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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

June 29, 2010 - 1:41 p.m.
Concord, New Hampshire

NHPUC JUL15'10 AM 9:48

RE: DE 10-122
PUBLIC SERVICE CO. OF NEW HAMPSHIRE:
Petition for Approval of Issuance
of Long and Short-Term Debt.
(*Prehearing conference*)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:
Catherine E. Shively, Esq.

Reptg. New Hampshire Sierra Club:
Arthur B. Cunningham, Esq.

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.
Steven E. Mullen, Asst. Dir./Electric Div.

Court Reporter: Steven E. Patnaude, LCR No. 52

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I N D E X

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P R O C E E D I N G

1
2 CHAIRMAN GETZ: All right. Good
3 afternoon, everyone. We'll open this prehearing
4 conference in docket DE 10-122. On May 3, 2010, Public
5 Service Company of New Hampshire filed a petition seeking
6 authority to issue up to \$600 million in principal amount
7 of long-term debt through December 31, 2012; to mortgage
8 its property in connection with the issuance of long-term
9 debt; to enter into interest rate transactions to manage
10 interest risk; to engage in long-term borrowing pursuant
11 to an unsecured revolving credit agreement; and to extend
12 its current short-term debt limit of 10 percent of net
13 fixed plant plus a fixed amount of \$60 million. An order
14 of notice was issued on June 1 setting the prehearing
15 conference for this afternoon. I'll also note for the
16 record that the affidavit of publication has been filed.
17 That we have the OCA's Notice of Participation. We have a
18 Petition to Intervene from the Sierra Club. And, we also
19 have filed an objection by PSNH to that Petition to
20 Intervene.

21 So, can we take appearances please.

22 MS. SHIVELY: Good morning, Mr.
23 Chairman, Commissioners. Catherine Shively, for Public
24 Service Company of New Hampshire.

1 MR. CUNNINGHAM: Arthur B. Cunningham,
2 for New Hampshire Sierra Club. With me is Catherine
3 Corkery, Chapter Director of the Sierra Club.

4 CHAIRMAN GETZ: Good afternoon.

5 MS. HATFIELD: Good afternoon,
6 Commissioners. Meredith Hatfield, for the Office of
7 Consumer Advocate, on behalf of the residential
8 ratepayers. And, with me from the office is Ken Traum.

9 CHAIRMAN GETZ: Good afternoon.

10 MS. AMIDON: Good afternoon. Suzanne
11 Amidon, for Commission Staff. And, with me today is Steve
12 Mullen, who is the Assistant Director of the Electric
13 Division.

14 CHAIRMAN GETZ: Okay. Good afternoon.
15 I think it's a little difficult to segregate out the
16 statements of the positions of the parties and the
17 intervention request and the scope of this proceeding.
18 So, rather than try and do several rounds and breaking
19 down those topic-by-topic, I think we'll start with the
20 Petitioner, and let everyone address all of those issues
21 in turn.

22 So, Ms. Shively, do you want to state
23 the Company's position and any arguments it has with
24 respect to the Sierra Club's Petition to Intervene and

1 your position as to the appropriate scope of this
2 proceeding, if you could take all of those issues on
3 please?

4 MS. SHIVELY: Okay. I believe you have
5 accurately summarized the Company's petition, so I'm not
6 going to repeat that. In this proceeding, we have
7 requested authority to issue \$600 million worth of
8 long-term debt from about the last quarter of 2010 through
9 December 31st, 2012, which is roughly a two-year period.
10 We're requesting authority over a two-year period due to
11 the continuing volatility of the financial markets.
12 Having the financing approval in place provides the
13 Company with an opportunity to capitalize on favorable
14 market conditions. Such authority has been previously
15 granted by this Commission, and similar authority has also
16 been granted by other New England commissions. We're also
17 requesting this authority because any further request to
18 issue debt closely resemble this request and would avoid a
19 duplication of expense and effort on behalf of all the
20 parties.

21 Regarding some of the specifics of the
22 request, we're asking that the interest rate on the
23 long-term debt will not exceed a rate equal to the
24 applicable index, plus a credit spread of up to 400 basis

1 points, or 4 percent, which is consistent with prior
2 approvals granted by this Commission. The exact
3 structure, terms and conditions, amount, documentation,
4 and the interest rate would be determined at the time of
5 issuance, based on the prevailing market conditions. As
6 usual, in making the financing decisions, the Company will
7 continue to take into account the need to maintain its
8 credit ratings, and also the need to maintain its
9 ratemaking capitalization.

