



For a thriving New England

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January 28, 2013

Ms. Debra A. Howland, Executive Director & Secretary  
N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

RE: Docket No. DE 12-292  
Public Service Company of New Hampshire  
2013 Default Energy Service Rate

Dear Director Howland:

Please find enclosed for filing with the Commission an original and seven (7) copies of Conservation Law Foundation's and Ratepayers' Motion for Rehearing of Order No. 25,448. A copy of this filing has this day been sent electronically to all parties on the PUC's service list.

Thank you for your attention to this matter. Please feel free to contact me at 225-3060 should you have any questions.

Sincerely,

N. Jonathan Peress, Director  
Clean Energy and Climate Change Program

NJP/dlh

Encls.

cc: DE 12-292 Service List

**STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire

2013 Default Energy Service Rate

Docket No. DE 12-292

**CONSERVATION LAW FOUNDATION'S AND RATEPAYERS'  
MOTION FOR REHEARING OF ORDER No. 25,448**

Conservation Law Foundation (“CLF”), and the undersigned ratepayers purchasing energy service (the “PSNH Ratepayers”) from Public Service Company of New Hampshire (“PSNH”) hereby request rehearing of Order No. 25,448, issued December 28, 2012 (“the Order”), pursuant to RSA 541:3. PSNH Ratepayers are: Alexandra M. Dannis and James G. Dannis, William Hopwood, Janet Ward, George Chase, and Amy Matheson. Each of the foregoing individuals has authorized CLF to represent that he/she is joining in this Motion as an individual ratepayer.<sup>1</sup> Collectively, CLF and the PSNH Ratepayers are referred to herein as “Petitioners.” In support of this Motion, Petitioners state as follows:

1. The rights, privileges and immunities of each of the Petitioners are affected by the Order and/or the rates established by the Commission therein as set forth below.

2. A non-profit environmental membership organization, CLF’s mission is to protect New England’s environment for the benefit of all people by using the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Consistent with its mission, CLF is dedicated to the protection and responsible use of resources affected by the generation, transmission and distribution of electric

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<sup>1</sup> CLF prepared this Motion which is being filed on behalf of itself, and by each PSNH Ratepayer. CLF is *not* acting in the capacity of legal counsel for, nor otherwise representing the PSNH Ratepayers, and each is a separate party to the instant motion.

power, and to advancing solutions that strengthen New England's – and New Hampshire's – economic vitality. CLF represents the interests of its members in ensuring that environmental impacts resulting from electric utility operation in New Hampshire and the region are minimized, and in avoiding adverse economic impacts associated with continued use and reliance on uneconomic, environmentally unsustainable electricity generation such as coal-fired generation at PSNH's Merrimack and Schiller Stations. In order to achieve its organizational objectives, CLF's focus includes advocacy regarding the design and operation of the region's energy markets, including those regulated by state Public Utility Commissions like the retail market in New Hampshire in which PSNH participates, and the wholesale electricity market in New England, as regulated by the Federal Energy Regulatory Commission. In this regard, CLF has been a voting member and participant in the New England Power Pool ("NEPOOL") since 2004 because we believe that vibrant competitive energy markets facilitate competition and innovation which attenuates environmental impacts.

3. CLF has over 3,300 members, including 435 members residing in New Hampshire and more than 300 members who reside in PSNH's service territory, many of whom are default energy service customers of PSNH, including but not limited to some of the PSNH Ratepayers joining this Motion. CLF joins in this Motion on behalf of itself and its members, whose rights and interests are directly affected by the 34% rate increase, constituting massive above market costs granted to PSNH by the Order in this proceeding.<sup>2</sup> CLF has regularly been granted intervention by the Commission in PSNH ratemaking proceedings including most

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<sup>2</sup> In addition to its stand alone rate impacts, the impacts of Order No. 25,448 are also far broader causing more fundamental market and policy effects. Within days of issuing the Order, the Commission opened "an investigation pursuant to RSA 365:5 and RSA 374:4 to examine the circumstances of PSNH's default service rates and the degree to which those circumstances affect the ability of PSNH to provide safe and reliable service at just and reasonable rates to its default service customers." DE 13-020 Order of Notice ("OON"). In the OON, the Commission expressly connected "long- and short-term environmental, economic and energy price and supply impact on the State" within PSNH's least cost planning to recent developments with PSNH's default energy service rates.

recently DE 10-121 (Energy Service Rate Reconciliation) and DE 11-215 (Proposed Energy Service Rate). In addition, CLF was granted intervention in DE 10-160 (PSNH Customer Migration) and pending DE 10-261 (PSNH Least Cost Integrated Resource Plan) and DE 11-250 (Scrubber Cost Recovery).

