

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-033

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Petition for the Issuance of Long-Term Debt, Mortgaging of Property, Execution of an
Interest Rate Transaction and Increase in Short-Term Debt Limit**

Order Approving Petition

Q R D E R N O. 25,021

October 5, 2009

Appearances: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; Conservation Law Foundation by Melissa A. Hoffer, Esq.; Office of Consumer Advocate by Meredith A. Hatfield, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL BACKGROUND

On February 20, 2009, Public Service Company of New Hampshire (PSNH) filed a petition for the issuance of long-term debt and for an increase in its short-term debt limit. Specifically, PSNH requested that the Commission approve: (1) the issuance of up to \$150 million aggregate principal amount of long-term debt securities through December 31, 2009; (2) the mortgaging of property; (3) the execution of an interest rate transaction; and (4) an increase in PSNH's short-term debt limit to 10 percent of net fixed plant plus a fixed amount of \$60 million. PSNH filed supporting testimony and related schedules of Randy A. Shoop, Vice President and Treasurer of Northeast Utilities Service and PSNH, subsidiaries of Northeast Utilities (NU). PSNH filed certain revised attachments to its petition on March 12, 2009.

An order of notice was issued on March 6, 2009 scheduling a prehearing conference for March 24, 2009. The Office of Consumer Advocate (OCA) filed a letter on March 10, 2009 stating that it would be participating in this docket on behalf of residential ratepayers pursuant to

RSA 363:28. On March 19, 2009, Granite State Electric Company d/b/a National Grid and the Conservation Law Foundation (CLF) filed petitions to intervene.

PSNH filed an objection to CLF's petition to intervene on March 24, 2009, the day of the prehearing conference. Staff filed a report on the technical session following the prehearing conference on March 25, 2009, including a proposed procedural schedule. As part of that report, Staff relayed OCA's position that, in its view, the Commission must perform an "Easton" review to determine whether the use of the proceeds of the financing are in the public interest.

See Appeal of Roger Easton, 125 N.H. 205 (1984) (*Easton*). Staff further reported that PSHN disagreed with the OCA and said the instant petition is no different than similar petitions filed within the past five years, and that the scope of the proceeding should not be broadened. Staff stated that the parties' proposed procedural schedule included the filing of briefs on the issue of scope by April 10, 2009. The Commission approved the proposed procedural schedule by a secretarial letter dated April 1, 2009.

On April 3, 2009, CLF filed a reply to PSHN's objection to CLF's motion to intervene. PSHN, OCA and CLF filed briefs on the scope issue on April 10, 2009. The OCA filed a motion for an extension of time by which to file motions to compel in connection with a discovery dispute with PSHN. On April 22, 2009, the Commission granted the OCA's motion. On May 13, 2009, with the issue regarding the scope of the proceeding still pending, the Commission suspended the procedural schedule. CLF filed a motion to supplement its legal brief on June 4, 2009, and PSHN filed an objection to that motion on June 11, 2009.

The Commission issued Order No. 24,979 (June 16, 2009) defining the scope of the proceeding as excluding any consideration of the public interest regarding the use of any financing proceeds for the installation of scrubber technology at Merrimack Station.¹

On July 24, 2009, CLF filed a motion to compel PSNH's response to certain data requests. PSNH filed an objection to that motion on August 3, 2009. On August 5, 2009, the Commission issued a secretarial letter scheduling a hearing on the merits of PSNH's petition for August 11, 2009. CLF filed a reply to PSNH's objection to CLF's motion to compel on August 6, 2009. Also on that date, the Commission issued Order No. 25,001 denying CLF's motion to compel.

