

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-122

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
PETITION FOR APPROVAL OF LONG AND SHORT TERM DEBT

NEW HAMPSHIRE SIERRA CLUB
MOTION FOR RECONSIDERATION

New Hampshire Sierra Club [NHSC], in accordance with RSA 541:3 and RSA 541:4, respectfully moves that the Public Utilities Commission [Commission] reconsider its Order of July 20, 2010, denying the New Hampshire Sierra Club standing to intervene in this docket.

INTRODUCTION

RSA 541:4 provides that a reconsideration Motion must fully set forth every ground upon which it is claimed that a decision or order complained of is unlawful or unreasonable. The Commission has held that such a showing may be made by the identification of matters that were “overlooked or mistakenly conceived.” Verizon New Hampshire Wire Center Investigation, DT 05-083, DT 06-112, citing Dumais v. State, 118 N.H. 309 [1978].

The Commission, in its July 20, 2010, Order, mistakenly conceived the thrust of the NHSC Petition to Intervene and erroneously denied its Petition to Intervene.

The primary concern of the Commission, in the exercise of its RSA 369:1 responsibilities regarding utility capitalization, is the protection of the consuming public. Appeal of Easton, 125 N.H. 205 [1984]. The scope of the Commission’s responsibility was it evaluates utility financing requests is to determine whether the financing will provide safe and reliable service which is economically justified when measured against adequate alternatives; and, whether the proposed capitalization would be supportable. Appeal of Conservation Law Foundation. Appeal of Consumer Advocate, 127 N.H.606 [1986].

NHSC asked to intervene in this financing docket in order to ensure that the Commission fully addressed the mandate of RSA 369:1. The New Hampshire Multiple Pollutant Control Program and the Clean Air Act are intended to protect the public from the adverse health affects of pollution. Violations of those statutes have substantial health consequences. A utility that violates those statutes is not providing safe and reliable service. Compliance with pollution control laws for coal fired power plants has serious and substantial costs. The Commission has the responsibility to assess those costs when

measured against alternatives. The costs of pollution control for antiquated coal fired power plants such as Merrimack Station are growing, uncertain and are likely to escalate beyond rate support. The Commission has the responsibility to determine whether the operating, maintenance and capital costs of pollution control will exceed cost estimates.

NHSC brings many years of experience in the enforcement of pollution control law; advising the public of the health effects and damage to the environment of pollution; and, aggressively advocating for compliance with the law.

The Commission, and the consuming public, would benefit from NHSC participation in this docket.

The consuming public would also benefit if the Commission would vacate the accelerated, summary procedural schedule adopted on July 20, 2010, and provide for a schedule that would allow full, fair, transparent, and wide participation in and discussion of this very large financing proposal.

RSA 541:4 SPECIFICATIONS

RSA 369:1 requires that the Commission, before it authorizes the issuance of debt securities, must make findings that the amount and objects of the proposed financing will be in the public good, goes to whether the object of the financing was reasonably required for use in discharging a utility's obligation, whether the utility's plans to accomplish that object were economically justified when measured against adequate alternatives, and whether the capitalization resulting from the utility's plans would be supportable. Appeal of Easton, supra; Appeal of Conservation Law Foundation. Appeal of Consumer Advocate, supra. A reviewing Court may review the evidentiary record to assure that reasoned consideration has been given to each of the pertinent factors upon which the responsible derivation of policy and resolution of opposing interests must rest. The New Hampshire Supreme Court, in Appeal of Conservation Law Foundation, stated at page 614:

“...Accordingly we emphasize that the express statutory concern for the public good comprises more than the terms and conditions of the financing itself [citing Easton, supra], and we held that the commission was obligated to determine whether the object of the financing was reasonably required for use in discharging a utility's obligation, which is to provide safe and reliable service Moreover, we specifically decided that the commission was obliged to determine whether the company's plans to accomplish that object were economically justified when measured against any adequate alternatives; and whether the

capitalization resulting from the company's plans would be supportable.
..." [Emphasis added].