10 Regarding the ratemaking capitalization,
11 our original projections were for about a \$210 million
12 issuance as early as the first quarter of 2011, and
13 225 million during the first quarter of 2012. In light of
14 the increased equity that's resulting from the recent rate
15 case settlement, we're going to be taking a look at that
16 to see if that request can be reduced somewhat. We're
17 still looking into that.

18 As discussed in Susan Weber's testimony,
19 the funds obtained through the financings will be used to
20 take out short-term debt incurred in the ordinary course
21 of business, to support transmission, distribution, and
22 generation activities, to pay issuance costs, and for
23 working capital. If market conditions allow, any
24 additional amounts over and above the short-term debt

1 levels would also be used for ongoing capital
2 expenditures.

3 As you noted, we also seek authority to
4 mortgage our property, execute interest rate transactions,
5 issue long-term debt to the parent, NU, or under an
6 unsecured revolver, and to extend our short-term debt
7 authorization at the current levels.

8 We believe the financing activities as
9 proposed are in the public good. And, we respectfully
10 request that the Commission issue an order approving the
11 proposed transactions no later than September 30th, 2010.

12 Regarding the issue of intervention, we
13 do object to the intervention of the New Hampshire Sierra
14 Club. Basically, I think that the petition recites a
15 number of their activities in environmental dockets, and
16 then concludes that, because of that, they're entitled to
17 intervene in this case. And, I don't see any substantial
18 interests. And, I'm concerned that their intervention
19 will likely impact the orderly conduct of these
20 proceedings, as they have specifically indicated that they
21 want to investigate our compliance with the environmental
22 permit requirements applicable to the scrubber.

23 And, regarding the scope of the
24 proceeding, I think the Commission spent quite a bit of

1 time in our last financing proceeding in an effort to
2 determine the appropriate scope. I think that you did a
3 very good job of that, and that the scope of this docket
4 should be the same as the scope of our prior financing.

5 CHAIRMAN GETZ: Okay. Thank you.

6 Mr. Cunningham.

7 MR. CUNNINGHAM: Yes, Mr. Chairman.

8 Thank you very much, members of the Commission. By my
9 calculation, this docket seeks authorization for somewhere
10 in the neighborhood, and considering the long-term
11 financing, the short-term financing, the revolving credit,
12 somewhere in the neighborhood of \$959 million. That's a
13 lot of money. And, if we look at RSA 369:1, it's required
14 that the financing be approved if it serves a lawful
15 corporate purpose. So, to reiterate the arguments that I
16 made yesterday, that Ms. Shively is quite right, that we
17 have some serious ongoing concerns and ongoing litigation
18 with respect to the environmental compliance of projects
19 at Merrimack Station.

20 The Commission is probably aware of the
21 exhibits and the reports that we've been able to find
22 during our investigation into those cases, including the
23 Burns & McDonnell report, the GZA report, and the Sargent
24 & Lundy report. For example, the Burns & McDonnell report

1 suggests that -- that not only the turbine be changed out,
2 but the boiler be replaced on MK2. The GZA report
3 suggests that, if emissions increase even less --
4 emissions for plant upgrade projects increase even less
5 than one percent, that NSR permitting responsibilities are
6 invoked. The Sargent & Lundy report is even more telling,
7 because it suggests that PSNH investigated serious
8 projects to upgrade the generating capacity of the plant
9 and life extension projects to increase generation output
10 in excess of 20 megawatts, without even mentioning the
11 installation of the new turbine at MK2. So, we have
12 serious, ongoing concerns about compliance. And, we think
13 that we should be able to participate in this docket to
14 ensure that these funds are going to proper corporate
15 purposes, and not in violation of the Clean Air Act or the
16 New Hampshire Multiple Pollutant Control Act.

17 CHAIRMAN GETZ: Well, excuse me right
18 there. What evidence do we have that such a violation
19 occurred? Because doesn't your Petition to Intervene set
20 forth that these issues have been litigated or are being
21 continued to be litigated in other forums? And, as far as
22 I can tell, it sounds like there is no court of competent
23 jurisdiction that says that they can't be doing what
24 they're doing. And maybe, in fact, we have the opposite

1 from the Air Resources Council. So, how do you make the
2 link? What would you propose that we do in this
3 proceeding with respect to environmental compliance?