The hearing was held on August 11, 2009 as scheduled. On September 4, 2009, CLF filed a motion for rehearing on the Commission's order denying CLF's motion to compel. PSNH filed an objection to CLF's rehearing motion on September 11, 2009. On September 14, 2009, CLF filed a correction to its Motion for Rehearing.²

II. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

Regarding its proposal to issue up to \$150 million of long-term debt, PSNH's petition indicated that the debt may have a maturity ranging from one to forty years; be in the form of first mortgage bonds or be secured by first mortgage bonds; be issued at a fixed or floating interest rate; and be sold to retail investors or institutional investors. Further, PSNH said that while the exact financing structure, terms and conditions, amount, documentation and coupon rate of the long-term debt will depend on market conditions at the time of issuance, the coupon

¹ See Order No. 24,979 for a complete discussion of the parties' arguments regarding the scope of this docket as it pertains to the Legislature's mandate that PSNH install certain scrubber technology at Merrimack Station.

² CLF's correction related to migration of PSNH's customers and PSNH's current energy service rate.

rate will be consistent with market rates for debt instruments having similar maturities and risks but the credit spread will not exceed 600 basis points (6.00%) above the applicable Treasury rate.

In testimony, PSNH said that the most likely debt structure is a \$150 million, 10-year, secured institutional debt offering. PSNH explained that the proceeds of the long-term debt issuance will be used to refinance existing short-term debt, finance anticipated capital expenditures and pay for issuance costs. According to PSNH, the existing short-term debt is from an unsecured bank revolving credit facility known as the Revolving Credit Facility and the NU System money pool. Hearing Transcript of August 11, 2009 (Tr. 8/11/2009) at 15. PSNH said its current short-term debt balance consists of withdrawals from these two sources used to fund working capital and capital expenditures, including projects for generation, transmission and distribution. *Id.* PSNH stated that the Company was prepared to issue the long-term debt in September, provided that the Commission gave its approval.

Consistent with its prior issuances of long-term debt, PSNH said the financing would be secured by a first mortgage bond. The Company said that the additional financing would not affect other existing first mortgages and essentially that the capital additions that are not encumbered by prior mortgages would serve as security for this long-term financing along with new capital additions. *Id.* at 51.

PSNH requested the flexibility to issue the long-term debt with a maximum credit spread of 600 basis points (6.00%) above the applicable Treasury rate. With regard to PSNH's most recent prior financing petition, the Commission approved a credit spread of up to 400 basis points.³ In response to questioning regarding credit spreads existing in the market at the time of hearing, PSNH testified that the Company was still seeking the additional flexibility of a 600

³ See Docket No. DE 07-070, *Public Service Company of New Hampshire*, Order No. 24,845 (April 14, 2008).

basis point spread but acknowledged that a 400 basis point credit spread, consistent with the Commission's prior authorization, would probably provide sufficient flexibility to secure long-term financing. *Id.* at 30-31.

PSNH testified that it was also seeking approval to use interest rate transactions, such as interest rate swaps or locks, to manage or hedge the interest rate risk associated with the proposed long-term debt. According to PSNH, an interest rate transaction or swap allows the company to lock in an interest rate for the financing and thus avoid rate volatility. *Id.* at 31. In determining whether to enter into an interest rate transaction, PSNH said it would consider current economic conditions as well as those forecasted for the period of issuance. *Id.* at 32.

In response to questions about evaluating the effectiveness of interest rate transactions, PSNH stated that measuring hedge effectiveness is a complicated process. *Id.* at 32-33. As described by PSNH, an interest rate transaction or swap is considered effective if the value of what is hedged and the value of the underlying interest rate move in tandem over the period of the financing. According to PSNH, if the value of the swap rate moves up while the transaction rate goes down, the interest rate transaction would be considered ineffective. *Id.* at 33. PSNH further explained that it would receive a payment in relation to an interest rate transaction if it locked in at a rate that was lower than the rate on the settlement date. On the other hand, PSNH said it would have to make a payment if it locked in at a rate that was higher than the settlement rate. *Id.* at 36.

PSNH explained that it plans to issue additional long-term debt annually through 2013. *Id.* at 38. The Company also plans to make equity infusions as time goes on to maintain a rating agency target of approximately 55 percent debt and 45 percent equity. PSNH testified that, if it

varies significantly from the debt to equity target, there could be rating agency impacts along with impacts to the cost of financing both debt and equity. *Id.* at 39.

