

**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 REQUEST OF CONSERVATION LAW FOUNDATION**  
**REGARDING COMPOSITION OF COMMISSION**

Public Service Company of New Hampshire (hereinafter “PSNH” or “the Company”) hereby objects to the request of the Conservation Law Foundation, Inc. (“CLF”) regarding the composition of the Commission for this proceeding due to the nomination of Commissioner Ignatius to the Superior Court.

CLF presents the Commission with a false dilemma: it posits that the Commission must either continue this proceeding with Commissioner Ignatius or delay the hearings until a new commissioner is nominated and confirmed. CLF ignores the obvious alternative: the Commission may proceed with the current procedural schedule with two Commissioners. With the docket now at the eve of hearings, any other action would impair the orderly conduct of this proceeding, and would be contrary to the public interest and the economic interest of PSNH’s retail customers as the ensuing delay would create millions of dollars of additional project costs which ultimately may be borne by customers. For these reasons PSNH objects to CLF’s Request.

In support of this Objection, PSNH states:

1. On January 23, 2014, the Commission issued Order No. 25,622, “Order Granting in Part and Denying in Part Motion for Appointment of Special Commissioner.” In that Order the Commission noted the complex nature of this proceeding, and set forth two fundamental considerations supporting its decision to grant the Motion requesting appointment of a

Special Commissioner: i. the risk of a possible deadlock if only two Commissioners were available; and, ii. the risk of an unforeseen event that disqualifies one commissioner, leaving a single commissioner on the docket. Order No. 25,622 at 3.

2. Significantly, in that Order the Commission expressly ruled, “[w]e do not believe, however, that the entire proceeding should be held in abeyance while the special commissioner request and appointment proceeds.” *Id.* at 3. That Order directed “the parties to proceed with the procedural schedule, as it may be amended, and to continue preparing this case for a final hearing as soon as possible.” *Id.* at 4

3. The current procedural schedule calls for hearings to commence on October 14, 2014 – less than three weeks from now. In light of this brief period, the “risk of an unforeseen event that disqualifies one commissioner” occurring prior to hearings is now extremely remote. That leaves only the risk of a possible deadlock as a concern should the proceeding move forward with two, instead of three, commissioners sitting.

4. In the January 8, 2014, “Joint Motion for Full Commission and Appointment of a Special Commissioner,” the Joint Movants, which included CLF, stated at ¶ 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.

5. In its Request, CLF makes no similar claim. Hearings are now imminent. The risk of a deadlock must be viewed in light of the fact that the orderly conduct of this proceeding would indeed be impaired if those hearings had to be delayed while we await the appointment of a third commissioner. At best, hearings might be rescheduled for January or February of next year. At worst, the hearings could be delayed for even a longer period. There is no certainty that the Governor would entertain a request for another special commissioner, or would do so now, given the pending election. Likewise, the Governor (or a new Governor) may await the nomination and ratification of a new permanent commissioner. There is no way to predict how long that process might take. Moreover, with any new commissioner there is the possibility of recusal. In short, if the presently scheduled hearings are postponed there is the

possibility of substantial delay.

6. The costs that would accrue as a result of such delay are not trivial. Every month, carrying costs on the unrecovered project costs accrue. During August 2014, the monthly carrying cost based on PSNH's rebuttal testimony projections was approximately \$471,000 – and those carrying costs increase each month.<sup>1</sup> A delay in hearings of just four months in the proceeding (from October to February) – which in turn would result in a similar delay in the implementation of a permanent scrubber rate – would increase the costs subject to recovery by approximately \$2 million.<sup>2</sup> A worst-case delay pushing hearings until next June would increase the potential cost to consumers by approximately \$4 million.<sup>3</sup>

7. It is neither in the public interest nor the economic interest of PSNH's retail customers<sup>4</sup> to delay the hearings in this docket and create millions of dollars in additional costs based on the possibility that there *might* be a deadlock. The benefits of awaiting a third commissioner are far outweighed by the significant financial harm that would occur. The history of this docket indicates that the Commission has functioned well with just two commissioners presiding.<sup>5</sup> The risk of a deadlock is one worth taking to potentially save consumers millions

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<sup>1</sup> The carrying costs result from the fact that the Temporary Rate in place is insufficient to cover the total cost of the project.

<sup>2</sup> Calculated as the estimated November 2014 Deferral Return as shown in Attachment 1 hereto times 4 months (\$490,000 x 4 months = \$1.960 million).

<sup>3</sup> Calculated as the estimated November 2014 Deferral Return as shown in Attachment 1 times 8 months (\$490,000 x 8 months = \$3.920 million).

<sup>4</sup> See, e.g., RSA 369-B:3-a.

