

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-122

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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

Order Following Prehearing Conference

ORDER NO. 25,131

July 20, 2010

APPEARANCES: Catherine E. Shively, Esq. on behalf of Public Service Company of New Hampshire; New Hampshire Sierra Club by Arthur B. Cunningham, Esq.; 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 BACKGROUND

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 aggregate principal amount of long-term debt securities through December 31, 2010, mortgage its property in connection with the issuance of long-term debt, enter into interest rate transactions to manage interest risk, engage in long-term borrowing pursuant to an unsecured revolving credit agreement, and extend its current short-term debt limit of 10% of net fixed plant plus a fixed amount of \$60 million. In support of its petition, the Company filed the testimony of Susan B. Weber. The Company also filed a motion for extension of time to file certain information required to be filed by N.H. Code Admin. Rules Puc 308.11(b) with respect to the new unsecured revolving credit agreement.

The Commission issued an order of notice on June 1, 2010, scheduling a prehearing conference on June 29, 2010 and establishing deadlines for the filing of petitions to intervene.

The Office of Consumer Advocate (OCA) filed a letter with the Commission on June 4, 2010, stating its intent to participate in this docket. On June 24, 2010, the New Hampshire Sierra Club (NHSC) filed a petition to intervene. On June 29, PSNH filed an objection to NHSC's petition to intervene. The prehearing conference was held as scheduled on June 29, 2010.

Following the prehearing conference, a technical session was held. Staff filed a report on the technical session on June 30, 2010, including a proposed procedural schedule, as follows

Data Requests to PSNH	July 9, 2010
Responses from PSNH	July 16, 2010
Technical Session	July 26, 2010 at 9:00 a.m.
2 nd Round of Data Requests	August 4, 2010
Responses to 2 nd Round	August 11, 2010
Staff and Intervenor Testimony	August 20, 2010
Technical Session	September 2, 2010 at 9:00 a.m.
Hearing on the Merits	September 14, 2010 at 10:00 a.m.

Staff noted that NHSC disagreed with the last three dates in the proposed procedural schedule contained in the letter, including the proposed hearing date of September 15, 2010. In addition, Staff informed the Commission that PSNH would be filing an amendment to the petition.

II. POSITIONS OF THE PARTIES REGARDING NHSC'S PETITION TO INTERVENE

In its petition, NHSC stated that it is a duly organized chapter of the Sierra Club, a non-profit organization whose members are dedicated to securing a pollution-free and healthy environment. The petition stated that, in April-May 2008, PSNH replaced the turbine at Merrimack Station without the public permitting process required by the Clean Air Act. NHSC filed a notice of appeal in a proceeding at the Air Resources Council (ARC) (Docket No. 09-10), asserting among other things that PSNH had violated the Clean Air Act by failing to apply for

and obtain permits required under 42 U.S.C. 7475 and 42 U.S.C. 7503 in connection with the turbine replacement, and that the temporary permit (TP-0008) issued by the ARC contained “substantial and impermissible flaws.” NHSC Petition to Intervene at 2.

The petition went on to say that in the course of its appeal before the ARC, NHSC discovered three studies commissioned by PSNH regarding Merrimack Station 2. According to NHSC, these studies proved that PSNH had engaged in a “comprehensive examination of generation upgrade and life extension projects for Merrimack Station.” *Id.* The petition describes what NHSC calls “serious and substantial errors of law by the Air Resource Council” and alleges “official misconduct” by the presiding officer of the ARC. *Id.* at 3.

NHSC also referred to its notice of appeal filed in Docket No. 10-06 at the ARC related to defects NHSC claims are contained in the Title V Operating Permit issued by the New Hampshire Department of Environmental Services to PSNH for Merrimack Station. *Id.* at 4. NHSC asserted that it would “pursue its legal remedies until such time [as] PSNH provides all the information that will permit a full and fair determination, on the merits, of whether or not it has complied with its responsibilities under the Clean Air Act and the New Hampshire Multiple Pollutant Reduction Program. NHSC will ask the Public Utilities Commission to do no less before it authorizes this multi million dollar funding request.” *Id.* at 4-5.

