year this has been pending, EAP is still, with their

1 expert, boring through these confidentiality claims.

2 I'm simply suggesting, Mr. Chairman and  
3 members of the Commission, that let's not spend a billion  
4 dollars on a project that, in the end, may be shown to be  
5 in violation of the Clean Air Act, until all these issues  
6 are fundamentally and finally and fairly resolved on all  
7 the evidence. That's our concern. That we have been  
8 stonewalled from day one. We're not a competitor, Sierra  
9 Club is not a competitor of PSNH. Sierra Club would  
10 willingly sign appropriate confidentiality agreements, if  
11 there are legitimate trade secrets, if there's legitimate  
12 market information. We would be pleased to sign a  
13 confidentiality agreement regarding that information. If  
14 the information was made available, we could have a look  
15 at it, we could have experts, independent experts look at  
16 it and make these determinations. What we're looking for  
17 is a full and fair merit hearing. And, I can't help but  
18 think that that's important to this Commission as well.

19 CHAIRMAN GETZ: The full and fair  
20 hearing of the merits of what?

21 MR. CUNNINGHAM: Of these Clean Air Act  
22 cases. These Clean Air Act cases. In a venue that's  
23 fully and fairly going to permit us to get access to  
24 materials and confidential materials, claimed confidential

1 materials.

2 CHAIRMAN GETZ: Okay. Let's -- did you  
3 have anything further?

4 MR. CUNNINGHAM: No. Thank you very  
5 much, Mr. Chairman.

6 CHAIRMAN GETZ: Ms. Hatfield.

7 MS. HATFIELD: Thank you, Mr. Chairman.  
8 The OCA is still reviewing PSNH's filing, and intend to  
9 engage in discovery and work with the parties and Staff in  
10 order to develop a position on the request. But we did  
11 want to raise a few issues that we're focusing on in our  
12 review of the docket. One is the size of the request. In  
13 looking at other recent requests for long-term financings  
14 from PSNH, \$600 million is certainly much larger than  
15 other recent requests. Secondly, is the time frame for  
16 which PSNH is seeking approval. If we understand their  
17 request correctly, they're seeking approval through  
18 December 31st of 2012, which we think is significantly  
19 longer than past authorizations that the Company has  
20 received. For example, in docket DE 09-033, they sought  
21 authority for about a 12 month -- 10 or 12 month period,  
22 as opposed to almost three years in this case.

23 We also, if we are looking at the filing  
24 correctly, and I believe Ms. Shively mentioned this in her

1 opening statement, that we see that the Company has  
2 proposed two issuances that total about \$435 million. So,  
3 we will be looking into why they're requesting approval  
4 for 600 million.

5 And, then, finally, with respect to  
6 PSNH's short-term debt request, I'm sure the Commission  
7 recalls in that '09 docket, PSNH sought approval and was  
8 approved to have their short-term debt limit increased, so  
9 that it was set at 10 percent of net plant, plus  
10 \$60 million, and that would expire at the next filing,  
11 which is the filing or the docket that we're in now. And,  
12 if we understand correctly, PSNH is now seeking for that  
13 approval to run indefinitely. So, that will be another  
14 issue that we'll be looking at.

15 With respect to the scope of the docket,  
16 we think that the various statutes on the authority for  
17 utilities to issue securities and to mortgage property  
18 apply, the 369 statutes, including the usual review that  
19 the Commission does on the amount of the issue, the  
20 purpose or purposes to which the proceeds will be used,  
21 and also the impact on ratepayers.

22 With respect to the intervention request  
23 of the Sierra Club, we take no position. Thank you.

24 CHAIRMAN GETZ: Okay. Thank you. Ms.



1 Amidon.

2 MS. AMIDON: Thank --

3 CHAIRMAN GETZ: Well, actually, I'll  
4 hold on this. But I think -- I was going to ask,  
5 Ms. Shively, if you'll be able to respond today to the  
6 question that Ms. Hatfield raised about, I guess, it's the  
7 addition of the two issuances, if that's something that  
8 you can briefly address? But, Ms. Amidon.

