

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

June 2, 2014 - 2:30 p.m.
Concord, New Hampshire

NHPUC JUN17/14 PM 4:38

RE: DE 11-250
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Investigation of Scrubber Costs and
Cost Recovery. (*Status conference*)

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Martin P. Honigberg
Special Commissioner Michael J. Iacopino

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:
Barry Needleman, Esq. (McLane, Graf...)
Robert A. Bersak, Esq. (*via teleconference*)

Reptg. TransCanada Power Marketing, Ltd.,
and TransCanada Hydro Northeast, Inc.:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. Conservation Law Foundation:
Ivy L. Frignoca, Esq. (*via teleconference*)

Reptg. the Sierra Club:
Zachary M. Fabish, Esq. (*via teleconference*)

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

ORIGINAL

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

Reptg. Residential Ratepayers:

Susan Chamberlin, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:

Suzanne G. Amidon, Esq.
Michael J. Sheehan, Esq.
Thomas C. Frantz, Director/Electric Division

I N D E X**PAGE NO.*****QUESTIONS/STATEMENTS FROM THE COMMISSION:***

Chrmn. Ignatius 6, 9, 10, 14, 15, 16, 17

Cmsr. Honigberg 11, 17

RESPONSES/STATEMENTS BY THE PARTIES:

Mr. Needleman 9, 11, 15, 18

Mr. Patch 10, 13, 14

Ms. Amidon 16, 19

Ms. Chamberlin 16

P R O C E E D I N G

CHAIRMAN IGNATIUS: Okay. Let's begin the hearing in Docket DE 11-250, regarding Public Service Company of New Hampshire's recovery of Scrubber costs. We have scheduled this for a status conference this afternoon. And, I apologize, we had far more complications on making the call-in option workable than we should have. We'll keep working and make sure this works better. But what we had intended to do this afternoon, and we will, with just a little bit of a delay in getting started, is to have everyone present here, and then accommodate a couple of people who gave us a good reason why they weren't able to attend in person and allowed them to call in, to participate in a status conference on the case, and where we're going next.

Why don't we begin first with appearances. We'll start with the people in the room, and then we will bring in the people who are on the phone.

MR. NEEDLEMAN: Barry Needleman, from the McLane law firm, representing PSNH.

MR. PATCH: Doug Patch -- whoops. Doug Patch, Orr & Reno, on behalf of TransCanada Power Marketing, Limited, and TransCanada Hydro Northeast, Inc.

MS. CHAMBERLIN: Susan Chamberlin,

1 Office of the Consumer Advocate.

2 MS. AMIDON: Suzanne Amidon, for
3 Commission Staff. And, I'm here with Mike Sheehan, my
4 colleague in the Legal Division, and Tom Frantz, the
5 Director of the Electric Division.

6 CHAIRMAN IGNATIUS: Thank you. And, on
7 the phone, let's start first with CLF.

8 MS. FRIGNOCA: Ivy Frignoca, for
9 Conservation Law Foundation.

10 CHAIRMAN IGNATIUS: You also are cutting
11 way in and out. I don't know if that's our system, or
12 something about how your phone is set. So, the closer you
13 can keep to the phone the better. And, I apologize, I
14 don't know how to pronounce your last name. Can you say
15 it again?

16 MS. FRIGNOCA: Yes. It's "Frignoca".

17 CHAIRMAN IGNATIUS: "Frignoca"?

18 MS. FRIGNOCA: Yes. Thanks.

19 CHAIRMAN IGNATIUS: Close? Thank you.
20 From Sierra Club?

21 MR. FABISH: Hi. This is Zack Fabish
22 from the Sierra Club.

23 CHAIRMAN IGNATIUS: All right. And,
24 again, Mr. Fabish, if you can keep your voice up. There's

1 something funny about this system today. And, from PSNH?

2 MR. BERSAK: Hi. I'm Bob Bersak. And,
3 Barry Needleman will be *[inaudible]*.

4 CHAIRMAN IGNATIUS: All right.

5 (Court reporter interruption.)

