

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

In Re: PSNH Petition for Clarification and Interpretation of  
Commission Orders Regarding Hemphill Power and Light Company

Docket No. DE 07-122

HEMPHILL POWER AND LIGHT COMPANY'S  
MOTION TO STAY PROCEEDING

Hemphill Power and Light Company moves the commission to stay this proceeding.

This motion rests on the following grounds.

1. On May 7, 2007, Hemphill served Public Service Company of New Hampshire ("PSNH") with a superior court writ of summons. The writ stated claims for monetary damages as well as declaratory and injunctive relief arising from PSNH's obligation to purchase power from Hemphill.
2. On May 14, 2007, Hemphill filed the writ with the Hillsborough Superior Court, Northern District, which assigned Docket No. 07-C-294 to the case. Thus, the superior court is exercising jurisdiction over Hemphill's claims.
3. On June 29, 2007, PSNH filed an equitable counterclaim for unjust enrichment in the same superior court proceeding.
4. On November 9, 2007, some six months after Hemphill first served the superior court writ, PSNH filed its petition in this proceeding. In its petition, PSNH notified the commission of the superior court proceeding and asked the commission to adjudicate one of the issues already raised in Hemphill's superior court writ. On the same day, PSNH filed a motion to stay with the superior court, which motion is still pending.

5. In its order of notice to this proceeding, the commission identified one of the issues to be decided as the extent of the commission's jurisdiction to resolve the dispute.

6. On November 20, 2007, Hemphill objected to PSNH's motion to stay and further moved the superior court to enjoin PSNH from proceeding before the commission. See Exhibit 1. The basis for Hemphill's motion is that the superior court, and only the superior court, has jurisdiction to try all of the parties' claims and grant all of the relief sought. *Id.* All of the parties' claims should therefore be resolved in a single proceeding before the superior court rather than through piecemeal litigation in two forums. *Id.*

7. The superior court has scheduled a hearing on PSNH's motion to stay and Hemphill's motion to enjoin for January 11, 2008. See Exhibit 2. Thus, the superior court is preparing to render a decision on PSNH's continued prosecution of its petition in this case.

8. Pending a decision by the superior court, it would be a waste of resources to move forward with this docket.

9. Therefore, both as a matter of comity toward the superior court and in the interest of economy, the commission should stay all further proceedings in this docket until the superior court has ruled on the petition to enjoin PSNH.

10. PSNH opposes this motion. The Office of the Consumer Advocate takes no position. Hemphill's counsel attempted to contact counsel for commission staff but as of the time of signing had not received a response.

WHEREFORE, Hemphill respectfully requests that the commission immediately stay this proceeding, pending a decision by the superior court in Docket No. 07-C-294 on whether to enjoin PSNH from proceeding before the commission.

Respectfully submitted,

HEMPHILL POWER AND LIGHT COMPANY  
By Its Attorneys,  
BROWN, OLSON & GOULD, P.C.

Dated: 12/27/07

By: /s/ Philip R. Braley  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties listed on the attached service list either by in-hand delivery or by e-mail transmission and U.S. Mail.

Date: 12/27/07

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