

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Costs and Cost Recovery

**Order Granting in Part and Denying in Part Motion for Appointment of Special
Commissioner**

ORDER NO. 25,622

January 23, 2014

I. PROCEDURAL HISTORY

This docket considers the prudence of the costs and cost recovery for the wet flue gas desulfurization system (Scrubber) installed by Public Service Company of New Hampshire (PSNH) at its coal-fired generation plant known as Merrimack Station.

On March 9, 2012 Commissioner Scott filed a letter recusing himself from participation in this docket as a result of his involvement with the Scrubber in his former regulatory capacity at the New Hampshire Department of Environmental Services. On January 8, 2014 the Office of Consumer Advocate (OCA), TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast, Inc. (collectively TransCanada), and the Conservation Law Foundation (CLF) (collectively, the Moving Parties) filed a motion asking the Commission to exercise its authority under RSA 363:20 to apply to the Governor for the appointment of a special commissioner so that this docket can be heard by a full three-member Commission. The Moving Parties also asked the Commission to stay action on PSNH's pending motions to strike until the special commissioner is available.

The Commission grants the Moving Parties' request to have the Commission apply for the appointment of a special commissioner and denies their request to stay action on PSNH's pending motions.

II. POSITIONS OF THE PARTIES AND STAFF

A. The Moving Parties

In support of their request for a special commissioner the Moving Parties noted that this docket involves PSNH's expenditure of a large sum of money to build the Scrubber and a heated dispute over whether PSNH will be able to recover that investment from its ratepayers, that all parties and Staff have spent significant time and resources on this docket, and that any order from the Commission will likely be appealed. The Moving Parties argued that absent a third commissioner there is a risk of deadlock between the sitting commissioners or of some unforeseen event that renders a sitting commissioner unable to participate.

The Moving Parties also asked the Commission to wait for appointment of the special commissioner before deciding PSNH's pending motions to strike testimony.

B. PSNH

PSNH objected to the motion and pointed out that this docket has proceeded since October 2011 with only two commissioners who issued a dozen substantive orders with no prior request for a third commissioner, and no prior suggestion that a quorum of two commissioners was insufficient. PSNH also noted that the Moving Parties did not provide any explanation for waiting until late in the proceeding to request a third commissioner.

PSNH objected to any delay in deciding its pending motions to strike testimony because it argued that they are ripe for decision now.

C. STAFF

Staff took no position on this motion.

III. COMMISSION ANALYSIS

The risks of proceeding with two commissioners include a possible deadlock or an unforeseen event that disqualifies one commissioner, leaving a single commissioner on the docket. RSA 363:16 requires a quorum of two commissioners to issue an order. *Public Service Company of New Hampshire*, Order No. 25,305 (Dec. 20, 2011).

The issues in this docket are important and complex and the outcome will have significant effects on PSNH, its ratepayers and the citizens of New Hampshire. The risks always inherent in proceeding to a final hearing with two commissioners are heightened by the significance of the issues presented in this docket. Were we to proceed to a final hearing with only two commissioners and were something to happen to cause one to become unavailable for some reason, the hearing would have to be conducted again. We are mindful of PSNH's arguments that this motion was filed late in the docket, but the unique circumstances of this dispute suggest a panel of three commissioners may be appropriate.

RSA 363:20 authorizes the Commission to request a special commissioner to alleviate the risk of losing a quorum:

If at any time a commissioner shall be disqualified or unable to perform the duties of his office, the governor, upon application of the commission, may, with the consent of the council, appoint a special commissioner to act in his place during the period of the commissioner's disqualification or inability to act.

We find that the circumstances of this docket justify a request for a third commissioner and thus we will ask the Governor to appoint a special commissioner.

We do not believe, however, that the entire proceeding should be held in abeyance while the special commissioner request and appointment proceeds. The Commission intends to take up

PSNH's pending motions to strike testimony. Further, the Commission expects the parties to proceed with the procedural schedule, as it may be amended, and to continue preparing this case for a final hearing as soon as possible.

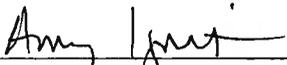
Based upon the foregoing, it is hereby

ORDERED, that the Moving Parties' motion to have the Commission request a special commissioner pursuant to RSA 363:20 is **GRANTED**; and it is

FURTHER ORDERED, that the Moving Parties' request to stay consideration of PSNH's motions to strike testimony is **DENIED**; and it is

FURTHER ORDERED, that the final hearing now scheduled to begin March 6, 2014 is **CONTINUED** to a date to be set after the Governor acts on the request for a special commissioner.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of January, 2014.



Amy L. Ignatius
Chairman



Martin P. Honigberg
Commissioner

Attested by:



Lori A. Davis
Assistant Secretary

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Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.