6 CHAIRMAN IGNATIUS: Mr. Bersak, you said
7 that you're present, but Mr. Needleman will be speaking
8 for PSNH?

9 MR. BERSAK: That is correct.

10 CHAIRMAN IGNATIUS: Thank you. All
11 right. What we'd like to do in this afternoon's status
12 conference is to remind everybody of the schedule that has
13 been established in a May 16th, 2014 letter from the
14 Commission to the parties, and to be certain that we are
15 on a track for hearings in October, with various dates in
16 between those. So, people should all have that, that
17 schedule, and should have committed that to their
18 calendars, and be as certain as we are that we're going
19 forward on those dates. This case has been quite a long
20 way in the making, a lot of discovery issues, and we've
21 given a lot of time to resolve those things. What we've
22 now done is scheduled -- set up a schedule that has
23 deadlines to allow the final stages of testimony and
24 discovery to be accommodated. So, there shouldn't be any

1 need for anything further. Given the history of this
2 case, we didn't do the normal two weeks, two weeks, two
3 weeks type schedule. We built in a little bit more. And,
4 it is generous enough that it should allow for any final
5 disputes there may be, and I hope there aren't any, but,
6 if there are, the schedule will allow for that to be able
7 to deal with those, have orders out on them and keep
8 moving.

9 So, we see no basis for any change in
10 the schedule. Hearings are now scheduled to begin on
11 October 13th, and to run through that week, as need be,
12 starting at 9:00 every morning. And, we have scheduled
13 internal dates to get us to that point.

14 I think the most significant we should
15 be sure everyone is focusing on involve the prehearing
16 motions date, that's established for August 22nd. We
17 don't always do that in cases. We occasionally do, and
18 this is one with enough issues that it seemed worthwhile
19 to do. What we'd like to have on that date, and we'll ask
20 you to submit any motions that you have to eliminate -- to
21 strike any evidence, motions *in limine*, any sort of
22 evidentiary matters, that you feel are legitimately
23 brought before the Commission for resolution, so that we
24 don't take all of those on as the hearings begin in

1 October. Obviously, if there's any objections to those
2 motions, there's time built in for the normal ten day
3 response, and Commission ruling on those.

4 We've also scheduled a prehearing
5 conference for September 17th, at 9:00 in the morning.
6 That, again, would be an opportunity for any final issues
7 that have arisen that haven't yet been dealt with through
8 order to address at that date. If it's appropriate, we
9 can schedule additional prehearing conferences. In many
10 cases, those are done just a few days before the start of
11 the hearing, and used for marking of exhibits, for any
12 final details, and we can certainly schedule those in
13 addition, if it will help move things forward.

14 If there were any opportunities for
15 resolution of issues, any settlement of matters, partial
16 or full, we would encourage that in any case. We don't
17 have a date set in there for any kind of settlement or
18 stipulated facts. And, we haven't scheduled a settlement
19 conference, because it seemed unlikely that that would be
20 fruitful. But we're not opposed to that, obviously, if
21 there was some opportunity to do so. And, if there is a
22 even partial stipulation of some of the factual matters
23 that are not in dispute were agreed to by stipulation and
24 brought forward, that would be probably a useful way of

1 making the hearings a bit more streamlined. It may mean
2 that certain witnesses wouldn't have to attend or wouldn't
3 have to put certain evidence on here. So, we're open to
4 that, if that's something that seems possible among the
5 parties. And, if there were any stipulations to be filed,
6 I think the normal Commission rule about five days prior
7 to the hearing would be appropriate. It doesn't have to
8 be at that prehearing motion date. It could be in what we
9 normally have for any kind of settlement or stipulation
10 offers.

11 I think that's the direction we want to
12 give to all of you, and then need to know today if there
13 are problems that you see in the schedule moving forward
14 and reaching a hearing by October 17 -- excuse me,
15 October 13th? Mr. Needleman.

16 MR. NEEDLEMAN: Sure. One concern, we
17 have our rebuttal testimony due on July 11th. When the
18 Commission set up the schedule and issued it on May 16th,
19 that was I think at that time with the understanding that
20 we would have the discovery responses from TransCanada by
21 May 19th. Now, those responses are due June 6. So, we've
22 lost almost three weeks. It's still our intention to do
23 everything we can to meet that deadline. But, as we sit
24 here today, we still don't know what we're going to get

1 from TransCanada, whether it's 10 pages, 10,000 pages, or
2 nothing on June 6th. And, so, we have some concern about
3 that issue.

