

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

Appeal of PSNH Ratepayers

No. 2013-0307

NHPUC JUL09'13 PM 12:02

On Appeal by Petition under RSA 541
from an Order of the
New Hampshire Public Utilities Commission

**SUPPLEMENTAL MOTION
OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
FOR SUMMARY DISPOSITION**

July 9, 2013

Pursuant to RSA 541:16 and Rule 25 of this Court's Rules, Defendant-Appellee Public Service Company of New Hampshire ("PSNH") requests leave to submit this Supplemental Motion for Summary Disposition of the appeal filed by Appellants George Chase, Alexandra Dannis, James Dannis, William Hopwood, Amy Matheson, and Janet Ward (together "PSNH Ratepayers") from an Order issued by the New Hampshire Public Utilities Commission ("PUC").

RSA 541:16 provides a basis for parties to appeals brought under RSA 541 to bring to the Court's attention "Subsequent Proceedings" involving an order under appeal.

Similarly Rule 25(2) provides for the filing of a Motion of this nature “for the purpose of bringing to the court's attention the effect that an opinion issued since the filing of the docketed case may have on the docketed case.”

PSNH filed “Motions for Summary Disposition and Summary Affirmance” (“PSNH’s Motions”) on May 20, 2013, which are pending before the Court. PSNH seeks leave to supplement the outstanding motions as a result of PUC proceedings which have occurred subsequent to that filing.

The subject appeal is from Order No. 25,485, issued on April 5, 2013, by the PUC in its Docket No. DE 12-292, “2013 Default Energy Service Rate.” In their appeal, Appellants presented three questions, the second of which was, “2. Whether the PUC erred in permitting Public Service Company of New Hampshire (“PSNH”) to raise its default service rates despite PSNH’s failure to file its statutorily-required LCIRP biennially.” Notice of Appeal at 3.

Subsequent proceedings have occurred at the PUC which now render this Question 2 moot. Appellants’ state that Question 2 presented for review involves the PUC’s “decision to permit Public Service Company of New Hampshire (‘PSNH’) to raise its default service rates by 34% even though PSNH had not filed a biennial Least Cost Integrated Resource Plan (‘LCIRP’) as required by RSA 378:38 and 378:40.” Notice of Appeal at 4.

Two events have occurred at the PUC subsequent to the filing of the instant appeal which render Question 2 moot: (1) the filing of an LCIRP by PSNH with the PUC on June 21, 2013, pursuant to the directive of the PUC in Order No. 25,459 issued on January 29, 2013,

in its Docket No. DE 10-261 (*see* Supplemental Appendix of PSNH at 1)¹; and, (2) the issuance by the PUC of an opinion subsequent to the filing of this appeal via an order in its Docket No. DE 12-292 on June 27, 2013 - - Order No. 25,535 - - altering PSNH's default energy service rates effective July 1, 2013. *See* Additional Supplemental Appendix² at 2.

As noted in PSNH's Motions at 3, in its Order No. 25,459, the PUC accepted and found adequate PSNH's 2010 LCIRP and directed PSNH to file its next LCIRP on or before September 3, 2013. *See* Order No 25,459, Supplemental Appendix at 24. On June 21, 2013, PSNH complied with that Order by filing its next LCIRP consistent with the determinations and requirements set forth in Order No. 25,459. *See* Secretarial Letter of PUC, Additional Supplemental Appendix at 1.

On December 28, 2012, in its Docket No. DE 12-292, the PUC issued Order No. 25,448, establishing PSNH's default energy service rate effective January 1, 2013. *See* Appellants' Appendix ("Appendix") at 42. That order was affirmed by the PUC's Order on Rehearing, No. 25,485, which is the subject of this appeal. Appendix at 98. Subsequent to those Orders, on June 27, 2013, the PUC issued its Order No. 25,535, altering PSNH's default energy service rates effective July 1, 2013. *See* Additional Supplemental Appendix at 2.

As discussed in the Memorandum of Law in Support of PSNH's Motions ("Memorandum"), PSNH's default energy service rate is required by statute to be set by the PUC at PSNH's actual cost of providing that service. ("The price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by

¹ The "Supplemental Appendix" was filed as part of PSNH's initial Motions for Summary Disposition and Summary Affirmance.

² The "Additional Supplemental Appendix" is being filed with this instant pleading.

the commission.” RSA 369-B:3,IV(b)(1)(A); Memorandum at 8-9; *see also* NHPUC Order No. 25,535, Additional Supplemental Appendix at 5.)

The Appellants' primary issue/argument under Appeal Question 2 is that RSA 378:38 requires the “biennial” filing of LCIRPs by the state’s utilities. Because PSNH had not filed a LCIRP within a two-year period prior to January 1, 2013, since the PUC was still in the process of reviewing PSNH’s previously filed 2010 LCIRP, the Appellants allege that under RSA 378:40, (and notwithstanding the second sentence of that statute³), the PUC was precluded from authorizing the January 1, 2013 rate change to PSNH’s default energy service rate contained in Order No. 25,448. PSNH’s Motions challenge this allegation of Appellants. Now that issue has become moot.

