

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

June 28, 2010 - 10:09 a.m.
Concord, New Hampshire

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RE: DE 10-121
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Reconciliation of Energy Service and
Stranded Costs for Calendar Year 2009.
(Prehearing conference)

PRESENT: Chairman Thomas B. Getz, Presiding
Commissioner Clifton C. Below
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:
Gerald M. Eaton, Esq.

Reptg. New Hampshire Sierra Club:
Arthur B. Cunningham, Esq.

Reptg. TransCanada:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. the Conservation Law Foundation:
N. Jonathan Peress, Esq.

Reptg. Residential Ratepayers:
Meredith Hatfield, Esq., Consumer Advocate
Kenneth E. Traum, Asst. Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq., Esq.
Steven E. Mullen, Asst. Dir./Electric Div.

Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRMAN GETZ: Okay. Good morning, everyone. We'll open the prehearing conference in docket DE 10-121. On April 30, 2010, Public Service Company of New Hampshire filed testimony and schedules in support of its proposed reconciliation of revenues and costs associated with its Energy Service Charge and Stranded Cost Recovery Charge for calendar year 2009. According to the petition, PSNH experienced a net under-recovery of \$4.4 million for its Energy Service costs attributed primarily to increased customer migration. We issued an order of notice on June 1 setting the prehearing conference for today. I'll note for the record that the affidavit of publication has been filed. And, we have a Notice of Participation from the Office of Consumer Advocate. And, we have Petitions to Intervene from the New Hampshire Sierra Club, Conservation Law Foundation, and TransCanada.

So, let's just begin with appearances.

MR. EATON: For Public Service Company of New Hampshire, my name is Gerald M. Eaton. Good morning.

CHAIRMAN GETZ: Good morning.

Appearances? Mr. Cunningham.

1 MR. CUNNINGHAM: Arthur B. Cunningham,
2 on behalf of the New Hampshire Sierra Club.

3 CHAIRMAN GETZ: Good morning.

4 MR. PATCH: Good morning. Doug Patch,
5 with the law firm of Orr & Reno, on behalf of TransCanada.
6 With me this morning is Cleve Kapala.

7 CHAIRMAN GETZ: Good morning.

8 MR. PERESS: Jonathan Peress, on behalf
9 of the Conservation Law Foundation. And, with me is our
10 summer intern, Robert Barry.

11 CHAIRMAN GETZ: Good morning.

12 MS. HATFIELD: Good morning,
13 Commissioners. Meredith Hatfield, for the Office of
14 Consumer Advocate, on behalf of residential ratepayers.
15 And, with me for the office is Ken Traum.

16 CHAIRMAN GETZ: Good morning.

17 MS. AMIDON: Good morning,
18 Commissioners. Suzanne Amidon, for Commission Staff.
19 With me today is Steve Mullen, the Assistant Director of
20 the Electric Division.

21 CHAIRMAN GETZ: Good morning. Well, I
22 think we'll do this in two rounds. First, let's hear a
23 brief statement of the position of each of the parties.
24 And, then, we'll address interventions, and we'll start

1 with whether, in the second round, Mr. Eaton, whether the
2 Company objects to any of the Petitions to Intervene, and
3 then we'll -- if so, then we'll have to hear from the rest
4 of the parties. And, that's how we'll proceed. So, if
5 you could start with the statement of position.

6 MR. EATON: Thank you, Mr. Chairman.
7 Public Service Company is here to explain the purchases of
8 supplemental power that PSNH made in 2009 and how it
9 operated its generating plants in 2009. We believe that
10 we made a complete filing, but we're ready to take
11 questions from the Staff and other intervenors that the
12 Commission allows to participate in the case.

13 We hope that we can arrive at a decision
14 before the end of the year, when we would set a new Energy
15 Service rate and a new Stranded Cost Recovery Charge for
16 2011. Thank you.