4 CHAIRMAN IGNATIUS: Does TransCanada --
5 do you have good news that everything will be filed on or
6 before Friday, the 6th?

7 MR. PATCH: I can't really say at this
8 point in time. We just got the order Thursday. We're
9 evaluating the order. We're trying to figure out what we
10 do at this point in time. So, I really can't say for
11 sure, unfortunately.

12 CHAIRMAN IGNATIUS: Can you give me a
13 little more comfort than that? That sounds like you're
14 thinking about whether to comply at all.

15 MR. PATCH: Unfortunately, I can't give
16 you more comfort than that. We got the order Thursday.
17 Obviously, it was not the order we had hoped to get.
18 We're in a difficult position. We made it clear, I think,
19 in the Motion to Reconsider, that the non-party affiliates
20 producing competitively sensitive information was a
21 problem for us. And, so, we're trying to figure out what
22 our next step is.

23 CHAIRMAN IGNATIUS: Well, let me remind
24 you, and you know from many years in these proceedings,

1 the competitively sensitive information is something
2 that's easily dealt with in terms of protective orders.
3 And, as you know from the order, it was very hard to
4 understand why documents of this age would be
5 competitively sensitive at all. But, if you think they
6 are and you have a basis for that, there's a way to deal
7 with that through a protective agreement among the
8 parties. So, I don't understand why that should be any
9 reason for a delay.

10 MR. PATCH: Well, that may be something
11 that would be best for us to explain in the event that we
12 do have a problem complying, rather than me try to do it
13 today.

14 CMSR. HONIGBERG: I have a question for
15 Mr. Needleman. How much of your rebuttal testimony
16 depends on what may come from TransCanada? You have lots
17 of other testimony you've had for many, many months. I
18 would think you would be largely done with your rebuttal
19 testimony by now, with a little more that you might be
20 supplementing after you get something from TransCanada.

21 MR. NEEDLEMAN: I think that's
22 essentially correct. But, not knowing what we're going to
23 get, makes it a little bit challenging. And, to the
24 extent that we have particular experts focusing on

1 economic issues, and we, for example, were to get an
2 abundant amount of material from the relevant time frame
3 that showed price forecasts that were what we've been
4 arguing all along, that would certainly be material and
5 would certainly affect the development of that testimony.

6 So, I think you're correct, much of it
7 is done. And, I want to be clear, we are going to make
8 every effort to meet that deadline. I'm not saying at
9 this point we're asking for any extra time. But it's very
10 hard, without seeing the production, to know exactly what
11 we're going to be able to do.

12 CMSR. HONIGBERG: I would encourage you
13 to do as much as you can, speaking only for myself. And,
14 to the extent that you need to supplement, that might be
15 the kind of thing you should think about doing. I think
16 that there's little reason to hold off on any other aspect
17 of what you're doing and filing the greatest extent
18 possible on the deadline, or at least before the deadline,
19 will help, I think, move the process along.

20 MR. NEEDLEMAN: Understood.

21 CHAIRMAN IGNATIUS: I would echo that.
22 And, remind everyone, a deadline is a deadline. And, it
23 may be difficult. And, if you have an argument that you
24 need an extension, then you come in and ask for an

1 extension. It seemed, if I recall, in the TransCanada
2 discovery responses, the deadline came and went without
3 any request for further time. And, then, the Motion for
4 Reconsideration came to, I guess, to explain why the
5 materials weren't submitted.

6 All right. Mr. Patch, you're telling me
7 I'm wrong. So, if I got that wrong, please correct me.

8 MR. PATCH: I think it was the same day.
9 I think the date on which the discovery was due was the
10 date on which we filed the Motion to Reconsider.

11 CHAIRMAN IGNATIUS: All right. My point
12 is, if you need an extension of a deadline, if that's
13 something you're seeking, that's something you have to ask
14 for specifically. And, it may or may not be granted. But
15 that's separate from, say, a motion for reconsideration.