In support of its request for an increase in its short-term debt limit, PSNH testified that the current limit on short-term debt, which is 10% of the value of net fixed plant,⁴ will be inadequate to support both investment in new capital additions and working capital needs, including items such as emergency storm restoration, for which it has to rely heavily on short-term borrowings. PSNH stated that certain intra-month peaks of short-term borrowings could cause it to exceed its current short-term debt limit. PSNH testified that it expects to run up against its short-term debt limit in the September-October 2009 time frame. *Id.* at 27. The Company cited those considerations along with planned capital expenditures in support of its request to increase its short-term debt limit above the 10 percent limit by an additional fixed amount of \$60 million. PSNH requested an increased short term debt limit for an indefinite period of time, stating that it anticipated making additional requests for long-term debt financing authority consistent with its 5-year forecast, and that the Commission could address the short-term debt issue in such filings. *Id.* at 21.

In response to questioning, PSNH said that it does not engage in project-specific financing. According to PSNH, it is much more attractive from a rates perspective to do general financing under PSNH's first mortgage bonds. *Id.* at 42-43. The Company explained that project-specific financing potentially involves restrictions, covenants and other structural components that would add costs to such financings, while first mortgage bonds allow PSNH to secure financing without those additional costs. *Id.* at 44.

⁴ Short-term debt is limited by the Commission's rules to the value of net fixed plant plus 10%. N.H. Code Admin. Rule Puc 307.05.

Staff noted that the Company, in response to data requests, had provided a list of approximately \$294 million in 2009 capital projects, and asked whether PSNH could say whether a particular project on the list is funded 100 percent by debt, partially by debt, or not at all by debt. PSNH replied that it could not answer the question because it does not track specific sources of financings to specific uses. PSNH said that, with respect to any specific project, it would not be able to say if that project was funded with cash, with money pool borrowings, or if it was funded with equity. *Id.*

If the Commission does not approve the long-term debt proposal, PSNH testified that it would have to consider how to finance its capital projects and other operating plans. PSNH said that, even if the Commission approved a higher short-term debt limit, the Company would have to access the revolving credit facility, and that PSNH is limited to \$100 million from that facility. PSNH said that, if the petition is not approved, it could go to NU, its parent company, as another option for equity funding. PSNH stated that if it financed the same set of assets with equity instead of debt there would be a greater impact on customer rates. *Id.* at 45-46.

PSNH calculated the impact of the proposed financing on energy service rates to be approximately two one-thousandths of a cent per kilowatt hour (kWh), or \$0.00002 per kWh. For distribution rates, PSNH estimated that the proposed financing would increase rates by approximately four one-thousandths of a cent per kWh, or \$0.00004. *Id.* at 11. PSNH did not calculate the rate impact on transmission rates, saying that the calculation of transmission rate impact is more comprehensive, and that transmission rates are regulated by the Federal Energy Regulatory Commission. *Id.* at 56.

In closing, PSNH stated that the proposed financing is related to a wide variety of generation, transmission and distribution expenditures, yet the only objection in this case is to the

installation of the scrubber despite the fact that the Commission has determined that the scrubber or alternatives to the scrubber are not at issue in this proceeding. PSNH concluded by stating that the proposed financing is in the public interest, that the Company has met its burden of production of the detailed information about the projects being proposed, and has demonstrated the impact of the proposed financing on rates. *Id.* at 68-70.

B. Conservation Law Foundation

At the start of the hearing, CLF stated that it intended to file a Motion for Rehearing on the Commission's August 6, 2009 decision denying CLF's motion to compel certain discovery from PSNH and that it objected to the Commission proceeding with the hearing before CLF's opportunity to move for rehearing expired. *Id.* at 5.