4. PSNH Ratepayers, as ratepayers directly bearing the cost of the increased above-market rates charged by PSNH, experience a direct economic injury from the rate increase in the Order. *Appeal of Richards*, 134 N.H. 148 (1991).

5. Although the Petitioners are not parties in the instant proceeding, they are empowered by law to protect their respective rights. See RSA 541:3 (stating that in addition to any party to a proceeding before the commission, “any person directly affected thereby . . . may apply for a rehearing. . . .”); *Appeal of Richards* at 154 (“A party or any person directly affected by the PUC’s decision or order may apply for a rehearing with respect to ‘any matter determined in the action or proceeding, or covered or included in the order.’”) (emphasis added).

6. The Commission may grant rehearing when the motion states “good reason for the rehearing.” RSA 541:3. Good reason may be shown by identifying specific matters that were either “overlooked or mistakenly conceived in the original decision and thus invite[] a reconsideration upon the record upon which that decision rested.” *Lambert Const. Co. v. State*, 115 N.H. 516, 519 (1975) (citations omitted).

7. This Motion arises out of PSNH’s request for approval of its proposed default energy service rate for 2013. PSNH initially requested an 8.97 cents/kwh default energy service rate on September 28, 2012, but increased the requested rate to 9.54 cents/kwh on December 12, 2012. The requested 9.54 cents/kwh rate, which the Commission approved in the Order, represents a 34% increase over the 2012 default energy service rate of 7.11 cents/kwh.

8. CLF submitted comments to the Commission in this proceeding on December 24, 2012 (“Comment Letter”) attached hereto as Exhibit 1 and which, in order to avoid duplication, we hereby incorporate by reference. The Comment Letter was filed in response to information provided by PSNH in the affidavit of Terrance J. Large (“PSNH Affidavit” attached hereto as Exhibit 2), which was filed on December 19, 2012 as part of PSNH’s response to a Commission record request in this proceeding. The Comment Letter asserted that the Commission lacked the statutory authority to approve the default energy service rate change sought in this proceeding because PSNH’s rate change request does not meet the requirements of RSA 378:40.

9. On December 28, 2012, the Commission approved PSNH’s default energy service rate increase of 34% in the Order. The Order noted that CLF had filed comments in response to the PSNH Affidavit on December 24. Order at 2. The Order did not otherwise acknowledge or discuss the content of CLF’s Comment Letter. Petitioners now move for rehearing of the Order in light of the legal arguments raised in the Comment Letter.

10. Specifically, Petitioners request that the Commission rehear the Order and disapprove PSNH’s 2013 default energy service rate increase on the basis of PSNH’s failure to comply with the requirements of RSA 378:38 & 378:40. As is further described in the Comment Letter, the Commission lacks the statutory authority to approve a rate change when the requesting utility has failed to file plans required under RSA 378:38, which includes least cost integrated resource plans (“LCIRP”) filed at least biennially. RSA 378:38, 378:40. PSNH’s most recent LCIRP was filed on September 20, 2010. See PSNH Affidavit. For these reasons, Petitioners request that the Commission rehear the Order in response to the legal arguments presented by CLF in the Comment Letter and above.

11. The Office of Consumer Advocate has authorized Petitioners to represent that it does not object to the relief requested herein.

WHEREFORE, Petitioners respectfully requests that the Commission:

- A. Grant this Motion for Rehearing of Order No. 25,448; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

**CONSERVATION LAW FOUNDATION**

By:



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New Hampshire Advocacy Center  
Conservation Law Foundation  
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Dated: January 28, 2013

**PSNH RATEPAYERS**

/s/ Alexandra Dannis, /s/ James Dannis  
Alexandra M. Dannis and James G. Dannis  
117 McGinty Road  
Dalton, New Hampshire 03598

/s/ William Hopwood  
William Hopwood  
706 Bunker Road  
Elkins, New Hampshire 03233

/s/ Janet Ward  
Janet Ward  
82 Watchtower Road  
Contoocook, New Hampshire 03229

/s/ Amy Matheson  
Amy D. Matheson  
105 Exeter Road, Apt. 2  
North Hampton, New Hampshire 03862

/s/ George Chase  
George Chase  
497 Putney Hill Road  
Hopkinton, New Hampshire 03229

CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of January 2013, a copy of the foregoing Motion for Rehearing Order No. 25,448 was sent electronically or by First Class Mail to the service list.