The Commission denial of the NHSC Petition to Intervene, if sustained, will prevent full, reasoned consideration of each of the pertinent factors upon which responsible policy and the resolution of opposing factors as follows:

1. Petition of Public Service Company of New Hampshire [PSNH] for Approval of up to \$600,000,000 of Long Term Debt Securities is impermissibly flawed because it does not satisfy the public good mandate of RSA 369:1.

The PSNH Petition for approval of debt securities and the direct testimony of Susan B. Weber filed in support of the Petition does not address or provide facts supporting the essential public good criteria required by RSA 369:1. The Petition and the Weber testimony do not, as required by Appeal of Conservation Law Foundation, supra: a) provide the object of the financing and whether the financing is reasonably required in discharging its obligation to provide safe and reliable service; b) whether the PSNH plans are economically justified when measured against adequate alternatives; and, c) whether the capitalization resulting from PSNH plans would be economically supportable.

2. RSA 369:1 requires that PSNH comply with the law to ensure that it is acting in the public good by providing safe and reliable service.

a. NHSC, in its Petition to Intervene, set forth facts challenging PSNH compliance with RSA 125-O and the Clean Air Act.

In April- May, 2008, Public Service Company of New Hampshire [PSNH] replaced the MK2 turbine at its Merrimack Station generating plant without the public permitting process required by the Clean Air Act.

On March 18, 2009, NHSC filed a Notice of Appeal in Docket No. 09-10, Public Service Company of New Hampshire, Temporary Permit TP 0008, asserting, *inter alia*, that: 1]. PSNH violated the Clean Air Act because it failed to make application for and obtain the permits required by 42 USC 7475 and 42 USC 7503, referred to as PSD/NSR permits, for the replacement of the MK2 turbine and the balance of plant projects; and, 2] the Temporary Permit TP-0008, contained substantial and impermissible flaws detailed in the NHSC comments filed on January 23, 2009. The gravamen of this NHSC assignment of error was that the permit was legally flawed with respect to the hazardous air pollutant mercury [Hg] because the permit does not comply with Clean Air Act 42 USC 4212 and RSA 125-O:11-18.

On March 25, 2010, NHSC filed a Notice of Appeal, in Docket No.10-06, to the issuance of the PSNH Merrimack Station, Proposed Title V Operating Permit FY 96-

TV048, asserting *inter alia* that: the Title V Permit should be vacated because the NHDES-ARD administrative record is devoid of facts demonstrating that PSNH has complied with Clean Air Act, including 42 USC 7411, 42 USC 7475 and 42 USC 7503, the provisions requiring NSPS, NSR and PSD permitting, together with corresponding improvements in control technologies, for NO_x and particulates; that the Title V is legally flawed with respect to the hazardous air pollutant mercury [Hg] because it does not comply with Clean Air Act 42 USC 4212 and RSA 125-O:11-18; and, that the Final Regional Haze SIP and the Title V Permit does not contain appropriate BART emission limits.¹

Clean Air Act 42 USC 7661d provides for an administrative appeal to the Administrator, United States Environmental Protection Agency, Region 1, if a party is not satisfied with the Air Resources Council disposition of the issues raised in a Title V appeal.

NHSC fully intends to file appeals to adverse decisions by the Air Resources Council.

b. RSA 369-B: 3-a requires that the Commission make a public good determination before PSNH may modify its generating capacity.

During the course of the ARC appeal 09-10, NHSC discovered three studies commissioned by PSNH that prove that PSNH engaged in a comprehensive examination of generation upgrade and life extension projects for Merrimack Station. The studies include Merrimack Station Unit 2 Boiler Replacement Feasibility Study, November 2004, by Burns & McDonnell; Preliminary Permit Plan Analysis-Critical Path Issues, Multi-Pollutant Control Strategy Options, July 26, 2005, by GZA; and, Sargent & Lundy, Merrimack Boiler Study, February 1, 2007. The studies suggest that PSNH has, or will, engage in generation upgrade, de-bottlenecking and life extension projects that exceed the legislative “public interest” determination of RSA 125-O:11-18. The Burns & McDonnell report explored replacement of the MK2 boiler. The exhaustive Sargent & Lundy study² examined, in detail, the balance of plant projects that may permit MK2 to produce up to an additional 20 MW of generation. The GZA report noted that a “cursory review of the MK2 annual current emission rates shows that a very small increase in actual emissions (less than 1%) is all that would be needed to exceed NSR significant emission levels”.

¹ Merrimack Station is the largest single contributor to regional haze in New Hampshire. Very importantly, on August 16, 2010, the Air Resources Council, at its regular monthly meeting, discussed the proposed new text of Chapter Env-A 2300, Mitigation of Regional Haze. EPA, in early 2010, rejected an earlier proposed New Hampshire Regional haze rule as lacking enforceable emission limits. At the August 16, 2010, meeting, William H. Smagula, Director-Generation, PSNH, admitted to the Air Resources Council that the proposed Regional Haze rule will require significant changes at Merrimack Station and will increase costs to customers. Mr. Smagula also stated that PSNH has done a study of those costs.

² The copy produced by PSNH pursuant to NHDES-ARC Order was the 4th, heavily redacted version.

Any plant project that increases emissions carries with it serious Clean Air Act implications, including the necessity of upgrading very expensive pollution control equipment.³

The Commission must conduct a full enquiry into generation upgrade at Merrimack Station to make the public good determination to ensure safe and reliable service required by RSA 369:1 and RSA 369-B:3-a.

3. The Commission, in order to make the finding that PSNH will provide safe and reliable service as required by RSA 369:1 and Appeal of Conservation Law Foundation, supra, must permit full discovery and the introduction of evidence of each and every fact regarding the costs of environmental compliance at the 60 year old Merrimack Station, including, but not limited to, the projected costs of permitting obligations under RSA 125-O and the Clean Air Act.⁴

The cost projections should include not only the costs of permitting obligations and the operating and capital costs to install and maintain pollution control equipment, but also a careful assessment of anticipated statutory, regulatory and judicial decisions.⁵

The Commission must, in the interest of the public good, permit examination of and the introduction of evidence regarding the costs for new and revised pollution standards for air toxics and coal combustion waste. The EPA, by court order, is required to promulgate new air toxic rules from coal fired power plants for *all* toxics, not just mercury, by November 11, 2011. The greenhouse gas issue looms large. On December 7, 2009 EPA issued a final ruling that greenhouse gases [including CO₂] endanger public health and welfare, and, are therefore, subject to regulation. Climate change legislation is pending before Congress.

NO_x is a particularly demanding problem for PSNH. NO_x is a component of ozone. A large part of southern New Hampshire is in non-attainment for ozone which means that the control of NO_x emissions must meet more stringent control standards. MK 2 is a BART eligible EGU under the Regional Haze SIP which means that emissions must meet a more stringent standard that, by the August 16, 2010, Air Resources Council admission of William H. Smagula, Director-Generation, PSNH, will have costs for ratepayers. [See footnote 1] MK2 is a wet bottom cyclone boiler, built in 1968, with very high uncontrolled NO_x emission rates due, in large part, to the very high heat release for the boiler and very high full load furnace exit gas temperature. The MK2

³ NHSC submitted these studies to the Public Utilities Commission in informational docket DE 08-103. The studies were sequestered by PUC staff without NHSC permission. See Puc 201.04.

⁴ The Public Utilities Commissions of other states permit comprehensive examination of the facts and costs of pollution control compliance. See, for example, State of Arkansas Public Services Commission Docket # 09-042-U, link: http://www.apscservices.info/efilings/docket_search_results.asp?CaseNumber=09-042-U&Aff=yes.

⁵ PSNH has consistently objected to NHSC efforts to obtain cost information for pollution control compliance. See DE 10-121.

NO_x uncontrolled emission rate is a much higher rate than most uncontrolled boilers and is higher than most cyclones. Andover Technology Partners, Case Studies, April 23, 1998. NHSC Exhibit B-11, ARC 09-10.

