

DE 00-211

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Petition for Valuation of J. Brodie Smith Hydro-Electric  
Station**

**Order Denying Motion for Determination of Responsibility  
for Commission Expenses**

**O R D E R    N O.    23,775**

**September 7, 2001**

This proceeding concerns the City of Berlin's request for valuation by the New Hampshire Public Utilities Commission (Commission) of the J. Brodie Smith Hydro-Electric Station (Smith Station) pursuant to RSA 38. Smith Station is owned by Public Service Company of New Hampshire (PSNH) and the City of Berlin is seeking to acquire the plant under the municipal condemnation provisions of RSA 38. See Order No. 23,733 (June 28, 2001) (discussing history of proceeding and its relationship to divestiture of other PSNH generation assets).

On July 25, 2001, PSNH filed a motion seeking a Commission determination of which party or parties will bear responsibility for the Commission's expenses in this proceeding. PSNH invokes RSA 38:9, IV, which provides that

[t]he expense to the commission for the investigation of the matters covered by the [municipality's valuation] petition, including the amounts expended for experts, accountants, or other assistants, and

salaries and expenses of all employees of the commission for the time actually devoted to the investigation, but not including any part of the salaries of the commissioners, shall be paid by the parties involved, in the manner fixed by the commission.

According to PSNH, "an expeditious ruling on this matter would provide the parties with additional information which may impact the petitioner's desire to pursue its petition."

Motion of Public Service Company of New Hampshire Pursuant to RSA 38:9, IV, etc. (PSNH Motion) at 1.

In support of its motion, PSNH points out that, in connection with the PSNH Restructuring Settlement Agreement approved by the Commission in Docket No. DE 99-099 and subsequently adopted by the Legislature, the Legislature provided a special opportunity for municipalities to acquire PSNH hydro-electric assets but explicitly determined that municipalities should bear the Commission's costs in such proceedings. See 2000 Laws 249:7. According to PSNH, this Chapter 249:7 standard should be applied here even though the City of Berlin is proceeding under RSA 38 rather than Chapter 249. In either instance, PSNH contends, the Legislature intended municipalities to assume this financial responsibility.

PSNH further points out that the principal effect of

the municipal provisions of Chapter 249 was to exempt municipalities from the requirement that a public vote precede valuation proceedings. Although PSNH concedes that the City of Berlin has now taken the requisite vote, and is thus proceeding fully under RSA 38, PSNH's position is that the instant petition antedates the municipal vote and, therefore, that Chapter 249:7 should govern.

It is further PSNH's position that the equities of this case favor assigning the Commission's costs to the City of Berlin. According to PSNH, any proceeds from the sale of Smith Station will accrue to PSNH ratepayers (as an offset to recoverable stranded costs under the Restructuring Settlement Agreement) and, therefore, "any costs of this proceeding that the Commission directs PSNH to bear will ultimately be collected from customers via the stranded cost recovery charge." PSNH Motion at 6. Finally, PSNH takes the position that the Commission is either authorized or required to hire a valuation expert, and therefore that the parties will benefit from knowing at the outset which party must bear the expert's expenses.

The Commission Staff filed a letter on July 30, 2001 asking the Commission to deny the PSNH motion without prejudice. According to Staff, the City of Berlin should

simply assume that the Commission's costs will be assigned to the municipality. Staff disagrees with PSNH that the Commission would or should consider assigning costs to PSNH ratepayers, but concedes the unlikelihood of requiring PSNH shareholders to bear these costs given the ultimate destination of divestiture proceeds. In Staff's view, given that the City is not requesting the Commission's ruling on costs at this time, it is appropriate to defer the issue to the end of the case, when the Commission will have a full record before it as well as full information about how the parties have conducted themselves throughout the case.

The City of Berlin submitted its opposition to the PSNH motion on August 6, 2001. The City agrees with Staff that a ruling on the motion would be premature. According to the City, the PSNH motion may be a "thinly veiled attempt to 'scare' the City into withdrawing its petition." Objection of the City of Berlin to PSNH's Motion for Cost Determination at 3. The City further disagrees with Staff that the costs in question should be allocated to the City. According to the City, the Commission is obliged to assess the conduct of the parties - a determination that must await the end of the case - before it determines how to allocate responsibility for the Commission's expenses. In the City's view, to do otherwise

would be to thwart the intent of RSA 38 to encourage voluntary resolutions of cases such as the instant one.

Upon a careful review of the motion papers, we conclude that no hearing is necessary and that, as suggested by Staff, the motion should be denied without prejudice. However, we deem it appropriate at this juncture to clarify for the parties our view that the provisions of RSA 38:9, IV, as opposed to 2000 Laws 249:5, govern the question of which party or parties will ultimately bear the Commission's expenses in this proceeding. As we made clear in Order No. 23,733 (June 28, 2001), neither Chapter 249 nor any other subsequently enacted provision of New Hampshire law related to the restructuring of PSNH or the divestiture of its generation assets prevents or precludes Berlin from moving forward with an RSA 38 proceeding. We are unpersuaded by PSNH's suggestion that because Berlin initially proceeded in this docket under Chapter 249, it should be bound by that enactment's language governing responsibility for Commission expenses (which would assign those expenses automatically to the municipality). This would elevate form over substance and simply invite Berlin to withdraw its present petition and institute another.

We agree with the City that the parties' conduct over the course of the proceedings may be relevant to the cost

allocation determination we must make under RSA 38:9, IV. Thus, we conclude that a ruling would be premature at this time. Moreover, as we plainly indicated in Order No. 23,733, it is consistent with administrative efficiency and appropriate use of the parties' resources to focus next on whether the acquisition of Smith Station by the City of Berlin would be in the public interest, given the changing status generally of PSNH's generation portfolio. It was our intention to defer all other matters in this docket, including costs, until after we have had an opportunity for a full hearing on the public interest issue.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the motion of Public Service Company of New Hampshire for a determination of responsibility for payment of Commission expenses arising out of this proceeding is DENIED, without prejudice.

By order of the Public Utilities Commission of New Hampshire this seventh day of September, 2001.

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary