

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 14-120

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of Energy Service and Stranded Costs for Calendar Year 2013

Order Granting Petition to Intervene

ORDER NO. 25,689

July 7, 2014

APPEARANCES: Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire, Christopher Courchesne, Esq. for Conservation Law Foundation, the Office of the Consumer Advocate by Susan A. Chamberlin, Esq. on behalf of residential ratepayers, and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

In this order, the Commission grants intervention to Conservation Law Foundation pursuant to RSA 541-A:32, II.

I. PROCEDURAL HISTORY

On May 1, 2014, Public Service Company of New Hampshire (PSNH) filed testimony and schedules in support of its proposed reconciliation of revenues and costs associated with its energy service charge and stranded cost recovery charge for calendar year 2013. The Office of the Consumer Advocate (OCA) informed the Commission of its intent to participate in this docket pursuant to RSA 363:28. The Commission issued an Order of Notice setting the time for filing petitions to intervene and scheduling a prehearing conference and technical session. Conservation Law Foundation (CLF) filed a petition to intervene to which PSNH filed an objection. A hearing examiner heard argument on the petition to intervene at a prehearing conference held on June 5, 2014, and subsequently filed a report that included a recommendation that the Commission grant CLF's petition to intervene and impose discovery limits.

Commission Staff (Staff) filed a report of the technical session that included a proposed procedural schedule for the docket, to which all participants agreed. The Commission approved and adopted Staff's proposed procedural schedule by Secretarial Letter dated July 3, 2014.

II. POSITIONS OF THE PARTIES AND STAFF

A. Conservation Law Foundation

CLF requests full intervenor status in this proceeding. CLF is an environmental membership organization. CLF has in excess of 4,100 members, approximately 500 of whom live in New Hampshire, and some of whom are PSNH customers on default energy service. CLF states that it is dedicated to the protection and responsible use of New England's natural resources, including resources affected by the generation, transmission, and distribution of electric power. CLF also claims that its mission is to promote thriving, resilient communities, and that it is dedicated to advancing solutions that strengthen New Hampshire's economic vitality. CLF states that it represents the interests of its members in avoiding adverse economic impacts associated with continued use of and reliance on uneconomic, environmentally unsustainable electricity generation such as coal-fired generation at PSNH's Merrimack and Schiller Stations. According to CLF, CLF and its members have a direct and substantial interest in the outcome of this proceeding because (1) its members who are PSNH customers will pay rates that will result from the Commission's decisions regarding the prudence of PSNH's costs for its self-owned generating assets, and (2) PSNH's operation of its fossil fuel power plants and the resulting costs implicate environmental and public health interests of CLF and its members, including those members exposed to harmful and toxic air pollution from PSNH plants. CLF argues that the "prudence," "reasonableness," and "just and reasonable rate" standards raise important economic and environmental concerns which affect the rights, duties, and privileges of

CLF and its members. Last, CLF represents that it has participated in numerous utility commission dockets. CLF believes that its institutional expertise and experience in electric markets and with environmental compliance measures at energy facilities will benefit the Commission's consideration of PSNH's filing.

CLF states that it appreciates that the Commission does not review or enforce environmental laws in proceedings such as this and has focused its participation in recent dockets on the economic merits of PSNH's decisions and investments. If CLF were permitted to intervene, CLF would likely examine PSNH's self-scheduling practices and the economics of those practices.

CLF points out that the Commission granted its petition to intervene pursuant to RSA 541-A:32, I in PSNH's 2012 reconciliation docket. *Public Service Co. of N.H.*, Order No. 25,540 (July 9, 2013).

B. Public Service Company of New Hampshire

PSNH objects to intervention. Quoting extensively from our Order of Notice (May 1, 2014), Orders No. 25,540 and 25,647 (April 8, 2014), and CLF's petition, PSNH argues that CLF's issues are outside the scope of this docket. In particular, PSNH argues that CLF's interests in protecting its members from "adverse economic impacts associated with continued use" of "environmentally unsustainable" generation assets and from "alleged environmental and public health harms" are outside the scope of this reconciliation docket. PSNH argues that CLF's underlying interest is in environmental and public health issues and that CLF views matters of PSNH's revenues and expenses as a "mere gateway" to discussion of those issues.

Second, PSNH argues that CLF has not demonstrated any basis for the organization's interests in this type of proceeding and that the Commission has already determined that the

organization has no interest in proceedings relating to PSNH's generating costs, referencing a December 23, 2011, Secretarial Letter in Docket DE 11-250. PSNH further claims that CLF has failed to demonstrate a nexus between its status as an environmental organization and its asserted role as protector of its members' default energy service rates. According to PSNH, any economic interests that CLF's members may have in this proceeding are already represented by the OCA and Staff. In summary, PSNH argues that CLF has no direct interest in this proceeding warranting mandatory intervention under RSA 451-A:32, I.

In the alternative, PSNH requests that the Commission limit CLF's participation in the docket to the issues relevant to a reconciliation filing, similar to the manner that the Commission limited CLF's participation in Order No. 25,540 at 4-5.

