

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

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**  
**Investigation of Merrimack Station Scrubber Costs and Cost Recovery**

**Joint Motion for Full Commission and Appointment of Special Commissioner**

NOW COMES the Office of the Consumer Advocate (“OCA”), TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, “TransCanada”), and the Conservation Law Foundation (“CLF”) (collectively, the “Moving Parties”), and respectfully move this Honorable Commission, pursuant to RSA 363:20, to apply to the Governor and Executive Council to appoint a special commissioner so that this matter shall be conducted before a full three member Commission. In support of this Motion, the Moving Parties state:

1. This matter arises from Public Service Company of New Hampshire’s (PSNH) request, filed on November 18, 2011, that the Commission grant recovery of the \$420 million costs of the scrubber installed at Merrimack Station, the PSNH-owned generation station in Bow, NH.
2. On March 9, 2012, Commissioner Robert Scott recused himself from the docket. See letter from Commissioner Robert Scott in DE 11-250, (March 9, 2012). Since then, the Commission has conducted this matter with only two commissioners.

3. The evidence in this case is substantial and detailed. The Commission must interpret RSA 125-O:18 et seq. and determine whether PSNH acted prudently – that is, how a similarly- situated, skilled utility manager would have acted – with respect to its decision to install and continue construction of the scrubber at various points in time. This matter has an extensive and contentious procedural history, including a PSNH appeal to the New Hampshire Supreme Court (which was denied). It is currently scheduled for hearings in March of 2014.

4. Currently, there are pending motions to strike intervenor testimony which were filed by PSNH. Resolution of these motions will fundamentally affect the submission of evidence on which the case will be decided. The Moving Parties request a full three person Commission deliberate the merits of these pending motions.

5. RSA 363:20 gives the Governor authority, upon application of the Commission, and with the consent of the Executive Council, to appoint a special commissioner to act in place of a disqualified commissioner.

6. This docket concerns a very large expenditure of money by PSNH which, if found to have been prudently incurred, would be recovered from PSNH default service customers. *See* RSA 125-O:18. All parties to the docket have invested a significant amount of time and resources to this matter. Absent the appointment of a third, special commissioner, the Commission could reach a deadlock between two commissioners if there are only two commissioners sitting

on this matter.<sup>1</sup> Moreover, this matter likely will result in appellate review. For these reasons the Moving Parties believe that the public interest will best be served if a full Commission hears this matter and renders a decision.

7. The orderly conduct of this proceeding will not be impaired by granting this petition. The Moving Parties have requested a full Commission well in advance of the scheduled hearing date.

8. The OCA sought the position of the parties on the service list and received the following responses: Sierra Club supports the motion; Staff takes no position and PSNH does not concur.

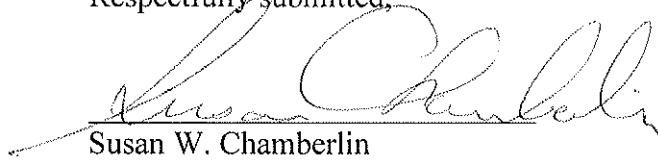
WHEREFORE, the Moving Parties respectfully request that this honorable Commission:

- A. Grant the request for a full Commission to hear this matter;
- B. Apply to the Governor for the appointment of a special commissioner to hear this matter;
- C. Make such application prior to deciding the merits of PSNH's pending motions to strike intervenor testimony.
- D. Grant such other relief as may be just and equitable.

---

<sup>1</sup> See RSA 363:16 which requires a quorum of two commissioners to issue an order. See also Order No. 17,222 in DF 84-167, 69 NH PUC 522 (1984) where a special commissioner was appointed to make a full complement of three commissioners when one commissioner recused himself from participating in a docket.

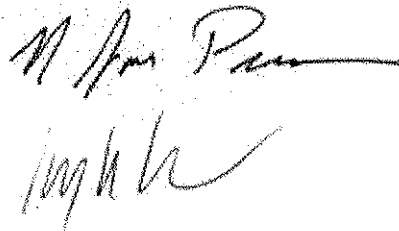
Respectfully submitted,



Susan W. Chamberlin  
Consumer Advocate  
Office of the Consumer Advocate  
21 South Fruit Street, Suite 18  
Concord, NH 03301  
(603) 271-1174  
[Susan.chamberlin@oca.nh.gov](mailto:Susan.chamberlin@oca.nh.gov)

---

Douglas L. Patch  
TransCanada Power Marketing Ltd.  
TransCanada Hydro Northeast Inc.  
By Their Attorneys  
ORR & RENO, P.A.  
45 South Main St., P.O. Box 3550  
Concord, NH 03302-3550  
Telephone: (603) 223-9161  
[dpatch@orr-reno.com](mailto:dpatch@orr-reno.com)



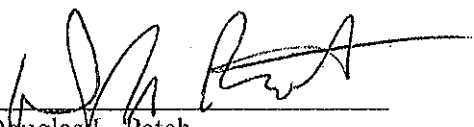
---

N. Jonathan Peress  
Ivy L. Frignoca  
Conservation Law Foundation  
27 N. Main Street  
Concord, NH 03301  
(603) 225-3060  
[njperessclf.org](http://njperessclf.org)

Respectfully submitted,

---

Susan W. Chamberlin  
Consumer Advocate  
Office of the Consumer Advocate  
21 South Fruit Street, Suite 18  
Concord, NH 03301  
(603) 271-1174  
[Susan.chamberlin@oca.nh.gov](mailto:Susan.chamberlin@oca.nh.gov)



---

Douglas L. Patch  
TransCanada Power Marketing Ltd.  
TransCanada Hydro Northeast Inc.  
By Their Attorneys  
ORR & RENO, P.A.  
45 South Main St., P.O. Box 3550  
Concord, NH 03302-3550  
Telephone: (603) 223-9161  
[dpatch@orr-reno.com](mailto:dpatch@orr-reno.com)

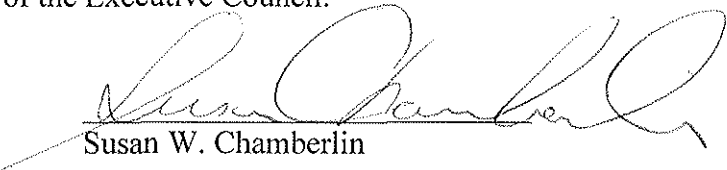
---

N. Jonathan Peress  
Ivy L. Frignoca  
Conservation Law Foundation  
27 N. Main Street  
Concord, NH 03301  
(603) 225-3060  
[njperessclf.org](http://njperessclf.org)

January 8, 2014

Certificate of Service

I hereby certify that on this 8<sup>th</sup> day of January, 2014 a copy of the foregoing motion was sent by electronic mail to the Service List and that copies of this Motion were hand delivered to the Governor and Members of the Executive Council.



Susan W. Chamberlin