

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-033

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Petition for Issuance of Long-Term Debt, Mortgaging of Property, Execution of an
Interest Rate Transaction and Increase in Short-Term Debt**

Order Denying Motions for Rehearing

ORDER NO. 25,050

December 8, 2009

I. PROCEDURAL BACKGROUND

On February 20, 2009, Public Service Company of New Hampshire (PSNH) filed a petition for approval of the issuance of long-term debt in the amount of \$150 million, the mortgaging of property, the execution of an interest rate transaction and an increase in its short-term debt limit. The Office of Consumer Advocate (OCA) filed a letter on March 10, 2009 stating that it would participate in the docket on behalf of residential ratepayers pursuant to RSA 363:28. Granite State Electric Company d/b/a National Grid (National Grid) and Conservation Law Foundation (CLF) filed petitions to intervene on March 19, 2009.

PSNH filed an objection to CLF's petition to intervene on March 24, 2009, the day of the prehearing conference.¹ Following briefing by the parties, the Commission issued Order No. 24,979 (June 16, 2009) defining the scope of the proceeding and granting CLF's petition to intervene. In delineating the scope of the proceeding, the Commission excluded any consideration of the use of any financing proceeds for the installation of the wet flue gas scrubber technology at Merrimack Station (scrubber) because the legislature had already determined that installation of the scrubber at Merrimack Station was in the public interest. *See,*

¹ See Order No. 25,021 (October 5, 2009) for the full procedural history in this docket.

RSA 125-O:11 and Order No. 24,979 at 16. The Commission also stated that in every utility financing docket it determines whether the requested financing comports with RSA 369:1, and the judicial decisions interpreting this statute including *Appeal of Roger Easton*, 125 N.H. 205 (1984) (*Easton*). Order No. 24,979 at 17-18. Notwithstanding exclusion of the Merrimack scrubber from this financing docket, the Commission held that the statute and judicial interpretations require it to analyze all other circumstances, “including whether the financing terms, and the resulting impact on capital structure and customer rates, are reasonable and in the public interest, and whether the proposed uses for the financing proceeds are in the public good.” Order No. 24,979 at 18.

On July 24, 2009, CLF moved to compel PSNH’s response to certain data requests, which the Commission denied by Order No. 25,001 (August 6, 2009). On September 4, 2009, CLF filed a motion for rehearing of Order No. 25,001. PSNH filed an objection to CLF’s rehearing motion on September 11, 2009 and on September 14, CLF filed a correction to its motion for rehearing.

The Commission issued Order No. 25,021 on October 5, 2009 approving: (1) PSNH’s issuance of long-term debt in the amount of \$150 million; (2) the mortgaging of property; (3) the execution of an interest rate transaction; and (4) an increase in PSNH’s short-term debt to the limit of 10% of the value of net fixed plant plus \$60 million until the Commission acts on PSNH’s next financing filing. In Order No. 25,021 the Commission stated that it would address CLF’s motion for rehearing regarding the motion to compel, in an order addressing all rehearing requests. On November 4, 2009, the OCA filed a motion for rehearing of Order No. 25,021, to which PSNH objected on November 5, 2009.

II. CLF MOTION FOR REHEARING RE: MOTION TO COMPEL

A. Conservation Law Foundation

In its motion for rehearing of Order No. 25,001 CLF asserted that the Commission erred as a matter of law when it denied CLF's motion to compel PSNH to respond to certain discovery questions. CLF argued that by limiting its review of the rate impacts of PSNH's proposed financing to those impacts "caused by this particular financing request," the Commission failed to comply with statutory and judicial standards. CLF Motion for Rehearing at 1, quoting from Order No. 25,001.

The data requests subject to CLF's motion to compel are as follows:

CLF-01, Q-CLF-002

(b) What does PSNH anticipate the effect of these load departures to be on rates? For purposes of your response in connection with rate impacts, indicate whether a sensitivity analysis has been applied, and if so, how PSNH estimated rate impact may change depending on variation in the rate of departure.

(c) How will load departure effect PSNH's ability to complete planned capital projects, including the "Scrubber Project"?

CLF-01, Q-CLF-003

The U.S. Energy Information Administration's ("EIA") June 2009 Electric Power Monthly ("EPM") reports that net generation in the U.S. dropped by 4.3 percent from March 2008 to March 2009, and that the "[t]he drop in coal-fired generation was the largest absolute fuel-specific decline from March 2008 to March 2009 as it fell by 24,656 thousand megawatt hours, or 15.3 percent." EPM at 1. Additionally, the EPM reports that, "year-to-date, total net generation was down 4.6 percent from 2008 levels. Net generation attributable to coal-fired plants was down 11.7 percent." *Id.* What impact will the decline in electric power demand--particularly from coal-fired plants--have on PSNH's ability to complete planned capital projects, including the Scrubber Project, and how will rates be affected?

CLF-01, Q-CLF-004

Referring to PSNH's September 2, 2008, filing with the New Hampshire PUC in DE 08-103, §§ III (Effect of Clean Air Project on Energy Service Rates)

and IV (Effect on Energy Service Rates if Merrimack Station Is Retired), pp. 14-15, in light of current gas prices, departure of load, decline in electricity demand, and other altered assumptions, explain whether those analyses remain accurate, and if they are no longer accurate, provide revised analyses.

According to CLF, an *Easton* review and other decisional standards² issued by the New Hampshire Supreme Court require Commission review of the rate impacts of PSNH's proposed financing. CLF Motion for Rehearing at 8. CLF argues that the Commission must look beyond the rate impacts of the financing to other factors which may influence energy service rates in the future. *Id.* at 5. Consequently, CLF stated that its data requests asking for trends in customer migration, electricity demand and a recalculation of estimated costs for the scrubber at Merrimack Station are relevant to the instant proceeding. Absent this information, CLF argues that the Commission cannot determine whether PSNH's customers can afford the proposed financing. *Id.* at 8. Finally, CLF argued that constitutional limits on the Commission's ratemaking authority require the Commission to "engage in a rational process of balancing consumer and investor interests to produce a rate that is just and reasonable.....the constitutional guarantee of reasonable rates would trump the mandate of the scrubber law [RSA 125-O:11-18] should the facts – including the information CLF has requested – show that erosion of the project's economic feasibility, customer migration, and drop in demand would, in the aggregate, require future rates to be set outside the 'zone of reasonableness.'" *Id.* at 9. CLF pressed for Commission review of potential future impacts on rates due to all of these factors in this financing docket.

² See, *Appeal of Conservation Law Foundation of New England, Inc.*, 127 N.H. 606 (1986).

B. Public Service Company of New Hampshire

In its objection to CLF's motion, PSNH opines that CLF's motion for rehearing was essentially a request for the Commission to reconsider Order No. 24,979 defining the scope of this proceeding. In that order, the Commission stated that "in this financing docket we will consider the economic impact of the proposed financing, its effect on PSNH's capital structure, and its potential impact on rates but it is not within the scope of our authority to consider whether the use of the financing proceeds for the scrubber is for the public good or whether there are reasonable alternatives to the scrubber." Order No. 24,979 at 18 and PSNH Objection at 1.

According to PSNH, CLF's reliance upon *Easton* was misplaced because the New Hampshire Legislature directed PSNH to install scrubber technology. PSNH Objection at 2. PSNH noted that, contrary to CLF's claim, PSNH testified at hearing about the impact of this financing on PSNH's revenue requirements, which results in an impact on energy service rates of approximately two one-thousandths of a cent per kilowatt hour (\$0.00002/kWh). *Id.* at 2-3. According to PSNH, even if one assumed a 50% drop in electric consumption, the rate impact of the financing would only be approximately four one-thousandths of a cent per kilowatt hour (\$0.00004/kWh). PSNH stated that a rate impact of this limited magnitude does not justify a comprehensive review of all actual and potential construction projects, nor the projection of future rates based on contested assumptions, estimated data and hypothetical cost recovery options. *Id.* at 3.

PSNH also challenged CLF's argument that the rate impact of the Merrimack scrubber justifies denial of PSNH's requested financing authority and claimed that issue is outside the scope of the proceeding as established in Order No. 24,979. Further, PSNH stated that a denial of the proposed financing on such grounds would override of the Legislature's directive of RSA

125-0:11 *et seq.*, and would be unjust, unreasonable and unconstitutional as discussed in *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062 (1982). PSNH Objection at 4.

In conclusion, PSNH argued that the Commission's decision in Order No. 25,001 rejecting CLF's discovery questions relating to the scrubber project was neither unlawful nor unreasonable, and therefore, pursuant to RSA 541:4, there is no basis to grant CLF's motion. In addition, PSNH said that to the extent CLF is challenging the Commission's June 19, 2009, decision in Order No. 24,979 that "it is not within the scope of our authority to consider whether the use of the financing proceeds for the scrubber is for the public good or whether there are reasonable alternatives to the scrubber," the motion for rehearing is untimely, having been filed 77 days after the issuance of that decision, in contravention of the 30-day statutory deadline set forth in RSA 541:3. PSNH Objection at 5.

III. OCA MOTION FOR REHEARING RE: SCOPE OF FINANCING REVIEW

A. Office of Consumer Advocate

At the close of the hearing, OCA argued that the Commission's duty to determine whether PSNH's proposed long-term financing is in the public good extends beyond the terms of the financing itself. In addition, the OCA asserted that, consistent with decisional standards enunciated by the Supreme Court in *Easton*, the Commission must fully review each project to be supported by the financing, including alternatives to those projects, in connection with its finding as to whether the purpose of the financing is consistent with the public good.

In its motion for rehearing of Order No. 25,021 approving PSNH's financing request, the OCA claims that the Commission erred in finding that PSNH's "mere identification" of the projects to be supported by proceeds from the long-term financing is sufficient for the Commission to make the requisite finding that the financing is in the public good. OCA Motion

at 6. The OCA said that the list of projects does not include the purpose of each project, how each project will be used, or why each project is needed. *Id.* at 5. The motion also repeats arguments OCA made at hearing, including OCA's claims that the record contains no basis for the Commission to determine whether PSNH's request is consistent with the public good. According to OCA, absent a review of each project to be funded by the proceeds of the financing, and the alternatives to such projects, the Commission's Order fails to meet the standards required by RSA 369 and New Hampshire Supreme Court decisions cited by the Commission's scoping order, Order No. 24,979. OCA Motion at 6.

In addition, the OCA stated that the Commission's order allows PSNH to avoid the requirements of such a project by project review by allowing the Company to refinance short term debt with long-term financing. *Id.* at 8. The OCA argued that this docket is the only forum where the Commission can examine the need for the projects to be funded by the financing proceeds because a prudence review will only allow the Commission to determine, in an after-the-fact review, whether investments were made with due care. *Id.* at 9. Finally, the OCA argues that an after-the-fact prudence review is different from the *Easton* review in that prudence reviews do not examine the need for a specific project.

B. Public Service Company of New Hampshire

PSNH stated in its objection to OCA's motion for rehearing that the motion fails to state good reason for such rehearing, as required by RSA 541:3, and fails to demonstrate that the order complained of is unlawful or unreasonable, as required by RSA 541:4. PSNH Objection to OCA at 1. According to PSNH, if the Commission were to adopt OCA's interpretation of RSA 369:1, the Commission would have to review in detail each and every capital expenditure for which a utility might use the proceeds of a financing that is subject to the Commission's approval. PSNH

stated that such a reading of RSA 369:1 would lead to absurd results which would prevent the state's utilities from rendering safe and reliable service in an economic manner. PSNH Objection to OCA at 1.