There are similar concerns for the control of particulate matter and sulfur dioxide and other pollutants.

PSNH has abandoned its efforts to control mercury by the activated carbon injection technique.⁶ The failure of this process has raised substantial concern that the flue gas desulphurization [FGD] system under construction at Merrimack Station will not reduce mercury to the level mandated by RSA 125-O.

4. The Commission, in order to ensure that the proposed capitalization satisfies RSA 369:1, must examine whether the financing is economically justified when measured against adequate alternatives.

The cost of pollution controls at aged coal fired power plants such as Merrimack Station is substantial and growing. The Commission must evaluate the economic desirability of the continued operation of the plant. The evaluation must be conducted in light of RSA 378:30-a, the anti-CWIP statute. Appeal of Public Service Company of New Hampshire, 125 N.H. 46 [1984].

PSNH has asked the Commission to approve financing exceeding a billion dollars. \$600,000,000 of that financing will have maturities of up to 40 years. Extending the life of a very dirty, 60 year old coal fired power plant another 40 years is an extremely unwise choice economically.⁷

5. The Commission must examine the very serious issue of the financial supportability of the proposed capitalization to ensure that expenses do not escalate beyond rate support.

It is certain that the costs of pollution control for coal fired power plants will escalate. Climate change legislation and regulatory action has increased costs to PSNH for its greenhouse gas emissions.⁸ Air toxics, including mercury, are subject to intense, more stringent emission limitations. PSNH compliance with current pollution controls is under attack. The litigation will have very severe cost consequences to PSNH if it is ordered to add pollution control equipment.

⁶ In accordance with the testimony of William H. Smagula, Director-Generation, PSNH, at the March 15, 2010, hearing in ARC 09-10 before the Air Resources Council.

⁷ For example, the natural gas plant in Londonderry, NH may be an alternative.

⁸ New Hampshire is a RGGI state.

Customer migration has become a problem for PSNH, has caused rate increases, and is the subject of a current Commission docket. [DE-10-160]. Energy efficiency programs have lowered demand. [DE 10-12]. Because of environmental concerns and cost saving measures, the public demand for renewable energy is growing.

The Commission must demand that the PSNH support its capitalization proposal with competent evidence of future rate implications. “ ...Rather, the commission’s responsibility is to determine whether at later ratemaking proceeding a reasonable rate can be set that will allow the company to support the capitalization that will result from use of the proceeds of the proposed financing...” Appeal of Conservation Law Foundation, *supra*, page 676.

In Commission docket DE 09-035, PSNH acknowledged that its investments and expenses are increasing as its revenues are stagnating or declining. PSNH admitted that given the age and condition of the plant, the need for replacements and upgrades to its system is growing. [Order No. 25,123, page 30]. The Commission stated that it will be called upon to confirm whether plant additions will be used and useful and in service and to find whether recovering the associated costs will be allowable. [Order, page 32]

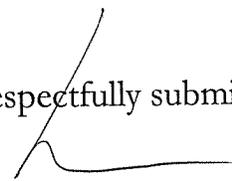
NHSC, by its Petition to Intervene, is asking that the Commission include pollution control costs in the rate making analysis.

6. The Commission must vacate the procedural schedule it adopted on July 20, 2010, in Order No. 25,131. The procedural schedule is arbitrary and unreasonably short to allow the Commission to develop the full evidentiary record necessary to support the findings required by RSA 369:1.

Wherefore, NHSC respectfully demands that it be permitted full intervention in this docket; that the Commission vacate the procedural schedule; fix a procedural schedule that will permit full examination of the public good of the financing proposal; and, for whatever other relief proper in the premises.

8/10/10

Respectfully submitted,

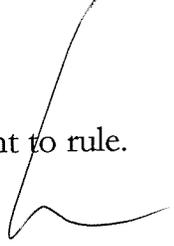


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Certificate of Service

Petitioner served notice of the filing of this Motion pursuant to rule.



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