

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generating Assets
Docket No. DE 14-238

SCOPING BRIEF OF THE CITY OF BERLIN

The City of Berlin ("**the City**") hereby files its Scoping Brief pursuant to the Public Utilities Commission's ("**PUC**") pre-hearing conference held on October 2, 2014 in this matter and the correspondence of PUC Executive Director Howland dated October 30, 2014. In support of its Petition, the City says the following:

1. Pursuant to PUC Order No. 25,733 dated November 6, 2014, the City has been granted full Intervenor status in accordance with RSA 541-A:32, I.
2. The City does not yet take an official position on the question of whether divestiture of PSNH's generation assets is or is not now warranted.
3. If the PUC determines that divestiture of some or all of PSNH's generation assets is now warranted, the City's major concerns are:
 - a. That the existing Power Purchase Agreement between PSNH and Berlin Station, made the subject of PUC Docket DE 10-195, should not be included in the divestiture;
 - b. That the Smith Hydro facility be appropriately valued (whether separately or as a regional group); and
 - c. That appropriate methodologies and/or protocols be implemented for the sale of the Smith Hydro facility (whether separately or as a regional group).

4. Additionally, the City expressly reserves and does not waive any other issues that the City may have in this Docket in general and/or in the applicable procedures to be implemented throughout this Docket.

a. The Berlin Station PPA should not be made part of this Docket.

5. The PUC's authority for this Docket stems from HB 1602 as passed by the 2014 Session of the NH General Court.
6. The PUC is without authority to expand that authority granted by the Legislature.
7. The legislative history of HB 1602 reveals that the purpose of HB1602 was as follows:

The purpose of allowing the public utilities commission to determine if divestiture of Public Service Company of New Hampshire's (PSNH) remaining generation assets is in the economic interests of PSNH's retail customers should be to maximize economic value for PSNH's retail customers, minimize risk to PSNH's retail customers, reduce stranded costs for PSNH's retail customers, promote the settlement of outstanding issues involving stranded costs, and, if appropriate, provide for continued operation or possible repowering of PSNH's generation assets.

See Session Laws 2014 Chapter 310:1.

8. While representatives of PSNH, TransCanada, the Retail Energy Supply Association and the New England Power Generators Association all spoke at the Senate Energy Committee Hearing on April 9, 2014 concerning HB 1602, no reference of any kind was made by any legislator or other participant to including Power Purchase Agreements within the scope of the generating assets to be divested. In fact, the record reflects that the only references to the generating assets were to "the plants," "these plants," "fossil units," "PSNH owns generation assets," "the scrubber docket," "obsolete power generation," "coal units" and "fossil and hydro facilities".

9. The Power Purchase Agreement between PSNH and Berlin Station (“the Berlin PPA”) was the subject of the extensive adversary proceeding in PUC Docket DE 10-195, wherein PSNH, the City and others presented extensive testimony concerning the valuation of the Power Purchase Agreement, the extensive long-range benefits to PSNH’s retail customers, and the economic vitality of the North Country and of the State at large.
10. Based on the Berlin PPA, the City and Berlin Station entered into a long term Payment in Lieu of Taxes (“PILOT”) Agreement, which was necessary for acquisition of financing for Berlin Station. Accordingly, many millions of dollars have been invested to bring the Berlin Station on-line, resulting in associated positive impacts on jobs throughout the “wood basket” of the North Country and to the tax base of the City.
11. North Country Senator Jeff Woodburn was a sitting member of the Senate Energy Committee at the hearing on April 9, 2014; and Senator Woodburn would surely have questioned the inclusion of the Berlin PPA within the scope of HB 1602 had such inclusion been the remotest possibility.
12. The City further asserts that no Power Purchase Agreement (“PPA”) was listed as an asset to be divested in the 1999/2000 Settlement Agreement in Docket DE 99-099. See Exhibit G to same.
13. If the PUC chooses to include the Berlin PPA and/or any other PPA within this Docket, the PUC would be both acting outside of its legislative authority and unnecessarily increasing the complexity of this Docket since all parties to any PPA with PSNH (both private plant operators and any additional municipalities where

such plants are located and/or additional employee unions) would need to be made parties to this Docket. Moreover, under the principals of due process and equal protection, the PUC could not selectively include just the Berlin PPA in this Docket without also including all other PPAs held by PSNH.

14. Additionally, if PSNH is divested of its generation plants, then PSNH may necessarily have to enter into additional PPA's to be able to be assured of an appropriate level of power needed to supply its retail customers. Including the Berlin PPA in this Docket would then be unnecessary and counter to the ultimate needs of the retail customers HB 1602 was intending to protect.

15. If the Berlin PPA is included within the scope of this Docket, then the significant tax revenue impacts to the City will need to be addressed by the PUC, thereby further complicating this already complex proceeding. The PUC would thereby be reopening the Berlin Station PPA Docket DE 10-195.

16. Accordingly, the City respectfully urges that the PUC not expand the scope of this Docket by including the Berlin PPA or any other PPA.

b. The Smith Hydro Facility must be appropriately valued.

