

THE STATE OF NEW HAMPSHIRE

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August 3, 2010

Re: DE 09-174, Public Service Company of New Hampshire
Petition for Declaratory Ruling—Penacook Lower Falls

To the Parties:

On July 12, 2010, Briar Hydro Associates (the successor in interest to New Hampshire Hydro Associates, the original owner of Penacook Lower Falls) filed a letter in the above-captioned proceeding bringing to my attention a Public Service Company of New Hampshire (PSNH) interoffice memorandum that came to light through the discovery process. The memorandum was sent on July 15, 1992, from Mr. Carl Vogel to Ms. Leslie Peterson. At that time, I was employed as an attorney for PSNH and the memorandum was apparently copied to me. Briar Hydro asserts that the memorandum contains PSNH's explanation of calculations that "are at the center of the dispute in this proceeding." Briar Hydro states that it is bringing the memorandum forward so I can "consider whether further action may be appropriate."

The Commission issued an Order of Notice in this proceeding on November 6, 2009. Among other things, the Order of Notice stated that the PSNH petition for a declaratory ruling raised an issue relating to the "interpretation of the pricing terms in the Contract governing PSNH's purchase of power from the Penacook Lower Falls facility."

The contract between PSNH and New Hampshire Hydro Associates was executed in April 1982, several years before my employment with PSNH. As for Mr. Vogel's memorandum, I have no recollection of it, nor of any other written or oral communication regarding the subject matter of this proceeding during the time of my employment with PSNH. Furthermore, the focus of the present dispute between PSNH and Briar Hydro, and the Vogel memorandum, is a complex energy pricing formula, which concerns an issue distinct from the capacity payment issue litigated in Docket No. DE 07-045, in which I participated.

PSNH asserts here that the "matter involves the meaning and interpretation of a contract" and that it is asking the Commission to "merely interpret the words by their normal meaning." Petition, p.3. It is not readily apparent to me at this juncture whether the dispute in this case can be resolved based on an interpretation of the contract within its four corners, which relates to the time period prior to my employment with PSNH, or whether the dispute may turn on PSNH's performance of the contract, which may relate to the period during my employment and may include the Vogel memorandum as evidence of that performance. Under the circumstances, including that a quorum of the Commission is available to conduct the proceeding, and consistent with RSA 363:12, I and VII, I believe the better course is to not participate in the hearing or deliberation of the issues raised by the petition for a declaratory ruling.

Very truly yours,

A handwritten signature in black ink that reads "Thomas B. Getz".

Thomas B. Getz
Chairman