17 CHAIRMAN GETZ: Okay. Thank you.
18 Mr. Cunningham, a brief statement of your position.

19 MR. CUNNINGHAM: Yes, Mr. Chairman and
20 members of the Commission. Arthur Cunningham, for the New
21 Hampshire Sierra Club. The Sierra Club and its members,
22 Mr. Chairman, are particularly interested in this docket
23 because of the pending existence of substantial Clean Air
24 Act and New Hampshire environmental law concerns. The

1 link to the financing docket is very simply that money
2 spent -- money spent on these stranded costs, for example,
3 on the recovery, cost recovery for the turbine replacement
4 and the damage done to the turbine replacement is very
5 much of interest to the Sierra Club. Any fact or any
6 matter that relates to that turbine upgrade or that
7 turbine replacement that has the potential or did increase
8 emissions from Merrimack Station is of concern to the
9 Sierra Club, because of what we believe are Clean Air Act
10 violations. So, it's our intent, Mr. Chairman, members of
11 the Commission, to follow very, very carefully any -- any
12 project, including the turbine replacement and other
13 projects, that may impact Clean Air Act -- the Clean Air
14 Act, increase emissions that impact the Clean Air Act is
15 of interest to the Sierra Club.

16 CHAIRMAN GETZ: Okay. Thank you. Mr.
17 Patch.

18 MR. PATCH: Thank you, Mr. Chairman.
19 TransCanada believes, in terms of its preliminary
20 statement of position, that consistent with the
21 requirements of RSA 369-B:3, that it is important to
22 review and determine whether the costs that PSNH incurred
23 to purchase power to supply Default Service customers in
24 2009, whether those costs were actual, prudent, and

1 reasonable, and to review and determine the prudence and
2 reasonableness of the use of its generation resources, and
3 whether PSNH has appropriately accounted for and
4 reconciled its Energy Service costs and offsetting
5 revenues. TransCanada does not have a position at this
6 point, until it has had an opportunity to review and
7 analyze those costs.

8 As I think the Commission knows,
9 TransCanada was an intervenor in DE 09-180, where a number
10 of these issues were raised with regard, on a preliminary
11 basis at least, with regard to 2010 Default Service costs.
12 So, we don't have a position at this point in time, but we
13 think it's important to review those. Once we've had a
14 chance to review them, assuming we're allowed to
15 intervene, then we may very well have a position on those
16 costs.

17 CHAIRMAN GETZ: Thank you. Mr. Peress.

18 MR. PERESS: Thank you, Mr. Chairman,
19 members of the Commission. CLF, as you know, submitted a
20 petition to intervene here, laying out what we believe and
21 suggest is the interrelationship between energy supply
22 decisions, as between the cost and prudence of those
23 decisions and the environmental impacts of those
24 decisions, as embodied in numerous statutes, RSA 378:37,

1 RSA 378:39, to name a few.

2 In docket 09-180, as Mr. Patch
3 referenced, the Commission made determinations relating to
4 the economic implications of PSNH supplying its Energy
5 Default Service through the use of Newington, due to the
6 2008 market dynamics whereby Newington was typically
7 uneconomic.

8 In this proceeding, there has been
9 substantial prefiled testimony filed by PSNH as to the
10 process for determining the comparative costs of operating
11 Newington versus purchasing power from the wholesale
12 market and the pool. The market conditions in 2009
13 further eroded the economic position of PSNH's generation
14 assets. Specifically, as the Commission is aware, natural
15 gas prices substantially decreased, and that began or I
16 guess amplified the process of migration that was ongoing.

17 Our interest here is to look at the
18 prudence and the reasonableness of PSNH's determinations
19 to self-supply its Energy Default Services versus
20 purchasing those, purchasing that supply from the market,
21 and the -- both the cost implications and collateral
22 environmental implications. We, at this point, do not
23 have a position on the docket, but look forward to
24 analyzing that in greater detail to determine whether or

1 not such decisions were prudent and reasonable.

2 CHAIRMAN GETZ: Thank you. Ms.
3 Hatfield.

4 MS. HATFIELD: Thank you, Mr. Chairman.
5 The OCA does not have a position at this time. As with
6 the other parties, we will be reviewing the filing,
7 engaging in discovery, and also reviewing whether or not
8 we have a position on whether the Company was reasonable
9 and prudent in the supply of Energy Service in 2009.
10 Thank you.

