

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

**Public Service Company of New Hampshire
Petition to Set 2012 Energy Service Rate**

Docket DE 11-215

**Public Service Company of New Hampshire's Objection to Conservation Law
Foundation's Petition to Intervene**

Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the Petition to Intervene of the Conservation Law Foundation ("CLF") in this proceeding. In support of this objection, PSNH states as follows:

1. On September 23, 2011, PSNH filed with the Commission its testimony and an initial proposed default energy service rate for 2012 pursuant to RSA 369-B:3, IV(b)(1)(A). CLF, an environmental advocacy group, filed a petition to intervene in this proceeding on October 14. In that petition, CLF asserts that

"[i]ntervention will allow CLF to protect its members' substantial interests in the environmental and public health impacts resulting from PSNH's use of its generating resources and market purchases to supply its customers. The economic interests of CLF's New Hampshire members as ratepayers are also directly affected by this proceeding, including by the costs incurred by PSNH for its self-owned generating assets, which costs also implicate the environmental interests addressed above."

CLF Petition to Intervene at 2.

The Commission should deny CLF's Petition because CLF does not have standing to intervene as that standard is set forth in RSA 541-A:32. CLF's rights and privileges will not be affected by this proceeding because this docket is concerned chiefly with

setting the Company's 2012 energy rate, not about whether the Company should use its generation assets to provide default service, or whether any potential environmental or health impacts associated with the use of those assets will or will not result from said use. This lack of standing is most clearly demonstrated by the fact that CLF cannot show any injury in fact if the Commission were to approve the energy service rate in this proceeding at 9.57 cents per kilowatt-hour or some other rate. CLF's petition to intervene should be denied because it has failed to state any substantial interest that would be affected by this proceeding.

2. The Administrative Procedures Act, RSA 541-A:32, I provides that a petition to intervene should be granted only where "[t]he petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding..." The Commission has adopted these standards. N.H. Code Admin. Rule Puc §203.17. The New Hampshire Supreme Court has held that in order to intervene, a petitioner must demonstrate an "injury in fact." *Appeal of Stonyfield Farm*, 159 N.H. 227, 231 (2009), citing *Appeal of Richard*, 134 N.H. 148, 154, cert. denied 502 U.S. 899 (1991).

3. This proceeding is established to determine whether the proposed charge for Default Energy Service Rate DE is based upon reasonable projections of PSNH's actual, reasonable and prudent costs of supplying energy (without any ruling on prudence) for the period from January 1, 2012 through December 31, 2012. The determination of whether PSNH's actual costs of providing energy service were prudent, just and reasonable awaits a reconciliation proceeding to be conducted starting in 2013.

4. In Paragraph 3 of its Petition, CLF claims “the decisions made by PSNH in selecting the resources it uses to supply energy service to its customers, its manner of complying with the mandates of RSA 125:0 and the New Hampshire RPS and RGGI program requirements and the prudence thereof, dictate both the costs of PSNH’s energy service and the resulting environmental impacts.” CLF neglects to recognize that the resources PSNH uses to supply energy service to its customers is set out by statute, RSA 369-B:3, IV, (b) (1)(A), which provides in pertinent part:

PSNH shall supply all, except as modified pursuant to RSA374-F:3, V(f), transition service and default service offered in its retail electric service territory from its generation assets and, if necessary, through supplemental power purchases in a manner approved by the commission.

The question of whether PSNH should use its generation assets or otherwise procure power to supply its default service customers is not within the Company’s discretion. The Commission recently acknowledged the dictates of this law in Docket No. DE 10-160, Investigation into the Effects of Customer Migration. In that proceeding, competitive suppliers suggested that energy service ought to be supplied through a competitive bid process for default service instead of through use of the Company’s generation assets. The Commission found that, in the first instance, PSNH’s generating sources must be used to supply default service. Order 25,256 at 33-34. The Commission further found that supplemental supply provided by competitive suppliers was not feasible. *Id.* Thus, PSNH’s intended use of the Company’s generating assets for the purpose of supplying default service is not the subject of this proceeding despite CLF’s desire to the contrary.

5. CLF also argues that it should be permitted to intervene because the rate in this docket will include the costs of PSNH's manner of complying with RSA 125-O:11 *et seq.* through the construction of a wet flue gas desulfurization plant as specified in the statute. RSA 125-O:12, V. PSNH has constructed that plant and placed it into service. However, PSNH's manner of compliance with other provisions of RSA 125-0 are subject to the regulations promulgated thereunder by the Department of Environmental Services and not the topic of this proceeding.¹ Even if the Commission had the expertise to assess PSNH's compliance with environmental statutes and regulations, it would only do so after the fact in a reconciliation proceeding to determine whether PSNH prudently incurred the cost of compliance, not in this 2012 rate setting docket.

6. CLF's further claim that it is entitled to intervene because the Company's calculation in the energy service rate includes the projected cost of compliance with the New Hampshire RPS and RGGI laws through projected purchases of renewable energy certificates ("RECS) for RPS and allowances purchased through RGGI auctions is similarly infirm. In this rate setting proceeding where no prudence determinations are made, the Commission can only determine whether PSNH has planned for too many or too few purchases of RECs and RGGI auction allowances, or the estimated prices for the RECs and RGGI allowances are so unreasonable that either an overcollection or undercollection will result. The actual number of RECs and RGGI auction allowances will eventually be determined by the actual amount of

¹ PSNH must comply with the provisions of RSA 125-O:5 and must report to the Commission and the Commissioner of the Department of Environmental Services. Compliance with this statute would be part of a CORE energy Efficiency proceeding.

power supplied and generation used to supply energy service in 2012. The prudent nature of those purchases will be decided in a reconciliation proceeding conducted in 2013, not in this proceeding.

7. CLF states in paragraph 5 of its Petition that “[i]n this docket, the Commission must determine whether the decisions and resulting costs incurred to PSNH to supply energy service were prudently incurred.” This fundamental misunderstanding of the nature of this proceeding can only lead to the conclusion that CLF will not confine its discovery, examination or introduction of evidence to matters which are relevant to setting an energy service rate for 2012. Granting of CLF’s intervention will thus lead to a delayed and disorderly conduct of this proceeding, contrary to the intervention statute of RSA 541-A:32.

8. Because CLF has not alleged any facts which support its allegation that its substantial rights, privileges and obligations will be affected by this proceeding, and its intervention will impair the orderly and prompt conduct of the proceedings, its petition to intervene should be denied.

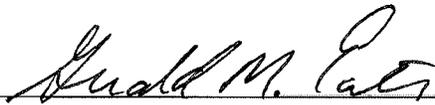
WHEREFORE, PSNH respectfully requests that the Commission:

- A. Deny CLF's Petition to Intervene; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

By Its Attorneys

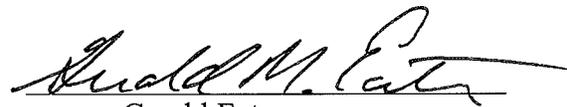
Dated: October 17, 2011

By: 

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Certificate of Service

I hereby certify that a copy of this Objection to CLF's Petition to Intervene has been served electronically on the persons on the Commission's service list this 17th day of October, 2011.


Gerald Eaton