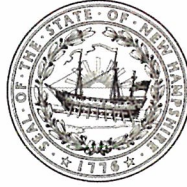


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June 12, 2014

To: Commissioners

From: Michael Sheehan, Hearings Examiner 

Re: Docket No. DE 14-120, Public Service Company of New Hampshire
Reconciliation of Energy Service and Stranded Costs for Calendar Year 2013
Prehearing Conference

HEARING EXAMINER'S REPORT

At your request, I presided over the June 5, 2014, prehearing conference in the above-captioned docket, which was held pursuant to the May 1, 2014, Order of Notice.

Preliminary Matters.

Public Service Company of New Hampshire (PSNH) timely filed an affidavit of publication.

The Office of Consumer Advocate (OCA) filed a letter stating it would participate in this docket on behalf of residential ratepayers pursuant to RSA 363:28.

The Conservation Law Foundation (CLF) filed a petition to intervene.

Appearances.

PSNH, by Matthew Fossum, Esq.

The OCA, by Susan Chamberlin, Esq.

Commission Staff, by Suzanne Amidon, Esq.

CLF, by Christopher Courchesne, Esq.

No other parties appeared at the prehearing conference.

Intervention Request.

In support of its request to intervene, CLF stated that approximately 500 of its 4,100 members are New Hampshire ratepayers, and counsel estimated that 250 of those ratepayers are PSNH default service customers. CLF argued it has expertise in the energy markets that it can contribute to this case. In particular, CLF will likely examine PSNH's self-scheduling practices and the economics of those practices. CLF noted that the Commission granted its petition to intervene in the similar reconciliation docket for calendar year 2012. *Public Service Co. of N.H.*, Order No. 25,540 (July 9, 2013). CLF stated that it adhered to the discovery limits in Order No. 25,540. CLF did not object to similar limits in this case.

PSNH opposed CLF's petition to intervene. PSNH stated that the economic interests of CLF members who are default service customers do not align with the environmental interests that form CLF's mission. PSNH argued that other parties to the docket can protect those economic interests. PSNH argued that CLF's petition to intervene suggests it intends to explore environmental topics that would exceed the scope of this proceeding. PSNH argued that CLF therefore has no direct interest in this proceeding warranting mandatory intervention under RSA 541-A:32, I. PSNH argued in the alternative that should the Commission grant CLF's request to intervene, it should limit CLF's participation similarly to that stated in Order No. 25,540 at 4-5.

The OCA supported CLF's petition to intervene. The OCA stated CLF could help with the Commission's review of the impact that environmental regulations have upon operating costs of PSNH's power plants.

Staff stated that it had no position on CLF's petition to intervene.

Preliminary Positions of the Parties.

PSNH noted that it looked forward to answering questions propounded by other parties in discovery and the development of a procedural schedule in this docket.

The OCA stated that the Rate Reduction Bonds (RRB) are part of a complicated settlement. According to PSNH's filing, approximately \$5 million remains in the trustee accounts upon the 2013 maturity of the RBBs to be allocated between PSNH and ratepayers. The OCA stated it does not initially accept PSNH's claim that PSNH is entitled to all of that money. The OCA stated its focus will be on the RRB issue.

CLF stated that, if granted intervention, it would likely examine issues similar to those it focused upon in PSNH's last reconciliation. These issues include PSNH's self-scheduling practices and whether PSNH economically operated its coal-fired power plants.

Staff stated it had no initial position, but noted that it planned to develop a procedural schedule, that issues surrounding the RBB are novel, and that Staff would likely retain an expert to review PSNH's outages and other topics as Staff has done in prior reconciliation cases.

Hearing Examiner's Recommendations.

I reviewed CLF's petition to intervene, PSNH's written objection, the parties' oral statements, and applicable law.

To obtain "associational standing" in court, an organization must show that its members would otherwise have standing, that "the interests it seeks to protect are germane to the organization's purpose," and that participation of the individual members is not required. *Sexual Minorities Uganda v. Lively*, 960 F.Supp.2d 304, 325-26 (D. Mass. 2013) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). Standing in court is similar to mandatory intervention before the Commission. CLF's ratepayer members meet the mandatory intervention standard of RSA 541-A:21, I, because this case may affect their rates. CLF enjoys a derivative right to mandatory intervention so long as "the interests [CLF] seeks to protect are germane to [its] purposes." *Id.*

CLF's mission is primarily environmental. An environmental goal of CLF is to reduce PSNH's use of its coal-fired power plants. CLF's petition stated that it intends to examine PSNH's decisions to operate its coal-fired plants versus buying power on the market, a proper issue for review in this docket. Energy bought on the market, according to CLF, may have been less expensive than PSNH's coal-fired energy. Petition at 2. CLF stated it may argue that PSNH's decisions to operate the coal-fired plants were economically unsound, an argument that would be consistent with its environmental mission.

Therefore, I recommend that the Commission grant CLF's motion to intervene pursuant to the mandatory intervention standard of RSA 541-A:32, I. See *Public Service Co. of N.H.*, Order No. 25,540 at 3 (July 9, 2013) (the Commission similarly allowed CLF's intervention under RSA 541-A:32, I: "We find that the substantial interest of CLF may be affected by this proceeding, through its members that are PSNH ratepayers").

I also recommend that the Commission issue a procedural order outlining the scope of this docket and the related discovery limits similar to those established in Order No. 25,540 at 4-5. This was discussed during the prehearing conference and the parties did not object to such limits in this docket.

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Docket #: 14-120-1 Printed: June 13, 2014

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

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- c) Serve a written copy on each person on the service list not able to receive electronic mail.**