According to CLF, the New Hampshire Supreme Court, in *Appeal of Conservation Law Foundation*, 127 N.H. 606 (1986), said that an *Easton* review requires the Commission to determine whether, at a later ratemaking proceeding, a reasonable rate can be set that will allow the subject utility to support the capitalization that will result from the use of the proceeds of the proposed financing. *Id.* at 58. CLF stated that the Commission, in its June 19, 2009 order in this docket, said that an *Easton* review is required in this financing proceeding, and that the Commission would consider the economic impact of the proposed financing, its effect on PSNH's capital structure, and its potential impact on rates. *Id.* at 57. According to CLF, the record in the instant proceeding contains no evidence to support a conclusion that PSNH has met the burden required by *Appeal of Conservation Law Foundation* or Order No. 24,979 (June 19, 2009), or a finding with respect to an *Easton* review pursuant to Commission Order No. 24,979. *Id.* at 59.

C. Office of Consumer Advocate

The OCA, citing *Easton*, said that the Commission has a duty to determine whether, under all the circumstances, the financing is in the public good, a determination which includes considerations beyond the terms of the proposed financing. Tr. 8/11/2009 at 60. Quoting from *Appeal of Conservation Law Foundation*, OCA stated that “those considerations include whether the object of the financing is reasonably required for use in discharging a utility company’s obligation to provide safe and reliable service.” The OCA opined that the Commission is required to give a full *Easton* review for all projects to be financed in the instant docket with the exception of the scrubber. *Id.* at 61. The OCA said that this interpretation is supported by a reading of RSA 369:1, which requires that the Commission finding of public good shall extend to the amount of the issue authorized and the purpose or purposes to which the securities or the proceeds thereof are to be applied and shall be subject to such reasonable terms and conditions as the Commission may find necessary in the public interest. *Id.* at 61.

OCA maintained that the Commission must determine that the terms of the financing are in the public good, and that the effect on rates of the financing and the projects financed are in the public good. OCA opined that PSNH did not provide sufficient information for the Commission to make those findings, and stated that, while the Company may prefer a more general approach to financing, that such an approach does not meet the statutory requirement, case law or the Commission’s recent order on scope. *Id.* at 62. The OCA stated that the record contains no analysis or detailed information about the uses of the proceeds. In addition, the OCA took issue with the Company’s assertion that it is simply refinancing short-term debt with long-term debt. According to the OCA, PSNH should not be permitted to proceed in that manner because it allows PSNH to avoid the review required for long-term debt, thereby precluding

ratepayers any chance to have the Commission conduct the required long-term debt review. *Id.*

at 63

The OCA concluded by stating that the Commission should reject PSNH's request for long-term financing because it has not met its burden and has not provided sufficient information to the Commission or the parties in order to undertake the necessary analysis required by the statutes and case law, including *Easton*. The OCA also expressed sympathy with CLF's objection made at the beginning of the hearing. The OCA stated that CLF had not exhausted its remedies with respect to the discovery dispute, thereby putting the case in a difficult procedural position. *Id.* at 64.

D. Commission Staff

Staff stated that, since the Company filed its petition in February, Staff had conducted discovery and had reviewed the filing. Staff stated that, in its view, the filing comported with the requirements of RSA 369, and the terms and the conditions of the financing are appropriate. In conclusion, Staff recommended that the Commission approve the petition with one modification, that being to limit the credit spread above the applicable Treasury rate for the long-term financing to 400 basis points instead of the 600 basis points requested by PSNH. *Id.* at 68.

III. COMMISSION ANALYSIS

A. Motion for Rehearing of Order Regarding Motion to Compel

We will address CLF's motions for rehearing of Order No. 25,001 denying CLF's motion to compel PSNH's response to certain data requests when the time for motions for rehearing of this order has elapsed, in order to provide for a more efficient appellate process.

B. Request for Authorization to Issue Long-term Debt, *et al.*

In reviewing the proposed financing, we must consider whether issuance is consistent with the public good. RSA 369:1 and 4. In determining the public good, the relevant statutes direct us to consider the amount of the issue authorized, the purpose or purposes to which the proceeds are to be applied, and the reasonableness of the terms and conditions of the financing. In addition, according to the New Hampshire Supreme Court, an *Easton* review entails a consideration of whether the object of the financing is reasonably required for use in discharging a utility company's obligation to provide safe and reliable service, whether the utility company's plans to accomplish that object are economically justified when measured against any adequate alternatives, and whether the capitalization resulting from the utility company's plans would be supportable. *Appeal of Easton*, 125 N.H. 205, 211-213 (1984).