4 MR. CUNNINGHAM: Leave the proceeding
5 open until these cases are resolved. We have -- there's
6 three important pending matters, Mr. Chairman. There's
7 the Air Resources Docket 09-10, Air Resources Docket
8 10-06, and there's a pending EPA Section 114 data request
9 that's pending. Each one of these dockets is important,
10 may lead to important evidence with respect to what's
11 going on at the plant.

12 One of the things I wanted to say, in
13 response to Mr. Eaton's remarks yesterday, and I failed to
14 do that, is he suggested that "the Sierra Club is just
15 data diving." That's an epithet, and it's not true. We
16 are not data diving. We are simply trying to follow the
17 law to get discovery into the potential violations of the
18 Clean Air Act. One of our frustrations, and it's been
19 very contentious before the Air Resources Council, is that
20 we have found --

21 CHAIRMAN GETZ: Can you not get
22 discovery in those other forums, where you --

23 MR. CUNNINGHAM: We have not been able
24 to get --

1 CHAIRMAN GETZ: Well, let's try not to
2 talk both at the same time, because the court reporter
3 won't be able to put it all into the transcript.

4 MR. CUNNINGHAM: I'm sorry, Mr.
5 Chairman.

6 CHAIRMAN GETZ: So, you can't get
7 discovery in those other proceedings, where these issues
8 are more directly in play. So, you're hoping to get more
9 information here, in order to pursue your remedies there?

10 MR. CUNNINGHAM: I think that's part of
11 the financing docket. The Commission has the authority to
12 investigate the destination of these funds. And, if the
13 destination of these funds goes to plant projects that
14 violate the Clean Air Act, that's basically our concern.

15 CHAIRMAN GETZ: And, which -- And, the
16 plant project you're talking about is the refurbishing of
17 the turbine?

18 MR. CUNNINGHAM: That's one of them.

19 CHAIRMAN GETZ: Hasn't this Commission
20 already ruled on that issue in Docket 08-145?

21 MR. CUNNINGHAM: It has. But the
22 Commission did not -- the Commission did not, in their
23 ruling on that, address the issue with respect to the
24 Clean Air Act. In other words, is that turbine or does it

1 -- is that turbine going to increase emissions beyond the
2 Clean Air Act thresholds that trigger NSR permitting?

3 CHAIRMAN GETZ: Are we a competent forum
4 to make that kind of decision about whether the Company is
5 in violation of the Clean Air Act?

6 MR. CUNNINGHAM: No. You are not. My
7 suggestion to the Commission is that the Commission defer
8 ruling and determining on the authorities here until those
9 Clean Air Act issues, those New Hampshire Pollution
10 Control Act issues are fully and fairly resolved on the
11 merits.

12 CHAIRMAN GETZ: But isn't this a
13 slippery slope? That a party could come into this
14 Commission on any issue, in any -- of state law or federal
15 law, and say "don't give a utility some kind of relief
16 that it's requesting, because something might happen
17 somewhere else"?

18 MR. CUNNINGHAM: Well, let me address
19 your question about the discovery issue, Mr. Chairman. In
20 the Air Resources Council case, that's 09-10, the Sierra
21 Club filed four separate requests for information,
22 addressing not only the turbine project, but other
23 projects that we believe may have increased generating
24 capacity and exceeded the emission thresholds in terms of

1 the Clean Air Act. PSNH has uniformly objected to each
2 and every one of those information requests. We've gotten
3 zero documents from PSNH, with save and except, finally,
4 we got the Sargent & Lundy report. We -- it's been a
5 major battle there in the Air Resources Council. It's not
6 been a fair proceeding. It's not been a thorough
7 proceeding. And, it's not ever going to get on the merits
8 -- the proceeding is never going to get with the merits on
9 the substantive Clean Air Act violation issues until such
10 time as PSNH cooperates on discovery.

