STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-122

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Issuance of Long- and Short-Term Debt and Related Relief

Order Granting in Part and Denying in Part PSNH's Debt Requests

O R D E R N O. 25,178

December 17, 2010

APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; the Office of Consumer Advocate by Meredith A. Hatfield, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On May 3, 2010, Public Service Company of New Hampshire (PSNH or Company) filed a petition seeking authority to issue up to $600 million in principal amount of long-term debt through December 31, 2012; to mortgage its property in connection with the issuance of long-term debt; to enter into interest rate transactions to manage interest risk; to engage in long-term borrowing pursuant to an unsecured revolving credit agreement; and to extend its current short-term debt limit of 10% of net fixed plant plus a fixed amount of $60 million. PSNH said that, as of March 31, 2010, it had $16.2 million in outstanding short-term debt.

With its petition, PSNH filed the supporting testimony and related schedules of Susan B. Weber, the Assistant Treasurer – Finance of Northeast Utilities Service Company (NUSCO), the service company for Northeast Utilities (NU) and its subsidiaries, including PSNH. PSNH also requested an extension of time to file information required by New Hampshire Code Admin. Rules Puc 308.11(b)(2) with respect to a new unsecured revolving credit agreement with a number of banks pursuant to which the Company can borrow up to $100 million on a short-term or long-term basis, subject to the Commission's approval.

The Commission issued an order of notice on June 1, 2010, scheduling a prehearing conference on June 29, 2010, and establishing deadlines for motions to intervene. The Office of Consumer Advocate (OCA) filed a letter with the Commission on June 4, 2010, saying that it would participate in this docket on behalf of residential ratepayers pursuant to RSA 363:28. On June 24, 2010, New Hampshire Sierra Club (Sierra Club) filed a petition to intervene. The prehearing conference was held as scheduled on June 29, 2010. Also on June 29, PSNH filed an objection to Sierra Club's petition to intervene. A technical session was held following the prehearing conference. Staff filed a report of the technical session and a proposed procedural schedule on June 30, 2010.

On July 20, 2010, the Commission issued Order No. 25,131, which approved the proposed procedural schedule with one modification, denied Sierra Club's petition to intervene, defined the scope of the proceeding, and directed PSNH make an updated filing to address concerns raised at the prehearing conference about the need for over $150 million in excess authority as compared with the proposed issuances and to explain the Company's reasons for the additional twelve months to issue the debt securities. The Commission also granted PSNH an extension of time regarding the filing of information related to a new revolving credit agreement.

On July 23, 2010, PSNH filed the revised testimony of Ms. Weber. The revised testimony reduced PSNH's requested authority for long-term debt authority by $100 million, from $600 million, as initially filed, to $500 million and provided an explanation of why the Company was seeking authority to issue long-term debt through 2012.

PSNH filed motions for protective orders regarding responses to three data requests. The first motion was filed on July 16, 2010, regarding PSNH's response to Staff 1-3, which requested PSNH's 5-year financial forecast. Also on July 16th, PSNH filed a motion for protective order regarding the response to TECH Q-002, which sought the assumptions used in developing the financial forecast. PSNH filed the third motion on August 3, 2010, regarding the response to OCA 1-007 which asked for information related to the NU Operating Company Credit Agreement, that was then under negotiation. PSNH filed an almost identical motion on September 10, 2010, regarding OCA 1-007, which requested confidential treatment of the proposed terms for the Revolving Credit Agreement. On October 22, 2010, PSNH filed an errata to its motions for confidential treatment correcting certain errors in the motions.

On August 18, 2010, Sierra Club filed a motion for reconsideration of Order No. 25,131 regarding the denial of its motion to intervene, to which PSNH objected on August 25, 2010. On September 10, 2010, the Commission issued Order No. 25,143 denying Sierra Club's motion for reconsideration. On October 12, 2010, Sierra Club appealed the Commission's denial of their motion to intervene to the New Hampshire Supreme Court and, on December 1, 2010, the Supreme Court issued an order declining the appeal.

Staff filed testimony on August 20, 2010. On August 31, 2010, Staff filed a letter notifying the Commission that the parties and Staff had agreed to cancel a technical session scheduled for September 2, 2010. The hearing on the merits was held on September 13, 2010, as scheduled. At the hearing, PSNH marked for identification two compilations of discovery conducted prior to hearing. The first set, marked for identification as Exhibit 3, was a compilation of certain non-confidential discovery responses. The second set, marked for identification as Exhibit 4, contained responses to discovery for which PSNH asserted a claim of confidentiality. The OCA objected to the admissibility of Exhibits 3 and 4.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In its initial filing, PSNH requested authority to issue and sell up to $600 million in aggregate principal amount of long-term debt in the form of first mortgage bonds, or in the form of unsecured notes, in multiple series, with a maturity ranging from 1 to 40 years. PSNH proposed to issue the long-term debt over a two-year period at a fixed or floating interest rate, to be sold to either retail investors (Retail Debt) or to institutional investors (Institutional Debt) and distributed in either the public or private markets. The Company also said it might issue the long-term debt in the form of advances from its NU parent corporation as evidenced by one or more promissory notes, an example of which was provided with the filing. PSNH sought authority to issue long-term debt having an interest rate not to exceed a rate equal to the applicable fixed or floating interest rate index plus a credit spread of up to 400 basis points (4.00%). PSNH said that the exact financing structure, terms and conditions, amount, documentation, and interest rate will be determined at the time of issuance, based on prevailing market conditions.