PSNH further pointed out that the OCA made identical arguments in its April 10, 2009 brief concerning the scope of review required in this docket and in its closing arguments at hearing in this proceeding. PSNH stated that the Commission dealt with these issues in both Order No. 24,979 and Order No. 25,021. According to PSNH, in those orders the Commission specifically acknowledged and complied with the statutory requirements set forth in RSA 369 for review and approval of a utility's financing application. PSNH Objection to OCA at 2

PSNH asserted that the OCA motion relies upon *Easton*, where the Supreme Court said that the Commission has a duty to determine whether under all the circumstances the financing is in the public good, including consideration of the proposed use of the financing. However, PSNH said that the *Easton* decision does not require the Commission to conduct an item-by-item review of each and every capital expenditure for which the proceeds of a utility financing may be used. *Id.* at 3. PSNH postulated that if the OCA's interpretation of RSA 369:1 and *Easton* were correct, the Commission would have to individually review each of the 300 separate projects identified in Exhibit 3 introduced at the hearing. PSNH stated that such an interpretation would require the Company to make 300 individual filings in order to determine whether PSNH's planned use of the proceeds of the financing is economically justified compared to the other options available. According to PSNH, such an item by item review would be more costly to PSNH's customers and would prevent PSNH from efficiently accessing capital markets. PSNH asserted that the Commission had an adequate record before it to approve PSNH's financing request and that the Commission relied upon information in sufficient detail for it to perform its

duty concerning this issue, including the testimony presented and the various exhibits entered into the record at hearing. *Id.* at 4.

PSNH argued that because the OCA motion for rehearing asserts issues which have already been considered and ruled upon by the Commission twice before in this proceeding, the motion fails to raise specific matters that were either “overlooked or mistakenly conceived” as required for rehearing by *Dumais v. State*, 118, N.H. 309,311 (1978). In conclusion, PSNH stated that the OCA motion asserts the same arguments for the third time in this proceeding, requesting a different outcome than it received in the prior order, and consequently the motion should be denied, citing *Connecticut Valley Electric Co.*, 88 NH PUC 355,356 (2003) and *Public Service Co. of N. H.*, Docket No. DE 07-108, Order No. 24,966 (May 1, 2009). PSNH
Objection to OCA at 5.

IV. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. The petitioner for such relief must explain why new evidence could not have been presented in the underlying proceeding. *O’Loughlin v. N.H. Personnel Commission*, 117, N.H. 999, 1004 (1977). Good reason may also be shown by identifying specific matters that were either “over-looked or mistakenly conceived” by the deciding tribunal. *Dumais v. State*, 118, N.H. 309, 311 (1978). A successful motion does not merely reassert prior arguments and request a different outcome. *See, Connecticut Valley Electric Co.* 88 NH PUC 355, 356 (2003).

A careful review of the rehearing motions leads us to conclude that the arguments raised in each motion have been previously raised and addressed in our prior Orders. Accordingly, we

address the arguments raised insofar as they are pertinent to demonstrate that matters were not overlooked or mistakenly conceived in those prior Orders.

A. CLF Motion for Rehearing re: Motion to Compel

CLF's motion for rehearing requests reconsideration of our decision to deny CLF's motion to compel responses to several data requests. CLF requested PSNH responses to CLF-01, Q-CLF-002 (c) concerning the effect of load departure on PSNH's ability to complete the scrubber project and CLF-01, Q-CLF-004 requiring a recalculation of submissions in other dockets regarding rate impacts of the scrubber project in light of current gas prices, load departure, decline in electricity demand, and other altered assumptions. Given the legislative finding that the scrubber project is in the public interest at RSA 125-O:11, we do not have the authority to transform the review of this financing request into a pre-approval proceeding relative to the scrubber project. CLF has presented no legal authority that causes us to reconsider that earlier decision. *See* Order Nos. 24, 979 and 25,001.