16 CMSR. HONIGBERG: So, everybody else is
17 good? Everything is going to happen on schedule.

18 MR. PATCH: Could I just raise a couple
19 of things?

20 CHAIRMAN IGNATIUS: Please.

21 MR. PATCH: Number one, I think the idea
22 of having a prehearing conference a few days before the
23 hearing is a good idea for marking exhibits. I think it
24 would streamline the process a lot. So, I think that

1 suggestion would make a lot of sense.

2 We really don't have any idea what
3 witnesses PSNH will be bringing forward with rebuttal
4 testimony. As I recall, I think they have filed either
5 joint or two pieces of testimony in this docket. At least
6 one of those witnesses has since retired. So, we don't
7 know whether Mr. Baumann would be brought back to testify
8 or not. Mr. Smagula, I assume, is still employed by PSNH,
9 and presumably he would be here to testify. We don't know
10 who they would be presenting as rebuttal witnesses. And,
11 they may not know themselves today, maybe they're not
12 prepared to say that.

13 But I think the other issue related to
14 that is whether or not they produce Mr. Long for the
15 hearing. Mr. Long's deposition was taken pursuant to an
16 order of the Commission. And, we have his deposition.
17 Obviously, it could be introduced for the record. But it
18 would seem to me that's an issue, as to whether or not
19 he's here for cross-examination and available for
20 questions from Commissioners. And, so, at some point, I
21 think that's an issue that ought to be dealt with.

22 CHAIRMAN IGNATIUS: All right. And,
23 have you asked PSNH who they intend to bring?

24 MR. PATCH: I have -- well, actually, we

1 asked at a prior technical session whether or not they
2 were planning to produce Mr. Long, and they said -- they
3 wouldn't answer the question at the time. And, so, we
4 filed a motion. But I have not asked PSNH that question.

5 CHAIRMAN IGNATIUS: All right.
6 Mr. Needleman, do you -- can you help us right now, in
7 your expectation of who the rebuttal witnesses will be and
8 who would be here to testify at the hearings?

9 MR. NEEDLEMAN: Probably not very much.
10 We haven't given thought to who is actually going to be
11 here to testify at the hearing. As far as Mr. Long goes,
12 this is the first I've heard of a request that he be here.
13 I thought that, once his deposition was taken, that was
14 the end of that issue. As far as our rebuttal witnesses
15 go, that's something that we're still working on.
16 Certainly, Mr. Smagula's testimony will be updated and
17 somebody will substitute for Mr. Baumann. As far as the
18 remainder, though, it's not something that I can commit to
19 at this point.

20 CHAIRMAN IGNATIUS: What would the
21 remainder be?

22 MR. NEEDLEMAN: We may have other
23 witnesses that we would be introducing as well, in terms
24 of rebuttal.

1 CHAIRMAN IGNATIUS: And, who will be
2 substituting for Mr. Baumann?

3 MR. NEEDLEMAN: Mr. Chung will be
4 substituting for Mr. Baumann.

5 CHAIRMAN IGNATIUS: Thank you. On the
6 issue of substitutions, the Staff also has a change. And,
7 is there a plan on Mr. Mullen's testimony?

8 MS. AMIDON: That testimony was prepared
9 also under the supervision of Tom Frantz, in addition to
10 being prepared by Mr. Mullen. And, Mr. Frantz has agreed
11 to adopt the testimony. If you'd like us to document that
12 for the record, we can do that.

13 CHAIRMAN IGNATIUS: No, that's fine. I
14 think just hearing it today is fine.

15 Is there anything else that parties
16 wanted to raise? Ms. Chamberlin, is there anything that
17 you had to bring forward?

18 MS. CHAMBERLIN: I support the
19 suggestion that we have a meeting a couple of days prior
20 to the hearing to mark exhibits. I think it's going to be
21 a lot of paper, and I don't think there's a lot of dispute
22 over the actual exhibits. And, I think we can probably
23 work through a good deal of that.

24 And, I don't know if we could settle,

1 I'm not sure -- I'm not sure this would fit with the
2 prehearing conference. But I'd like to see a settlement
3 conference at least scheduled, so that parties can
4 consider the option.

