

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Docket No. DE 11-250

Public Service Company of New Hampshire

Investigation of Merrimack Station Scrubber Project and Cost Recovery

OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO JOINT MOTION FOR FULL COMMISSION
AND APPOINTMENT OF SPECIAL COMMISSIONER

Public Service Company of New Hampshire (hereinafter “PSNH” or “the Company”) hereby objects to the Joint Motion for Full Commission and Appointment of Special Commissioner filed on January 8, 2014, by the Office of the Consumer Advocate (“OCA”), TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, “TransCanada”), and the Conservation Law Foundation, Inc. (“CLF”) (collectively, the “Moving Parties”). In that Motion, the Moving Parties note that in March, 2012, Commissioner Scott recused himself from participating in this docket. Now, nearly two years later, after the Commission has issued a dozen orders with a quorum of two commissioners, and based upon no identified change in circumstances, the Moving Parties claim that a quorum of two commissioners is insufficient for this proceeding. In addition, notwithstanding the Moving Parties’ claim to the contrary, the granting of their Motion would indeed impair the orderly conduct of this proceeding. For these reasons PSNH objects to the Motion.

In support of this Objection, PSNH states:

1. On October 14, 2011, in Docket No. DE 11-215, the docket to establish PSNH’s 2012 energy service (ES) rate, PSNH filed the joint testimony of Robert A. Baumann and William H. Smagula indicating that its flue gas desulfurization system (Scrubber Project) at Merrimack Station was placed in service on September 28, 2011. The Scrubber Project was installed at Merrimack Station pursuant to RSA 125-O:11. In the filed testimony PSNH

proposed to begin recovery of the costs associated with the Scrubber Project in ES rates effective with service rendered on and after January 1, 2012. See “Order of Notice,” Docket No. DE 11-250, December 1, 2011 at 1.

2. On November 18, 2011, PSNH filed a motion for the establishment of temporary rates effective January 1, 2012, for costs associated with the Scrubber Project. In the petition, PSNH expressed concern that a delay in the initiation of cost recovery for the Scrubber Project investments would set the stage for added costs to customers and a period of rate volatility. *Id.* at 2.

3. On December 1, 2011, the Commission issued its Order of Notice establishing this docket.

4. Commissioner Robert R. Scott began his term as a Commissioner on March 7, 2012. Two days later, by letter dated March 9, 2012, Commissioner Scott recused himself from participating in this docket “to avoid even the appearance of impropriety given [his] recent regulatory involvement with the Merrimack Station Scrubber Project for the New Hampshire Department of Environmental Services to which this docket applies.”

5. On that same date of March 9, 2012, a “Motion for Disqualification” of Commissioner Michael D. Harrington was filed by “Ratepayer Dannis.”¹ That Motion was expressly supported by two of the instant Moving Parties, CLF² and OCA.^{3,4} By Order No. 25,342 dated April 3, 2012, the Commission denied the Motion to Disqualify Commissioner Harrington.⁵

¹ Commissioner Harrington’s term as Commissioner also began on March 7, 2012.

² Hearing Transcript, March 12, 2012 at 35-36; “CLF’s Response to Motion for Disqualification,” March 19, 2012.

³ Hearing Transcript, March 12, 2012 at 36-37.

⁴ The Sierra Club’s position on the Motion to Disqualify Commissioner Scott was ambiguous. During the March 12, 2012, hearing, Sierra Club stated it would, “take the position of not necessarily supporting the motion, but supporting the seriousness of the motion and the importance of investigating it....But, again, these are serious issues that ratepayer Dannis has raised, and I think that they deserve a full airing, just to protect the integrity of the process.” Hearing Transcript, March 12, 2012 at 37.

⁵ The Commission’s denial of the Motion to Disqualify Commissioner Harrington remains subject to potential appeal. See *Appeal of Northern New England Telephone Operations, LLC*

6. Subsequent to Commissioner Scott’s recusal, this docket has proceeded before the Commission with a quorum of two commissioners. As the Moving Parties note, such a quorum of two commissioners meets the statutory requirements of RSA 363:16: “A majority of the commission shall constitute a quorum to issue orders or adopt rules, and any hearing or investigation may be held or conducted by 2 commissioners or by a single commissioner.”⁶

7. Subsequent to Commissioner Scott’s recusal, with a quorum of two commissioners, the Commission has issued a dozen orders in this proceeding, covering a wider gamut of issues than the Commission would routinely face in any proceeding, from orders dealing with discovery matters, to rulings on scope, to the setting of rates.⁷ Those orders include:

- a. Order No. 25,334, March 12, 2012, “Order Granting in Part Motion to Compel”;
- b. Order No. 25,342, April 3, 2012, “Order Denying Motion to Disqualify”;
- c. Order No. 25,346, April 10, 2012, “Order Granting Temporary Rates”;
- d. Order No. 25,361, May 11, 2012, “Order Denying Motion for Rehearing and/or Reconsideration of Order 25,334”;
- e. Order No. 25,398, August 7, 2012, “Order Regarding TransCanada Motion to Compel”;
- f. Order No. 25,445, December 24, 2012, “Order Regarding TransCanada’s Motions to Compel”;
- g. Order No. 25,506, May 9, 2013, “Order Granting Motion for Rehearing in Part”;
- h. Order No. 25,522, June 2, 2013, “Order Denying Request”;
- i. Order No. 25,546, July 15, 2013, “Order Denying Second Motion for Rehearing and Clarifying Scope”;
- j. Order No. 25,565, August 27, 2013, “Order Denying Third Motion for Rehearing”;
- k. Order No. 25,566, August 27, 2013, “Order Compelling Deposition”;
- l. Order No. 25,592, November 1, 2013, “Order Affirming Hearing Examiner’s Deposition Report and Suspending Procedural Schedule.”

d/b/a Fairpoint Communications – NNE, __ N.H. __, 75 A.3d 1102, 1107-08 (2013).

