

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-033

Public Service Company of New Hampshire

Petition for Increase to Short Term Debt Limit and to Issue Long Term Debt

Order Denying Motion to Compel

ORDER NO. 25,001

August 6, 2009

On February 20, 2009, Public Service Company of New Hampshire (PSNH or Company) filed a petition requesting Commission approval of the issuance of up to \$150,000,000 of long term debt and an increase in the Company's short term debt limit to ten percent of net fixed plant plus a fixed amount of \$60,000,000. According to PSNH, it has incurred short term debt to finance the recent 2008 ice storm recovery as well as generation, distribution and transmission system expenditures. Regarding the long term debt, PSNH stated that it plans to use the proceeds to refinance its short term debt, to finance anticipated capital expenditures and to pay for issuance costs.

The Commission issued Order No. 24,979 (June 19, 2009) clarifying the scope of this proceeding. Following that order on scope, disputes arose between Conservation Law Foundation (CLF) and PSNH concerning responses to several CLF data requests. On July 24, 2009, CLF filed a motion to compel PSNH's response to three data requests and on August 3, 2009, PSNH filed an objection to CLF's motion. On August 6, 2009 CLF filed a reply to PSNH's objection.¹

¹ A reply to an objection is not contemplated by our rules. In any event the arguments in CLF's reply raise points that were previously argued or are not relevant to the question before the Commission in this proceeding. See N.H. Code of Admin. R. Puc 203.07.

I. POSITIONS OF THE PARTIES

A. CLF Motion to Compel

CLF seeks to compel PSNH to respond to the following data requests:

CLF-01, Q-CLF-002

(a) What is the extent of departure of load from PSNH service across all customer classes over the past year and past six months? Please provide data by customer class.

(b) What does PSNH anticipate the effect of these load departures to be on rates? For purposes of your response in connection with rate impacts, indicate whether a sensitivity analysis has been applied, and if so, how PSNH estimated rate impact may change depending on variation in the rate of departure.

(c) How will load departure effect PSNH's ability to complete planned capital projects, including the "Scrubber Project"?

CLF-01, Q-CLF-003

The U.S. Energy Information Administration's ("EIA") June 2009 Electric Power Monthly ("EPM") reports that net generation in the U.S. dropped by 4.3 percent from March 2008 to March 2009, and that the "[t]he drop in coal-fired generation was the largest absolute fuel-specific decline from March 2008 to March 2009 as it fell by 24,656 thousand megawatt hours, or 15.3 percent." EPM at 1. Additionally, the EPM reports that, "year-to-date, total net generation was down 4.6 percent from 2008 levels. Net generation attributable to coal-fired plants was down 11.7 percent." *Id.* What impact will the decline in electric power demand – particularly from coal-fired plants—have on PSNH's ability to complete planned capital projects, including the Scrubber Project, and how will rates be affected?

CLF-01, Q-CLF-004

Referring to PSNH's September 2, 2008, filing with the New Hampshire PUC in DE 08-103, §§ III (Effect of Clean Air Project on Energy Service Rates) and IV (Effect on Energy Service Rates if Merrimack Station Is Retired), pp. 14-15, in light of current gas prices, departure of load, decline in electricity demand, and other altered assumptions, explain whether those analyses remain accurate, and if they are no longer accurate, provide revised analyses.

In its first question, CLF seeks to compel PSNH to answer subsections (b) and (c) since PSNH provided a response to subsection (a). This first question deals with industrial customer migration from PSNH to competitive suppliers. CLF asserts that PSNH's consideration of its customer migration trends and the resulting effects on this financing are relevant to this docket.

CLF argues that “[i]n the event PSNH’s current level of load departure does not reverse and/or increases, the costs of the Scrubber Project—and any other generation capital projects proposed to be funded with this financing—will be borne by an increasingly small pool of customers—those that are least able to afford the increase in rate that would be imposed.” CLF motion at 6. CLF goes on to suggest that this information would allow the Commission to put in place customer safeguards in the event of substantial revenue loss. *Id.*

CLF’s second question deals with declining electric power demand reported by EIA. CLF argues that substantial new borrowings by PSNH at a time when it is losing high value sales and overall demand is dropping requires consideration of how these factors may impact rates. CLF motion at 7.

CLF’s third question requests an update of PSNH’s estimated impact of the Scrubber Project on energy service rates filed on September 2, 2008, in DE 08-103. CLF argues that an assessment of the rate impact of the proposed financing “must occur within the context of an understanding of what the rate impact would have been had the project not gone forward and PSNH instead supplied its customers with market power purchases.” CLF motion at 8.