Additionally, CLF asked that PSNH respond to CLF-01, Q-CLF-002 (b) requesting the anticipated effects of future customer migration on rates and CLF-01, Q-CLF-003 requesting the anticipated effects on future rates of: (1) potential declines in demand for electricity; and (2) more specifically, potential declines in demand for coal-fired generation. In Order No. 25,001, denying CLF's motion to compel, we considered CLF's arguments that customer migration trends and declining energy demand are relevant to this financing and may be factors influencing energy service rates in the future. If those effects occur, they will not be as a result of this financing, but rather will reflect numerous factors, including the development of a competitive market, the price of coal, natural gas and other fuels and the

health of the economy in New Hampshire and the region. Our consideration of the rate impact of PSNH's proposed financing is limited to the rate impacts associated with the financing. CLF has not presented additional evidence or legal argument that causes us to grant rehearing of these issues.

Finally, with regard to CLF's reference to constitutional limitations on our ratemaking authority, those authorities do not govern financing requests pursuant to RSA 369:1. "As we explained in some detail in *Appeal of CLF*, at 675-76, a proceeding to evaluate a proposed financing plan under RSA chapter 369 is distinctly different from a proceeding to set rates under RSA 378:27 and :28." *Appeal of McCool*, 128 N.H. 124, 140 (1986). In reviewing a utility financing request, the Commission is not setting rates where all factors affecting rates are properly considered. *See* RSA 378:7. Instead, the Commission is considering whether the proposed financing will have an adverse effect on the utility's capital structure or its rates and whether the uses of the financing are appropriate. *See Easton*.

Our findings supported our determination that the financing is for the public good. Based upon the record, we found that the rate impact associated with the proposed financing was insignificant: an increase in energy service rates of approximately two one-thousandths of a cent per kilowatt hour; and an increase in distribution rates of approximately four one-thousandths of a cent per kilowatt hour. We also found that PSNH's capital structure would not be negatively affected following the financing. Order No. 25,021 at 12.

B. OCA Motion for Rehearing re: Scope of Financing Review

Because the OCA's motion challenges the evidence considered and the record produced in this docket, we examine the extent of the Commission's discretion pursuant to

constitutional due process requirements, as well as RSA 369:1 and :4. Prior Commission decisions, as well as those of the New Hampshire and United States Supreme Court, have held that “[i]n the context of administrative proceedings, due process is a ‘flexible’ concept. *City of Nashua*, Order No. 24,667 (September 22, 2006) *citing Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (citations omitted); *see also Appeal of Office of Consumer Advocate*, 148 N.H. 134, 138 (2002) (applying same standard in context of both New Hampshire and federal constitutions).

In addition to the flexibility afforded the Commission under constitutional due process, RSA 369:4 affords the Commission similar flexibility when it states, “The commission, *after such hearing or investigation as it may deem proper*, shall determine the actual or probable cost incurred or to be incurred; and, if in its judgment the issue of such securities upon the terms proposed is consistent with the public good, it shall authorize the same to an amount sufficient, at the price fixed in accordance with the laws applicable thereto; to provide funds for defraying the cost as so determined.” (emphasis added)

Easton, and *Appeal of PSNH* before it, stands for the proposition that the Commission’s duty pursuant to RSA 369:1 is to look beyond merely the terms of a financing and, further, that management’s authority to borrow is subject to the supervision of the Commission. It is important also to recall the facts present in *Easton* and its immediate progeny. Within the spectrum of financing requests that come before the Commission, the facts underlying *Easton* represent a case of an extreme, non-routine financing request. The predicate for the Court’s decision was a \$54 million borrowing, the object of which was an ownership interest in the Seabrook nuclear plant. This borrowing was on the heels of a \$75 million borrowing, to cover the New Hampshire Electric Cooperative’s entire interest in Seabrook. And there was likely to

be more borrowing. As the Court observed, “it is not a *mere possibility* that the costs of Seabrook may necessitate more financing.” (emphasis in original) As a result, *Easton* was a case where the borrowing was large and for a single purpose that would have an immediate and significant effect on rates and the utility’s capitalization.