PSNH testified that it intends to use the proceeds of the issuance of long-term debt to refinance PSNH short-term debt incurred in the ordinary course of business, which includes financing capital expenditures for the Company's transmission, distribution and generation business segments, funding working capital, including the possibility of unforeseen or unpredictable events such as emergency storm restoration, and paying issuance costs. If market conditions provide an opportunity to finance an amount in excess of the then-current short-term debt, PSNH said any additional debt raised would be used for funding ongoing capital expenditures and working capital needs.

According to testimony, PSNH is seeking the Commission's approval to issue the secured or unsecured long-term debt in multiple series from January 2011 through December 2012, a 24-month period. The primary reasons for a 24-month period are: (1) given the volatility of the financial markets over the last several years, such an authorization will enable PSNH to promptly capitalize on favorable market conditions by significantly reducing the lead time in issuing debt; and (2) the Company said any future request for authority to issue long-term debt during the financing period would likely resemble the request in the instant petition. The Company reasoned that approval to issue debt over a two-year period would save significant time and expense for all parties involved in the approval process by avoiding the need for two successive proceedings, one immediately following the other. If the Commission were to approve the 24-month financing period, PSNH said it would file a report with the Commission within 30 days following each issuance of long-term debt that would summarize the terms and conditions and the actual costs of the transaction, and demonstrate compliance with any pre-approved parameters imposed by the Commission.

PSNH projected that it will go to the market as early as the first quarter of 2011 for approximately $210 million, and as early as the first quarter of 2012 for an additional amount of up to $225 million of long-term debt, pursuant to the Company's latest 5-year forecast. PSNH acknowledged that the projected issuance of approximately $435 million in long-term debt through the financing period is less than the authority requested to issue up to $600 million in long-term debt. PSNH said that it is requesting the additional authority for added flexibility should its financing needs increase. The Company explained that any changes over the proposed issuance would be governed by operational considerations (such as major storms and their associated costs) as well as changes in the timing of capital expenditures and working capital incurred in the normal course of business. In addition, PSNH said that it will consider the need to maintain its credit ratings and ratemaking capitalization in assessing further indebtedness.

PSNH testified that it will consider the market conditions at the time of issuance when deciding whether to issue Institutional Debt or Retail Debt. The Company said that it draws on the knowledge and experience of its investment banks and analyzes data from various financial and industry sources to develop its conclusions regarding credit spreads, interest rates, issuance costs and other economic factors and will seek such professional advice when assessing market conditions prior to an issuance. PSNH said that current market conditions revealed Institutional Debt to be less expensive than Retail Debt, but there is no guarantee that either debt market will remain accessible, or that the price differential will remain the same.

As with its prior 2009 financing request (Docket No. DE 09-033), PSNH requested authority to enter into an interest rate transaction to manage the interest rate risk associated with the proposed long-term debt. PSNH said that it would consider using a Treasury Rate Lock or Forward-starting Swap to mitigate interest risks. By locking in the U.S. Treasury rate in advance of the planned issuance, PSNH said it could eliminate or reduce the risk associated with a rising interest rate environment depending on the percentage of the principal amount of debt that is hedged. PSNH said it would also consider a Forward-starting Swap, which functions substantially like a Treasury Rate Lock, except that the Forward-starting Swap is based on expected changes in the U.S. LIBOR swap market instead of the U.S. Treasury market, and mitigates a portion of an issuer’s credit risk in addition to underlying Treasury rate risk. According to PSNH, it will only enter into an approved transaction, as determined by the

Company's Interest Rate Risk Management Policies and Procedures, and will comply with all hedge accounting guidelines in accordance with generally accepted accounting principles.