B. PSNH Objection to CLF Motion

PSNH claims that the three CLF questions in dispute concern matters outside the scope of this financing proceeding and that they are not reasonably calculated to lead to evidence admissible in the proceeding. According to PSNH, the three questions represent CLF’s attempt to do an “end run” around the Commission’s decision limiting the scope of the proceeding. PSNH objection at 5.

Regarding CLF's first question, PSNH asserts that customer migration has no impact on distribution or transmission rates. As to energy service rates, PSNH argues that the Commission may take customer migration into account when it sets rates for default customers in a separate docket.

PSNH takes the position that any decline in demand identified in CLF question two is not applicable to PSNH since RSA 369-B:3, IV,(b),(1),(A) and RSA 374-F:3, V,(f),(4) require PSNH to use its generation output to supply default service/transition service. PSNH objection at 6. Further, given the legislative mandate, PSNH argues that the Scrubber installation must proceed even if the Commission does not approve this financing request. PSNH objection at 7.

Finally, regarding CLF's third question, PSNH argues that the estimated rate impact of the fully installed scrubber is beyond the scope of this proceeding. Instead, according to PSNH, that inquiry belongs in DE 08-103 where the original estimate was filed. PSNH objection at 8.

II. COMMISSION ANALYSIS

In considering discovery disputes we are guided by RSA 541-A:33, II, which sets out the standard for admission of evidence in administrative proceedings:

The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law.

See also RSA 365:9. N.H. Code of Admin. R. Puc 203.23 incorporates these statutory standards.

In the context of civil litigation, New Hampshire law favors liberal discovery, and consistent with New Hampshire Superior Court Rule 35(b) regarding the scope of discovery, we require parties to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence. *Id. citing Investigation*

into Whether Certain Calls are Local, Order No. 23,658, 86 NH PUC 167, 168 (2001).

Furthermore, “[i]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to undertake.” *City of Nashua*, Order No. 24,681 (October 23, 2006).

In this docket, because several parties disagreed on the scope of this proceeding, we issued an order describing the scope of our review. Order No. 24,979. “[I]n this financing docket we will consider the economic impact of the proposed financing, its effect on PSNH’s capital structure, and its potential impact on rates but it is not within the scope of our authority to consider whether the use of the financing proceeds for the scrubber is for the public good or whether there are reasonable alternatives to the scrubber.” *Id.* at 18. In considering CLF’s motion we look to the scope of this proceeding as set forth in Order No. 24,979 in determining whether the evidence sought meets the statutory relevance test.

While CLF’s first question dealing with industrial customer migration may be a factor influencing energy service rates in the future, such rate impacts, if and when they occur, are not a result of the financing. In this docket we are not bound to consider all potential impacts on PSNH’s future energy service rates. Instead, we will consider potential rate impacts caused by this particular financing request. As a result, we will not compel PSNH to respond to this question.

CLF’s question dealing with national declines in demand for electricity generally, and coal-fired generation in particular, is another example of a factor that may arguably influence PSNH’s rates in the future. Similar to customer migration data, however, reduced demand is not

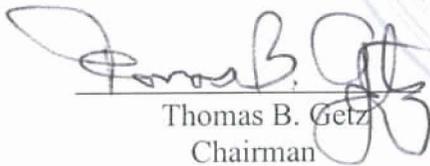
the result of this financing request and we will not compel PSNH to produce evidence or projections of declining demand for electricity in this docket.

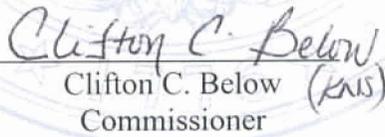
Finally, CLF's request that PSNH update estimated rate impacts of the Merrimack Scrubber project, is beyond the scope of this financing docket. We specifically found that issues related to whether PSNH should go forward with the scrubber installation or the cost, or the rate impact of the Scrubber installation as compared to other alternatives in this financing docket, are beyond the scope of this proceeding. As noted in the order on scope, updated costs of the Scrubber installation as well as whether PSNH should ask permission to take alternative actions are the subject of other ongoing or future dockets. *Id.* at 18.

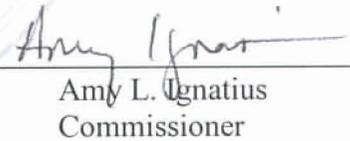
Based upon the foregoing, it is hereby

ORDERED, the Conservation Law Foundation's motion to compel is DENIED.

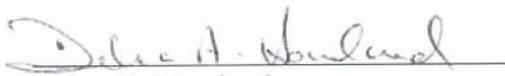
By order of the Public Utilities Commission of New Hampshire this sixth day of August, 2009.


Thomas B. Getz
Chairman


Clifton C. Below (KNS)
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director & Secretary