11 CHAIRMAN GETZ: Thank you. Ms. Amidon.

12 MS. AMIDON: Thank you. As is customary
13 in the reconciliation dockets, Staff is going to
14 investigate both the energy and stranded costs related to
15 the filing. And, we have already commenced discovery and
16 issued one set of discovery at this point. We will
17 continue to investigate the docket, and hopefully we'll
18 come to a recommendation to the Commission at some point,
19 once we've had a chance to look at all the factors.

20 CHAIRMAN GETZ: Thank you. Well, Mr.
21 Eaton, let's turn to Petitions to Intervene for the
22 moment. The parties have all filed petitions, give you an
23 opportunity to state your position on whether we should
24 grant or deny the petitions. And, then, we'll let all the

1 parties respond. After that, then I guess we'll give you
2 the final step, to give you the opportunity to respond to
3 any of these statements of positions, if you have any
4 issues about scope or anything related to those issues.

5 So, what's the Company's position on the
6 Petitions to Intervene?

7 MR. EATON: All right. I'll start off
8 with the Sierra Club petition. It's PSNH's position that
9 Sierra Club has not alleged enough facts to sustain the
10 standard of whether they have substantial interest in this
11 proceeding. What concerns us about this petition and this
12 CLF petition is a mixture of economic and environmental
13 regulation. And, with all due respect, this Commission
14 regulates economic decisions by the Commission, and, with
15 respect to environmental decisions, that is left to the
16 Department of Environmental Services.

17 And, specifically, they talk -- Sierra
18 Club talks about their different appeals in other matters
19 involving Public Service Company of New Hampshire. And,
20 then, on Page 3 of their petition, they say they have
21 "scoured any related regulatory dockets." This is not a
22 docket for data mining. And, there has been no allegation
23 that they will suffer any direct harm from approval of the
24 Company's costs for 2009. And, therefore, I believe the

1 petition should fail for those reasons.

2 With respect to Sierra Club's [CLF's?]
3 petition, they also say that "The decisions made by PSNH
4 in selecting resources it used to supply energy service to
5 its customers and the prudence thereof, dictate both the
6 costs of PSNH's energy service and the resulting
7 environmental impacts." I think we agree with part of
8 that, and -- but without a discussion of the resulting
9 environmental impacts, which we believe are outside of the
10 Commission's jurisdiction and the scope of this, of this
11 proceeding. In Paragraph 4, CLF wants to protect its
12 members' substantial interests in the environmental and
13 public health impacts relating to PSNH use of its
14 generating resources. I don't know how the Commission
15 could retroactively change PSNH's choices, as far as the
16 environmental and public health impacts. It certainly can
17 explore whether our choices to run different stations,
18 versus purchasing from the Pool, was economic, but not
19 whether it is environmentally sound.

20 And, in Paragraph 5, the Commission -- I
21 mean, the CLF petition says "These issues raise important
22 environmental concerns." Again, we're worried about this
23 case being an environmental case, and that it will be --
24 will not lead to the orderly conduct of these proceedings,

1 which is also part of the standard for intervention.

2 With respect to TransCanada, we
3 certainly agree with the scope that Attorney Patch raised,
4 but we doubt that TransCanada's substantial interests
5 would be affected by this proceeding. In fact, if
6 TransCanada is right, and we are passing imprudent
7 purchases onto our Energy Service customers, that just
8 makes our Energy Service more attractive -- less
9 attractive to customers and more attractive is
10 TransCanada's power to the competitive market. So,
11 although we believe in the scope that they have outlined
12 in their petition, we don't believe they're the right
13 party to pursue this. That, essentially, if they prove
14 their case, and costs are disallowed, PSNH's Energy
15 Service will be lower, and therefore that would hurt
16 TransCanada's competitive position relative to PSNH.

17 So that, I guess to summarize, I think
18 what we really need is a very clear scoping order from the
19 Commission as to what is in and what is out. And, so that
20 we are not spending a lot of time on objections and
21 motions to compel. But we don't believe that the
22 Commission should grant the petitions for intervention for
23 the reasons I've stated.

