

Attachment 1

**Public Service Company of New Hampshire's Motion to Strike and Objection to the
December 17, 2012 Objection of Conservation Law Foundation**

Docket DE 10-261

December 19, 2012

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Least Cost Integrated Resource Plan

Docket DE 10-261

Public Service Company of New Hampshire's
Motion to Strike and Objection to
the December 17, 2012 Objection
of
Conservation Law Foundation

Public Service Company of New Hampshire (“PSNH” or the “Company”), in accordance with Rule Puc 203.07, hereby moves to strike, and in the alternative, objects to “Conservation Law Foundation’s Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing” dated December 17, 2012 (the “CLF Objection”). The reason for this Motion is that CLF’s Objection addresses issues beyond the scope of PSNH’s December 6, 2012, Motion to Strike, in an attempt to introduce new issues without following the procedural requirements of the Commission’s administrative rules.

In support of this motion, PSNH states as follows:

1. On September 30, 2010, PSNH filed its LCIRP consistent with RSA 378:38 and Commission Order No. 24,945, as amended by Order No. 24,966 and Order No. 25,061. Notably, the cited Orders initially established, then amended, the date for the filing of the Company’s 2010 LCIRP. (“FURTHER ORDERED, that Public Service Company of New

Hampshire file its next least cost integrated resource plan on or before February 28, 2010, consistent with the determinations made herein.” Order No. 24, 945 at 21; “FURTHER ORDERED, that Public Service Company of New Hampshire file its next least cost integrated resource plan on or before May 3, 2010, consistent with the determinations made in Order No. 24,945.” Order No. 24,966 at 8; “FURTHER ORDERED, that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010 and shall include a continuing unit operation study for Newington Station in that filing.” Order No. 25,061 at 33.)

2. On November 3, 2010, the Commission issued an Order of Notice opening this docket. Thereafter, numerous parties petitioned to intervene and over the ensuing year and a half, extensive discovery was conducted, testimony was filed and a multi-day hearing was held. By Secretarial letter, the Commission established a deadline for filing of briefs of June 13, 2012. Such post-hearing briefs were filed by numerous parties, including CLF, in accordance with that deadline, and the case is awaiting the Commission’s decision.

3. On November 29, 2012, CLF filed a request for the Commission to take administrative notice pursuant to Rule Puc 203.27 of various regulations adopted by the Massachusetts Department of Energy Resources in August 2012. CLF argued that these regulations may impact the ability of Schiller Station Unit 5 (“Northern Wood Power Project” or “NWPP”) to sell renewable energy certificates (“RECs”) in Massachusetts in the future, and, therefore, the regulations are relevant to PSNH’s 2010 LCIRP filing. In other words, CLF contended that newly adopted regulations, which may affect the NWPP at some point in the future, are somehow relevant to a determination on PSNH’s 2010 LCIRP, which has been pending for more than two years. In a December 6, 2012, Motion, PSNH moved the Commission to strike CLF’s

November 29th filing from the record because it was deficient in numerous respects, most notably that, “[t]he information provided in the filing is neither new nor relevant to the review of the 2010 LCIRP.”

4. On December 17, 2012, CLF filed what it captioned as “Conservation Law Foundation’s Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing.” In the CLF Objection, CLF agreed with PSNH that the information in its November 29 Supplemental Filing was not available at the time PSNH prepared and filed its 2010 LCIRP. Indeed, CLF admits that the information in question was **“new information which CLF did not have at the time of the hearing in this proceeding.”** CLF Objection at ¶1. If CLF **“did not have [this information] at the time of the hearing in this proceeding”** - - hearings which ended on May 10, 2012 - - it is inconceivable how this information is relevant or should be considered by the Commission to determine the adequacy of PSNH’s 2010 LCIRP filing filed nearly two years earlier, which is the purpose of this proceeding under RSA 378:39.

5. Rather than addressing the issues contained in PSNH’s December 6 Motion to Strike, the CLF Objection attempts to interject entirely new issues into this proceeding. The vast majority of the CLF Objection focuses on its allegation that “PSNH was required to file an LCIRP ***within two years of the date when it previously filed one.***” CLF Objection, ¶4 (emphasis in original). The CLF Objection states, “RSA 378:39 (sic) required PSNH to file a new LCIRP before September 30, 2012 by mandating that ‘[] each electric utility shall file a least cost integrated resource plan with the commission at least biennially.’” (The correct statutory reference is to RSA 378:38.) In a footnote, CLF asserts, “While not necessarily relevant to the

instant proceeding, PSNH's failure to submit a timely (sic) LCIRP also (sic) precludes the Commission from approving an increase in rates charged by PSNH. RSA 378:40."

6. The CLF Objection, by requesting that the Commission "[g]rant such further relief as it deems appropriate," may be read as a request for an order or ruling regarding the biennial filing schedule of RSA 378:38, and the applicability of RSA 378:40 to the instant proceeding. Procedurally, per Rule Puc 102.08, "a request made to the commission or a presiding officer after the commencement of a contested proceeding for an order or ruling" is defined to be a "Motion." Rule Puc 203.07 sets forth the procedural requirements for the filing of a "motion." The requirements of Rule Puc 203.07 were not complied with by CLF in either its original request for administrative notice or the CLF Objection. Hence, the Commission should strike the CLF Objection, to the extent it seeks to interject new issues for which it desires an order or ruling.

7. In the event the Commission decides to address the new issues interjected by CLF in the CLF Objection, PSNH objects. CLF's statement of the law is incomplete, incorrect, and misleading.

