DR 99-099: PSNH Proposed Restructuring Settlement
DR 96-150: Electric Restructuring Proceeding - PSNH Interim Stranded Cost Charge
DR 96-148: "Best Efforts" Proceeding
DR 96-149: "Light Loading" Proceeding
DR 96-424: Petition of Hannaford Brothers Company
DR 97-059: PSNH Base Rate Proceeding
DR 97-014; DR 98-014; DR 98-197; DR 97-044: PSNH FPPAC
DR 97-167: Petition of OCA Re: Millstone
DR 97-185: PSNH Management Audit
DR 95-247: Bio-Energy Proceeding

Order Denying Motion for Rehearing of Order on Motion for Disqualification

O R D E R N O. 23,298

September 13, 1999

This matter comes before me on the September 7, 1999 Motion of the Office of Consumer Advocate (OCA) and the Granite State Taxpayers, Inc. (GST) (together, the Moving Parties) to the Public Utilities Commission (Commission) for Rehearing or Reconsideration of my Order No. 23,277 denying the Moving Parties' motion for my disqualification from hearings or deliberations on certain cases concerning the rates and restructuring of Public Service Company of New Hampshire (PSNH). Our rules provide 5 days for parties to object to a motion for rehearing. No objections were received.

In keeping with the practice followed by the Commission on the underlying motion for disqualification, I will rule on the Motion for Rehearing, notwithstanding that it is directed to the entire Commission. As noted in Order No. 23,277, the case law indicates that motions for recusal should be decided by the

subject decisionmaker, subject to an appeal to the Supreme Court. See, Douglas v. Douglas, slip op. at 8 (New Hampshire Supreme Court March 10, 1999), citing with approval Taylor-Boren v. Isaac, slip op., 143 N.H. ___ (decided December 30, 1998).

The Moving Parties state that they file their Motion for Rehearing or Reconsideration pursuant to RSA 541:3 in order to "preserve any independent appeal rights held by OCA and Granite State Taxpayers." The Moving Parties agree that Order No. 23,277 properly states the applicable law, and implicitly agree that the Ethics Board Report sets out the undisputed facts relevant to their motion for disqualification. However, they assert that "the Commission [in Order No. 23,277] improperly applied the facts ... to these legal standards for disqualification."

RSA 541:3, and our rules promulgated thereunder, determine the procedure for a motion for rehearing before the Commission. RSA 541:3 provides in pertinent part that

> "[w]ithin 30 days after any order...has been made...any party...may apply for a rehearing...*specifying in the motion all grounds for rehearing*, and the commission may grant such rehearing *if in its opinion good reason for the rehearing is stated in the motion."* (Emphasis supplied).

Administrative Rule Puc 203.04(d)(1) provides that all motions shall clearly and concisely state "the facts and law which support the motion..." The Moving Parties have not complied with these requirements.

The Moving Parties do not discuss in what way Order No. 23,277 improperly applied the facts to the legal standards for disqualification. They do not dispute any aspect of the 16-page analysis set forth in Order No. 23,277 discussing in great detail the possible inferences that could be drawn from the undisputed facts, and applying the case law to help determine which of those inferences would be reasonable when seen from the perspective of an objective person with full knowledge of the relevant facts. Nor do the Moving Parties challenge my actual impartiality, nor any of the particular inferences discussed in that Order. The Office of Consumer Advocate and Granite State Taxpayers have not presented any reason to revisit Order No. 23,277, or the question of my impartiality in these dockets.

I also note that at my request, the Commission has transferred the question of my disqualification to the Supreme Court for its review.

I note that as a result of the Commission's decision on August 9 , 1999, the underlying legal issues contained in the Moving Parties original motion to disqualify me have been transferred to the New Hampshire Supreme Court. (A copy of this

request, filed with the Supreme Court on August 18, 1999, was provided to the Moving Parties.) The Commission has requested a ruling on the question of whether the subject conversation requires that I be disqualified from the above-referenced proceedings.

Based on the foregoing, it is hereby

ORDERED, that the September 7, 1999 motion of Granite State Taxpayers, Inc. and Office of Consumer Advocate for rehearing or reconsideration of Order No. 23,277 dated August 6, 1999, denying the Moving Parties' motion for my disqualification from certain of the above-captioned dockets be, and hereby is, **DENIED**.

By order of Commissioner Brockway this thirteenth day of September, 1999.

Nancy Brockway
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary