

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Investigation of Scrubber Costs and Cost Recovery**

**Order Granting Motion to Stay**

**ORDER NO. 25,755**

**January 15, 2015**

**I. PROCEDURAL HISTORY**

This docket considers the prudence of the costs and cost recovery for the wet flue gas desulfurization system (Scrubber) installed by Public Service Company of New Hampshire (PSNH) at its coal-fired generation plant known as Merrimack Station. We held a hearing on the merits in October 2014 and received closing briefs in November 2014.

PSNH previously asked that the Commission issue its order on the merits by the end of 2014 so that PSNH could implement any resulting rate changes beginning January 1, 2015. Post-Hearing Memorandum of PSNH at 42; *see* Transcript Day 7, afternoon, at 68-69 (“the Company’s goal is to allow the Commission to be in a position to issue an order in time so that, if there are rate adjustments that need to be made, they could be implemented contemporaneously with our January 1<sup>st</sup> rate changes”). On December 23, 2014, however, PSNH orally notified the Commission of its intent to request a stay, and PSNH filed a written Motion to Stay Proceedings on December 26, 2014. PSNH filed the same motion in Docket No. DE 14-238, a proceeding commenced “to determine whether all or some of PSNH's generation assets should be divested.” RSA 369-B:3-a, I.

## **II. POSITION OF THE PARTIES.**

### **A. PSNH**

PSNH requests the stay “to allow collaborative and legislative efforts to progress that may resolve the myriad issues that are currently under consideration.” Motion at 1. In support of its request, PSNH states that Senate Majority Leader Jeb Bradley filed Legislative Service Request (LSR) #2015-S-0928-R “relative to electric rate reduction financing and commission action.” PSNH indicates that this LSR will result in proposed legislation that may resolve the issues in this docket and in Docket No. DE 14-238. Motion at 2. PSNH represents that Senator Bradley supports the requested stay. *Id.* PSNH argues that the “dynamics affecting the ability to reach a collaborative resolution to the myriad issues would be negatively impacted if the Dockets were to proceed at this time.” *Id.* PSNH offers to provide regular updates of the legislation and other efforts to resolve this case. Finally, PSNH argues that a stay would promote the orderly and efficient conduct of the proceedings and not impair the rights of others. *Id.* at 3; *cf.* Puc 203.13 (c) (“The commission shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding”).

### **B. The TransCanada Intervenors**

TransCanada Power Marketing, Ltd. and TransCanada Hydro Northeast, Inc. (the TransCanada Intervenors) do not object to a settlement effort but raise questions they think should be resolved first. TransCanada Intervenors’ Response at 2. The TransCanada Intervenors ask which parties may participate in the “collaborative process,” whether the Commission will facilitate the process and how that will be accomplished, and whether there will be time frames and deadlines. The TransCanada Intervenors argue that “it is important that the ground rules and the process be clarified before the Motion is granted.” *Id.*

### **C. Conservation Law Foundation**

The Conservation Law Foundation (CLF) states that PSNH's motion "fails to present adequate information regarding the scope, structure, or intent of the proposed settlement process, making it difficult to assess the merits of initiating such a process at this time." CLF Response at 1. CLF notes the late timing of PSNH's motion, that the case is otherwise ripe for a final decision, and that a settlement would be late under Commission rules. *Id.* CLF also points out that PSNH failed to seek the concurrence of the other parties. *Id.* CLF nonetheless does not object to the requested stay and intends to engage in any settlement discussions. CLF urges the Commission to oversee the settlement negotiations among the parties to this docket and Docket No. DE 14-238 before the legislative process in order "to have the best chance of success." *Id.*

### **D. Sierra Club**

The Sierra Club objects to the motion to stay in both dockets. As to this case, the Sierra Club notes the late filing, the substantial work by all parties to bring this docket almost to its end, and the conflict with PSNH's oft-stated objection to delay. Sierra Club Objection at 2. The Sierra Club argues the motion is not supported with sufficient facts, but with a mere reference to a vague legislative service request and desire to resolve the case outside the normal process. *Id.* at 3. The Sierra Club fears an "open-ended and likely lengthy delay in the dockets, with no parameters for ending the stay." *Id.* at 4.