At the prehearing conference, NHSC reiterated that it had “serious ongoing concerns and ongoing litigation with respect to the environmental compliance of projects at Merrimack Station.” Prehearing Conference Transcript of June 29, 2010 (Tr. June 29, 2010) at 8. NHSC said it should be able to participate in this docket to ensure that proceeds from the financing are used for proper corporate purposes and not “in violation of the Clean Air Act or the New

Hampshire Multiple Pollutant Control Act.” *Id.* at 9. NHSC, in response to a question, said that the Commission should leave the financing proceeding open until the cases pending before the ARC in Dockets No. 09-10 and 10-06 are resolved. *Id.* at 10.

NHSC further stated that it was not “data diving” in this docket but was simply trying to follow the law to get discovery into the potential violations of the Clean Air Act. *Id.* In response to a Commission inquiry as to whether NHSC was not able to conduct discovery in the forums where litigation is pending, NHSC said that the Commission has the authority to investigate the destination of the financing proceeds “[a]nd if the destination of these funds go to plant projects that violate the Clean Air Act, that’s basically our [NHSC’s] concern.” *Id.* at 11.

When asked whether the refurbishing of the turbine at Merrimack Station was the principal concern, a matter previously ruled on, NHSC agreed that the Commission ruled on that issue in Docket No. 08-145 but claimed that the Commission did not look at whether the “turbine is going to increase emissions beyond the Clean Air Act thresholds that trigger [new source review] permitting.” *Id.* at 11-12. While NHSC conceded that the Commission is not the appropriate forum to determine whether the Company is in violation of the Clean Air Act, it repeated its request that the Commission “defer ruling and determining on the authorities here until those Clean Air Act issues, those New Hampshire Pollution Control Act issues are fully and fairly resolved on the merits.” *Id.* at 12. NHSC went on to say that it cannot resolve those issues without access to materials that PSNH claims are confidential, and that PSNH had impeded discovery in the proceedings at the ARC and the EPA. *Id.* at 13-14.

PSNH objected to NHSC’s petition to intervene. In its written objection, PSNH argued that NHSC has no substantial interest and therefore no standing in this proceeding and that its

participation will impede the orderly conduct of this proceeding by raising issues irrelevant to the issues in this docket. PSNH asserted that either ground is sufficient to deny the petition under RSA 541-A:32. At hearing, PSNH said that the petition recites a number of NHSC's activities in environmental dockets and then concludes that, because of those activities, NHSC is entitled to intervene in this docket. PSNH reiterated that NHSC did not have any substantial interests in this proceeding and that, if NHSC were allowed intervention, it would impact the orderly conduct of these proceedings. Tr. June 29, 2010 at 7.

The OCA and Staff took no position on NHSC's petition to intervene.

III. COMMISSION ANALYSIS

A. NHSC Petition to Intervene

Pursuant to RSA 541-A:32, I (b) and (c), the Commission shall grant a petition to intervene if the petition states facts demonstrating that the petitioner's rights duties, privileges, immunities or other substantial interests may be affected by the proceeding, and the Commission determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. In addition, pursuant to RSA 541-A:32, II, the Commission has the discretionary authority to grant a petition to intervene if it would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings. We have carefully reviewed and considered NHSC's petition and its statements at the prehearing conference and conclude that NHSC has not stated a right, duty, privilege, immunity or other substantial interest that would be affected by the outcome of this proceeding. The petition, therefore, does not meet the necessary criteria for intervention under RSA 541-A:32, I.

Next, we consider whether it would serve the interests of justice if NHSC were granted intervention pursuant to RSA 541-A:32, II. NHSC's petition focuses on a discussion of proceedings initiated by NHSC at the ARC challenging the permits issued to PSNH pursuant to the authority of the New Hampshire Department of Environmental Services. Following this discussion and NHSC's analyses of reports it obtained through proceedings at the ARC and the EPA, NHSC opines that the Commission should make sure that PSNH is in compliance with the Clean Air Act and the New Hampshire Multiple Pollutant Reduction Program in connection with this financing docket. Because the ARC, the agency with competent jurisdiction over PSNH's compliance with applicable environmental laws, is hearing NHSC's appeals regarding NHSC's principal concern, *i.e.*, whether PSNH is in compliance with the Clean Air Act and the New Hampshire Multiple Pollutant Reduction Program, we cannot find that the interests of justice are served by allowing NHSC to intervene in PSNH's financing proceeding to re-litigate PSNH's compliance with air emissions requirements.

NHSC's petition to intervene appears as well to be an attempt to acquire discovery from PSNH that it has not been able to obtain through the ARC or EPA proceedings. At the prehearing conference, NHSC complained of problems it has had in obtaining discovery from PSNH at the ARC. NHSC said that it wanted a full and fair hearing of the merits regarding PSNH's compliance with the Clean Air Act "in a venue that's fully and fairly going to permit us to get access to materials and confidential materials". *Id.* at 14. Granting a petition to intervene to allow NHSC to conduct discovery for materials that were not provided in another forum, and which relate to issues beyond the scope of this proceeding as described below, would impair the

prompt and orderly conduct of this proceeding. Accordingly, we find no basis under RSA 541-A:32, II to grant NHSC's petition to intervene in the instant docket.

B. Scope of Proceeding

Pursuant to RSA 369:1, public utilities engaged in business in this State may issue evidence of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to the use of the proceeds of those funds, and the effect on rates, to insure the public good is protected. *See Appeal of Easton*, 125 N.H. 205, 211 (1984). The scope of this docket includes the terms of the financing, the amount of the financing, the effect on rates and on the capital structure and debt/equity ratio for PSNH, and a review of whether the proposed use of the proceeds is in the public good. This filing does not propose funding for a specific project but for the Company's capital investments, generally.

The Commission has previously noted 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." *Public Service Company of New Hampshire*, Order No. 25,050 (December 8, 2009) at 14. In this case we will grant a period of discovery and hearing on the financing request.

PSNH has asked for authority to issue debt over a period of 24 months, which is different from PSNH's previous petitions that have requested authority for a period of 12 months. In addition, we note that the amount of the financing authority requested is \$600 million although

the total of the projected issuances is \$435 million. As indicated by Staff's report of technical session, PSNH intends to amend its 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. We direct PSNH to amend its filing, no later than July 23, 2010, to address these concerns and explain the Company's reasons for the additional 12 months to issue the debt securities.

C. PSNH Motion For Extension Of Time To File Information

The Company filed a motion for extension of time to file certain information required to be filed by N.H. Code Admin. Rules Puc 308.11(b) with respect to the new unsecured revolving credit agreement. In that motion, the Company indicated that it expected the final terms of the new unsecured revolving credit agreement to be available on or before July 1, 2010. To date, however, the final terms have not been filed with the Commission. We will grant the extension until July 23, 2010 when PSNH shall file the information omitted in its initial filing.

Based upon the foregoing, it is hereby

ORDERED, New Hampshire Sierra Club's petition to intervene is hereby DENIED; and it is

FURTHER ORDERED, that the proposed procedural schedule is adopted with the exception of the hearing date, which shall be September 13, 2010 at 10:00 a.m.; and it is

FURTHER ORDERED, that the scope of the proceeding will be as described herein.

By order of the Public Utilities Commission of New Hampshire this twentieth day of
July, 2010.

Thomas B. Getz
Thomas B. Getz (PNS)
Chairman

Clifton C. Below
Clifton C. Below (PNS)
Commissioner

Amy L. Ignatius
Amy L. Ignatius
Commissioner

Attested by:

Debra A. Howland
Debra A. Howland
Executive Director