24 CHAIRMAN GETZ: Okay. Thank you.

1 Mr. Cunningham, opportunity to respond.

2 MR. CUNNINGHAM: Briefly, Mr. Chairman.
3 Sierra Club is not asking for the Commission to decide
4 environmental issues. What the Sierra Club is asking the
5 Commission to do is to defer decisions on financing issues
6 that have a direct relationship to the potential
7 environmental violations that we suspect have occurred.
8 Every dollar, and it just boils down to this, every dollar
9 spent, and these are significant dollars, every dollar
10 spent on plant upgrades, whether it's replacement of the
11 big turbine and other plant upgrades, all those dollars
12 spent have Clean Air Act violation implications. If these
13 projects increase emissions, those increased emissions may
14 trigger very substantial costs to PSNH to upgrade their
15 pollution control equipment. For example, the Sierra Club
16 has been continually concerned about NOx emissions from
17 Merrimack Station and the existing SCR. If those
18 violations are determined, ultimately determined on the
19 merits, then those violations will have substantial cost
20 implications. So, we feel that the interest of the Sierra
21 Club bears a very, very direct relationship to these
22 financing dockets. Because every step down the road,
23 another million, another 10 million, another 100 million
24 that leads to Clean Air Act violation findings, this

1 should be of concern to the Public Utilities Commission.

2 So, no, Mr. Chairman and members, we're
3 not asking you to decide the environmental issues. What
4 we are asking you is to defer to the ultimate disposition
5 of these issues in other venues. So, that's the purpose
6 of the Sierra Club intervention.

7 CHAIRMAN GETZ: But you're drawing a
8 link to the financing proceeding that I think there's a
9 prehearing conference on tomorrow. Are you considering
10 this reconciliation docket in the nature of --

11 MR. CUNNINGHAM: Yes, as part and
12 parcel, because of this purchase power agreement went to
13 the serious damage that was done to the MK2 turbine as it
14 was replaced. All those dollars, all those dollars that
15 went into that repair of that damaged turbine, if the
16 facts show that that damaged turbine has increased
17 emissions -- the repaired damaged turbine has increased
18 emissions in violation of the Clean Air Act, those
19 financing decisions are important to the Sierra Club.

20 CHAIRMAN GETZ: Okay. Thank you. Mr.
21 Patch.

22 MR. PATCH: Thank you, Mr. Chairman. A
23 couple of things that I would like to point out. First of
24 all, as I think the Commission knows, in the DE 09-180

1 docket, PSNH began an attempt to try to pass off some of
2 the costs that it incurs in Energy Service dockets onto
3 all customers, not just Default Service customers. And,
4 the Commission has decided to address those issues in a
5 separate docket, the one for which there is a prehearing
6 conference this afternoon, the 160 docket. But costs,
7 like the ones that you're being -- in this docket that
8 you're going to be asked to determine whether they're
9 reasonable and prudent, are those kinds of costs. So, I
10 think that there's a clear opportunity, if PSNH can argue
11 that these are prudent, at least there's the potential
12 that some of those costs may be -- there may be an attempt
13 to try to pass them off onto other customers, you know,
14 non-Default Service customers. So, we think -- and that's
15 an issue for TransCanada. We raise that issue, and we
16 were opposed, obviously, to the attempts for them to do
17 that in the 180 docket. I think that's important.

18 We were told in the 180 docket as well
19 that the issues that we raised with regard to whether some
20 of the purchases that PSNH was making, and the methodology
21 it was using to make those power purchases to supplement
22 what it -- the power that it generates, were really issues
23 that should be addressed in a prudency proceeding. And,
24 so, that's what this is.

1 So, we think we are here, and we're in
2 the -- proposing to be in the docket this afternoon as
3 well, as a result of what happened in the 180 docket. We
4 think we've stated a clear basis for our intervention. We
5 also think it's in the interest of justice for the
6 Commission to hear other voices, the voice of a
7 competitive supplier, the voice of nonprofit groups, like
8 the Sierra Club and CLF, we think it's very important for
9 you to hear other perspectives. We think we bring
10 different issues to the table. We think it enlarges the
11 scope of the proceeding. We think it gives you a broader
12 basis to make decisions. And, obviously, ultimately, you
13 make those decisions. But we think it's a much healthier
14 process, if you allow the intervention of groups like
15 TransCanada, like CLF, like the Sierra Club, because then
16 you have a lot of different perspectives. And, we think
17 that makes you a better Commission ultimately by doing
18 that.

19 So, we would urge you to reject PSNH's
20 position and allow the interventions.

21 CHAIRMAN GETZ: Thank you. Mr. Peress.

22 MR. PERESS: Thank you, Mr. Chair and
23 Commission. As you're aware, the order of notice in this
24 proceeding framed the issue as "the prudence of PSNH's use

1 of its generation resources during the period", i.e. 2009,
2 "as well as the prudence of market purchases used to
3 supplement those resources." The Conservation Law
4 Foundation has a direct and immediate interest in the
5 outcome of the prudency determinations made by this
6 Commission with respect to those decisions to either
7 generate and self-supply or to purchase from the market.
8 Perhaps more so than any period in the past, the cost
9 implications and the environmental implications of the
10 prudency of those decisions are completely unified and
11 congruent, because, as is axiomatic from the amount of
12 migration that PSNH is having to address, there is lower
13 cost market power available than power generated from its
14 own assets. By the same token, the market power generally
15 has a significantly lower marginal emissions rate and
16 lower environmental impacts than does most of PSNH's
17 generating assets.

18 In Mr. Baumann's testimony, he
19 testified, for example, that Merrimack Unit 1 ran for 124,
20 I believe, straight days during 2009. During this docket,
21 we can assess whether that was prudent in the context of
22 the comparative cost of that resource versus the
23 comparative cost of resources that were available from the
24 wholesale market and the environmental implications of

1 doing so, which CLF has a direct and substantial interest
2 in.

3 CHAIRMAN GETZ: Thank you. Ms.
4 Hatfield, it appears that the issues that are raised with
5 respect to the Petitions to Intervene are intertwined with
6 the issues of scope. Would you like to comment on either
7 of the petitions or the appropriate scope of this
8 proceeding?

9 MS. HATFIELD: Thank you, Mr. Chairman.
10 I would. We strongly support the intervention motion of
11 TransCanada, for many of the reasons that Mr. Patch
12 discussed, including the fact that I also do recall that
13 several of the issues that TransCanada raised in DE
14 09-180, TransCanada was told were more appropriate for a
15 prudence review. And, we certainly believe that a company
16 like TransCanada has significant experience in this area
17 related to market purchases and methodologies for
18 determining them. Obviously, they have a point of view,
19 they're a company in the market, but we still think that
20 the Commission's review would greatly benefit from their
21 perspective in that area.

22 We have no objection to the intervention
23 request of Sierra Club and of CLF. And, it seems to me
24 that just the discussion we've had in the last few minutes

1 has really shown the types of important questions that can
2 be raised by having a broader group of intervenors, while
3 keeping in mind the scope of this docket, which is not, as
4 I think Mr. Eaton pointed out, the environmental prudence,
5 if you will, of PSNH's decisions. So, we agree with Mr.
6 Eaton that it would be helpful for the Commission, in
7 ruling on motions for intervention, to make clear to the
8 parties what the scope of the docket is, which I think
9 you've already set out in the order of notice.

10 And, that's all I have to say. Thank
11 you.

12 CHAIRMAN GETZ: Thank you. Ms. Amidon,
13 would you like to speak to either of the issues?

14 MS. AMIDON: Staff takes no position on
15 the motions to intervene. We think that the order of
16 notice identifies and describes the scope of this docket
17 as we have historically dealt with the reconciliation. To
18 the extent that there are issues that are not subject to
19 the Commission's regulation, we don't think that they
20 should be part of this docket. And, I guess that's all we
21 have to say.

22 CHAIRMAN GETZ: Thank you.

23 (Chairman and Commissioners conferring.)