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N. Jonathan Peress  
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Conservation Law Foundation  
27 North Main Street  
Concord, New Hampshire 03301-4930  
Tel.: (603) 225-3060  
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Dated: January 28, 2013

**EXHIBIT 1**





For a thriving New England

CLF New Hampshire 27 North Main Street  
Concord, NH 03301  
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F: 603.225.3059  
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December 21, 2012

**Via Electronic Mail; Original and Six Copies by Overnight Mail**

Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: Docket No. DE 12-292, Public Service Company of New Hampshire  
2013 Energy Service Rate**

Dear Ms. Howland,

This letter is submitted in accordance with Puc 203.18, on behalf of the Conservation Law Foundation and its members, and addresses a response to a record request from the Commission provided by Public Service Company of New Hampshire ("PSNH") on December 19, 2012 in the above-referenced proceeding. PSNH's response includes the affidavit of Terrance J. Large, (the "PSNH Affidavit") which was, upon information and belief, provided to demonstrate that PSNH's pending rate change request in the instant docket would, if approved by the Commission, meet the requirements of statute, including, without limitation, RSA 378:40 and RSA 378:41. CLF hereby asserts that the rate change requested by PSNH<sup>1</sup> does not meet the requirements of RSA 378:40 and the Commission is thus devoid of statutory enabling authority to approve the rate change sought in this proceeding.

RSA 378:40, entitled "Plans Required," explicitly and directly imposes an affirmative requirement on utilities seeking approval for a rate change to file a least cost integrated resource plan at least biennially. It states that "[n]o rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39." RSA 378:40. Under RSA 378:38, "each electric utility shall file a least cost integrated resource plan (LCIRP) with the commission at least biennially" (emphasis added). Accordingly, PSNH "shall" (i.e., is required)<sup>2</sup> to file a least cost integrated resource plan ("LCIRP") "at least" every two years, and in addition, must have timely filed an LCIRP in order for the Commission to approve a rate change. In this instance, PSNH has failed to do so.

<sup>1</sup> The instant proceeding was brought by PSNH to request approval of a change in its default energy service rate from 7.11 cents/kwh to 9.54 cents/kwh, amounting to an approximately 34% rate increase.

<sup>2</sup> The use of the term "shall" in the statute emphasizes that PSNH is *directed* to file an LCIRP at least every two years. *State v. Johanson*, 156 N.H. 148, 151 (2007); *City of Rochester v. Corpening*, 153 N.H. 571, 574 (2006).

According to the PSNH Affidavit, the company last filed an LCIRP on September 30, 2010. As of today's date it has been more than two years plus eighty one days since PSNH last filed an LCIRP. Clearly, PSNH did not comply with the requirement to file an LCIRP biennially and is therefore in violation of RSA 378:38.

The regulation of public utilities and the establishment of rates to be charged by a public utility are, in the first instance, legislative functions which, in New Hampshire, have been delegated to the Commission. *Legislative Utility Consumers' Council v. Public Service Company Of New Hampshire*, 119 N.H. 332, 340 (1979). Under RSA 378:40, the Commission lacks the statutory enabling authority to approve PSNH's request for an increase in the default energy services rate in this proceeding. PSNH's failure to undertake the statutorily mandated duty to file an LCIRP vitiated the Commission's authority to approve PSNH's proposed massive rate increase and any attempt by the Commission to grant such increase would be *ultra vires* and void *ab initio* as a matter of law. *In Re Town of Nottingham*, 153 N.H. 539, 555 (2006) ("An agency 'must also comply with the governing statute, in both letter and spirit,') (quoting, *Appeal of Morin*, 140 N.H. 515, 519, 669 A.2d 207 (1995)). Cf. *In re Campaign for Ratepayers' Rights*, 162 N.H. 245, 256 (2011) ("Absent subject matter jurisdiction, a tribunal's order is void.") (quoting *Gordon v. Town of Rye*, 162 N.H. 144, 149 (2011)). See also, *In re Alexis O.*, 157 N.H. 781, 790 (2008) ("Administrative regulations that contradict the terms of a governing statute exceed the agency's authority, and are void.").

