

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 15, 2010 - 10:08 a.m.
Concord, New Hampshire

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RE: DE 10-226
ELECTRIC UTILITIES:
Disclosure of Electric Service Energy
Sources and Environmental Characteristics.
(Prehearing conference)

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

APPEARANCES: Reptg. Public Service of New Hampshire:
Gerald M. Eaton, Esq.
Reptg. Granite State Electric Co. d/b/a
National Grid:
Sarah B. Knowlton, Esq. (McLane, Graf...)
Reptg. Unitil Energy Systems, Inc.:
Gary Epler, Esq.
Reptg. New Hampshire Electric Cooperative:
Mark W. Dean, Esq.
Reptg. TransCanada Power Marketing:
Douglas L. Patch, Esq. (Orr & Reno)

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

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APPEARANCES: (C o n t i n u e d)

Reptg. Office of Energy & Planning:
Eric Steltzer

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. the PUC Staff:
Marcia A. B. Thunberg, Esq.
Amanda O. Noonan, Dir./Consumer Affairs Div.
Thomas C. Frantz, Dir./Electric Division

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the prehearing conference in Docket DE 10-226. Senate Bill 327, New Hampshire Laws 2010, Chapter 336, amended RSA Chapter 378 by establishing requirements for disclosure of electric service energy sources and environmental characteristics. As a result, the Commission must approve a standard format and methodology for electricity providers to use in providing information to their customers. This proceeding has been opened to establish a standard format and methodology for disclosure of the energy source and related environmental characteristics of electric service. And, we issued a order of notice on September 28 setting the prehearing conference for this morning.

I'll also note that the new statute, 378:49, says that "The public utilities commission shall, after notice and hearing, by order or rule, approve a standard format and methodology." And, although we've set the hearing today as an order of notice and a prehearing conference, we haven't expressed a preference whether this should proceed as an adjudication or as a rulemaking. And, when you have the opportunity to comment today, I'd like that to be one issue that is addressed, on what's the

1 better way to proceed or I guess, conceivably, whether you
2 could do pieces of it as a rulemaking and pieces of it as
3 an adjudication. So, that will be an important issue.
4 And, of course, we've had some history of dealing with
5 this issue in the past. And, my recollection was that
6 there was -- it was reconciling the issues of "how can we
7 meaningfully provide information to customers to make
8 informed choices, on the one hand, and what's the
9 obligation or what's the capabilities of providers to
10 provide information?"

11 So, I guess -- and, we'll also note
12 that, at this juncture, we've had a number of Petitions to
13 Intervene, and would include the -- what I have is Public
14 Service Company of New Hampshire, TransCanada, Unitil
15 Energy Systems, Constellation Energy, Granite
16 State/National Grid, the Office of Energy & Planning, and
17 we also have the Notice of Participation by the Office of
18 Consumer Advocate.

19 Okay. So, I guess, for purposes of
20 where we are at this juncture, we will grant all of the
21 Petitions to Intervene as having -- the parties having
22 expressed interests, duties, privileges that would be
23 affected by this proceeding. And, to the extent we
24 proceed as an adjudication, then the Petitions to

1 Intervene are granted.

2 So, I guess, with that, we'll just
3 start, go around the room, beginning with Mr. Eaton, and
4 hear comment/positions of parties, and also address the
5 procedural issue. And, I still expect that, after we hear
6 from the parties, there may be questions from the Bench,
7 but that there also be a technical session, to the extent
8 the parties want to meet in technical session and provide
9 some further recommendations on how to proceed, then we'll
10 follow that normal process.

11 Is there anything else to raise?

12 CMSR. BELOW: Just to remind folks that
13 the statute, the new statute under what is now RSA 336:2,
14 just updates an existing -- I'm sorry, that's not the RSA,
15 that's the session law. The RSA that gives the Commission
16 the authority to fine, assess fines or revoke the
17 registration of competitive electricity suppliers was also
18 updated, so that it includes the new section of the law.
19 And, there's sort of a question, in that regard, we
20 already have some rules that address this area. And, sort
21 of the question is, should at least that portion of the
22 rules possibly be updated in conjunction with whatever we
23 do in this matter?

24 CHAIRMAN GETZ: Mr. Eaton.

1 MR. EATON: Thank you, Mr. Chairman. My
2 name is Gerald Eaton, on behalf of Public Service Company
3 of New Hampshire. We would prefer that this docket
4 proceed in a non-adjudicatory manner. Meaning that we
5 think that many of the issues can be resolved through
6 technical sessions and certain ground rules being
7 established, and then the providers of electricity could
8 submit suggested formats for their information.

9 As far as a rulemaking is concerned, my
10 first thoughts are that there are different
11 characteristics of some of the providers of electricity,
12 in that Public Service Company is a generating utility and
13 purchases some of its supply on the open market, while
14 Exeter & Hampton and the Unitil Companies, as well as
15 National Grid, use an RFP process, and the Co-op is a
16 member-owned cooperative that develops its own power
17 supply that's not regulated. Perhaps a standard
18 rulemaking for all the companies, if it got too detailed,
19 might not apply to each company. So, I would ask the
20 Commission to keep an open mind as far as how specific the
21 rules are. But, certain general guidelines, as to how the
22 standard format should look, would be helpful, a template
23 or something like that, would be appropriate.

24 But I have no opinion as to whether the

1 competitive supplier rules ought to be amended according
2 to the change in the law. I hadn't addressed that before
3 today.

4 CHAIRMAN GETZ: All right. Thank you.
5 Ms. Knowlton.

6 MS. KNOWLTON: Good morning. My name is
7 Sarah Knowlton. I'm from the law firm of McLane, Graf,
8 Raulerson & Middleton. And, I'm here today on behalf of
9 Granite State Electric Company. And, with me today is
10 Christopher Meyer from the Company. National Grid's
11 affiliates in Massachusetts and Rhode Island currently
12 make environmental disclosures and have a standard format
13 that they use. There's some differences between the two
14 states. To the extent that there are requirements that
15 are adopted here in New Hampshire, the Company is
16 interested in seeing some consistency across the
17 jurisdictions where possible and, in particular, would be
18 interested in ensuring that any definitions that are
19 adopted are consistent with the NEPOOL definitions.

20 As far as the approach, in terms of
21 whether this will be conducted as a rulemaking or an
22 adjudicative proceeding, I would concur with Mr. Eaton
23 that National Grid's preference would be to conduct this
24 as a rulemaking. I think that's consistent with the

1 process that is being employed for the net metering,
2 implementing the net metering -- the changes to the net
3 metering statute. And, I think it would give the
4 utilities and other interested parties a chance to work
5 cooperatively to put together a proposed rule. I don't
6 think this needs to be contentious from my perspective.
7 And, so, pursuing a rulemaking process I think would be
8 more consistent with that approach.

9 As far as the competitive supplier
10 rules, those rules were just repromulgated and adopted as
11 final. So, whether it would be necessary, you know, to
12 include any changes in those rules, we haven't looked at
13 that issue yet. National Grid did comment on the
14 competitive supplier rules and participate in that docket.
15 So, if that's something that the Commission continues to
16 want to consider, we'd want the opportunity to respond at
17 a later date on that issue.

18 CHAIRMAN GETZ: Okay. Thank you. Mr.
19 Epler.

20 MR. EPLER: Thank you. Good morning,
21 Mr. Chairman and Commissioners. My name is Gary Epler,
22 appearing on behalf of Unitil Energy Systems, Inc.
23 Addressing the points, as far as how to proceed on this,
24 Unitil doesn't have any particular preference. We agree

1 with the comments of the previous two parties that we
2 don't really see this as being a contentious matter. But,
3 given that, even proceeding by order, doesn't necessarily
4 mean that it has to be an adjudication. That I think,
5 through technical sessions and perhaps a presentation of a
6 report and recommendation to the Commission, might be a
7 simple way to proceed in that manner.

8 And, similarly, as the previous two
9 speakers have said, Unitil has not looked at the issue
10 that the Chairman raised with respect to competitive
11 suppliers. So, we don't have a particular opinion on that
12 issue right now.

13 As for the substance, as Attorney
14 Knowlton raised in her remarks, in Massachusetts, Unitil's
15 affiliate is under a requirement for providing a
16 disclosure label. I have a copy of that here, which I can
17 provide to the Commission and to the parties. And, we
18 agree with her comments that, to the extent that there can
19 be capability and consistency between what's required in
20 other states that would certainly help our company, to the
21 extent that that's also consistent with the requirements
22 of the statute. Thank you.

23 CHAIRMAN GETZ: Is what Unitil does in
24 Massachusetts and what Grid does in Massachusetts, with

1 respect to disclosure, are they to satisfy or do they
2 identically satisfy the requirements in Massachusetts or
3 are there differences between what the two companies do?

4 MR. EPLER: My understanding is that
5 there is a consistent framework for all utilities in
6 Massachusetts. So, I believe that what we provide is the
7 same as what National Grid provides and NSTAR and Western
8 Mass. Electric Company. That's my understanding. And,
9 that is actually what we say in our disclosure label, that
10 it's consistent in the state. But I can research that
11 further and advise the Commission through the Staff
12 counsel.

13 CHAIRMAN GETZ: Thank you. Mr. Patch.

14 MR. PATCH: Good morning. Douglas
15 Patch, from the law firm of Orr & Reno, on behalf of
16 TransCanada Power Marketing. During the course of the
17 legislative process, TransCanada was involved in this
18 legislation and took the position that it would probably
19 be better to do it through rulemaking than by order,
20 although it was not a strong position. We just suggested
21 that it might be easier, at some point down the road, for
22 a member of the public, a new supplier, to find something
23 in rules than it would be in a Commission order. So, we
24 felt that that was a better way to go. But, again, it was

1 not strongly stated, and I don't think we have a firm
2 position on that here today.

3 Consistency across jurisdictions I think
4 is important to TransCanada. During the legislative
5 process, there was some discussion about a format that's
6 been used in the State of Maine that I think TransCanada
7 kind of liked. But I'm not sure how that differs from
8 what's used in Massachusetts or other New England states.
9 But we're happy to work with the parties in whatever way,
10 you know, is sort of the consensus. Thank you.

11 CHAIRMAN GETZ: Thank you. Mr. Dean.

12 MR. DEAN: Good morning. I'm Mark Dean,
13 on behalf of the New Hampshire Electric Cooperative. At
14 the outset, procedurally, I have to move orally this
15 morning for -- to intervene on behalf of the Cooperative.
16 In somewhat of a startling reversal of my usual habits,
17 I'm arguing that there is jurisdiction in this case and
18 that the Co-op would have been really an appropriate
19 mandatory party, if that's how the order of notice had
20 been structured. Even though RSA 378 does not generally
21 apply to the Cooperative, the provisions of the disclosure
22 are not tied to the definition of "public utility", but to
23 "energy provider" or "provider of electricity", and the
24 Cooperative views itself as fitting into that aspect of

1 the statute.

2 So, and in addition to moving for
3 intervention, I think the Cooperative has the same basic
4 position on the procedural issues that other utilities
5 have laid out. I think, echoing what Mr. Eaton said, I do
6 think that, while there clearly is a desire to have a
7 certain degree of uniformity in whatever the disclosure
8 is, for all sorts of purposes, whether for consumers to
9 understand and compare or for utilities to implement,
10 there are also differences between the various providers.
11 There certainly are differences between competitive
12 electric suppliers and utilities. So, I just, I guess to
13 use Mr. Eaton's phrase, to "keep an open mind" on sort of
14 how detailed the requirements have to be, so that they
15 might provide some degree of flexibility and still be able
16 to meet the requirements.

17 As far as rulemaking or adjudicatory,
18 from our point of view, I don't think it makes much
19 difference, so long as, again, whatever standard is
20 adopted, whether in an order or in rules, that there's
21 flexibility needed, that that's what we'd be looking for.
22 Thank you.

23 CHAIRMAN GETZ: Okay. Thank you. And,
24 then, for the record, we find that the Co-op has

1 demonstrated rights, duties, other interests affected by
2 this proceeding and the Petition to Intervene is granted.

3 Mr. Steltzer.

4 MR. STELTZER: Yes. Thank you,
5 Commissioners. My name is Eric Steltzer. I work for the
6 Office of Energy & Planning. And, I'm here in the absence
7 of Joanne Morin, who will be taking the lead at our office
8 for this docket. OEP's interest has been from the very
9 beginning of this process in looking into environmental
10 disclosure, and we participated in sessions last summer,
11 and have been, in part, involved in the legislative
12 process. And, our interest here today is to ensure that
13 the requirements are enacted in a manner that we
14 understood to be consistent with the bill that was passed
15 by the Legislature.

16 Regarding some of the topics that have
17 been brought up by the parties prior to this, we agree
18 with the rulemaking and that that should be the direction
19 that this should go. We also feel that there should be
20 great consistency between the utilities and what they're
21 offering for environmental disclosure and whatever we can
22 do to learn on how they're being enacted in other states,
23 and take the best practices there and incorporate them
24 into the requirements for New Hampshire, we would agree

1 with that direction. Thank you.

2 CHAIRMAN GETZ: Thank you. Ms.
3 Hatfield.

4 MS. HATFIELD: Thank you. Good morning,
5 Commissioners. Meredith Hatfield, for the Office of
6 Consumer Advocate, on behalf of residential customers.
7 The OCA did also participate fully in the legislative
8 process, and it was a very cooperative process. All of
9 the utilities and a few competitive suppliers were very
10 helpful in providing information about their disclosure
11 requirements in other states. And, actually, the OCA
12 pulled together sample disclosure labels that some of our
13 utilities' affiliates have to provide to customers in
14 other states. And, we were thinking that we would begin
15 the discussion with those samples, in order to ensure that
16 there is consistency across the region, and to really ask
17 the utilities what they think is the best way to
18 communicate this information to customers.

19 And, during the legislative process, I
20 think there was a very strong interest on the part of the
21 sponsors of the legislation to take that sort of approach.
22 And, a lot of time was spent crafting the bill so that it
23 gave the Commission the flexibility to approve a standard
24 format that had some flexibility by order. And, there was

1 specific discussion about the length of the rulemaking
2 process and the difficulty of amending rules. And, our
3 office certainly has a preference actually for doing this
4 by in an adjudicative proceeding, in order to allow the
5 Commission to make changes upon request of a party who has
6 to comply or another party.

7 The only downside we see of doing it
8 through an adjudicative proceeding is one that Mr. Patch
9 referred to, and that is the issue of a new supplier who
10 comes into the state and is trying to learn what the
11 requirements are of being a supplier in the state. I
12 think that, with some creative thinking, the parties could
13 probably come up with ways to ensure that the Commission's
14 website and other materials included that information.

15 But I agree with some of the prior
16 speakers that, just because the Commission has an
17 adjudicative proceeding, it doesn't mean that it needs to
18 be contentious. And, I think all of the parties really
19 committed, during the legislative process, to continue to
20 work together and to try to come up with an agreed upon
21 format that the Commission could approve through an order.

22 With respect to the issue of the
23 competitive supplier rules, we also have not looked at
24 that issue. But I agree with what I think Attorney

1 Knowlton was saying, those rules were just updated. So,
2 if we could avoid having to do that again right away, that
3 would be good. But, in light of that statute change, it
4 may require those rules to be changed again. Thank you.

5 CHAIRMAN GETZ: Thank you. Ms.
6 Thunberg.

7 MS. THUNBERG: Good morning,
8 Commissioners. Marcia Thunberg, on behalf of Staff, and
9 with me today is Amanda Noonan and Tom Frantz. A lot of
10 Staff's comments have already been stated today. But,
11 with respect to the rulemaking or going through
12 implementing standards by order, Staff could go either
13 way. We're leaning toward a rulemaking, for the reason of
14 putting the newcomers on notice. We are not looking to
15 reinvent the wheel. We are amenable to looking at what
16 other states are doing, so long as the format is something
17 that complies with RSA 378:49.

18 With respect to updating or whether the
19 proceeding here needs any update to the 2000 rules, Staff
20 has no position at this time, but we'll keep that in mind
21 as the proceeding progresses.

22 There are some details that need to be
23 worked out. The statute, 378:49, I(b) refers to "air
24 pollutants", but doesn't specify which air pollutants.

1 So, those kind of details need to be worked out, font
2 size, what kind of format. So, Staff will be working with
3 the parties in the technical session. We're amenable to,
4 if there develops or if a small group wants to come up
5 with a draft set of rules, to go that route and have some
6 technical sessions, we're fine with that, or, as OCA's
7 preference, to have more of a settlement approach, we're
8 amenable to that. So, thank you very much.

9 CHAIRMAN GETZ: Thank you. Okay. Is
10 there anything further then that we need to address? Any
11 additional comments? Ms. Hatfield.

12 MS. HATFIELD: Mr. Chairman, with
13 respect to the issue of whether it will be an adjudicative
14 proceeding or a rulemaking, I'm assuming the Commission
15 won't rule on that right now. So, would you like the
16 parties to try to develop a schedule that can be adapted
17 to either approach?

18 CHAIRMAN GETZ: That would be useful.
19 Yes. I'm expecting at the technical session that there
20 would be further discussion of those issues, because there
21 doesn't seem -- well, on the one hand, while there doesn't
22 seem to be a lot of parties with a strong preference one
23 way or the other, there does seem to be a couple of,
24 obviously, different ways we could proceed. If there's a

1 meeting of the minds, that would be good. If there's not,
2 then, you know, a report from Staff indicating what the
3 options are would be useful.

4 CMSR. BELOW: And, I would offer that a
5 hybrid approach could be considered as well, where some of
6 the details that might need to change from time to time
7 might be in an order, and some general framework could be
8 in rules. And, obviously, an order probably could happen
9 faster than rules, so we could get something going, and
10 then an option would be to follow through with the
11 competitive supplier sort of sanction issue and some
12 framework elements that might go into rules. I'd just
13 offer that as something for the parties to consider. It
14 could be either or it could be a hybrid.

15 CHAIRMAN GETZ: Any other comments this
16 morning?

17 (No verbal response)

18 CHAIRMAN GETZ: Okay. Hearing nothing,
19 then we'll close the prehearing conference and await a
20 recommendation by the parties. Thank you, everyone.

21 MS. THUNBERG: Thank you.

22 **(Whereupon the prehearing conference**
23 **ended at 10:31 a.m. and a technical**
24 **session was held thereafter.)**