In view of the principles of flexible due process, and the Commission’s discretion under RSA 369:1, it was reasonable, given the *Easton* facts, to employ a greater level of procedural requirements and to conduct a deeper review of the object of the financing, the Seabrook nuclear plant. As the Court observed in *Easton*, the line of cases argued by the parties concerning the tension between the Commission’s authority and a utility’s discretion “attempt to strike a balance between the commission’s authority and management’s prerogatives. It is clear that although the scales tip in favor of one or the other depending upon the specific facts and issues of each case, the PUC has a role in determining whether a proposed financing is in the public good.” *Easton* at 211.

The preliminary task here is defining the proper parameters of our role relative to the particular facts and issues of this case. Clearly, our facts are markedly different from the facts in *Easton*, on the opposite end of the financing spectrum, and thus lead us to treat this as a routine financing, that will have no discernable impact on rates or deleterious effect on capitalization, in which the funds are to enable numerous investments appropriate in the ordinary course of utility operations. We find this approach to be proper inasmuch as the Court in *Easton* discussed several prior Commission financing cases, including a Seabrook related financing that the Court considered “routine.” *Easton* at 212, citing *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1067 (1982). In *Appeal of Public Service Company of New Hampshire*, the Court found that the Commission exceeded its authority when it placed

conditions on the capital received in “a routine stock issuance.” *Id.* *Easton* refers to this case in part to demonstrate the balance the Commission must strike between the management prerogatives of a utility and the public good. The lesson of *Easton* is that certain financing related circumstances are routine, calling for more limited Commission review of the purposes and impacts of the financing, while other requests may be at the opposite end of the spectrum, calling for vastly greater exploration of the intended uses and impacts of the proposed financing.

The import of the OCA’s position, which focuses on the words of *Easton* and its progeny, without focusing on the context of the facts and issues, is that every single financing request and every expenditure made with financed funds would become a full blown pre-approval proceeding concerning every management decision, hardly the underlying balance that the *Easton* Court observed. Such an interpretation would lead to an absurd result, which the Court could not have intended. Indeed, in *Appeal of Public Service Company of New Hampshire*, the Court noted that “the owners of a utility do not surrender to the PUC their rights to manage their own affairs merely by devoting their private business to a public use.” *Appeal of Public Service Company of New Hampshire*, 122 N.H. at 1066-67. The Legislature, furthermore, could not have intended that RSA 369:1 be transfigured into a statute requiring pre-approval of routine management decisions, turning the entire regulatory paradigm in New Hampshire on its head.

The OCA argues that the record developed in this docket does not form a sufficient basis for Commission approval pursuant to RSA 369 and *Easton*. As explained above, the proper application of *Easton* is determined by the context of the facts and issues of the case. In this case, the size and objectives of the financing and the financial impact on ratepayers and the company attributable to the financing are unlike the financings for the Seabrook nuclear plant and do not merit the same level of review.

PSNH testified that the proceeds of the long-term debt issuance would be used to refinance short-term borrowings, which had funded working capital needs along with generation, distribution and transmission capital expenditures. *See*, Exhibit 3 at pages 10-24. OCA argues that PSNH's project list contained in Exhibit 3 does not form a sufficient evidentiary basis for our finding of appropriate use of the loan funds. Because the OCA has called into question the adequacy of this evidence we discuss it in some detail in order to more clearly demonstrate the basis of our decision.

The \$350 million in capital projects that may be funded in whole or in part by the \$150 million financing are contained in a multi-page document that lists over 300 specific expenditures, broken into categories of distribution system construction, generation system construction and transmission system construction. There are 220 distribution system projects, totaling \$147 million, which involve replacing porcelain insulators and poles, reconstructing lines, replacing buried cables, providing service to new customers, installing secondary service drops, replacing obsolete or damaged facilities, replacing meters, transformers and regulators, right-of-way costs, reliability improvements, voltage maintenance, replacing tools and equipment, numerous upgrades to lines, towers and related equipment and construction of new distribution lines. There are 78 generation system construction projects, totaling \$148 million, \$123 million of which is related to the scrubber project. These projects include upgrading the coal unloader, wood yard and dock fender system at Schiller station, various upgrades to existing hydro facilities, annual maintenance at Merrimack, Schiller, Newington, Wyman and other hydro facilities, routine upgrades and replacements to switch gear and transformers, improving a boiler at Schiller; replacing valves, breakers and air compressors and purchasing a front-end loader and dump truck for Merrimack. Finally, there were 72 transmission construction projects totaling

approximately \$56 million, involving replacing autotransformers, transformers and breakers at numerous substations and generation facilities, as well as, replacing and upgrading numerous transmission lines.

