

**THE STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION**

Docket No. DE 11-250

**Public Service Company of New Hampshire
Investigation of Scrubber Costs and Recovery**

MOTION FOR DISQUALIFICATION



Pursuant to the N.H. Admin. Rules, Puc 203.07, and in accordance with the standards set forth in RSA 363:12 and/or RSA 21-G:22, Jim and Sandy Dannis (“Ratepayer Dannis”) hereby move for the disqualification of Commissioner Michael Harrington from hearing or otherwise participating in this proceeding. In support of this Motion, Ratepayer Dannis states the following:

1. Commissioner Harrington was confirmed by the State of New Hampshire Executive Council as a newly appointed Commissioner of this Commission on March 7, 2012. During the Council’s review of Mr. Harrington’s nomination, it was disclosed that Mr. Harrington currently possesses a vested right to payment of a sizeable pension¹ from Northeast Utilities based on his approximately 20 years of employment at Seabrook Station during which time when it was owned by PSNH, a subsidiary of Northeast Utilities (“NU”), or by other NU subsidiaries. As set forth in greater detail below, Mr. Harrington’s NU pension constitutes a private interest which may affect or influence his perspectives in hearing and ruling on this proceeding.

Facts and Law Supporting This Motion

NHPUC MAR09/12 PM 4:27

¹ During deliberations before the Executive Council, Mr. Harrington refused to disclose the amount of money payable to him under his NU pension or the current value of his interest in the pension.

2. The instant proceeding addresses rate recovery for costs of PSNH's \$422 million Scrubber Project at Merrimack Station. According to PSNH's petition, it is seeking to add in excess of \$300 million to its rate base through this proceeding.

3. The outcome of this proceeding will affect the financial condition of Northeast Utilities ("NU"). In its annual Form 10-K, filed with the U.S. Security and Exchange Commission on February 24, 2012², NU disclosed this proceeding as a "Risk Factor" that could adversely affect its financial condition as follows:

[Risk Factors]

Judicial or regulatory proceedings or changes in regulatory or legislative policy could jeopardize full recovery of costs incurred by PSNH in constructing the Clean Air Project.

Pursuant to New Hampshire law, PSNH placed the Clean Air Project in service at its Merrimack Station in Bow, New Hampshire. PSNH's recovery of costs in constructing the project is subject to prudence review by the NHPUC. A material prudence disallowance could adversely affect PSNH's financial position, results of operations or cash flows. While we believe we have prudently incurred all expenditures to date, we cannot predict the outcome of any prudence reviews. **Our projected earnings and growth could be adversely affected were the NHPUC to deny recovery of some or all of PSNH's investment in the project.** (Emphasis added).

4. NU's annual Form 10-K also states that its economic condition is almost entirely dependent on the earnings it receives from its regulated utility subsidiaries, such as PSNH.

According to its 10-K,

As a holding company with no revenue-generating operations, NU parent's liquidity is dependent on dividends from its subsidiaries, primarily the Regulated companies, its bank facility, and its ability to access the long-term debt and equity capital markets.

NU parent is a holding company and as such, has no revenue-generating operations of its own. **Its ability to meet its debt service obligations and to pay dividends on its common shares is largely dependent on the ability of its subsidiaries to pay dividends to or to repay borrowings from NU parent;** and/or NU parent's ability to access its credit facility or the long-term debt and equity capital markets. Prior to funding

² A copy of relevant pages of NU's 2011 Form 10-K are attached hereto as Exhibit 1.

NU parent, the Regulated companies have financial obligations that must be satisfied, including among others, their operating expenses, debt service, preferred dividends (in the case of CL&P) and obligations to trade creditors. Additionally, the Regulated companies could retain their free cash flow to fund their capital expenditures in lieu of receiving equity contributions from NU parent. Should the Regulated companies not be able to pay dividends to or repay funds due to NU parent or if NU parent cannot access its bank facilities or the long-term debt and equity capital markets, NU parent's ability to pay interest, dividends and its own debt obligations would be restricted. (Emphasis added).

In light of the sums at stake in this proceeding, in excess of \$400 million dollars, NU's disclosure unequivocally demonstrates that the Commission's ruling in the instant proceeding could materially impact NU's ability to pay its own debt obligations.

5. The risk disclosure in NU's 2011 Form 10-K follows similar disclosures in its 2010 10-K which directly and unambiguously link NU's financial well-being to determinations by the Commission. For example, NU reported that the Commission's decisions addressing customer migration could "decrease" NU's revenues,

Migration of customers from PSNH energy service to competitive energy suppliers could increase the cost to the remaining customers of energy produced by PSNH generation assets and decrease our revenues.

PSNH's ES rates have been higher than competitive energy prices offered to some customers in recent years, primarily due to lower natural gas prices. As a result, by the end of 2010, approximately 2 percent of PSNH's retail customers (representing approximately 32 percent of load), mostly large commercial and industrial customers, were buying their energy from competitive suppliers rather than from PSNH. The remaining retail customers are experiencing an increase in the cost of energy service supplied by PSNH by 5 percent to 7 percent due to migration of large commercial and industrial customers and the lower base in which to recover PSNH's fixed generation costs. This increase may in turn cause further migration and further increasing of PSNH energy service rates. This trend could lead to PSNH continuing to lose retail customers and increasing the burden of supporting the cost of its generation facilities on remaining customers and being unable to support the cost of its generation facilities through an ES rate.