PSNH testified that it is currently a party to an unsecured revolving credit agreement with a number of banks pursuant to which the Company can borrow, under the terms and conditions of the agreement, up to $100 million on a short-term basis or, subject to the Commission's approval, on a long-term basis. Under the agreement in place at the time of the filing, PSNH said it could borrow at variable rates plus an applicable margin based upon unsecured debt ratings. Because the agreement expires on November 6, 2010, PSNH said that it can only borrow funds under the agreement on a short-term basis, that is, less than 365 days. At the time of the filing, PSNH stated that the Company was in the process of negotiating a new revolving credit agreement and requested that the Commission authorize PSNH to borrow on a long-term basis under the new agreement. According to the Company, at the time of its filing, the terms and conditions of the new revolving credit agreement were under development and would be provided to the Commission as soon as they are available.[1]

According to PSNH's prefiled testimony, as of March 31, 2010, its net fixed plant was approximately $1.54 billion and its short-term debt limit (10% of net fixed plant plus $60 million) was $214 million. PSNH testified that the Commission authorized the short-term debt limit only until PSNH's next filing, *i.e.*, the instant docket. Order No. 25,021 (October 5, 2009) at 13. PSNH testified that it continues to make new capital investments and will continue to need funds for working capital, including funds for emergency storm restoration, for which it has to rely heavily on short-term borrowings. In addition, the Company said it expects that its intra-month peaks in short-term borrowings may cause its short-term borrowing needs to exceed the

[1] The Revolving Credit Agreement has been finalized and was filed with the Commission on October 22, 2010.

10% limit. PSNH requested that the Commission extend its currently authorized short-term debt limit of 10% of net fixed plant plus $60 million until further order of the Commission.

PSNH filed supplemental testimony on July 23, 2010, in response to Commission Order No. 25,131 (July 20, 2010). In the supplemental testimony, PSNH said that, as a result of the Commission's approval of a settlement agreement in PSNH's distribution rate case (Docket No. DE 09-035)[2], the long-term debt component of PSNH's capital structure was changed from 51.17 percent to 45.73 percent. The May 3, 2010 original filing assumed the then-applicable target debt component of 51.17 percent. PSNH stated that change in the long-term debt component is currently estimated to decrease the amount of long-term debt financing that PSNH requires during the financing period by approximately $40 million to $50 million. In addition, in recognition of concerns expressed at the prehearing conference by OCA and Staff and by the Commission in Order No. 25,131 related to the "excess financing authority" originally requested, PSNH further reduced the requested long-term debt authority by an additional $50 million.

PSNH noted that its current forecast anticipated issuance of a total of $435 million of long-term debt while, through its supplemental testimony, it has requested authority to issue up to $500 million in long-term debt over the two-year period ending December 31, 2012. PSNH said that the excess borrowing authority was requested to allow for the possibility of issuing "index-eligible"[3] debt over the financing period, which typically results in lower interest rates. In addition, the requested authority would allow PSNH to respond to unforeseen capital or working capital needs, such as emergency storm restoration, which cost PSNH approximately $75 million in 2008. PSNH emphasized that even if it had the authority to issue up to $500

[2] *See* Order No. 25,123 (June 28, 2010).
[3] Transactions of $250 million or greater are considered "index-eligible".

million in long-term debt, it would not use that authority unless the issuance made sense from an overall financial perspective.

At hearing, PSNH clarified the priority in which the Company would pursue the options for borrowing set forth in its prefiled testimony, an issue raised by Staff witness Steven E. Mullen in his testimony. PSNH has said that it would seek long-term debt through one of three sources: in the form of secured or unsecured securities in the debt capital markets; in the form of borrowing from NU as evidenced by one or more promissory notes or by one or more bank loans; or pursuant to the Company's and NU affiliates' unsecured revolving credit agreement with participating banks. To clarify the issue of priority raised by Staff, PSNH testified that it would first seek to issue long-term debt in the debt capital markets. In the unlikely event that those markets are inaccessible, PSNH would then look to borrow long-term debt through the revolving credit agreement. Finally, if revolving credit agreement borrowings were insufficient or unavailable for some reason, PSNH would seek to borrow from NU. Hearing Transcript of September 13, 2010 (Tr.) at 16-17.

PSNH also noted that Mr. Mullen had raised a question regarding the use of the revolving credit agreement (Revolver) for both short-term and long-term debt. To further explain its use of the Revolver, PSNH said that any borrowing from the Revolver for a period greater than 364 days would be considered long-term borrowing. The limit on the term of such long-term borrowing would depend on the termination date of the Revolver. Any borrowing for 364 days or less would be considered short-term. *Id*. At 17-18. The Company also agreed with Mr. Mullen's assertion that it would be required to pair any borrowings from the Revolver facility with equity pursuant to a settlement agreement reached by the parties in DE 09-035, PSNH's recent distribution rate case. *Id*. At 18.