11 One of our fundamental issues and one of
12 our fundamental difficulties with PSNH conduct is this
13 aura, this -- this culture of confidentiality. I just
14 talked to the woman, a lady in charge of the Section 114
15 request at the EPA. That was a massive 114 data request.
16 PSNH claimed almost blanket confidentiality on this data
17 request. It went to ask of projects done there that may
18 have increased the generating capacity of emissions in
19 future projects. EAP has advised that it's the single
20 largest data request that they have ever had to deal with.
21 EAP has hired an expert witness to analyze the documents
22 and analyze the legitimacy of the PSNH confidentiality
23 request. As of Monday a week ago, EPA, and this is over a
24 year this has been pending, EAP is still, with their

1 expert, boring through these confidentiality claims.

2 I'm simply suggesting, Mr. Chairman and
3 members of the Commission, that let's not spend a billion
4 dollars on a project that, in the end, may be shown to be
5 in violation of the Clean Air Act, until all these issues
6 are fundamentally and finally and fairly resolved on all
7 the evidence. That's our concern. That we have been
8 stonewalled from day one. We're not a competitor, Sierra
9 Club is not a competitor of PSNH. Sierra Club would
10 willingly sign appropriate confidentiality agreements, if
11 there are legitimate trade secrets, if there's legitimate
12 market information. We would be pleased to sign a
13 confidentiality agreement regarding that information. If
14 the information was made available, we could have a look
15 at it, we could have experts, independent experts look at
16 it and make these determinations. What we're looking for
17 is a full and fair merit hearing. And, I can't help but
18 think that that's important to this Commission as well.

19 CHAIRMAN GETZ: The full and fair
20 hearing of the merits of what?

21 MR. CUNNINGHAM: Of these Clean Air Act
22 cases. These Clean Air Act cases. In a venue that's
23 fully and fairly going to permit us to get access to
24 materials and confidential materials, claimed confidential

1 materials.

2 CHAIRMAN GETZ: Okay. Let's -- did you
3 have anything further?

4 MR. CUNNINGHAM: No. Thank you very
5 much, Mr. Chairman.

6 CHAIRMAN GETZ: Ms. Hatfield.

7 MS. HATFIELD: Thank you, Mr. Chairman.
8 The OCA is still reviewing PSNH's filing, and intend to
9 engage in discovery and work with the parties and Staff in
10 order to develop a position on the request. But we did
11 want to raise a few issues that we're focusing on in our
12 review of the docket. One is the size of the request. In
13 looking at other recent requests for long-term financings
14 from PSNH, \$600 million is certainly much larger than
15 other recent requests. Secondly, is the time frame for
16 which PSNH is seeking approval. If we understand their
17 request correctly, they're seeking approval through
18 December 31st of 2012, which we think is significantly
19 longer than past authorizations that the Company has
20 received. For example, in docket DE 09-033, they sought
21 authority for about a 12 month -- 10 or 12 month period,
22 as opposed to almost three years in this case.

23 We also, if we are looking at the filing
24 correctly, and I believe Ms. Shively mentioned this in her

1 opening statement, that we see that the Company has
2 proposed two issuances that total about \$435 million. So,
3 we will be looking into why they're requesting approval
4 for 600 million.

5 And, then, finally, with respect to
6 PSNH's short-term debt request, I'm sure the Commission
7 recalls in that '09 docket, PSNH sought approval and was
8 approved to have their short-term debt limit increased, so
9 that it was set at 10 percent of net plant, plus
10 \$60 million, and that would expire at the next filing,
11 which is the filing or the docket that we're in now. And,
12 if we understand correctly, PSNH is now seeking for that
13 approval to run indefinitely. So, that will be another
14 issue that we'll be looking at.

15 With respect to the scope of the docket,
16 we think that the various statutes on the authority for
17 utilities to issue securities and to mortgage property
18 apply, the 369 statutes, including the usual review that
19 the Commission does on the amount of the issue, the
20 purpose or purposes to which the proceeds will be used,
21 and also the impact on ratepayers.

22 With respect to the intervention request
23 of the Sierra Club, we take no position. Thank you.

24 CHAIRMAN GETZ: Okay. Thank you. Ms.

1 Amidon.

2 MS. AMIDON: Thank --

3 CHAIRMAN GETZ: Well, actually, I'll
4 hold on this. But I think -- I was going to ask,
5 Ms. Shively, if you'll be able to respond today to the
6 question that Ms. Hatfield raised about, I guess, it's the
7 addition of the two issuances, if that's something that
8 you can briefly address? But, Ms. Amidon.