⁶ RSA 363:17, “Request for Full Commission,” was not cited in the Motion. That statute only proscribes hearings “by a single commissioner” if invoked by a party. Here, the quorum of two commissioners already seated also fulfills the requirements of RSA 363:17.

⁷ Although issued prior to the beginning of the terms of both Commissioners Scott and Harrington, the only other order in this proceeding, Order No. 25,332, February 6, 2012, “Order on Motion for Protective Order and Confidential Treatment” was also issued by a quorum of two commissioners (Commissioners Below and Ignatius).

8. At no time during the almost two years that have elapsed since the recusal of Commissioner Scott or the denial of the Motion to Disqualify Commissioner Harrington did any of the Moving Parties, or any other party, suggest that a quorum of two commissioners was insufficient to properly preside over this proceeding.

9. The Moving Parties provide no reason whatsoever to explain why they waited nearly two years to express their belief “that the public interest will best be served if a full Commission hears this matter and renders a decision.” Motion at ¶6. By implication, the Moving Parties must believe that the thirteen orders issued in this docket by only a quorum of two commissioners somehow fail to adequately serve the public interest. Given the broad scope of the issues decided in those myriad orders, if the Moving Parties’ concerns had merit, the very core of this docket to date would be put into question.

10. Given the recusal of Commissioner Scott, and the strong objections to the participation of Commissioner Harrington in this proceeding supported by OCA and CLF, the Moving Parties had full knowledge and opportunity to make a request for appointment of a special commissioner in early 2012. The Moving Parties provide absolutely no explanation why they waited nearly two years to make their request; the Moving Parties provide no explanation whatsoever why the previous thirteen orders issued in this proceeding by a quorum of two commissioners are in any manner inadequate to meet the public interest; the Moving Parties point to no circumstance or event that has recently transpired that now necessitates the filing of their Motion. The Moving Parties’ request is untimely, and must therefore be denied.⁸

11. The Moving Parties claim that “The orderly conduct of this proceeding will not be impaired by granting this petition.” Motion at ¶7. They base this claim on the fact that their Motion was filed “well in advance of the scheduled hearing date.” *Id.* The Moving Parties

⁸ “There has been no timely request for the full Commission to sit on the instant proceeding pursuant to RSA 363:17. Even if such a request had been received, it would not be necessary to schedule further proceedings because a quorum of the Commission was present at the hearings already held. See, RSA 363:16.” *Re Public Service Co. of New Hampshire*, 69 NHPUC 522, 532 (1984).

are wrong: the granting of their Motion would indeed disrupt the orderly conduct of this proceeding. In fact, by their own Motion the Moving Parties expressly request such a disruption - a disruption that would necessitate further delays in reaching the hearing date milestone referred to by the Moving Parties.

12. In their Motion, the Moving Parties request that the Commission delay action on four pending Motions to Strike until there is a full three-person Commission to deliberate the merits of those motions.⁹ Motion at ¶4. The pleading process regarding those motions is now complete; hence, those motions are ripe for Commission decision now. The Moving Parties urge the Commission not to act on those motions, but instead to delay such action and await: completion of the pleading process for their instant, later-filed Motion, the decision of the Commission on the Motion, and if the Motion is granted, the application to the Governor by the Commission seeking appointment of a special commissioner, the Governor's consideration of that request, and, if deemed appropriate by the Governor, the Governor's search and selection of a special commissioner nominee to present to the Executive Council; followed by the Executive Council's deliberation and action on that nomination. Despite this significant delay the Moving Parties' request would have on the orderly proceeding of this docket, they have the temerity to allege that "[t]he orderly conduct of this proceeding will not be impaired by granting this petition (sic)." Motion at ¶7.

13. The Commission should also consider the fact that neither TransCanada nor CLF have demonstrated rights, duties, or privileges that are impacted by this docket. *See* Secretarial Letter, December 23, 2011. Their status as party intervenors was granted pursuant to RSA 541-A:32, II, which requires that discretionary grants of intervention "not impair the orderly and prompt conduct of the proceedings." The Moving Parties' request in the Motion would unquestionably violate that statutory standard, bringing into question the legal standing of their continued intervention.¹⁰

⁹ On December 31, 2013, PSNH filed four motions to strike certain portions of pre-filed testimony. On January 10, 2014, objections to PSNH's motions were submitted by the Moving Parties.

¹⁰ In its "Objection to Public Service Company of New Hampshire's Motions to Strike Testimony" dated January 10, 2014, TransCanada repeats its request to delay this proceeding: "The Commission should withhold judgment on the Motions to Strike until all

WHEREFORE, for the reasons set forth above, the Joint Motion for Full Commission and Appointment of Special Commissioner should be denied.

Respectfully submitted this 13th day of January, 2014.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Robert A. Bersak
Assistant Secretary and Chief Regulatory Counsel
Linda T. Landis
Senior Counsel
Public Service Company of New Hampshire
780 N. Commercial Street, P.O. Box 330
Manchester, NH 03105-0330
603-634-3355
Robert.Bersak@PSNH.com
Linda.Landis@PSNH.com

**McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION**

Wilbur A. Glahn, III
Barry Needleman
900 Elm Street, P.O. Box 326
Manchester, NH 03105
(603) 625-6464
bill.glahn@mclane.com
barry.needleman@mclane.com

commissioners who will sit on this case have the opportunity to review the Motions and Objections.” Objection at 1.

CERTIFICATE OF SERVICE

I certify that on this date I caused this Objection to be served to parties on the Commission's service list for this docket.

January 13, 2014