PSNH also responded to Mr. Mullen's request for clarification regarding the interest rate applicable to promissory note borrowings from PSNH's parent, NU. PSNH said that NU would likely provide funds to PSNH at its then-existing cost of borrowing, which would most likely be a borrowing from the NU Revolver or through a debt capital markets transaction. *Id*. At hearing, PSNH said it was still in the process of negotiating the Revolver but that in all likelihood borrowings would not have a credit spread in excess of 400 basis points. In any event, PSNH said it would seek to achieve the lowest cost of long-term debt financing for its customers. *Id.* at 19.

PSNH said that Mr. Mullen recommended a reporting requirement in connection with the 24-month financing period requested by PSNH. Pursuant to Mr. Mullen's recommendation, PSNH would file a report no later than December 31, 2011, detailing the then-current financial market conditions, update estimates regarding expected financing costs for future issuances, and any other significant matters relevant to potential issuances that could occur through December 31, 2012. PSNH said it would have no difficulty complying with Staff's recommendations, including Mr. Mullen's recommendation that the Company file a report within 30 days of any issuance of long-term debt that would summarize the terms and conditions and the actual cost of the transaction, and demonstrate compliance with the pre-approved parameters of the filing. *Id.* at 20. In response to questions at the hearing, PSNH acknowledged it would need Commission approval if market conditions required a change to any term of the financing, such as a change in the credit spread approved by the Commission. *Id*. at 44-45.

Finally, PSNH summarized the difference between the existing Revolver and the new agreement under negotiation. Regarding the new agreement, PSNH said both the fees associated with the new agreement as well as the borrowing spreads have increased to reflect current market conditions. Second, the borrowing supplements for each of the NU subsidiaries participating in the Revolver facility have been increased, reflecting projected short-term borrowing levels for each of the companies to ensure sufficient liquidity for their operating systems. Finally, PSNH said that the last major difference in the renegotiated agreement is new language that describes how to deal with a potential defaulting lender under the new Revolver. *Id.* at 21.

In response to questions at hearing, the Company was unable to characterize how the financing proposal did or did not conform to the Company's most recent least cost integrated resource plan and the Company testified that, in addition to funding capital requirements of $326 million[4] for 2010, proceeds from the 2011 long-term debt issuance would also be used to fund working capital requirements, to pay for debt issuance costs, and perhaps an insignificant amount towards operation and maintenance expenses. *Id.* at 36-37. The Company agreed that the additional requisite equity component to maintain the existing capital structure, which would be a contribution from NU or earnings retained by PSNH, plus $210 million in long-term debt would equal roughly $459 million, or about $133 million in excess of the planned capital construction for 2010. *Id.* at 38.

PSNH also testified that the balance of 2011 long-term debt issuance proceeds could be used to fund 2011 capital projects. *Id.* at 39. The Company stated that it did not have an analysis of the associated rate impacts for the three categories of capital investment forecast for 2011 and 2012 – distribution, generation and transmission, nor was it known whether there had been an analysis of alternatives to constructing certain new transmission lines. *Id.* at 41. In addition, PSNH said that it had not yet developed its capital finance plan for 2011 and that, as of the date of the hearing, it had no outstanding short-term debt. *Id.* at 48-49.

[4] $326 million is the total amount of capital additions included in PSNH's 2010 capital budget. See Mullen testimony, Attachment SEM-1.

As to whether Exhibits 3 and 4 should be admitted as full exhibits, PSNH said that discovery responses are routinely presented at hearing to clarify the questions asked, in this instance, by Staff and the OCA regarding the filing. *Id*. at 68. According to PSNH, the responses to data requests were available for some time and the OCA had numerous opportunities prior to hearing to ask questions about or to object to the responses. *Id*. at 69. PSNH concluded by requesting that the Commission grant the relief in its petition as modified by its July 27, 2010 filing.

B. Office of Consumer Advocate

The OCA observed that RSA 369 requires the Commission to find that any proposed long-term debt issued by a utility is consistent with the public good pursuant to RSA 369:1. According to the OCA, PSNH did not provide adequate information on the terms or the proposed use of the funds for the proposed financing, either in the original or supplemental filing, to allow such a finding. *Id.* at 71. In addition, the OCA argued that PSNH should not be allowed to supplement its filing with the responses to data requests that PSNH sought to introduce into the record and which are marked for identification as Exhibits 3 and 4. The OCA said that this supplemental information should not be considered by the Commission in its review of the filing (*Id*. at 67) and, if admitted, urged the Commission to accord less weight to the supplemental information because it was not presented by the Company as part of its case in chief. *Id*.

The OCA stated that PSNH presented no testimony demonstrating that the projects to be funded by the proposed $500 million long-term issuance are necessary for the provision of safe and reliable service to customers. *Id*. at 72. The OCA opined that an “after-the fact” review of the capital expenditures supported by this financing will not allow such an analysis. *Id*. According to the OCA, if the Commission should decide to approve any financing, the

Commission should limit the Company's authority to $435 million, the amount PSNH claimed was needed. *Id*. at 73.