9 MS. AMIDON: Thank you. Staff has begun
10 to review the filing, and we will be conducting discovery
11 and we will meet with the parties following this
12 prehearing conference to develop a procedural schedule for
13 the orderly process of this proceeding. As was referenced
14 by the Consumer Advocate, RSA 369 applies. And, as the
15 Commission did in the last PSNH filing, and with the
16 financing filings that you receive from other utilities,
17 there will be a form of an Eastman review as to the
18 purpose or purposes to which these funds will be put, the
19 amount of money involved, and, in addition, we will be
20 asking the Company to provide us with rate impacts that
21 result from the filing.

22 Having said that, with respect to the
23 Petition to Intervene, we take no position.

24 CHAIRMAN GETZ: Okay. Ms. Shively, do

1 you have anything else?

2 MS. SHIVELY: May I have just a moment?

3 CHAIRMAN GETZ: Sure.

4 (Off the record.)

5 CHAIRMAN GETZ: Ms. Shively.

6 MS. SHIVELY: Yes. Regarding the
7 intervention, I would just simply like to say that we have
8 a very strong objection to leaving this proceeding open
9 until the air cases are resolved. We, obviously, do not
10 believe that our projects that are designed to decrease
11 pollution violate the Clean Air Act. It doesn't make a
12 lot of sense. And, there have been ample opportunities
13 for discovery in those other forums. I think that the
14 Sierra Club is simply not satisfied with the results that
15 they have obtained there. And, if they're admitted as an
16 intervenor in this case, we're going to be spending a lot
17 of time objecting to data requests unnecessarily.

18 It wasn't clear to me exactly what you
19 were asking about --

20 CHAIRMAN GETZ: Well, maybe it would be
21 better for Ms. Hatfield to repeat the question or the
22 issue that she was concerned in following up on.

23 MS. HATFIELD: Sure. Thank you, Mr.
24 Chairman. The request is for \$600 million. And, when we

1 reviewed the filing, we saw two issuances; one of 210 and
2 the other of 225, which I believe Ms. Shively described in
3 her opening, which equals 435 million. So, one of the
4 areas we wanted to explore in discovery was the difference
5 between those two amounts.

6 MS. SHIVELY: We're certainly prepared
7 to address that in both the technical session and in
8 discovery. I think that the short answer is that there
9 are -- there are two financings planned. The other
10 amounts are to provide additional flexibility. And, as I
11 indicated before, in light of the rate case settlement, I
12 think we'll be looking at reducing potentially that
13 request somewhat.

14 CHAIRMAN GETZ: Okay. Thank you.
15 Anything else?

16 (No verbal response)

17 CHAIRMAN GETZ: All right. Anything
18 further this afternoon?

19 (No verbal response)

20 CHAIRMAN GETZ: All right. Well, let me
21 address the Petition to Intervene and the scope issues
22 this way. We intend to take the matters under advisement
23 and not issue a ruling from the Bench today. I think that
24 may -- I guess my concern was as a practical concern of

1 how that plays into the technical session, and whether
2 there's going to be effectively, Mr. Cunningham, that
3 you're going to be pressing for a longer procedural
4 schedule than might be the case. I think I'm inclined to
5 let the parties go to technical session. If they can
6 agree on a procedural schedule, fine. If they can't agree
7 on a procedural schedule, and if we get two different
8 recommendations, then we'll deal with that.

9 But I would say this, Mr. Cunningham.
10 I'm very concerned about the scope issue, and whether this
11 Commission would have any authority in any proper way to
12 effectively make rulings that are related to Clean Air Act
13 issues. I don't think that you have drawn a clear
14 roadmap, either in your petition or in your comments
15 today, how those issues relate to issues that we would be
16 deciding under RSA Chapter 369.

17 But we're going to take those arguments
18 under advisement for the time being, and then await a
19 recommendation from the parties as to the procedural
20 schedule for this hearing.

21 So, is there anything further?

22 (No verbal response)

23 CHAIRMAN GETZ: Okay. Hearing nothing,
24 then we will close the prehearing conference and take the

1 matter under advisement.

2 (Whereupon the prehearing conference
3 ended at 2:08 p.m.)

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