The PSNH Affidavit (at par. 1) notes that the September 20, 2010 LCIRP is currently pending before the Commission. The statutory exception in RSA 378:40 for LCIRPs undergoing Commission review does not apply, however, where the utility has failed to timely make the required LCIRP filing (i.e., within two years). That a timely filing is first required is unequivocal in the text of the statute. The relevant text states,

[h]owever, nothing contained in this subdivision shall prevent the commission from approving a [rate] change, [] 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.

RSA 378:40. The condition precedent for the statutory exemption contains two elements: 1) "the utility has made the required plan filing in compliance with RSA 378:38"; **and**, 2) "the process of review is proceeding in the ordinary course but has not been completed." It is indisputable that PSNH did not make the required plan filing in compliance with RSA 378:38 because the statute directs PSNH to make the filing biennially and more than two years have passed. Accordingly, PSNH failed to meet the statutory condition precedent for the exception.

RSA 378:38 is explicit that the deadline for filing an LCIRP occurs two years from the filing of its last LCIRP. The language in RSA 378:38 is clear. There is no ambiguity in the statute. Ascribing the "plain and ordinary meaning to the words used" leaves no uncertainty: the





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General Court mandated that PSNH was required to make the filing biennially and PSNH did not. See, *State v. Hynes*, 159 N.H. 187, 193 (The intent of the statute is discerned by examining the language of the statute, and, where possible, applying “the plain and ordinary meaning to the words used.”).

Although the Commission is empowered to waive certain requirements to file an LCIRP, such authority is not relevant here because PSNH did not request one nor has a waiver been granted. RSA 378:38-a. In fact, on a prior occasion in 2004, PSNH requested such a waiver under RSA 378:38-a as it related to the generation elements of least cost integrated resource planning. See *re Public Service of New Hampshire, Order on Request for RSA 378:38-a Waiver*, Order 24,435 (Feb. 25, 2005). Evidently PSNH is aware of its right to petition for a waiver, and chose not to seek a waiver in this instance.

Even a cursory review of prior Commission orders and precedent make it abundantly plain that in the absence of a waiver (i.e., extension) granted by the Commission, PSNH was required to file an LCIRP by September 30, 2012, within two years of its last filed plan. See, *Re Public Service Company of New Hampshire*, 91 NH PUC 527 (2006) (PSNH LCIRP filed June 30, 2005; Commission approval order November 8, 2006 which extended filing date for next plan to September 30, 2007); *Re Public Service Company of New Hampshire*, 94 NH PUC 103 (2009) (PSNH LCIRP filed September 28, 2007; Commission approval order February 27, 2009 which extended filing date for next plan until February 28, 2010; subsequently extended to September 30, 2010 in *Re Public Service of New Hampshire*, 97 NH PUC 760 (2009)). Most notable about PSNH’s prior LCIRP filings is that there was never a single day in which the date in which it filed an LCIRP extended beyond two years from the prior LCIRP submittal without first obtaining an extension by order from the Commission. Indeed, CLF did not find a single instance prior to the instant proceeding in which a utility missed the biennial LCIRP filing deadline without first obtaining an extension by order from the Commission and complying with such extension.<sup>3</sup>

In fact, in at least one prior instance a utility filed an LCIRP while its prior plan was still under review by the Commission in order to comply with the two-year requirement in RSA 378:38. See, *Re Granite state Electric Company dba National Grid*, 93 NH PUC 96 (2008)(LCIRP filed May 19, 2005 and then May 1, 2007; Commission order approving both LCIRPs Feb. 29, 2008 ). **The most glaring characteristic of the instant proceeding is that PSNH is seeking Commission approval for one of the largest rate hikes in the state’s history, without first complying with its statutory obligation to file a plan under RSA 378:38 and thus is also in violation of RSA 378:40.**

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<sup>3</sup> The extent to which the Commission is empowered to waive the “biennially” requirement *sua sponte* without a utility first petitioning for a waiver is beyond the scope of this comment and CLF hereby reserves any and all rights with respect to same.