C. Staff

Staff's witness, Steven E. Mullen, recommended that the Commission approve PSNH's filing, as amended, regarding the request for authority to issue long- and short-term debt. With respect to PSNH's request for authority to issue debt over twenty-four months, Mr. Mullen recommended that it be granted and that PSNH be required to file, on or before December 31, 2011, an interim report detailing then-current financing market conditions, updated estimates regarding expected financing costs for further issuance(s) and any other issues of significant relevance to potential future issuance(s) that could occur through December 31, 2012. Staff Testimony at 4.

Mr. Mullen said that PSNH needed to provide further clarification of its initial filing regarding the priority of its options for issuing long-term debt (e.g., first mortgage bonds, promissory note, Revolving Credit Agreement). In addition, he asserted that PSNH also should clarify what the applicable interest rate would be in connection with the promissory note option and the short-term and long-term nature of borrowing through the new Revolver facility. Mr. Mullen testified that he had discussed these issues with PSNH but that PSNH needed to be clear and explicit for the Commission's consideration. *Id*. at 6.

Mr. Mullen said that PSNH testified that it plans to use the proceeds of the long-term debt financing to repay existing short-term debt, to finance ongoing capital expenditures and to pay issuance costs. According to Mr. Mullen, those planned uses are typical of PSNH's previous long-term debt financings. Mr. Mullen attached to his testimony a copy of PSNH's 2010 capital budget listing its capital projects for the year for its distribution, transmission and generation operations. *Id*. at 7. Mr. Mullen testified that he had reviewed the list and concluded that the hundreds of listed projects appear to be consistent with PSNH's obligations in relation to owning and operating its distribution, transmission and generation facilities. He cautioned that his observations should not be construed as comments regarding the prudence of any individual project. *Id*.

With respect to the amount of long-term debt authority requested by PSNH, Mr. Mullen said that he was more comfortable with the revised limit of $500 million as compared to the initial proposed limit of $600 million. Mr. Mullen stated that he understood the need for some flexibility in the financing given the extended time frames PSNH proposed for issuance. *Id*. at 8. Mr. Mullen said that PSNH had described its plans to receive equity contributions from its parent in amounts that, pursuant to the settlement agreement in Docket No. DE 09-035, PSNH's recent distribution rate case, will stabilize its debt-to-equity ratio as it issues additional debt. As to the possibility of PSNH issuing the entire $500 million of long-term debt, Mr. Mullen noted that the Company, in its supplemental testimony, stated it would not issue the entire amount just because it had the authority to do so but that "[a]ny issuance must to make sense from an overall financial perspective or it will not happen," . *Id*. at 8-9.

Mr. Mullen recommended that the Commission approve PSNH's request for a financing period through December 31, 2012. *Id*. at 9. He said that in the event PSNH's financing needs significantly altered during the pendency of that time frame, or the parameters of any financing needs no longer fit within the scope of the instant requests, PSNH would have to seek Commission approval to modify any of the terms that may be approved in the instant proceeding. *Id*. at 10.

Mr. Mullen testified that he had no concerns regarding the Company's request to mortgage property or to execute interest rate transactions. *Id*. at 10-11. With respect to PSNH's request to extend its authorized short-term debt limit of 10% of net fixed plant plus a fixed amount of $60 million, Mr. Mullen opined that the formula resulted in an overall level that meets the needs of PSNH's day-to-day utility operations. Mr. Mullen said that allowing the increase until further ordered by the Commission was reasonable and did not restrict the Commission or any other party from revisiting the issue in the future. *Id*. at 14.

Finally, Mr. Mullen observed that there would be essentially no rate impact as a result of the proposed debt financing. Mr. Mullen said that rate impacts from financing transactions result primarily from changes in a utility's capital structure or changes in a utility's overall cost of capital. PSNH committed to keep the debt and equity components of its capital structure, on a percentage basis, similar to where they were at the time of entering into the settlement agreement in Docket No. DE 09-035. Therefore, Mr. Mullen surmised that PSNH's capital structure and overall cost of capital will be largely unchanged from where they are today. *Id*. at 14-15.

Staff concluded by stating that it had conducted a review of the filing and, based on that review, recommended that the Commission approve the proposed issuance of long-term debt as consistent with the public good. Tr. September 13, 2010 at 73-74. Staff said that the financing would have no material impact on rates, the terms and conditions are reasonable, and that the proposed use of the money is to support the operations of a public utility. *Id*. at 74. Staff said that the financing was in the nature of a routine financing similar to that approved by the Commission in Docket No. DE 09-033, with the exception that this proceeding involves a request to issue debt over twenty-four months instead of twelve months. *Id*.