### **E. Office of Consumer Advocate**

The Office of the Consumer Advocate (OCA) does not object to a stay in this case so long as PSNH's default service ratepayers are held harmless for the extra carrying costs for the Scrubber that might accrue during the stay. OCA Response at 1. "PSNH can demonstrate its good faith by holding ratepayers harmless for this requested stay." *Id.* at 3. The OCA also

argues that there has been sufficient time for any settlement discussion or legislative action and that PSNH provided no legal support for its request. “There are no facts or issues to be developed elsewhere that would assist the Commission in its determination in either docket.”

*Id.* at 2.

#### **F. Staff**

Staff did not file a response to the motion to stay.

### **III. COMMISSION ANALYSIS.**

A request to stay at this late juncture is unusual, especially given PSNH’s request for a final order by the end of 2014. PSNH’s reasons for the stay are thin because it mostly relies on a legislative service request that provides little insight into the form that a legislative solution may take. We nonetheless grant PSNH’s motion for several reasons. First, the Legislature passed the law that is at the center of this litigation, RSA 125-O:11-:18. We find it reasonable to allow the Legislature time to address and possibly resolve the important issues related to the Scrubber.

Second, our final order could disrupt the legislative discussion by strengthening the hand of those whose arguments we adopt and weakening the position of those we rule against. We thus find it best to let the Legislature address the policy issues first.

Third, delaying our final order will not harm ratepayers. Whether we release our final order now or later will have a negligible effect on PSNH’s rates. PSNH is now collecting 0.98 cents per kilowatt hour (kWh) in temporary rates for the Scrubber, which is approximately two-thirds of PSNH’s requested rate for all Scrubber costs of 1.47 cents/kWh. PSNH requests an additional 0.38 cents per kWh to pay the deferral over seven years, which is now approximately \$105 million. The passage of a few months will only affect PSNH’s 0.38 cents per kWh request for the deferral and a short delay will not significantly change that figure. Although we deny at

this time the OCA's request to exclude the amount of deferral that accrues during the pendency of this stay, we do so without prejudice to a future request depending on what may transpire over the coming months.

Finally, we deny the request of some parties to manage the "collaborative and legislative efforts." We have no authority over the legislative process. To the extent the parties ask us to supervise a separate settlement negotiation, we decline. Any settlement process that we supervise would be limited to the issues and parties in this docket. PSNH's motion to stay is based on possible resolution of issues that are broader than those before us here, and involves those who are not parties. Although nothing prevents the parties to this case from discussing and settling matters within the scope of this docket, we do not think it practical to supervise such a process in light of what appears to be a legislative effort at a global resolution of issues related to PSNH's generation fleet.

The stay will not be indefinite. We will monitor the progress of the legislation and any settlement talks. If and when it becomes clear that neither process will be timely or fruitful, we will issue our order on the merits. We thus require PSNH to file in this docket monthly updates regarding the legislative process and any settlement discussions. Any other party may file updates of its own or in response to PSNH's filings.

**Based upon the foregoing, it is hereby**

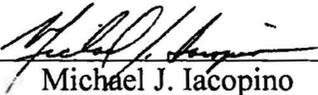
**ORDERED**, that PSNH's motion to stay is GRANTED; and it is

**FURTHER ORDERED**, that PSNH shall provide the Commission with updates of the legislative and any settlement processes by the first of each month beginning February 1, 2015; and it is

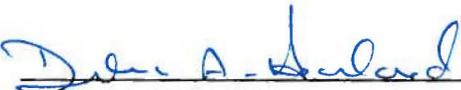
**FURTHER ORDERED**, that any other party may respond to PSNH's updates or file its own update by the 10<sup>th</sup> of each month beginning February 10, 2015.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of January, 2015.

  
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Martin P. Honigberg  
Chairman

  
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Michael J. Iacopino  
Special Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director