17. The Smith Hydro Facility is one of the largest taxable properties within the City with a current taxable value of approximately \$53 Million.

18. The City's Utility Appraiser, George E. Sansoucy, P.E., LLC ("Mr. Sansoucy"), has appraised the Smith Hydro Facility and the other hydro facilities within the City using the sales, income and reproduction cost new less depreciation methods of value.

19. Mr. Sansoucy has testified before the PUC on numerous occasions including during the Berlin Station PPA Docket DE 10-195.

20. Mr. Sansoucy's opinions are based in part upon his use of the Ventyx Reports, which were also used in Docket DE 10-195.
21. PSNH has in recent years started to rely, in part, on the NH Department of Revenue Reports prepared under the authority of RSA Chapter 83-F ("the 83-F Reports") for the numerous tax abatement cases PSNH has brought against various municipalities across the State. There are currently 87 docketed PSNH cases at the Board of Tax and Land Appeals ("BTLA") for Tax Years 2010, 2011 and 2012 that will be going to trial in January and February 2015; and there are 73 docketed PSNH cases at the BTLA for Tax Year 2013 alone. Some, but obviously not all, of these cases involve municipalities where PSNH's generation plants are located.
22. The 83-F Reports utilize the "unit method" based primarily on original cost less book depreciation and additional factors, the application of which generates a far lower value within any given municipality than under other appraisal methodologies – even PSNH's own "net book". By way of example, the draft DRA Utility Value for PSNH in Berlin for 2014 (which is presumably based on the 2014 83-F Report) is a total of \$21,605,168 for all PSNH assets in the City – poles, wires, substations, transmission lines and the Smith Hydro facility.
23. The 83-F Reports are intended for use by the Commissioner of the DRA in collecting the State's Utility Tax.
24. While the City asserts that the 83-F Reports are improper for use in a local ad valorem tax abatement matter, the City questions whether PSNH will be arguing for higher valuations in this Docket than it is arguing for in the various BTLA matters.

25. The City also questions the PUC Staff's stated intention to re-do the LaCapra Appraisal of March 2014, potentially with different documentation from PSNH. If a second LaCapra Appraisal is to be performed, then the City will necessarily need to know what documentation was used for the first LaCapra Appraisal and what documentation was used for the second LaCapra Appraisal.
26. The City further questions the PUC Staff's stated desire to use only the 2013 Avoided Energy Supply Cost Study of Synapse Energy. Differing studies, such as the Ventyx Reports, should be allowed to be used as such may prove beneficial for the PUC to consider in this matter, particularly where the PUC has found the Ventyx Reports persuasive and reliable in related Dockets in the City.
27. The City asserts that if the PUC determines that PSNH should divest itself of the Smith Hydro Facility, then the valuation of the Smith Hydro Facility should be performed using the standard appraisal techniques of sales, income and reproduction cost new less depreciation and that the City's Appraiser be allowed to use the Ventyx Reports as necessary. In this way, an appropriate value of Smith Hydro Facility and the other PSNH generation assets are determined, whether or not the City acquires the Smith Hydro Facility.

c. Appropriate methodologies and/or protocols must be implemented for any Sale of the Smith Hydro Facility.

28. The 1999/2000 Settlement Agreement in Docket DE 99-099 outlined an overly cumbersome process for any bids to acquire PSNH's divested generation plants, particularly by a municipality. Issues with this process include, but are not limited to, the following: (i) the pre-bid requirements on the City are out-of-line with municipal bonding practices, (ii) the selection of "Qualified Bidders" is ambiguous at best, and

(iii) the selection of the Final Satisfying Bid appears arbitrary and within the sole control of PSNH. The City asserts that the PUC does have the authority under HB 1602 to address this bidding process by establishing appropriate methodologies and/or protocols associated with any sale of PSNH's generating plants.

29. The City asserts that while the Smith Hydro Facility and any of the other hydro facilities owned by PSNH could be offered on an individual basis, the Smith Hydro Facility should not be "lumped" in with any fossil or wood generating plants or even any hydro facilities outside of the North Country.

30. PSNH operates its hydro facilities on a "Division" basis, e.g. Northern, Central and Southern Divisions. The Smith Hydro Facility is part of the Northern Division along with two other hydro facilities – the Gorham Hydro Facility in Gorham, NH and the Canaan Hydro Facility in Canaan, VT and Stewartstown, NH. Accordingly, at most, PSNH's hydro facilities should be offered for any group sale based upon that same Division basis if individual facility sales are not allowed by the PUC.

WHEREFORE, the City of Berlin requests that the PUC include and/or address these points in determining the proper scope of this Docket.

Respectfully submitted,

The City of Berlin

By and through its City Attorney

12/5/14
Date

By: 

Christopher L. Boldt, Esq.

Donahue, Tucker & Ciandella, PLLC

56 NH Route 25

P.O. Box 214

Meredith, NH 03253


(603) 279-4158

cboldt@dtclawyers.com

CERTIFICATE OF SERVICE

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

12/5/14
Date


Christopher L. Boldt, Esq.