9 MS. AMIDON: Thank you. Staff has begun  
10 to review the filing, and we will be conducting discovery  
11 and we will meet with the parties following this  
12 prehearing conference to develop a procedural schedule for  
13 the orderly process of this proceeding. As was referenced  
14 by the Consumer Advocate, RSA 369 applies. And, as the  
15 Commission did in the last PSNH filing, and with the  
16 financing filings that you receive from other utilities,  
17 there will be a form of an Eastman review as to the  
18 purpose or purposes to which these funds will be put, the  
19 amount of money involved, and, in addition, we will be  
20 asking the Company to provide us with rate impacts that  
21 result from the filing.

22 Having said that, with respect to the  
23 Petition to Intervene, we take no position.

24 CHAIRMAN GETZ: Okay. Ms. Shively, do

1       you have anything else?

2                       MS. SHIVELY: May I have just a moment?

3                       CHAIRMAN GETZ: Sure.

4                       (Off the record.)

5                       CHAIRMAN GETZ: Ms. Shively.

6                       MS. SHIVELY: Yes. Regarding the  
7       intervention, I would just simply like to say that we have  
8       a very strong objection to leaving this proceeding open  
9       until the air cases are resolved. We, obviously, do not  
10      believe that our projects that are designed to decrease  
11      pollution violate the Clean Air Act. It doesn't make a  
12      lot of sense. And, there have been ample opportunities  
13      for discovery in those other forums. I think that the  
14      Sierra Club is simply not satisfied with the results that  
15      they have obtained there. And, if they're admitted as an  
16      intervenor in this case, we're going to be spending a lot  
17      of time objecting to data requests unnecessarily.

18                      It wasn't clear to me exactly what you  
19      were asking about --

20                      CHAIRMAN GETZ: Well, maybe it would be  
21      better for Ms. Hatfield to repeat the question or the  
22      issue that she was concerned in following up on.

23                      MS. HATFIELD: Sure. Thank you, Mr.  
24      Chairman. The request is for \$600 million. And, when we

1 reviewed the filing, we saw two issuances; one of 210 and  
2 the other of 225, which I believe Ms. Shively described in  
3 her opening, which equals 435 million. So, one of the  
4 areas we wanted to explore in discovery was the difference  
5 between those two amounts.

6 MS. SHIVELY: We're certainly prepared  
7 to address that in both the technical session and in  
8 discovery. I think that the short answer is that there  
9 are -- there are two financings planned. The other  
10 amounts are to provide additional flexibility. And, as I  
11 indicated before, in light of the rate case settlement, I  
12 think we'll be looking at reducing potentially that  
13 request somewhat.

14 CHAIRMAN GETZ: Okay. Thank you.  
15 Anything else?

16 (No verbal response)

17 CHAIRMAN GETZ: All right. Anything  
18 further this afternoon?

19 (No verbal response)

20 CHAIRMAN GETZ: All right. Well, let me  
21 address the Petition to Intervene and the scope issues  
22 this way. We intend to take the matters under advisement  
23 and not issue a ruling from the Bench today. I think that  
24 may -- I guess my concern was as a practical concern of

1     how that plays into the technical session, and whether  
2     there's going to be effectively, Mr. Cunningham, that  
3     you're going to be pressing for a longer procedural  
4     schedule than might be the case. I think I'm inclined to  
5     let the parties go to technical session. If they can  
6     agree on a procedural schedule, fine. If they can't agree  
7     on a procedural schedule, and if we get two different  
8     recommendations, then we'll deal with that.

9                     But I would say this, Mr. Cunningham.  
10    I'm very concerned about the scope issue, and whether this  
11    Commission would have any authority in any proper way to  
12    effectively make rulings that are related to Clean Air Act  
13    issues. I don't think that you have drawn a clear  
14    roadmap, either in your petition or in your comments  
15    today, how those issues relate to issues that we would be  
16    deciding under RSA Chapter 369.

17                    But we're going to take those arguments  
18    under advisement for the time being, and then await a  
19    recommendation from the parties as to the procedural  
20    schedule for this hearing.

21                    So, is there anything further?

22                    (No verbal response)

23                    CHAIRMAN GETZ: Okay. Hearing nothing,  
24    then we will close the prehearing conference and take the

1 matter under advisement.

2 (Whereupon the prehearing conference  
3 ended at 2:08 p.m.)  
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