

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**2013 Default Energy Service Charge
Docket No. DE 12-292**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO
CONSERVATION LAW FOUNDATION'S AND RATEPAYERS' MOTION FOR
REHEARING OF ORDER NO. 25,448**

January 30, 2013

Pursuant to RSA Chapter 541 and New Hampshire Code of Administrative Rules Puc 203.07(f), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to "Conservation Law Foundation's and Ratepayers' Motion for Rehearing of Order No. 25,448" (the "Motion")¹ filed on January 28, 2013 in the above docket with the New Hampshire Public Utilities Commission ("Commission"). The bases for this Objection are that the Motion is nothing more than a reassertion of prior arguments that were rejected by the Commission and any argument that the Commission did not address the matters asserted in the context of this case is simply incorrect.

In support of its objection PSNH states as follows:

1. On September 28, 2012, PSNH filed a proposed default energy service rate for calendar year 2013 which was docketed as DE 12-292. Following discovery and the submission of testimony of various parties, PSNH filed an updated proposal on December 12, 2012. A duly

¹ The Motion was filed by CLF on behalf of itself and a group of named ratepayers, referred to collectively in the Motion as the Petitioners. The Motion states in a footnote that CLF was not "acting in the capacity of legal counsel for, nor otherwise representing the PSNH Ratepayers, and each is a separate party to the instant motion." Motion at footnote 1. For convenience, PSNH references only CLF in this objection.

noticed hearing was held on PSNH's proposal on December 19, 2012. On December 24, 2012, Conservation Law Foundation ("CLF"), which was not a party to the docket, filed a letter commenting on PSNH's proposal. Specifically, CLF's comment letter contended that PSNH's default energy service rate filing did not conform with various statutes relating to PSNH's Least Cost Integrated Resource Plan ("LCIRP").² See RSA 378:38-:42.

2. On December 28, 2012, the Commission issued Order No. 25,448 approving PSNH's proposed default energy service rate. On January 28, 2013, CLF filed the Motion contending that other than noting the filing of CLF's comment letter, Order No. 25,448 "did not otherwise acknowledge or discuss the content of CLF's Comment Letter." According to the Motion, "Petitioners now move for rehearing of the Order in light of the legal arguments raised in the Comment Letter." The Motion contends that the Commission should grant rehearing of Order No. 25,448 and deny PSNH's rate change "in light of the legal arguments raised in the Comment Letter." Motion at 4.

3. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

4. PSNH notes first that CLF was not a party to Docket No. DE 12-292. This fact was admitted by CLF ("[T]he Petitioners are not parties in the instant proceeding... ." Motion at ¶5), and was noted by PSNH in its objection to another CLF filing in the docket, see PSNH's December 26, 2012 Motion to Strike Objection of Conservation Law Foundation of December

² On January 29, 2013, the Commission issued Order No. 25,459 approving PSNH's LCIRP.

24, 2012, as well as by the Commission itself in Order No. 25,448. Accordingly, it is not clear that the Commission was ever required to address the content of CLF's letter within the context of its Order. Instead, the Commission was well within its discretion to treat the document as a comment from the public. As such, the Commission's alleged failure to acknowledge or discuss CLF's letter provides no basis for rehearing.

5. Further, PSNH notes that CLF is now attempting to transform its comment letter into a more substantive filing by referencing it in the Motion and admonishing the Commission for failing to respond to it. Thus, CLF's Motion merely reargues issues raised previously in search of a different result. CLF's argument that the Commission did not, or did not adequately, address the arguments CLF made in a prior document submitted to the Commission provides no justification to grant rehearing.

6. Should the Commission decide to address the argument within CLF's Motion, rather than dismiss the Motion on its face, the Motion presents no justification for rehearing. As noted, the entire argument in the Motion is that PSNH's default energy service rate filing did not conform to PSNH's LCIRP, that although the issue had been raised the Commission did not address it, and that the Commission lacks the statutory authority to approve a rate change unless a utility files a new LCIRP within two years of the date of its last filing. These contentions lack merit and do not require rehearing of the underlying Order.

7. During the hearing on this case, the Office of Consumer Advocate ("OCA") specifically raised the issues discussed by CLF in its letter and the Motion. *See* Transcript of December 18, 2012 hearing in DE 12-292 (Tr.) at 76-77. Moreover, the OCA noted that the issue was "raised in a filing in the Least Cost Integrated Resource Plan." Tr. at 76. The referenced LCIRP filing was one made by CLF in the context of Docket No. DE 10-261 regarding PSNH's LCIRP. Thus,

the arguments regarding the conformance of PSNH's filing to the requirements of the LCIRP were directly before the Commission in this docket and the Commission specifically addressed, and rejected, those arguments.

8. In Order No. 25,448, the Commission specifically stated "at hearing, the OCA asked the Commission to determine whether PSNH complied with RSA 378:40 in its petition to establish an energy service rate for 2013." Order No. 25,448 at 8. Following a well-reasoned discussion, the Commission concluded, in relevant part, that "PSNH's energy service filing conforms to the most recent LCIRP filed and found adequate by the Commission pursuant to RSA 378:41." Order No. 25,448 at 10. Therefore, regardless of whether the Commission directly addressed the substance of CLF's letter – which, as PSNH has noted it was not required to do – the entirety of the argument was before the Commission and was found wanting. As such, the Motion fails to establish any basis for rehearing.

9. PSNH recently briefed the requirements of RSA 378:38, *et seq.*, regarding the biennial filing of least cost integrated resource plans. That pleading, entitled "Motion to Strike and Objection to the December 17, 2012 Objection of Conservation Law Foundation," was filed in Docket No. DE 10-261 on December 19, 2012, and its content is incorporated by reference herein.³

10. Moreover, RSA 378:38-a provides that "The commission may waive any requirement to file least cost integrated resource plans by an electric utility under RSA 378:38, except for plans relating to transmission and distribution." This statute provides the commission with broad "waiver" authority pertaining to "any requirement to file" which would include the timing of

³ See ¶¶ 5-12. For the convenience of the Commission and parties, a copy is attached hereto as Attachment 1.

such filings. The Commission's broad waiver authority was noted by the Office of Consumer Advocate during the December 18, 2012, hearing in this proceeding. Tr. at 76-77.

11. Accordingly, based upon the record in this case, it is clear that any present argument in the Motion regarding the statutory authority of the Commission to effectuate the rate changes contained in Order No. 25,448 is nothing more than a reassertion of prior arguments that were rejected by the Commission, and any argument that the Commission did not address PSNH's LCIRP in the context of this case is simply incorrect. Thus, CLF's Motion should be denied.

WHEREFORE, PSNH respectfully requests that the Commission deny CLF's Motion for Rehearing of Order No. 25,448, and order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

January 30, 2013

Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached pleading to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

January 30, 2013

Date



Robert A. Bersak