III. COMMISSION ANALYSIS

A. Motions for Confidential Treatment

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5, IV exempts from public disclosure any records that constitute confidential, commercial, or financial information. As set forth in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), building on *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), we apply a three-step analysis to determine whether information should be protected from public disclosure pursuant to the Right-to-Know law. *See, e.g., Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the analysis is complete and the Right-to-Know law requires disclosure. If a privacy interest is at stake, the second step is to determine if there is a public interest in disclosure. Disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise disclosure is not warranted. If there is a public interest in disclosure, the third step requires a balancing between the public interest in disclosure and the privacy interest.

In furtherance of the Right-to-Know law, the Commission's administrative rule Puc 203.08 is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08 (b).

1. Five-Year Forecast and Assumptions Underlying the Forecast

PSNH filed motions to protect the five-year forecast provided in response to Staff 1-003, as well as the assumptions used in developing the forecast provided in response to TECH Q-002. In its motions, PSNH said that the information requested is forward-looking financial information that could potentially implicate the prohibition of the Securities and Exchange Commission (SEC) against "selective disclosure" of material financial information. The Company said that the selective disclosure rule prohibits material financial information from being disclosed to selected individuals (e.g., any large institutional investors and hedge funds with substantial holdings in NU stock that may monitor the public filings in this docket) before a full disclosure is made to the general public through a public filing with the SEC. Additionally, PSNH said that it does not circulate its financial forecasts and that the information contained in PSNH's financial forecasts is confidential and competitive information that falls within the exemption from public disclosure of RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08. According to the Company, the limited benefits of disclosing this information would not outweigh the harm done by disclosure. PSNH noted that the Commission had granted protective treatment to similar information in the past.

We have reviewed the information *in camera* and have determined that the information responding to Staff 1-003 and TECH Q-002 is confidential commercial or financial information that is exempt from disclosure under the Right-to-Know law, applying the first step in the analysis. Next we must determine whether there is a public interest that warrants disclosure of this information. Because disclosure is only warranted if there is a public interest related to the conduct of government, we consider whether making this information public would shed light on the Commission's consideration of PSNH's financing requests. The petition before us requests authority to issue long-term debt over a twenty-four-month period and related relief. While the information related to the five-year forecast and the underpinnings to that forecast provides the Company's planning over the next five years, we do not find that the information, except for the amount of forecast increase in working capital in 2011, which the Company seeks to fund with the requested financing, enlightens the public about our determination of whether the proposed financing is in the public good pursuant to RSA 369.

In considering the public good, we review the implications of the financing on the Company's capital structure. Disclosing the forecast and underlying assumptions will only reveal the business planning of the Company and will not disclose any workings of the Commission in its review of this proposed financing.

Finally, in applying the third step, we agree with PSNH that the harm of public disclosure of this information, given the restrictive disclosure rules of the SEC, outweighs the benefits of disclosure, except for specifying the amount of increase in working capital, which is a specific use of the funds requested and approved by the Commission as set forth below. Therefore, we grant the motions for confidential treatment in reference to Staff Set No. 1-003 and TECH Q-002, except for disclosing the amount of forecast increase in working capital that we use to determine the amount of new long-term debt issuance that we set forth herein.

2. Revolving Credit Agreement

We note that since the time that PSNH filed its original motion for confidential treatment of the Revolving Credit Agreement with NU (August 3, 2010), and its updated motion regarding the same (September 10, 2010), the Revolving Credit Agreement has been finalized and was publicly filed with the Commission on October 22, 2010. Therefore, we will consider the motions for confidential treatment of the responses to OCA 1-007 which related to the now-public Revolving Credit Agreement withdrawn.

B. Petition for Long-Term Financing and Related Relief

In reviewing the proposed financing, we must determine whether the issuance is consistent with the public good, pursuant to RSA 369:1 and 4. In determining the public good, the relevant statutes require us to consider the amount of the issue authorized, the purpose or purposes for which the proceeds are to be used, and the reasonableness of the terms and conditions of the financing. In addition, according to the New Hampshire Supreme Court, the Commission must consider whether the object of the financing is reasonably required for use in discharging a utility company's obligation to provide safe and reliable service, whether the utility company's plans to accomplish that object are economically justified when measured against any adequate alternatives, and whether the capitalization resulting from the utility company's plans would be supportable. *Appeal of Easton*, 125 N.H. 205, 211-213 (1984).

In Order No. 25,131 we said that the scope of this docket includes the terms and amount of the financing, the effect on PSNH's rates, capital structure, and debt/equity ratio, and whether the proposed use of the proceeds is for the public good. *Id*. at 7. In that Order, we also observed that PSNH's request in this docket is different from prior financing proceedings in that PSNH seeks authority to issue debt over a period of twenty-four months, rather than the customary twelve-month time period, and the amount of the financing originally requested was up to $600 million, although the total of the projected issuances was $435 million.

PSNH amended its filing to reduce this requested authority to issue up to $500 million while still planning to issue long-term debt in two tranches—one of up to $210 million scheduled for 2011 and one of up to $225 million scheduled for 2012. At hearing, PSNH stated that the proceeds of the planned initial issuance of $210 million in long-term debt scheduled for the first quarter of 2011 would be used to refinance short-term debt incurred in connection with capital construction in 2010 and to fund working capital requirements, operation and maintenance expense, the cost of debt issuance, and some of its forecast capital investments during 2011.

As Staff observed, the principal differences between the 2009 filing and the instant filing are PSNH's request for a twenty-four month financing period and the proposed overall long-term debt limit of $500 million for that period. Presumably, the second issuance of long-term debt scheduled for 2012 would be used to refinance PSNH's short-term debt incurred in connection with 2011 capital construction for generation, distribution and transmission, as well as some capital investment in 2012. The magnitude and period of the proposed financing as implicated by the issuance in the second year go beyond the parameters of a routine financing. Furthermore, at hearing, PSNH testified that it had not yet developed the 2011 capital construction plan, and consequently we cannot make an informed judgment about the use of the proceeds of the second year issuance, as well as some of the use of the proceeds from the 2011 proposed issuance, to the extent they may be used for future unspecified investments. Accordingly, on the record before us we cannot find it in the public interest to grant PSNH authority for the second long-term debt issuance proposed for 2012.

As for the first long-term debt issuance, proposed for 2011, PSNH's 2010 capital budget lists its planned capital projects for the year in relation to its distribution, transmission and generation operations. PSNH stated that it will receive equity contributions from its parent, NU, in amounts that, as it issues additional debt, will maintain its capital structure in component percentages similar to those included in the settlement agreement in PSNH's recent distribution rate case, Docket DE 09-035. The agreed target capital structure in that proceeding consisted of 45.73 percent long-term debt, 1.87 percent short-term debt, and 52.40 percent common equity. *See* Settlement Agreement in Docket DE 09-035, Exhibit 20, Hearing Date May 10, 2010 and Order No. 25,123 (June 28, 2010) at 9. Applying the long-term debt component of approximately 46 percent, if PSNH raises sufficient capital to fund its 2010 capital budget of $325.9 million, plus its forecast increase in working capital for 2011 of $15.1 million (from Q-Staff-003, p. 4, Ex. 4), it will need to issue additional long-term debt of $157 million plus approximately $1.5 million to cover debt issuance costs. Because these amounts are not exact, we will provide PSNH some flexibility by allowing an additional $1.5 million of long-term debt borrowing authority, bringing the total authorization to $160 million. The Company did not identify specific O&M expenses that it sought to fund from long-term debt, nor on the face of it does that appear to be an appropriate use of long-term debt. Therefore, we have not included allowance for such expenses in the amount of long-term debt that we are approving herein.

The proposed uses of the proceeds of the proposed 2011 financing are similar to the proposed use of the funds for the financing approved in Order No. 25,021 (October 5, 2009) in Docket No. DE 09-033, regarding PSNH's 2009 long-term financing. As required by *Easton*, we have reviewed the proposed uses of the financing, including the specific projects listed in PSNH's 2010 capital construction plan, and find the uses of this proposed financing to be in the nature of routine expenditures reasonably necessary for safe and reliable utility operation. We will not further scrutinize each individual project in the 2010 capital construction plan and we acknowledge utility management's prerogatives regarding the day-to-day operations of a public utility. *See Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066-67 (1982) and *Appeal of Roger Easton*, 125 N.H. 205, 211 (1984).

Mr. Mullen concluded that, based on the PSNH data responses attached to his testimony, there would be essentially no rate impact as a result of the proposed debt financing. We observe that these investments are largely complete or near completion and questions with regard to whether they were prudent and reasonably incurred, as well as used and useful in the provision of utility service, will be the subject of future rate case proceedings. We also note that no evidence was presented in this case as to whether the planning for future investments proposed to be funded from the proceeds of the long-term debt conforms with the least cost integrated resource plan most recently filed and found adequate. See RSA 378:38-41. The conformity of investments already made in 2010 will be considered when PSNH seeks to include such investments in rates.

Because PSNH committed to keep the debt and equity components of its capital structure, on a percentage basis, similar to where they were at the time of entering into the Settlement Agreement in Docket No. DE 09-035, Mr. Mullen surmised that PSNH's capital structure and overall cost of capital will be largely unchanged from where they are today. PSNH affirmed the capital structure requirements at hearing. Based upon testimony by both PSNH and Staff we find that the proposed borrowing for 2011 will not change PSNH's capital structure and that the borrowing will have a minimal impact on rates. We also find that issuance of long-term debt is economically justified given the alternatives of further increasing short-term debt or funding operations with equity. Furthermore, we find that the capital structure resulting from the financing is supportable.