The NHPUC is examining this issue in a proceeding in which hearings ended on December 1, 2010. PSNH has suggested transferring some fixed costs of the generation facilities into a nonbypassable charge while intervening competitive suppliers have proposed taking over the purchased power portion of the load not supplied by PSNH's

generation. Others have also proposed having PSNH bid all of its generation facilities into the market while an RFP process supplies all of the power for PSNH's energy service. **The NHPUC is considering further proceedings to explore these and other issues as well as the NHPUC authority to require PSNH to divest its generation facilities. It is not known what the results of such a proceeding would be, what PSNH may realize as a result of the sale or retirement of one or more of its generation facilities, or to what extent or manner the NHPUC would provide for recovery of any investment in its generation facilities.** (Emphasis added).³

6. NU needs earnings by its subsidiaries, such as PSNH, to pay its debt and financial obligations. Thus, if vested NU pension obligations require contributions by NU in order to be paid, full payment of any such pension benefits is dependent on the health of NU's financial condition, and consequently, the ongoing earnings of NU subsidiaries like PSNH. NU's pension obligations, however, are underfunded by hundreds of millions of dollars. As provided in a memorandum (at page 9) prepared by Responsible Energy Action LLC (attached as Exhibit 3) and incorporated in full into this Motion, and provided to the Executive Council on March 6, 2012,

Northeast Utilities' pension plan is among the most materially underfunded among large US companies. In other words, the value of the pool of investment securities set aside in the pension trust is much less than the current value of the pension obligations (including, per our assumptions, Mr. Harrington's pension). The funding shortfall as reported by Goldman Sachs⁴ is close to \$1 billion and is highly material to Northeast Utilities' financial position and results. To be sure this point is understood, if the pension plan were terminated today, there would not be enough money to pay all the pensions. If Northeast Utilities suffers business reversals or goes bankrupt, pension obligations may not be funded by the company, and the underfunding shortfall may grow. This is made an express term of the **Northeast Utilities pension plan** in Section 14.1, which provides that "the Company maintains the right to suspend, terminate, or completely discontinue contributions under the Plan". **For pension holders such as Mr. Harrington, the practical consequence is that his investment experience as a holder of a vested pension depends materially on the credit of Northeast Utilities, just as would the investment of a bondholder.**

³ A copy of relevant pages of NU's 2010 Form 10-K are attached hereto as Exhibit 2.

⁴ A copy of the Goldman Sachs report detailing the extent to which NU's pension obligations are underfunded entitled, **Markets Take Their Toll on Pension Funded Status**, August 15, 2011 is attached as Exhibit 4.

7. According to NU's 2011 10-K, PSNH's 2011 operating income was \$180.1 million and PSNH paid \$112.6 million into NU's pension plan, or an amount equal to 63% of operating income. Of NU's 2011 pension plan contribution of \$143.6MM, \$112.6MM, or 78%, was funded by PSNH. With NU's pension plan severely underfunded, with NU dependent on subsidiary earnings / dividends for financing, and with the Commission essentially determining the amounts and timing of the dividends flowing upstream to NU from PSNH, it is obvious as a financial matter that an NU pension holder has a private interest in PSNH's financial condition. Simply put, payment of NU's pension obligations is dependent on continued return on equity and regulated rate base recovery being provided by state utility commissions supervising its regulated utility subsidiaries. As NU disclosed to its shareholders, the decision to be made by the Commission in this docket will materially impact the ability of NU to cover its debts. Among those debts are pension obligations to its ex-employees such as Commissioner Harrington.

8. Under the New Hampshire Executive Code of Ethics, "executive branch officials shall not participate in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties." RSA 21-G:22. The right to payments from NU's pension plan amount to a private interest held by Commissioner Harrington and decisions made by the Commission will materially affect the ability of NU to meet its pension obligations. It is axiomatic that the private pecuniary interest held by Commissioner may directly or indirectly influence his perspective on cost recovery for PSNH.

9. RSA 363:12, IV requires a PUC Commissioner to "disqualify himself from proceedings in which his impartiality might be reasonably questioned." In Docket 11-184, Commissioner Ignatius disqualified herself under much less obvious circumstances than are

present here (i.e., due to her husband having been involved in negotiations with a third party power supplier to PSNH). See Letter to Parties in DE 11-184, dated August 23, 2011. We respectfully suggest that such a disqualification of Commissioner Harrington is required in the instant proceeding and is necessary to maintain the integrity of the Commission's oversight of public utilities in the state.

WHEREFORE, we respectfully request that Commissioner Harrington be disqualified from this proceeding.

Respectfully submitted,

Sandy and Jim Dannis

A handwritten signature in black ink, appearing to be 'Jim Dannis', written over a horizontal line.

By:

Jim Dannis
117 McGinty Road
Dalton, New Hampshire 03598
603-837-9246
jim@dannis.net

Dated: March 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2012, a copy of the foregoing Petition to Intervene by Ratepayer Jim and Sandy Dannis was sent electronically to all persons on the service list for this proceeding, DE 11-250.

Dated in Dalton, New Hampshire this 9th day of March, 2012.

A handwritten signature in black ink, appearing to read 'Jim Dannis', is positioned above a horizontal line.

Jim Dannis
117 McGinty Road
Dalton, New Hampshire 03598
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jim@dannis.net