

THE STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
PETITION FOR INCREASE IN SHORT TERM DEBT LIMIT AND TO ISSUE  
LONG TERM DEBT

DOCKET NO. DE 09-033

CONSERVATION LAW FOUNDATION'S MEMORANDUM OF LAW ON THE  
PUC'S DUTY TO MAKE A PUBLIC GOOD DETERMINATION ON PSNH'S  
PROPOSED FINANCING

The New Hampshire Public Utilities Commission ("Commission") has requested briefing from the parties to this docket on the question whether the Commission has authority to review Public Service Company of New Hampshire's ("PSNH") proposed financing.

The New Hampshire Supreme Court has held unequivocally that the Commission has a duty pursuant to RSA 369:1 and 369:4 to determine whether a utility's proposed financing is in the public good—and that determination involves a review of facts, including the proposed uses of the funds, beyond the mere terms of the financing:

[T]he PUC's authority under RSA chapter 369 is [not] limited to the determination of whether the *terms* of the proposed financing are in the public good. On the contrary, this court long has held that the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good—a determination which includes considerations beyond the terms of the proposed borrowing.

*Appeal of Easton*, 125 N.H. 205, 213 (1984) (emphasis in original).

Accordingly, citing *Appeal of Easton*, the Commission has on numerous occasions stated that "[t]he public good consideration involves looking beyond actual terms of the proposed financing to *the use of the proceeds* and *the effect on rates* to ensure that the public good is protected." *Hampstead Area Water Co.*, DW 08-088, No.