As discussed above, RSA 369:4 affords the Commission the discretion to determine the appropriate procedures needed for a review of PSNH's financing request. The 220 distribution construction projects appear to be routine, and based upon this evidence we found the distribution system use of financing proceeds to be in the public good without further review of possible alternative uses of the funds. Similarly, we found the evidence demonstrated that the 76 generation construction projects, which excluded the Merrimack scrubber, were routine maintenance and given the routine nature of these projects we found the use of financing proceeds for the generation system to be in the public good without further review of possible alternative uses of funds. Allowing PSNH to use loan funds for these purposes does not mean that the Commission has found these investments to be used and useful in the provision of utility services, or that these investments are prudent and should be included in utility rate base.

Transmission planning is done on a regional basis through the ISO-NE and PSNH's transmission rates are set by the Federal Energy Regulatory Commission (FERC). As a result, we did not consider transmission rate impacts. Based upon our review of PSNH's transmission construction projects, however, we found them to be routine and appropriate and that PSNH's use of loan proceeds for its transmission upgrades was in the public interest. FERC proceedings will undertake the full evaluation of transmission investments and impacts on rates.

We do not agree that in this docket *Easton* requires the level of project specific review the OCA asserts. PSNH has requested financing for expenditures made in the normal course of

utility operation. Requiring extensive discovery and litigation over every expenditure of a utility would be inefficient and is not, in our view, what *Easton* requires.

The OCA also claims that a prudence review at the time PSNH seeks to include new capital investments in rate base will not allow the Commission to review whether a particular project to be supported by this financing is necessary for PSNH to deliver safe and reliable service. We disagree, as the Supreme Court in *Appeal of McCool* explained, an after the fact prudence review involves a backward looking and pragmatic judgment as to whether assets are used and useful in supplying utility service and whether the investment was foreseeably wasteful. *Appeal of McCool* at 141-42. A prudence review in a future rate case will determine whether the projects are used and useful and whether the cost of those projects was reasonable.

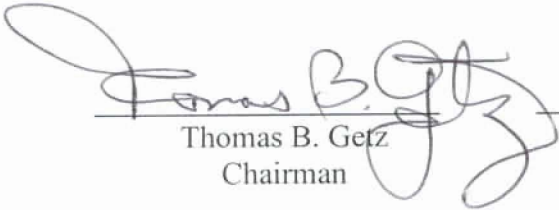
In its motion for rehearing, the OCA did not offer any new arguments that provide good reason for us to reconsider our denial of its motion. Instead, the OCA raised the same arguments presented in its scoping brief and at hearing. Further, we have not misconceived or overlooked any matter that would lead to a different conclusion than we reached in Order No. 25,021. Therefore, we deny OCA's motion for rehearing.

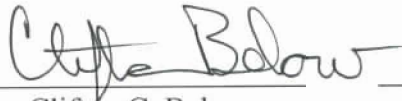
Based upon the foregoing, it is hereby

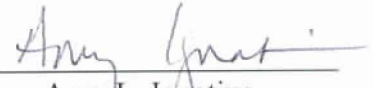
ORDERED, that Conservation Law Foundation's motion for rehearing of Order No. 25,001 denying its motion to compel is hereby DENIED; and it is

FURTHER ORDERED, that the motion for rehearing of Order No. 25,021 by the Office of Consumer Advocate is hereby DENIED.

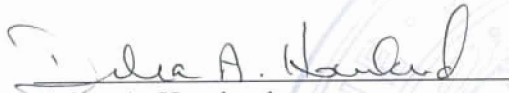
By order of the Public Utilities Commission of New Hampshire this eighth day of
December, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

