

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Least Cost Integrated Resource Plan

Docket DE 10-261

Public Service Company of New Hampshire's Motion to Strike the November 29, 2012
Supplemental Filing of Conservation Law Foundation

Public Service Company of New Hampshire ("PSNH" or the "Company"), in accordance with Puc 203.07, hereby moves to strike the Supplemental Filing of Conservation Law Foundation ("CLF") filed with the Commission on November 29, 2012 in this docket. The stated purpose of CLF's filing is to "provide the Commission with new information relevant to its review" of PSNH's 2010 Least Cost Integrated Resource Plan ("LCIRP"). The information provided in the filing is neither new nor relevant to the review of the 2010 LCIRP and should be stricken from the record in this proceeding.

In support of this motion, PSNH states as follows:

1. On September 30, 2010, PSNH filed its LCIRP consistent with RSA 378:38 and Commission Order Nos. 24,945 and 25,061. On November 3, 2010, the Commission issued an order of notice opening this docket. Thereafter, numerous parties petitioned to intervene and over the ensuing year and a half, extensive discovery was conducted, testimony was filed and a multi-day hearing was held. By secretarial letter, the Commission established a deadline for

filing of briefs of June 13, 2012. Post-hearing briefs were filed by numerous parties, including CLF, in accordance with that deadline, and the case is awaiting the Commission's decision.

2. On November 29, 2012, CLF filed its request for the Commission to take administrative notice, pursuant to Puc 203.27, of various regulations adopted by the Massachusetts Department of Energy Resources in August 2012. CLF argues that these regulations may impact the ability of Schiller Station Unit 5 ("Northern Wood Power Project" or "NWPP") to sell renewable energy certificates ("RECs") in Massachusetts in the future, and, therefore, that the regulations are relevant to PSNH's 2010 LCIRP filing. In other words, CLF contends that newly adopted regulations, which may affect NWPP at some point in the future, are somehow relevant to a determination of PSNH's 2010 LCIRP that has been pending for more than two years. The Commission should strike this filing from the record because it is deficient in numerous respects.

3. Initially, PSNH notes that under Puc 203.27, the rule covering administrative notice, if a party requests that the Commission take administrative notice, the Commission "shall" notify the parties "either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed." N.H. Code Admin. R. 203.27(b). The Commission's rule clearly contemplates that requests for administrative notice will be made at an early phase of the proceeding so that the parties to the docket will have a fair opportunity to incorporate any materials so noticed into the case. Further, Puc 203.27(c) provides, "The commission shall afford parties an opportunity to contest the material so noticed." In that CLF's filing has been made more than half a year after the close of the hearing (May 10, 2012) and more than five months after the deadline for the filing of briefs, the Commission has had no opportunity to notify the parties of the material for which CLF seeks administrative notice, and the parties have

had neither the opportunity to address the materials as part of their case, nor to contest those materials. Accordingly, the Commission must reject CLF's request that the Commission take administrative notice of the matters set forth in its filing.

4. Arguably more relevant here is Puc 203.30, governing requests to reopen the record for the submission of additional evidence in a proceeding. Under Puc 203.30(b), however, for a party to request that the record be reopened the party must make a motion orally before the close of the hearing, or by a motion that complies with Puc 203.07¹ if the hearing has concluded. The filing here falls well short of the requirements for a motion in Puc 203.07. Accordingly, regardless of which rule applies here, CLF's request is deficient and should be rejected. In addition, Puc 203.30(a) restricts the reopening of the record to situations where "the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute." Under RSA 378:39, the Commission's role is to review PSNH's 2010 LCIRP "in order to evaluate the adequacy of each utility's planning process." The adequacy of PSNH's 2010 LCIRP, which was filed on September 30, 2010, will not be affected matters that have taken place more than two years after the date of that filing and the late submission of this additional information will not enhance the Commission's ability to resolve this proceeding, and must therefore be rejected.

5. Aside from the above procedural infirmities, CLF's filing suffers from other defects. CLF's supplemental filing relates solely to NWPP. CLF's June 13, 2012, closing brief, however, does not discuss NWPP. To the extent Schiller Station is mentioned at all in CLF's brief it is in a discussion devoted to Schiller Station's coal burning units, Units 4 and 6. CLF raised no arguments relative to the wood burning NWPP. The Commission should reject CLF's attempt to

¹ While Puc 203.30 references Puc 203.06, Puc 203.06 relates to the filing of petitions, while Puc 203.07 relates to the filing of motions. PSNH presumes, for purposes of this motion, that the correct reference is to Puc 203.07.

bootstrap its current concern to its prior filings and instead reject it for what it is – a new filing, raising a new and untimely issue, for the first time, following the close of the hearing in this docket.

6. Further, in its December 28, 2010 secretarial letter in this docket, the Commission stated “the Commission notes as a general matter that a sound planning process should consider *reasonably foreseeable regulatory changes*, recognizing that the threshold at which a potential change in regulatory standards becomes too remote or speculative for a utility to consider will depend on the particular facts and circumstances of the regulatory matter at issue.” December 28, 2010 Secretarial Letter in Docket No. DE 10-261 at 2 (emphasis added). The regulations referenced in CLF’s filing are well beyond any reasonably foreseeable regulatory changes that may form the basis of any decision in this docket. CLF cannot legitimately argue that the cited regulations were in fact “reasonably foreseeable regulatory changes” because CLF itself apparently did not believe those regulations to be particularly relevant to this case. CLF presented no evidence regarding these regulations when it pre-filed the testimony of Douglas Hurley (Exhibit CLF-9) on July 27, 2011 – nearly a year after the 2010 LCIRP was filed. In Mr. Hurley’s testimony at page 5, he was asked the question, “Are there potential future regulations that might affect the Company’s generating assets?” In his response to this direct question, Mr. Hurly made no reference whatsoever to the regulations discussed in CLF’s supplemental filing. If CLF’s own witness did not deem the regulations in question to be noteworthy, CLF cannot now ask the Commission to find these regulations to be “reasonably foreseeable regulatory changes.”

7. Moreover, as noted in CLF’s filing, the regulations it references were adopted in August 2012, after the close of the record in this case and two years after the filing of the 2010

LCIRP. Also, in speculating about the impact of the regulations, CLF acknowledges that they may not even affect NWPP until sometime in 2016. While, according to the Commission, the threshold for when a regulation is too remote or speculative for the utility to consider will depend on the facts and circumstances of the case, PSNH contends that wherever that threshold might be set, the regulations referenced here are well beyond it. No reasonable person could contend that regulations that were adopted two years after PSNH's filing, that were not presented as part of this case until five months after the close of the record and three months after their adoption, that were not worthy of mention in CLF's own direct testimony, and that by CLF's admission may not have a meaningful impact for an additional three to four years, should form part of PSNH's 2010 LCIRP or be part of the Commission's considerations in this docket.

8. The Commission must bring finality to this process. This docket has been pending for more than 2 years, during which time parties had ample opportunity to raise issues they believed relevant to the proceeding. To allow such a filing so late in the process, and to give consideration to the matters within that filing, is neither just nor equitable and should not be permitted. For the reasons stated, PSNH moves that the Commission strike the filing made by CLF on November 29, 2012 and give no consideration to the matters therein.


CONCLUSION

PSNH requests that the Commission strike CLF's November 29, 2012 filing from this docket and grant such further relief and may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

12/6/12
Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the above Motion to Strike to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

12/6/12
Date


Matthew J. Fossum