

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Scrubber Costs and Cost Recovery

Docket No. DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

SIERRA CLUB'S OBJECTION TO PSNH'S MOTION TO STAY PROCEEDINGS

The Sierra Club objects to Public Service Company of New Hampshire's ("PSNH") Motion to Stay Proceedings in Dockets Nos. DE 11-250 and DE 14-238. In support of its objection, the Sierra Club states as follows:

1. On December 26, 2014, PSNH filed a very short and cryptic motion seeking an indefinite stay of proceedings in both the fully-briefed and heard scrubber docket (DE 11-250) and a second docket (DE 14-238) opened by the Commission at the behest of the legislature that it "expedite" consideration of divestiture of PSNH's generating assets. PSNH's request is contrary to both common sense and the directive of the Legislature, and its motion wholly fails to offer any legitimate support for its contention that these dockets should be stayed.

Accordingly, PSNH's motion should be denied.

2. The only two reasons PSNH gives for its request that both the scrubber docket and the divestiture docket be indefinitely stayed are: first, that a legislative service request "relative to electric rate reduction financing and commission action" has been filed for

consideration in the 2015 legislative session, and second, that PSNH desires “an opportunity” to develop a “collaborative resolution” to both dockets. Motion at ¶¶ 2-3. Neither reason as stated justifies staying these dockets.

3. First, as this Commission is fully aware, the Commission has already in the scrubber docket accepted copious material in the form of direct, responsive, and rebuttal testimony and exhibits, held two weeks’ worth of hearings, and received post-hearing briefs from PSNH, the Office of the Consumer Advocate, the Commission Staff, and Intervening parties. The only thing that remains is an order from the Commission. Staying the scrubber docket now at this stage—on the very vague basis offered by PSNH—makes little sense, particularly since the scrubber docket proceedings have been ongoing for over three years, with significant amounts of discovery, testimony, motion practice, time and expense by the Parties, Consumer Advocate, and Staff already having been expended, and multiple Commission determinations already having been issued.

4. Indeed, PSNH’s request is all the more bewildering given its repeatedly-stated concern, throughout the scrubber docket, with anything that might, in PSNH’s mind, slow down the “orderly and prompt” resolution of the docket. *See, e.g.*, PSNH Objection to Joint Motion for Full Commission and Appointment of Special Commissioner (Jan. 13, 2014) at 5 (bemoaning any “further delays in reaching the hearing,” and arguing that no delay was warranted in resolving certain motions, as “[t]he pleading process regarding those motions is now complete” and that they are thus “ripe for Commission decision now”); *see also* PSNH Objection to Joint Motion for Deposition of Gary Long (Aug. 8, 2013) at 2, 3-6 (noting that PSNH had requested that the Commission “accelerate” consideration of the scrubber, cataloguing extensions of the discovery schedule and objecting to further delays in discovery).

Indeed, mere weeks ago PSNH was urging the Commission to quickly resolve the scrubber docket, with PSNH's counsel Robert Bersak, who now signs a motion seeking an indefinite stay, requesting that this Commission issue "an order by the end of the year." DE 11-250 Day 7 Hearing Trans. (Oct. 23, 2014) (Afternoon Session) 69:2-9.

5. Similarly, the divestiture docket was opened at the specific direction of the legislature, which gave instructions in no uncertain terms that the docket proceed without delay: "the commission **shall commence and expedite** a proceeding to determine whether all or some of PSNH's generation assets should be divested." 2014 N.H. Laws, Chapter 310 (codified at RSA 369-B:3-a) (emphasis added). Further, the Legislature directed the Commission to provide it with a "progress report" no later than "March 31, 2015," again indicating that the docket should not be lightly stayed. *Id.*

6. In face of this, PSNH only vaguely suggests that a legislative service request and a desire to arrive at a collaborative solution might somehow be hampered if this Commission moves forward with the scrubber and divestiture dockets. But PSNH points to no actual legislation, pending or otherwise, that would justify the indefinite stay that it seeks.¹ Merely pointing to a *request* by a senator for the development of a potential bill—which of course may or may not ever be passed into law, and in fact might not ever even be drafted at all—as PSNH does in its motion is to fail utterly in establishing any need for a stay. This is particularly true where the Legislature has already spoken on the matter of the divestiture docket, indicating that it should be expedited. 2014 N.H. Laws, Chapter 310 (codified at RSA 369-B:3-a). A desire to wait for hazily inchoate and possible future legislation does not and cannot trump existing law.

¹ Indeed, the proposed legislative service request PSNH hopes will lead to a "collaborative solution" to "the myriad"—but undefined—"issues" the request is purportedly to address is not even attached to PSNH's motion.

7. Nor does PSNH offer any explanation as to the likelihood, timeline, benefit, or even *substance* of its hoped-for “collaborative solution.”² Instead, PSNH offers to “update the Commission” as to any progress with its envisioned collaborative process, including an update as to whether or not the process is “unsuccessful,” at which point PSNH would “seek a re-initiation” of the dockets. Motion at ¶ 6. This amounts to a request for an open-ended and likely lengthy delay in the dockets, with no parameters for ending the stay aside from PSNH’s election to again proceed. Moreover, it is unclear why any such “solution” would be so categorically more desirable than allowing the Commission to move forward with its tasks that the Commission should set aside a fully-briefed and heard docket on the one hand, and a docket with an existing legislative mandate for expedited treatment on the other, in favor of such an open-ended and ill-defined process.³

8. At end, PSNH’s motion amounts to little more than a baseless assertion that the scrubber and divestiture dockets should be stayed because PSNH would prefer them to be stayed. The timing of PSNH’s motion, its lack of specificity and substance, and its failure to set any limiting parameters on its requested stay all mitigate against granting. PSNH’s motion should be denied.

² Further, PSNH’s stated desire for an indefinite stay so that it may pursue a “collaborative” resolution to these dockets seems misplaced in light of the fact that not one of the parties in either the scrubber or divestiture docket joined PSNH in its motion. An appropriate scenario for a stay would involve a large number of parties agreeing that a collaboratively-supported resolution proposal is at hand, perhaps obviating the need for further adjudicative processes. This does not appear to be the case here.

³ Additionally perplexing is PSNH’s baseless assertion that the “dynamics affecting the ability to reach a collaborative resolution . . . would be negatively impacted if the Dockets were to proceed at this time.” *Id.* at ¶ 5. Parties can and do negotiate settlements or develop collaborative proposals in Public Utility Commission dockets all the time without such dockets being indefinitely stayed; yet PSNH does not bother to offer any explanation why the situation here would be different.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Sierra Club's Brief on Scoping has been served electronically on the persons in the Commission's service lists for the above-captioned dockets in accordance with Puc 203.11 on this 5th day of January, 2015.

_____/s/
Zachary M. Fabish