5 CMSR. HONIGBERG: Well, at the very
6 least, I think you could benefit, you all could benefit
7 from seeing what you can agree to with respect to facts.
8 Because it seems that there is a large number of facts,
9 baseline facts here, that you should be able to stipulate
10 to, so that we can just start from that point. And, it
11 may eliminate the need for certain witnesses, if those
12 facts can be agreed to. Whether that is technically
13 called a "settlement" or not, it's certainly a limitation
14 of factual disputes, and potentially the elimination of
15 some issues will be helpful, I think.

16 CHAIRMAN IGNATIUS: I agree. It never
17 is a requirement of the Commission that you have a -- you
18 don't need an order of the Commission in order to have
19 those kinds of conversations.

20 Does anyone feel it would make them more
21 likely to be fruitful if you had a directive of the
22 Commission to sit down and discuss? Or, are we free to
23 leave it to you to have those discussions on your own?
24 Mr. Needleman.

1 MR. NEEDLEMAN: I don't, from our
2 perspective, I don't think a directive is necessary. And,
3 certainly, to the extent that we can work out a
4 stipulation that narrows the issues, I think we'd be happy
5 to do that.

6 CHAIRMAN IGNATIUS: Thank you. Mr.
7 Fabish, anything that you'd like to bring to our
8 attention?

9 MR. FABISH: No.

10 CHAIRMAN IGNATIUS: All right.
11 Ms. Frignoca, anything that you'd like to bring to our
12 attention?

13 MS. FRIGNOCA: No [inaudible]. Thank
14 you.

15 CMSR. HONIGBERG: Didn't hear that?

16 MS. FRIGNOCA: No. We're all set.
17 Thank you.

18 CHAIRMAN IGNATIUS: Thank you. Anything
19 else? Staff, I haven't asked if there's anything else you
20 have to bring forward?

21 MS. AMIDON: Nothing. Thank you.

22 CHAIRMAN IGNATIUS: All right. Going
23 once?

24 (No verbal response)

1 CHAIRMAN IGNATIUS: Going twice?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: Commissioner
4 Iacopino, anything you wanted to add?

5 CMSR. IACOPINO: No.

6 CHAIRMAN IGNATIUS: Ms. Amidon.

7 MS. AMIDON: It just occurs to me one
8 thing that may come before the Commission's attention.
9 And, it's only because we are uncertain at this point of
10 what, based on what Mr. Patch said, of what TransCanada
11 will produce on June 6, or whether they're going to ask
12 for an extension. I do believe, if there is -- if the
13 possibility exists, based on some of the written filings,
14 that TransCanada will not be producing any responses to
15 the data requests, based on their concerns about for
16 whatever reason, that issue may be something that will
17 come to the Commission's attention one way or another.
18 So, I'm just pointing that out. I don't know if that's
19 going to happen. But it's possible there will be another
20 filing with the Commission that you'll have to consider
21 along the way. I'm just offering that as an observation.

22 CHAIRMAN IGNATIUS: All right. Thank
23 you. All right. If there's nothing further?

24 (No verbal response)

1 CHAIRMAN IGNATIUS: Mr. Bersak, anything
2 you wanted to mention?

3 MR. BERSAK: No thank you. [inaudible].

4 CMSR. HONIGBERG: We'll take that as a
5 "no".

6 CHAIRMAN IGNATIUS: Then, it sounds like
7 we've heard what we're able to hear. I want to impress on
8 everyone, if you haven't gotten the message already, this
9 has got to come to hearing in October. We've got to reach
10 a resolution. And, we've given a schedule that we believe
11 accommodates that. And, we've all got to stay focused on
12 it and get to hearings and a final order in this case.

13 So, we look forward to the filing of the
14 discovery responders on the 6th, the rebuttal testimony,
15 and the discovery on that testimony hopefully will go
16 smoothly. So, thank you. We'll take -- I guess there's
17 nothing to take under advisement, is there? We'll just --
18 we await the next filings from all of you. And, thank you
19 for your participation this afternoon.

20 (Whereupon the status conference was
21 adjourned at 2:49 p.m.)

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