24 CHAIRMAN GETZ: Commissioner Ignatius.

1 CMSR. IGNATIUS: Thank you. I wanted to
2 ask you one clarifying question of Mr. Eaton, or anyone
3 else who can add further to it. And, this is really a
4 factual clarification. Does the filing include
5 information regarding the investigation and recovery of
6 the outage costs caused by the damage to the turbine?

7 MR. EATON: We had hoped that all the
8 investigation would be complete by this time. However, we
9 are awaiting the conclusion of the insurer's
10 investigation. They're going after this quite
11 aggressively. We have kept the Commission informed of
12 recoveries from insurance companies for the cost of the
13 outage to repair the damaged turbine and the replacement
14 power costs. But we have not included a discussion of the
15 investigation beyond what was discussed in docket 09-091,
16 just because there's nothing substantially new that I'm
17 aware of.

18 CMSR. IGNATIUS: Are the costs
19 themselves included in the calculations for this docket?

20 MR. EATON: The costs of that outage and
21 the recoveries are included.

22 CMSR. IGNATIUS: And, so, will the
23 participants in this docket have the ability to explore
24 those costs, even though you don't have the final report

1 yet from the insurers? That's -- you anticipate that
2 that's part of the matters to be explored in this docket?

3 MR. EATON: Yes, I do.

4 CMSR. IGNATIUS: Okay. And, I'm sure
5 Mr. Cunningham recognizes I was referring to language in
6 his Petition for Intervention that said that the costs
7 were not -- the information was not included. So, your
8 clarification is that the final details from the insurer
9 have not been submitted yet, but that that matter of the
10 outage and costs incurred as a result of the damage to the
11 turbine is within the scope of this docket?

12 MR. EATON: Yes. The 2009 outage, yes.

13 CMSR. IGNATIUS: Thank you.

14 CHAIRMAN GETZ: Okay. Mr. Eaton, is
15 there anything else you would like to speak to regarding
16 the scope of the proceeding?

17 MR. EATON: Yes. Something that came up
18 in Mr. Peress's discussion. Under RSA 369-B:3,
19 IV(b)(1)(A), PSNH is required to supply Default Service
20 from its generation assets. We're really not at liberty
21 to simply close down Merrimack Station and buy from the --
22 and buy from the market. It's definitely an issue of
23 whether the plants are made available, of whether they're
24 economic, as far as the -- as far as the forward market

1 for the next day is concerned. And, certainly, as he
2 mentioned, Newington, whether we ran Newington when we
3 should have purchased lower cost power, we think is part
4 of the docket. But the fact that Merrimack ran for 145
5 days is -- we should run our plants when they're economic,
6 and when they are going to be dispatched by the Pool
7 because of their -- and I don't believe we ran Newington
8 Station when there were cheaper alternatives during the
9 year.

10 CHAIRMAN GETZ: Okay. Thank you.

11 (Chairman and Commissioners conferring.)

12 CHAIRMAN GETZ: All right. With respect
13 to the Petitions to Intervene, we're going to grant the
14 Petitions to Intervene, finding that the Sierra Club,
15 TransCanada, and Conservation Law Foundation have
16 demonstrated rights, duties, privileges, or other
17 interests the could be affected by this proceeding.
18 However, we take seriously Mr. Eaton's point about the
19 necessity to define very clearly the scope of the
20 proceeding. I think there have been some statements that
21 suggest a broader scope than might be appropriate. We're
22 going to take that issue under advisement and deal with it
23 in the procedural order coming out of this prehearing
24 conference and the technical session.

1 So, is there anything else we need to
2 address this morning?

3 (No verbal response)

4 CHAIRMAN GETZ: Okay. Then, so I expect
5 that there will be a technical session following this and
6 a recommendation for a procedural schedule. And, then,
7 once we get that recommendation, we'll issue an order
8 dealing with the procedural schedule and the scope of the
9 proceeding. Thank you, everyone.

10 (Whereupon the prehearing conference
11 ended at 10:40 a.m. and a technical
12 session was held thereafter.)

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