

**THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire  
Merrimack Station Scrubber Project  
Request for Information

Docket No. DE 08-103

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S  
OBJECTION TO MOTION FOR REHEARING AND RECONSIDERATION  
OF  
EDWARD M. B. ROLFE**

Pursuant to Rule Puc §203.07(f), Public Service Company of New Hampshire (hereinafter "PSNH" or "the Company") hereby objects to the Motion for Rehearing and Reconsideration filed by Edward M. B. Rolfe. Mr. Rolfe's filing may not be considered by the Commission due to his failure to comply with the Commission's Rules of Practice and Procedure set forth in N.H. Admin. Code Chapter Puc 200. Furthermore, Mr. Rolfe's Motion fails to allege sufficient good reason for rehearing or reconsideration; therefore it must be denied. RSA 541:3. In support of this Objection, PSNH says the following:

**I. PROCEDURAL ISSUE**

Edward M.B. Rolfe apparently filed what is captioned as a "Motion for Rehearing and Reconsideration of Order No. 24,898" on October 17, 2008. Mr. Rolfe's filing is ineffective and may not be considered by the Commission due to his failure to comply with the Commission's Rules of Practice and Procedure contained in N.H. Admin. Code Chapter Puc 200. Specifically, Mr. Rolfe failed to comply with Rule Puc §203.11(c) in that he never served a copy of his filing on PSNH.

Rule Puc §203.11(c) requires that "Motions for rehearing filed pursuant to RSA 541:3 shall be served by hand, by facsimile or other method such to ensure that they are received by the parties by 4:30 p.m. on the same day as they are filed with the commission." Mr. Rolfe completely failed to serve PSNH with a copy of his filing. PSNH became aware of Mr.

Rolfe's filing today (October 23, 2008) when it was preparing its response to other timely filed and properly served Motions for Rehearing filed in this docket.

As a matter of general administrative practice, entities filing any document for consideration by the Commission are required to serve a copy of such filing "on each person identified on the commission's service list for that docket." Rule Puc §203.02(c). Such service is expected to be made on a timely manner, and proper service is usually evidenced by a signed Certificate of Service.

Motions for Rehearing have more stringent service requirements. The Rehearing process is governed by Rule Puc §203.33, which references the provisions of RSA Chapter 541. RSA Chapter 541 places stringent time periods on the consideration of such motions for rehearing. RSA 541:5. As a result of the limited time provided for Commission action by RSA 541:5, the Commission's rules require objections to Motions for Rehearing to be filed "within 5 days of the date on which the motion for rehearing is filed." Rule Puc §203.07(f). This is half of the usual ten-day period otherwise allowed for objections to other motions. Rule Puc §203.07(e). As a result, the Commission's rules require Motions for Rehearing to be served via same day service by hand, by facsimile or other method. As noted earlier, Mr. Rolfe failed to serve PSNH at all.

PSNH does not know whether Mr. Rolfe served any of the other parties on the Service List. Mr. Rolfe's Motion for Rehearing as supplied to the Company by the Commission's Secretary's office earlier today (October 23, 2008 – six days after Mr. Rolfe apparently filed his Motion), does not include a Certificate of Service.

In light of the multiple Motions for Rehearing filed on October 17, 2008, and the abbreviated time-period afforded parties to object to such Motions for Rehearing, Mr. Rolfe's failure to serve PSNH with his filing has materially adversely affected PSNH's due process rights. Rule Puc §203.02 mandates that for a filing to be effective, it must be served on parties identified on the Commission's service list.

Due to Mr. Rolfe's failure to serve PSNH with his Motion for Rehearing, filing is ineffective and may not be considered by the Commission.

## **II. SUBSTANTIVE ISSUES**

Virtually all of the grounds for rehearing contained in Mr. Rolfe's Motion for Rehearing were previously addressed by PSNH in its Memorandum of Law. PSNH

incorporates the contents of its Memorandum of Law into this objection to address those matters.

The remainder of the grounds for rehearing contained in Mr. Rolfe's Motion for Rehearing are addressed in PSNH's "Objection to the Motions for Rehearing of TransCanada Hydro Northeast, Inc. and Certain Commercial Ratepayers" dated October 23, 2008. Rather than duplicate those arguments, PSNH incorporates the contents of its Memorandum of Law into this objection to address those matters.

### **III. Conclusion**

The Motion for Rehearing filed by Mr. Rolfe is materially procedurally deficient and may not be considered by the Commission. Moreover, the Motion provides no legal basis for the Commission to revise its legal conclusion regarding its limited authority concerning installation of scrubber technology at Merrimack Station. The law's mandate requiring PSNH to install scrubber technology as soon as possible, and the public interest findings made by the Legislature in support of that mandate, are clear and unequivocal. For the reasons set forth herein and in its original decision in Order No. 24,898, the Commission should reject Mr. Rolfe's Motion for Rehearing.

Respectfully submitted this 23rd day of October, 2008.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By: 

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### CERTIFICATE OF SERVICE

I certify that on this date I caused the attached Memorandum of Law to be served pursuant to N.H. Code Admin. Rule Puc 203.11. I have also served Douglas L. Patch, Esq., Edward A. Haffer, Esq., and Mr. Edward M. B. Rolfe who are not on the Commission's service list for this docket.

October 23, 2008

  
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