

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 10-122**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Petition for Approval of Issuance of Long-Term Debt and Related Relief**

**Order Denying New Hampshire Sierra Club Motion for Reconsideration**

**O R D E R   N O. 25,143**

**September 10, 2010**

This docket involves the request of Public Service Company of New Hampshire (PSNH) for approval, pursuant to RSA 369:1, to borrow up to \$500 Million in long term debt.<sup>1</sup> PSNH proposes to incur the debt in two increments over the course of the next two years, 2011 and 2012. The New Hampshire Sierra Club (NHSC) petitioned to intervene in this docket on June 24, 2010, and, on July 20, 2010, the Commission issued Order No. 25,131 (Order) that denied NHSC's intervention. NHSC filed a motion for reconsideration of the Commission's denial of its request to intervene on August 18, 2010.

The Order denied the motion to intervene because: (1) NHSC failed to state a right, duty, privilege, immunity or other substantial interest that would be affected by the outcome of this proceeding pursuant to RSA 541-A:32, I; and (2) allowing NHSC to use this docket to re-litigate PSNH's compliance with air emissions requirements or conduct discovery for materials that have not been provided in other forums would not serve the interests of justice pursuant to RSA 541-A:32, II. Order at 5-6.

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<sup>1</sup> PSNH's original request for authority to borrow up to \$600 million was modified in the Amended Direct Testimony of Susan B. Weber filed on July 23, 2010.

The Order also defined the scope of the proceeding as “the terms of the financing, the amount of the financing, the effect on rates and on the capital structure and debt/equity ratio for PSNH, and a review of whether the proposed use of the proceeds is in the public good.” Order at 7.

## **I. POSITIONS OF THE PARTIES**

### **A. New Hampshire Sierra Club Motion for Reconsideration**

NHSC’s motion does not address how its rights, duties, privileges, immunities or substantial interests are affected by the outcome of this proceeding and instead concentrates on “the thrust of” its petition to intervene as it relates to the scope of the proceeding. Motion at 1. NHSC argues that PSNH’s provision of safe and reliable service pursuant to RSA 374:1 includes an obligation to comply with the New Hampshire Multiple Pollutant Control Program and the Clean Air Act. NHSC suggests that PSNH may be violating those statutes, without referencing any such finding by a court or agency with jurisdiction over such compliance and argues that the public interest finding required by RSA 369:1 mandates an extensive review of PSNH’s environmental compliance at its Merrimack Station Plant. Motion at 1-2. According to NHSC, the Commission’s determination of public interest under RSA 369:1 should consider PSNH’s estimated costs of current and future environmental compliance as well as whether alternatives to such expenditures exist. Motion at 2.

NHSC argues that PSNH is considering generation upgrades, de-bottlenecking and life extension projects at Merrimack Station that exceed the public interest standard set out in RSA 125-O:11-18. Motion at 4. NHSC also argues that the Commission should examine whether a generation upgrade at Merrimack Station complies with both RSA 369:1 and 369-B:3-a (dealing with plant modifications). Motion at 5.

NHSC discusses a number of specific air pollutants and associated environmental standards and argues that the Commission should explore PSNH's plans and costs for compliance with each of those emissions standards at Merrimack Station. NHSC urges the Commission to determine probable future costs of environmental compliance and likely impacts on future rates. Motion at 6-7. Finally, NHSC asks that the Commission vacate the procedural schedule in this docket and fix an alternative procedural schedule which will allow NHSC and others to fully examine all of the issues described in its motion.

### **B. Public Service Company of New Hampshire's Objection**

According to PSNH, NHSC has not made any new arguments and instead has only repeated arguments made in its original petition to intervene. PSNH asserts that NHSC has attempted to expand the scope of this financing docket to include an extensive review of PSNH's environmental compliance. PSNH argues that the public interest and environmental concerns have already been dealt with in RSA 125-O. PSNH concludes that NHSC's attempts to expand the scope and to delay the procedural schedule will impair the orderly and prompt conduct of the proceedings and urges the Commission to deny NHSC's motion.

## **II. COMMISSION ANALYSIS**

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. Good reason may be shown by identifying specific matters that were either "over-looked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Connecticut Valley Electric Co.* 88 NH PUC 355, 356 (1978). To the extent new evidence is proffered as a basis for rehearing, the

motion for rehearing should explain why such evidence could not have been presented in the original hearing. *O'Loughlin v. N.H. Personnel Commission*, 117 N.H. 999, 1004 (1977).

A careful review of NHSC's motion for reconsideration leads us to conclude that, with respect to intervention, it has failed to identify specific matters that were overlooked or mistakenly conceived and it has similarly failed to state other good reason why it should be granted intervention. NHSC raises certain arguments for the first time in its motion for reconsideration that relate primarily to the scope of the proceeding rather than to the question of intervention.