C. Hearing Examiner's Recommendation

The hearing examiner recommends that the Commission grant CLF's petition to intervene pursuant to RSA 541-A:32, I, as the Commission did in Order No. 25,540 in PSNH's 2012 reconciliation docket. The hearing examiner would find that CLF's ratepayer members have standing because this docket may affect their rates. He would also find that CLF enjoys a derivative right because "the interests [CLF] seeks to protect" – an environmental goal to reduce PSNH's use of its coal-fired power plants – "are germane to [its] purposes" (quoting *Sexual Minorities Uganda v. Lively*, 960 F.Supp.2d 314, 325-26 (D. Mass. 2013)). The hearing examiner reasons that CLF's argument that PSNH's decisions to operate its coal-fired plants were economically unsound is consistent with CLF's environmental mission.

III. COMMISSION ANALYSIS

The Commission considers petitions to intervene in accordance with the standards of RSA 541-A:32. *See* NH Code Admin. Rules Puc 203.17. The Commission reviews the facts

alleged in the petition and determines whether the petition demonstrates “rights, duties, privileges, immunities or other substantial interests [that] may be affected by the proceeding” RSA 541-A:32, I(b). If it finds that the petition meets this test, and that the intervention would not impair the orderly and prompt conduct of the proceeding, then the Commission grants intervention. RSA 541-A:32, I(c). If the petition does not meet the test of RSA 541-A:32, I, then the Commission may nonetheless grant the petition if “intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II.

The Commission has twice recently considered CLF’s standing to participate in PSNH rate dockets that concern PSNH’s use of its generation assets. In PSNH’s most recent reconciliation docket, the Commission granted CLF’s petition to intervene pursuant to RSA 541-A:32, I after finding that “the substantial interest of CLF may be affected by this proceeding, through its members that are PSNH ratepayers.”). Order No. 25,540 at 3. In contrast, in Docket DE 11-250, another docket involving PSNH’s prudent management of its coal-fired generation assets and resulting rates, the Commission granted CLF intervention under the discretionary standard of RSA 541-A:32, II. In that docket, the Commission concluded that CLF did not demonstrate any affected rights, duties, or privileges that would mandate its intervention. See December 23, 2001, Secretarial Letter in Docket No. DE 11-250 at 1.

Here, again, the Commission finds that CLF has not demonstrated any rights, duties, or privileges that would be affected by this docket and that would mandate its intervention. We understand that CLF intends to focus its participation on “the prudence of PSNH’s use of its generation resources ... as well as the prudence of the market purchases used to supplement those resources,” Order of Notice at 2 (May 21, 2014), by concentrating on PSNH’s economic

decisions to generate power with its coal-fired assets instead of purchasing power on the market. We are not persuaded, however, that CLF's mission is to protect its members from financially imprudent decisions of utility companies. Nor are we persuaded of the nexus between CLF's environmental mission and PSNH's financial prudence in generating its own power versus purchasing that power on the market, even if PSNH generates power with assets that are allegedly "uneconomic, environmentally unsustainable [coal-fired] electricity generation."

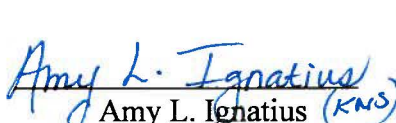
We find instead that allowing CLF to participate in this docket under the permissive standard of RSA 541-A:32, II would be in the interests of justice. CLF may further the Commission's understanding of the financial prudence and financial effect of PSNH's decisions to self-generate rather than purchase power on the market. As the hearing examiner reasoned, this is a proper issue for review in this docket. We also find that CLF's intervention will not impair the orderly and prompt conduct of the proceedings provided that CLF refrains from exceeding the scope of a reconciliation docket as clarified in Order No. 25,540 at 3-5 and the Order of Notice. CLF should focus its participation "on the economic merits of PSNH's decisions and investments" as they relate to the difference in cost of power between self-generation and market purchases.

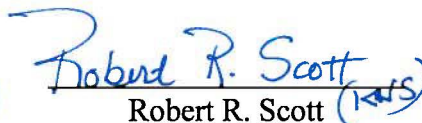
Accordingly, we grant CLF's petition to intervene pursuant to RSA 541-A:32, II.

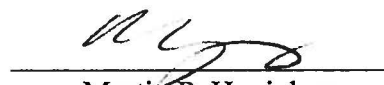
Based upon the foregoing, it is hereby

ORDERED, that Conservation Law Foundation's petition to intervene is GRANTED as specified in the body of this order.

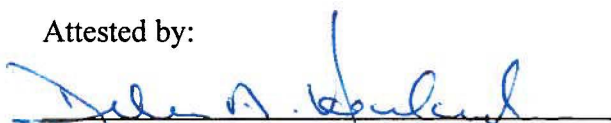
By order of the Public Utilities Commission of New Hampshire this seventh day of July,
2014.


Amy L. Ignatius (KMS)
Chairman


Robert R. Scott (KMS)
Commissioner


Martin P. Honigberg
Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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