Having limited approval to the long-term debt issuance planned for 2011, we find that it is consistent with the public good for PSNH to issue up to $160 million in long-term debt including debt issuance costs, mortgage property, utilize an interest rate hedging mechanism, borrow in connection with the Revolving Credit Agreement, and use a credit spread of up to 400 basis points (4.0%) in connection with such issuance.

PSNH also seeks authority to issue short-term debt up to an amount equal to 10% of its net fixed plant plus $60 million. Despite the fact that the Company, at the time of hearing, had no short-term debt, we recognize that the short-term debt needs can change in connection with the growth of plant in service as pointed out by Staff. We grant this authority until such time as the Commission orders otherwise.

With respect to Exhibits 3 and 4, which concern the use of the proceeds of the 2011 financing, we address whether to admit them into evidence in this proceeding. As a matter of practice, we allow discovery materials to be admitted into the record at hearing. In this case, Mr. Mullen testified that he had reviewed the documents marked for identification as Exhibits 3 and 4 and relied on some of the information in the development of his position on PSNH's financing requests. Attaching discovery to testimony and thus sponsoring the admission of those attachments is a common method of introducing discovery into the record and much of the material in Exhibits 3 and 4 was attached to Mr. Mullen's testimony. Furthermore, based upon the approved procedural schedule in this case, all parties had received the discovery prior to the technical session on September 2, 2010, and well before hearing on September 13, 2010. As a result, we find no prejudice in allowing Exhibits 3 and 4 to be admitted into evidence.

Finally, we emphasize that, if PSNH intends in the future to seek approval of a financing that is not routine, it must augment such a petition, consistent with *Easton* and its progeny, to include a detailed explanation or list of the proposed uses of the financing proceeds, separate estimates of possible rate impacts resulting from increased capitalization for new investments in generation, distribution, and transmission, the effect of the filing on the Company's capital structure, the terms and conditions of the financing, and the rate impact of the proposed financing itself. Further, the Company should be prepared to address how the proposed investments are consistent with or a product of its least cost integrated resource planning process.

Based upon the foregoing, it is hereby

ORDERED, that the request of Public Service Company of New Hampshire for authority to issue long-term debt in 2011 is hereby GRANTED in an amount up to $160 million; and it is

FURTHER ORDERED, that the remainder of the request of Public Service Company of New Hampshire for authority to issue up to $500 million in additional long-term debt through December 31, 2012 is hereby DENIED; and it is

FURTHER ORDERED, that the request of Public Service Company of New Hampshire for authority to issue short-term debt in an amount not to exceed 10% of its net fixed plant plus $60 million is hereby APPROVED until further ordered by the Commission; and it is

FURTHER ORDERED, that the request of Public Service Company of New Hampshire for authority to mortgage its property, to enter into interest rate transactions to manage interest risk, to engage in long-term borrowing pursuant to an unsecured revolving credit agreement and to use a credit spread of up to 400 basis points (4.0%) is hereby GRANTED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall make a detailed report to the Commission regarding the terms of the issuance of long-term debt scheduled for 2011 within 30 days of its issuance.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of December, 2010.

Thomas B. Getz Chairman	Clifton C. Below Commissioner	Amy L. Ignatius (KNS) Commissioner

Attested by:

Debra A. Howland
Executive Director

GERALD M EATON
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

STEPHEN R HALL
PSNH
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

MEREDITH A HATFIELD
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

OCA LITIGATION
OCA LITIGATION
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301

CATHERINE SHIVELY
PUBLIC SERVICE COMPANY OF NEW H
780 N COMMERCIAL ST
PO BOX 330
MANCHESTER NH 03105-0330

ERIC STELTZER
OFFICE OF ENERGY AND PLANNING
4 CHENELL DRIVE
CONCORD NH 03301

KEN E TRAUM
OFFICE OF CONSUMER ADVOCATE
21 SOUTH FRUIT ST STE 18
CONCORD NH 03301-2429

12/17/10 Order No. 25,178 issued and forwarded to all parties.
Copies given to PUC Staff.

Docket #: 10-122 Printed: December 20, 2010

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429

LAUREL ADAMS
50 LANGLEY RD
DURHAM NH 03824

MARIE BERGEN
5A MONROE ST
CONCORD NH 03301-3615

CATHERINE CORKERY
40 N MAIN ST 2ND FLR
CONCORD NH 03301

ARTHUR B CUNNINGHAM
PO BOX 511
HOPKINTON NH 03229

K NOLIN
PO BOX 330
MANCHESTER NH 03105

Docket #: 10-122 Printed: December 20, 2010

INTERESTED PARTIES

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