We have already found, based upon NHSC's original petition for intervention, as well as its statements at the prehearing conference, that it has not demonstrated that its rights, duties, privileges, immunities or other substantial interests are affected by the outcome of this proceeding. Order at 5. *See* RSA 541-A:32, I. Since NHSC has not made any additional arguments on this point in its motion for reconsideration, we find no reason to change our ruling on this issue.

With regard to whether to grant discretionary intervention pursuant to RSA 541-A:32, II, we found that, as regards this proceeding, NHSC's proposal to determine PSNH's compliance with applicable air emissions standards, which is beyond the Commission's authority, does not serve the interests of justice and that granting intervention to allow NHSC to conduct discovery for materials not provided in another forum, as it stated was a purpose of its intervention, would impair the prompt and orderly conduct of the proceeding. Order at 6-7. Furthermore, NHSC's motion merely repeats arguments concerning air emissions standards and its intention to use the proceeding to challenge PSNH's compliance with environmental laws. Motion at 1-4 and 6.

With regard to the scope of the proceeding, for the first time in its motion for reconsideration NHSC does articulate some of the standards for review of proposed financings under RSA 369:1 that have been developed through case law and presents an outline of arguments that it would want to develop in relation to those standards if granted intervention. NHSC's arguments principally center on PSNH's compliance with environmental air emissions standards – current, under development, and that might be forthcoming. NHSC now ties the environmental compliance issues originally raised with questions of current and future costs of compliance and potential future rate impacts of such potential compliance obligations.

As we have stated in relation to past PSNH financing requests, “[o]ur consideration of the rate impact of PSNH's proposed financing is limited to the rate impacts associated with the financing.” *Public Service Company of New Hampshire*, Order No. 25,050 (December 8, 2009). We will examine the uses of the proposed financing and will consider potential rate impacts of the financing as required by the facts of this proceeding. However, these new arguments by NHSC do not specify matters that were overlooked or mistakenly conceived in our original decision based on the record before us at that time, nor does NHSC suggest why such arguments could not have been made in their original petition for intervention or at the prehearing conference.

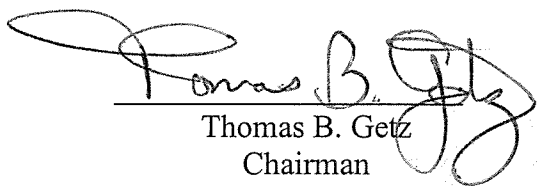
Finally, while NHSC does not repeat its proposal that this proceeding be left open with no ruling until such time as environmental compliance litigation is resolved in other forums (Prehearing conference transcript at 10, lines 4-11, and 12, lines 6-11), NHSC's motion does demand that the procedural schedule be vacated and asserts that a considerably longer process is needed. Motion at 2, 5 and 7. Thus, NHSC's motion for reconsideration does not support a determination that its intervention would not impair the orderly and prompt conduct of the

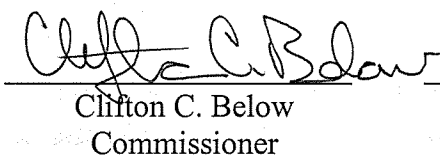
proceeding. For the reasons set forth above, we affirm our earlier ruling that NHSC's intervention in this docket should be denied. *See* RSA 541-A:32, II.

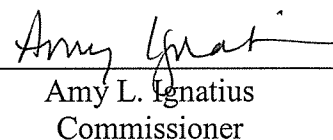
**Based upon the foregoing, it is hereby**

**ORDERED**, NHSC's request for reconsideration is denied.

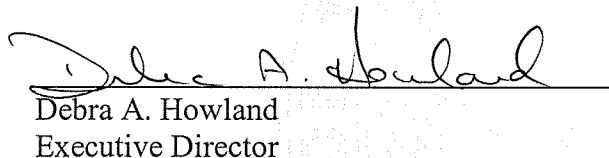
By order of the Public Utilities Commission of New Hampshire this tenth day of September, 2010.

  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
Commissioner

  
Amy L. Ignatius  
Commissioner

Attested by:

  
Debra A. Howland  
Executive Director

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

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

OCA LITIGATION  
OCA LITIGATION  
21 SOUTH FRUIT ST STE 18  
CONCORD NH 03301

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

ERIC STELTZER  
OFFICE OF ENERGY AND PLANNING  
4 CHENELL DRIVE  
CONCORD NH 03301

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

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**FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**  
**WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:**  
DEBRA A HOWLAND  
EXEC DIRECTOR & SECRETARY  
NHPUC  
21 SOUTH FRUIT STREET, SUITE 10  
CONCORD NH 03301-2429

LAUREL ADAMS  
50 LANGLEY RD  
DURHAM NH 03824

MARIE BERGEN  
5A MONROE ST  
CONCORD NH 03301-3615

CATHERINE CORKERY  
40 N MAIN ST 2ND FLR  
CONCORD NH 03301

ARTHUR B CUNNINGHAM  
PO BOX 511  
HOPKINTON NH 03229

K NOLIN  
PO BOX 330  
MANCHESTER NH 03105

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**INTERESTED PARTIES**

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