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It is important to recognize that the failure of PSNH to adequately plan, or for that matter, to take seriously the General Court's policy mandating least cost integrated resources planning is the cause for PSNH seeking massively above market rates in the first instance. The Commission is undoubtedly aware of PSNH's witness Terrence Large's brazen comments during the hearing in DE 10-261, that the LCIRP planning process "sadly has very limited value" Transcript ("Tr.") Day 1 PM, p. 115, lines 14-15); that the LCIRP drives decision-making "[t]o a very limited degree." Tr. Day 1 PM, p. 116, lines 3-4; and suggesting that the only purpose of the planning process is to "satisfy the requirements of the law". Tr. Day 1 PM, p. 120, line 14. This was after PSNH made clear in testimony that its least cost planning does not consider forward price curves for natural gas, does not project energy margins or clearing prices, does not consider forecasts of customer migration, and does not meaningfully consider future environmental costs for PSNH's generation fleet. See, CLF Post-Hearing Brief, DE 10-261 (June 13, 2012).

PSNH has now acted on its dismissive beliefs, and taken its haughtiness to a new unprecedented level. It decided to disregard the statutory deadline for filing an LCIRP while at the same time seeking a 34% rate increase to impose above-market costs upon New Hampshire's captive, most vulnerable ratepayers. PSNH's failure to file a timely LCIRP as required by statute has the effect of negating the Commission's authority to approve its requested rate increase and the Commission may not do so in compliance with the law.<sup>4</sup>

We appreciate the opportunity to provide our comments and respectfully request that the Commission consider these comments in rendering its decision in the above referenced docket.

Respectfully submitted

A handwritten signature in blue ink, appearing to read "N. Jonathan Peress".

N. Jonathan Peress  
Conservation Law Foundation  
(603) 225-3060  
njperess@clf.org

cc: Service List in DE12-292

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<sup>4</sup> Although CLF is not a party to the instant proceeding, it is empowered by law to protect its rights and those of its members. See, RSA 541:3 (stating that in addition to any party to a proceeding before the commission, "any person directly affected thereby . . . may apply for a rehearing. . ."); RSA 541:6 (applicant for rehearing may appeal by petition to the supreme court). See also *Appeal of Richards*, 134 N.H. 148, 154 (1991) ("A party or any person directly affected by the PUC's decision or order may apply for a rehearing with respect to 'any matter determined in the action or proceeding, or covered or included in the order.' RSA 541:3. If the motion for rehearing is denied, the party may then appeal by petition to this court. RSA 541:6.") (first emphasis added; second emphasis in original) (holding that Campaign for Ratepayer Rights, which was not a party to the proceeding, had standing to appeal denial of motion for rehearing).

**EXHIBIT 2**

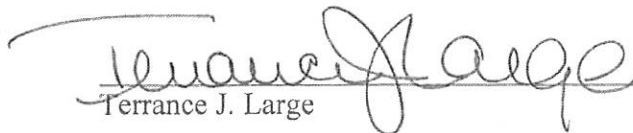
AFFIDAVIT

I, Terrance J. Large, being duly sworn, depose and say as follows:

1. My name is Terrance J. Large, and I am employed by Public Service Company of New Hampshire ("PSNH") in Manchester, New Hampshire, as the Director of Business Planning and Customer Support Services. My duties include overseeing the development of PSNH's Least Cost Integrated Resource Plan ("LCIRP"). The most recently filed LCIRP found adequate by the Commission is PSNH's 2007 LCIRP, which I filed with the Commission on September 28, 2007. On September 30, 2010 PSNH filed an LCIRP that was docketed as Docket No. DE 10-261. That docket is currently pending before the Commission.

2. PSNH has requested that the Commission permit PSNH to amend its Stranded Cost Recovery Charge ("SCRC") and its Energy Service ("ES") Rate. Those requests are docketed as DE 12-291 and DE 12-292, respectively. The Company's "energy service" and "default service" were discussed throughout PSNH's 2007 LCIRP. Based upon my personal knowledge of PSNH's LCIRP, a decision by the Commission to implement the SCRC and ES Rate as proposed by PSNH will be in conformity with the LCIRP most recently filed and found adequate by the Commission.

3. Further the affiant sayeth not.

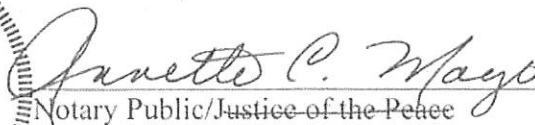
  
Terrance J. Large

State of New Hampshire  
County of Hillsborough

The foregoing Affidavit was subscribed and sworn to before me by Terrance Large this 18th day of December, 2012.

Commission expires:



  
Notary Public/Justice of the Peace