8. CLF's main argument is that RSA 378:38 requires a utility "to file an LCIRP at least every two years." CLF Objection, ¶4. However, the statute does not address when the two-year period begins. CLF contends that utilities are required to file least cost plans every other year, regardless of whether the Commission's review and approval process for previously filed least cost plans has been completed. CLF's interpretation of the law could, and would lead to the absurd result of "pancaking" of least cost plan filings by the state's electric utilities. *See Re Granite State Electric Company dba National Grid*, 93 NH PUC 96 (2008) (order addressing both the 2005 and 2007 plans filed by National Grid.) New plans would be filed before the

Commission and intervening parties have had an opportunity to review and comment on prior plans, and before the Commission has completed its review of the adequacy of each utility's planning process as required by RSA 378:39. CLF's interpretation of the least cost plan filing requirement would result in inefficiencies and the wasting of resources (both time and money) by the state's electric utilities, the Commission and its staff, and other parties.

9. The Commission has previously addressed the ambiguous language contained in RSA 378:38. In *re Public Service Co. of New Hampshire*, 91 NH PUC 527 (2006), the Commission decided the adequacy of the LCIRP filed by PSNH on June 30, 2005. In that Order, the Commission ordered PSNH to file its next LCIRP filing by September 30, 2007 - - a period greater than two years from the date of the prior filing. Notably, the Commission stated, "We view this change as consistent with the requirement in RSA 378:38 that such plans be filed at least biennially." *Id.* at 538. Similarly, in *re Public Service Co. of New Hampshire*, 94 NH PUC 103 (2009), the Commission decided the adequacy of the LCIRP filed by PSNH on September 28, 2007 (pursuant to the 2006 Order). In that Order, the Commission directed PSNH to file its next LCIRP – the one that is the subject of the instant proceeding -- "one year from the date of this order" (*Id.* at 110), on or before February 28, 2010, [a period 29 months from the previous filing]. (*Id.* at 113). Subsequently, in *re Public Service Co. of New Hampshire*, 97 NH PUC 760 (2009), the Commission delayed the instant filing, ordering "that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010." Thus, the Commission directed that the LCIRP that is the subject of this proceeding be filed 19 months from the February 27, 2009 approval of the previous plan (97 NH PUC 760), but more than three years from the date of the Company's previous September 28, 2007, filing.

10. From the Commission precedent cited above, it is clear that the Commission has deemed the least cost plan filing requirement of RSA 378:38 to be met if a utility files a new plan within two years of the date that the Commission approves that utility's prior LCIRP. "It is a well established principle of statutory construction that a longstanding practical and plausible interpretation given a statute of doubtful meaning by those responsible for its implementation without any interference by the legislature is evidence that such a construction conforms to the legislative intent. *Trice v. City of Cranston, R.I.*, 297 A.2d 649, 652 (1972); see *Bellows Falls etc. Co. v. State*, 94 N.H. 187, 190, (1946)." *New Hampshire Retail Grocers Ass'n v. State Tax Comm'n*, 113 N.H. 511, 514 (1973); see also *Hamby v. Adams*, 117 N.H. 606, 609 (1977) ("[W]here a statute is of doubtful meaning, the long-standing practical and plausible interpretation applied by the agency responsible for its implementation, without any interference by the legislature, is evidence that the administrative construction conforms to the legislative intent."). The Commission's interpretation of RSA 378:38 is indeed "practical and plausible," has been in effect for years, and has not been interfered with by the legislature. As a result, CLF's opinion regarding the filing requirements of RSA 378:38 is incorrect.

11. Moreover, CLF's footnoted suggestion - - which CLF itself expressly notes is "not necessarily relevant to the instant proceeding" - - that "PSNH's failure to submit a timelt (sic) LCIRP als (sic) precludes the Commission from approving an increase in rates charged by PSNH. RSA 378:40," is similarly incorrect. The second sentence of RSA 378:40 expressly provides that "nothing contained in this subdivision shall prevent the commission from approving a change [in rates], otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed." In the instant proceeding, "the

process of review is proceeding in the ordinary course but has not been completed” for the LCIRP timely filed by PSNH in accordance with the Commission’s Order at 97 NH PUC 760.

12. Further, given that PSNH timely filed the LCIRP, CLF assertions that “[w]hile PSNH cites in its Motion to Strike a number of Commission rules, there is no rule that addresses the manner in which matters germane to least cost integrated resource planning for a utility are to be addressed after the utility fails to comply with the statutory mandate for it to file an IRP,” should be disregarded. CLF Objection, ¶6. PSNH maintains that the issues raised by CLF are not, in fact, germane to this LCIRP proceeding and, as noted above, that PSNH has not failed to comply with any statutory mandate. Moreover, in the instant proceeding, the Commission has already ruled that regulations (NH DES’s Regional Haze Plan) that were not finalized prior to the submission of PSNH’s LCIRP were “beyond the scope of this docket.” Order No. 25,220 (May 4, 2011). The Commission should adhere to that decision regarding the Massachusetts DOER regulations presented in CLF’s supplemental filing.

WHEREFORE, PSNH respectfully requests that the Commission:

- A. Strike the November 29, 2012, Supplemental Filing of Conservation Law Foundation;
- B. Strike the December 17, 2012, “Conservation Law Foundation Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing;”
- C. In the alternative, grant PSNH’s objection to the new issues CLF seeks to interject into this proceeding by its November 29, 2012 Objection; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

Public Service Company of New Hampshire

December 19, 2012
Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the above pleading to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

December 19, 2012
Date


Robert A. Bersak