<sup>5</sup> As PSNH pointed out in its January 13, 2014, Objection to the original Joint Motion for Full Commission and Appointment of a Special Commissioner, the Commission had issued twelve different Orders with only two commissioners presiding. Those Orders were listed in PSNH's Objection. Since then, the Commission has issued four more Orders in this proceeding with only two commissioners:

- a. Order No. 25,630, "Order Denying Joint Motion to Designate Staff," February 14, 2014;
- b. Order No. 25,640, "Order on Motions to Strike Testimony," March 26, 2014
- c. Order No. 25,646, "Order on Motions to Compel and Motions to Rescind Intervenor Status," April 8, 2014; and
- d. Order No. 25,687, "Order on PSNH's Motion to Rescind TransCanada's Intervenor Status," July 2, 2014

of dollars.<sup>6</sup>

WHEREFORE, for the reasons set forth above, PSNH urges the Commission to proceed to hearings expeditiously, and not suspend this proceeding to await the appointment of a third commissioner.

Respectfully submitted this 24<sup>th</sup> day of September, 2014.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

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<sup>6</sup> Consider that in its prefiled testimony, the OCA raises as an issue in this proceeding the prudence of a \$50,000 payment made by PSNH to comply with a permitting requirement. That \$50,000 is less than the cost of three days of delayed cost recovery.

### **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.

September 24, 2014

  
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**ATTACHMENT 1**

Carrying Cost Workpaper

Public Service Company of New Hampshire  
Approximate Monthly Costs of Delaying the Scrubber Proceeding

Yearly Under Recoveries as Shown in PSNH Rebuttal Testimony dated July 11, 2014, Bates page number 709 (Attachment EHC-2):

2011 Scrubber under recovery	13,210	
2012 Scrubber under recovery	36,917	
2013 Scrubber under recovery	29,822	
Jan-April 2014 Scrubber under recovery	10,786	(A)
Remaining 2014 Projected Scrubber costs	39,612	(A)
Total projected May-Dec 2014 Recoveries	<u>(25,612)</u>	(A)
2014 projected Scrubber under recovery	24,786	Sum of (A) not shown on Bates page number 709; agrees to 2014 under recovery detailed below.
Total projected under recovery as of 12/31/14	<u>104,735</u>	

Costs, Recoveries and Deferral Return Included in the 2014 Projected Under Recovery as Shown in PSNH Rebuttal Testimony dated July 11, 2014, Bates page number 709 (Attachment EHC-2):

	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Total
Fuel Related and O&M Costs	2,914	2,617	3,215	1,999	1,682	1,945	1,945	1,931	1,742	1,685	2,101	2,384	26,160
Return on Rate Base	3,028	2,984	2,856	2,738	2,685	2,634	2,590	2,554	2,518	2,491	2,474	2,458	32,010
Recoveries	<u>(3,857)</u>	<u>(3,240)</u>	<u>(3,457)</u>	<u>(2,694)</u>	<u>(2,525)</u>	<u>(3,255)</u>	<u>(3,676)</u>	<u>(3,559)</u>	<u>(3,075)</u>	<u>(3,032)</u>	<u>(3,024)</u>	<u>(3,466)</u>	<u>(38,860)</u>
2014 Under Recovery before Deferral Return	2,085	2,361	2,614	2,043	1,842	1,324	859	926	1,185	1,144	1,551	1,376	19,310
Deferral Return	401	413	427	441	451	460	466	471	476	483	490	498	5,476
2014 Under Recovery	2,487	2,775	3,041	2,483	2,293	1,784	1,325	1,397	1,661	1,626	2,040	1,873	24,786

Calculation of Deferral Return:

	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Total
2014 Under Recovery before Deferral Return (from above)	2,085	2,361	2,614	2,043	1,842	1,324	859	926	1,185	1,144	1,551	1,376	19,310
Prior Month Cumulative Deferral Balance (excluding Return)	73,468	75,553	77,915	80,529	82,572	84,414	85,737	86,597	87,523	88,708	89,852	91,402	
Current Month Cumulative Deferral Balance (excluding Return)	75,553	77,915	80,529	82,572	84,414	85,737	86,597	87,523	88,708	89,852	91,402	92,778	
Average Cumulative Deferral Balance (exclucing Return)	74,510	76,734	79,222	81,550	83,493	85,075	86,167	87,060	88,115	89,280	90,627	92,090	
Cumulative Deferred Income Taxes (40.525%)	<u>(30,195)</u>	<u>(31,096)</u>	<u>(32,105)</u>	<u>(33,048)</u>	<u>(33,835)</u>	<u>(34,477)</u>	<u>(34,919)</u>	<u>(35,281)</u>	<u>(35,709)</u>	<u>(36,181)</u>	<u>(36,727)</u>	<u>(37,320)</u>	
Net Average Cumulative Deferral Balance (excluding Return)	44,315	45,637	47,117	48,502	49,657	50,599	51,248	51,779	52,407	53,099	53,900	54,771	
Weighted Average Cost of Capital	0.9058%	0.9058%	0.9058%	0.9087%	0.9087%	0.9087%	0.9087%	0.9087%	0.9087%	0.9087%	0.9087%	0.9087%	
Deferral Return	401	413	427	441	451	460	466	471	476	483	490	498	5,476
2014 Under Recovery													24,786