



conservation law foundation

For a thriving New England

CLF New Hampshire 27 North Main Street
Concord, NH 03301
P: 603.225.3060
F: 603.225.3059
www.clf.org

March 29, 2013

Via Electronic Mail and Hand Delivery

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



**Re: Docket No. DE 12-292
Public Service Company of New Hampshire 2013 Energy Service Rate**

Dear Ms. Howland:

On January 28, 2013, the Conservation Law Foundation (“CLF”) and six ratepayers who purchase energy service from Public Service Company of New Hampshire (“PSNH”) (“PSNH Ratepayers”) timely filed a motion for rehearing in the above-captioned docket pursuant to RSA 541:3. A copy of such motion is appended hereto and fully incorporated herein by reference.

CLF’s and the PSNH Ratepayers’ motion requests rehearing of Order No. 25,448, in which the Public Utilities Commission (“Commission”) approved PSNH’s request for a 9.54 cents/kwh rate – amounting to a 34 percent increase over PSNH’s 2012 default energy service rate of 7.11 cents/kwh. The motion requests rehearing on the grounds that PSNH had not filed a timely Least Cost Integrated Resource Plan (“LCIRP”), as mandated by RSA 378:38, and that, therefore, the Commission lacked statutory authority to approve PSNH’s requested rate change. *See* RSA 378:40 (“No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39.”).

RSA 541:5 establishes clear, unambiguous requirements for the Commission relative to motions for rehearing filed pursuant to RSA 541:3, stating:

Action on Motion. Upon the filing of such motion for rehearing, the commission *shall within ten days* either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order or suspension may be upon such terms and conditions as the commission may prescribe.

RSA 541:5 (emphases added). Thus, the Commission was required to have issued an order on CLF’s and PSNH Ratepayers’ motion for rehearing within ten days of its filing, or no later than February 7, 2013. Despite this requirement, as of the date of this correspondence, fully 59 days days after the filing of the subject motion for rehearing, the Commission still has failed to take action.

That the Commission act on CLF's and PSNH Ratepayers' motion for rehearing within a finite, ten-day period, is not a matter of discretion. To the contrary, as RSA 541:5 makes clear, it is a statutory *requirement* which the Commission, as a matter of law, was required to fulfill. Indeed, based on this unambiguous language, the New Hampshire Supreme Court strongly rejected the notion advocated by the state, on behalf of the Commission, that the ten-day limitation in RSA 541:5 is somehow "directory[,] not mandatory." *Appeal of Concord Natural Gas Corp.*, 121 N.H. 685, 690 (1981). As the Court stated with respect to the language of RSA 541:5, "[a]bsent an indication of legislative intent to the contrary, the word 'shall' acts as a command." *Id.* (concluding that the Commission "was in error in delaying action on the motion for rehearing for almost two months.").

The Commission's failure to timely act on CLF's and PSNH Ratepayers' motion for rehearing violates both RSA 541:5 and a specific directive of the Supreme Court in *Appeal of Concord Natural Gas Corporation*. There, despite concluding that appellants had not been prejudiced by the Commission's delay in responding to a motion for rehearing (appellants had alleged no such prejudice), the Court specifically directed: "the agency should conform its procedures to the statutory commands, and we require the PUC to do so in the future." *Id.* at 691.

The Commission's failure to comply with the ten-day limitation established by RSA 541:5 is contrary to law, depriving CLF and PSNH Ratepayers of due process, and materially prejudicing the interests of CLF, its members, and PSNH Ratepayers, by, without limitation, imposing a significantly higher energy service rate that, as set forth in the pending motion for rehearing, the Commission was not authorized to approve in the first instance.

In light of its clear statutory obligations, the Commission must immediately take action on CLF's and PSNH Ratepayers' motion for rehearing, vacating Order No. 25,448 and remedying the material prejudice already suffered by CLF and PSNH Ratepayers as well as any further material prejudice yet to occur during the pendency of the motion for rehearing.

Respectfully submitted,



N. Jonathan Peress
Conservation Law Foundation
(603) 225-3060
njperess@clf.org

cc: Service List in DE 12-292
Alexandra Dannis
James Dannis
William Hopwood
Janet Ward
Amy Matheson
George Chase