

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2013 TERM

No. 2013-0307

Appeal of PSNH Ratepayers

MOTION FOR LEAVE TO PRESENT NEWLY ENACTED LEGISLATION

Public Service Company of New Hampshire

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June 30, 2014

MOTION FOR LEAVE TO PRESENT NEWLY ENACTED LEGISLATION

NOW COMES Public Service Company of New Hampshire (“PSNH”), by and through its attorneys, and respectfully moves, pursuant to Supreme Court Rule 16(7), for leave to present newly enacted legislation to this Honorable Court. In support of this motion, PSNH states as follows:

1. In the Appellants’ Notice of Appeal in this case, they contended, among other things, that “The PUC’s error in construing RSA 378:38 has significant consequences not only for this case, *but also for utility planning practices in the future.*” Notice of Appeal at 9 (emphasis added). Further, the Appellants have contended throughout the case, including in the Notice of Appeal, that the “PUC’s legal conclusion that an electric utility may file an LCIRP two years after the date of the Commission’s order on the utility’s prior LCIRP . . . is contrary to the plain meaning” of the law. Notice of Appeal at 7. Additionally, and with respect to the Appellants’ contentions relative to the requirements of RSA 541:5, the Appellants have contended that RSA 541:5 creates a strict deadline for the PUC in ruling upon motions for rehearing. Appellants’ Brief at 17. By this motion, PSNH hereby requests that the Court permit the submission of newly enacted legislation directly bearing upon both of these issues.

2. With respect to the first item, on June 16, 2014, Governor Hassan signed into law House Bill (“HB”) 1540, which will take effect on August 15, 2014, 60 days after signing. In that the legislation was signed on June 16, 2014, it was not available at the time of briefing or the May 8, 2014 submission of this case. A copy of HB 1540 accompanies this motion as Attachment 1. The law significantly amends RSA 378:37-:42, which the Appellants contend are central to this case. In particular, HB 1540 amends the timing requirements of RSA 378:38 and provides that LCIRP filings are due within 2 years of the PUC’s ruling on a prior LCIRP, or, in

any event, within 5 years of a prior LCIRP filing. It also amends the requirements for the contents of the plan and repeals several provisions.

3. PSNH maintains that there is no basis for the Court to reach the requirements of RSA 378:37, *et seq.*, in light of the mandatory statutory provisions in RSA chapter 369-B. Nevertheless, to the extent the Court may consider RSA 378:37, *et seq.*, PSNH believes it is important for the Court to receive and consider this additional information. Even assuming the “significant consequences” for future filings referenced by the Appellants existed (and PSNH contends they did not and do not exist), such circumstances could no longer exist following the enactment of HB 1540, and could not justify further pursuit of this appeal. As the Appellants noted in their reply brief, any changes to the “statutory LCIRP filing mandates must be made by the legislature, not PSNH or the Commission.” Appellants’ Reply Brief at 5. The Legislature has made such changes. Moreover, the new law makes clear that the timing requirement is in line with the one PSNH contends already exists. In that the requirements of HB 1540 will be the legal requirements for LCIRP filings going forward, any ruling by this Court on the existing statutes will persist only until the effective date of the new law. Therefore, the enactment of HB 1540 moots or otherwise undermines the bases upon which this appeal rests.

4. Additionally, under Supreme Court Rule 10(1)(h), to justify an appeal from an administrative agency the appellants must provide “A direct and concise statement of the reasons why a substantial basis exists for a difference of opinion on the question and why the acceptance of the appeal would protect a party from substantial and irreparable injury, or present the opportunity to decide, modify or clarify an issue of general importance in the administration of justice.” In that the relevant statutes have been amended, there is no “opportunity to decide, modify or clarify an issue of general importance in the administration of justice.” Any opinion

of this Court would be limited to a statutory scheme that no longer exists. Moreover, in light of the amendments, there is no substantial basis for a difference of opinion. Accordingly, to the extent the appeal could have been said to meet the requirements of the rule, it no longer does so, and this appeal should not be the subject of an opinion from this Court.

5. Regarding the requirements of RSA 541:5, on May 23, 2014 Governor Hassan signed HB 1384, which will take effect on July 22, 2014, 60 days after its passage. In that the legislation was signed on May 23, 2014, it was not available at the time of briefing or the May 8, 2014 submission of this case. A copy of HB 1384 accompanies this motion as Attachment 2. HB 1384 amends the timing of PUC rulings on motions for rehearing. As with the issues relating to RSA 378, *supra*, PSNH contends that there is no reason for the Court to reach this issue. Nevertheless, to the extent the Court may do so, any opinion rendered will be based upon a statutory scheme that has been amended. Furthermore, there will, as with the above, no longer be any opportunity to decide an issue of general importance to the administration of justice, which the Appellants had contended was the basis for accepting this question. Notice of Appeal at 11.

WHEREFORE, for the reasons discussed above, PSNH respectfully requests that this

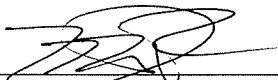
Court:

- A. Grant leave to present relevant, newly enacted legislation; and
- B. Grant such further relief as may be just, equitable and appropriate.

Respectfully submitted,

Public Service Company of New Hampshire

Date: June 30, 2014

By: 

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I forwarded a copy of the foregoing Motion by first class mail, postage prepaid, to the parties of record, opposing counsel, and the Attorney General of the State of New Hampshire.

June 30, 2014
Date


Matthew J. Fossum