In Order No. 24,979 (June 19, 2009), we found that our review of the proposed financing would not involve an examination of the installation of scrubber technology to remove mercury and other pollutants at Merrimack Station, as the New Hampshire General Court had already determined that such installation is in the public interest. See RSA 125-O:11 and Order No. 24,979 at 16. That being the case, we also observed that “[i]n every financing docket, the Commission undertakes a review of a company’s request to determine whether it comports with the relevant statutory and decisional standards, including *Easton*. Irrespective of whether any challenge is raised to a company’s proposed financing, the Commission must analyze all the circumstances, including whether the financing terms, and the resulting impact on capital structure and customer rates, are reasonable and in the public interest, and whether the proposed uses for the financing proceeds are in the public good.” (citations omitted) *Id* at 17-18.

We have reviewed the filing and determine that it is consistent with the public good to authorize PSNH to issue long-term financing for the reasons set forth in its petition, namely, to refinance existing short-term debt, finance anticipated capital expenditures and pay for issuance costs. Based upon the record, PSNH incurs short-term debt to fund working capital needs and pay capital expenditures, periodically issues long-term debt, and receives equity contributions from and makes dividend payments to its parent, NU, thereby allowing PSNH to maintain an appropriate capital structure. Further, identification of the various capital projects to be undertaken with these funds for the distribution, transmission and generation segments of PSNH's business supports a finding that the purposes, uses or objectives of the financing are reasonably required by PSNH to discharge its obligations as an electric utility. *See* Ex. 3 at 8-19.

We also find that the issuance of long-term debt is economically justified given the alternatives of (1) further increasing short-term debt or (2) funding operations with equity – a more expensive option that would have a greater upward pressure on customer rates than long-term financing. PSNH testified that the proposed financing would increase energy service rates approximately two one-thousandths of a cent per kilowatt hour (kWh), or \$0.00002 per kWh, and would increase distribution rates approximately four one-thousandths of a cent per kWh, or \$0.00004. Tr. 8/11/2009 at 11. This testimony, which was not contested, demonstrates that, after the financing, PSNH's rates will continue to be just and reasonable. Given the minimal rate impact and the investments to be made in PSNH's distribution, transmission and generation operations, we find that the issuance of long-term debt as requested by PSNH is consistent with the public good. Furthermore, we find that the capital structure resulting from the financing is supportable.

We also approve PSNH's use of an interest hedge mechanism in connection with the issuance to help avoid volatility in interest rates over the term of the financing. In addition, we accept Staff's recommendation that PSNH's credit spread be reduced from 600 to 400 basis points above the applicable Treasury rate for purposes of this financing, in light of PSNH's statement that under current market conditions, a credit spread of up to 400 basis points would allow it sufficient flexibility in the issuance. Consequently, we conclude that the terms and conditions of the financing as described by PSNH are reasonable.

Finally, we find it reasonable and in the public good to increase PSNH's short-term debt limit to 10% of net fixed plant plus an additional \$60 million to provide the Company with necessary funding to support its operations and capital programs for its generation, transmission and distribution businesses. We will allow this limit to be in place until PSNH's next filing for the issuance of long-term debt.

Based upon the foregoing, it is hereby

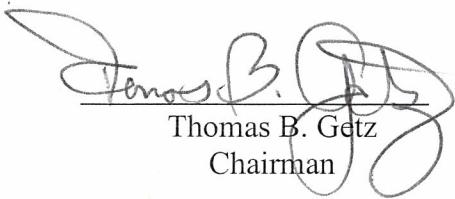
ORDERED, that the petition by Public Service Company of New Hampshire to issue long-term debt in the amount of \$150 million is hereby APPROVED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire is authorized to use an interest rate hedging mechanism in connection with the issuance; and it is

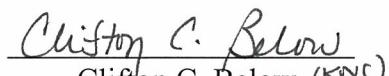
FURTHER ORDERED, that Public Service Company of New Hampshire shall use a credit spread of up to 400 basis points above the applicable Treasury rate in connection with the debt issuance; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire is hereby authorized to increase its short-term debt limit to the value of 10% of net fixed plant plus \$60 million, until the Company's next filing for the issuance of debt.