PSNH’s default energy service rate is re-set semi-annually by the PUC. To comply with the statutory requirement for the rate to reflect PSNH’s actual, prudent, and reasonable costs of providing power, that rate is fully reconciled to correct for under- or over-recoveries resulting from changes to forecast costs or sales.⁴ Per RSA 369-B:3,IV(b)(1)(A) the PUC altered the default energy service rate of 9.54 cents per kilowatt-hour (ordered into effect as of January 1, 2013 by Order No. 25,448) by reducing that rate to 8.62 cents per kilowatt-hour (per Order No. 25,535 dated June 27, 2013).

³ The second sentence of RSA 378:40 reads, “However, nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.” *See* Memorandum at 8.

⁴ *See* PUC Order No. 25,448, Appendix at 48. “The genesis of the two-part procedure for calculating default service rates, which PSNH refers to as ES rates, and the reconciliation of those rates, lies in RSA 374-F, and the Settlement Agreement in Docket No. DE 99-099, which implemented electric utility restructuring for PSNH, and Docket No. 02-166, Order No. 24,117 (January 30, 2003), which further refined the mechanism for setting transition service rates, now ES rates. Because PSNH is entitled to recover its actual costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting ES rates. The first step, which is determined in this docket, is based upon an estimate of future costs for the following calendar year. The second step, which occurs after the power has been produced or purchased and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.”

Because PSNH filed an LCIRP on June 21, 2013 pursuant to the schedule established by the PUC in its Order No. 25,459; because on June 27, 2013, the PUC altered the default energy service rate that is the subject of this appeal; and, because that default energy service rate was fully reconciled by the PUC in order to comply with the actual, prudent, and reasonable cost standard of RSA 369-B:3,IV(b)(1)(A) – the issue presented by Question 2 is no longer a justiciable controversy since the issue is at best an academic one. That is, the PUC’s recent Order altering PSNH’s default energy service rate on a reconciling basis to achieve a statutorily-mandated level, subsequent to PSNH’s timely LCIRP filing, would result in there being no further rate changes to customers regardless of any decision or outcome of the pending appeal.

This Court has held on myriad occasions that, “Generally ... a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead.” *New Hampshire Ass’n of Counties v. State*, 158 N.H. 284, 292 (2009); *Londonderry Sch. Dist. SAU #12 v. State*, 157 N.H. 734, 736 (2008); *In re Juvenile 2005-212*, 154 N.H. 763, 765 (2007); *Hosp. Medical Staff v. Board of Trustees of Exeter Health Resources, Inc.*, 148 N.H. 492, 498 (2002); *In re Thayer*, 145 N.H. 177, 182 (2000); *Petition of Brooks*, 140 N.H. 813, 816 (1996); *Appeal of Hinsdale Fed’n of Teachers, NEA-New Hampshire, NEA*, 133 N.H. 272, 276 (1990).

The actions taking place by and at the PUC subsequent to the filing of this appeal render Question 2 moot. The January 1 rate determination that is the subject of this appeal has been altered by the PUC on a fully-reconciling basis to achieve a statutory rate level. Pursuant to the authorities cited above, Question 2 no longer presents a justiciable controversy. “We generally will refuse to review a question that no longer presents a

justiciable controversy because issues involved have become academic or dead... ." *Hosp. Medical Staff*, 148 N.H. at 498.

Hence, PSNH respectfully moves to supplement its currently pending PSNH Motions to include a request that the Court summarily dismiss Question 2 due to mootness and lack of justiciability.

WHEREFORE, for the reasons stated above, Public Service Company of New Hampshire respectfully requests that this honorable Court:

- A. Accept this Motion as a supplement to PSNH's outstanding Motions for Summary Disposition and Summary Affirmance, pursuant to RSA 541:16 and Rule 25(2);
- B. Summarily dismiss Question 2 of the issues presented for appeal; and,
- C. Grant such further relief as it deems just and appropriate.

Respectfully submitted this 9th day of July, 2013,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By its attorneys,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has on this 9th day of July, 2013 been either hand delivered or sent by first class mail, postage prepaid, to the parties of record, including Susan S. Geiger, Esq. and Rachel Goldwasser, Esq. for the PSNH Ratepayers, c/o Orr & Reno, P.A., One Eagle Square, Concord, N.H. 03301; Suzanne Amidon, Esq. for the New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, N.H. 03301-2429; Susan Chamberlain, Esq. for the New Hampshire Office of Consumer Advocate, 21 South Fruit Street, Suite 18, Concord, N.H. 03301; as well as the Attorney General of the State of New Hampshire, 33 Capitol St., Concord, NH 03301 and the Secretary, New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, N.H. 03301-2429.



Robert A. Bersak