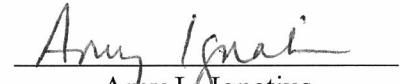
By order of the Public Utilities Commission of New Hampshire this fifth day of October,
2009.



Thomas B. Getz
Chairman

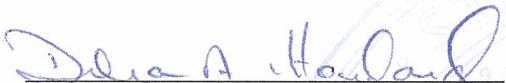


Clifton C. Below (KNS)
Commissioner



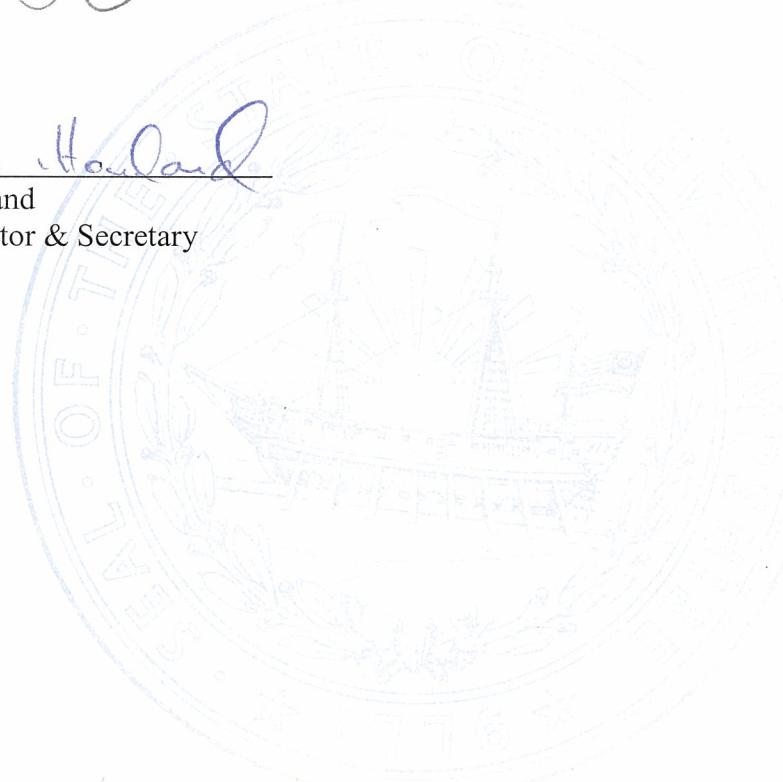
Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland

Executive Director & Secretary



ALEXANDRA E BLACKMORE
NATIONAL GRID
40 SYLVAN RD
WALTHAM MA 02451

MARLA B MATTHEWS
GALLAGHER CALLAHAN & GARTREL
214 N MAIN ST
CONCORD NH 03301

THERESA M BURNS
NATIONAL GRID USA
55 BEARFOOT RD
NORTHBOROUGH MA 01532

K NOLIN
PUBLIC SERVICE COMPANY OF NEW H
PO BOX 330
MANCHESTER NH 03105

ALLEN DESBIENS
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

CATHERINE SHIVELY
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

GERALD M EATON
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

KEN E TRAUM
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301-2429

STEPHEN R HALL
PSNH
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

MELISSA HOFFER
CONSERVATION LAW FOUNDATION
27 N MAIN ST
CONCORD NH 03302

KRISTINE E KRAUSHAAR
CONSERVATION LAW FOUNDATION
27 N MAIN ST
CONCORD NH 03301-4930

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SUZANNE AMIDON
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

MATTHEW FOSSUM
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

THOMAS FRANTZ
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

GEORGE MCCLUSKEY
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

STEVE MULLEN
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

AMANDA NOONAN
CONSUMER AFFAIRS DIRECTOR
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429