

DE 10-160
Public Service Company of New Hampshire
Investigation of Effects of Customer Migration
Staff Closing Statement and Legal Argument

Introduction: The Commission opened this docket to examine the impact of customer migration on energy service rates for customers, principally residential and small commercial and industrial customers, remaining on PSNH default service. In its Order of Notice, the Commission referred to Order No. 25,061 in Docket No. DE 09-180, PSNH's filing for its 2010 energy service rate, where the Commission stated its intent to explore the interplay of customer choice and migration issues with power procurement options for PSNH "including current practices, competitive procurement through Requests for Proposals (RFPs), purchasing through the spot market or other market based options" Order of Notice at 1.

The instant proceeding included testimony, discovery and a two-day hearing. Following the hearing, the Commission issued a secretarial letter on January 28, 2011 which provided for written closing statements regarding the various options proposed by PSNH and the parties to address the problems of customer migration and briefs on certain legal issues.

Staff Closing

There appears to be no dispute among the parties that as customers, primarily large commercial and industrial customers, migrate from PSNH's energy service (ES) to competitive supply options, specific costs associated with PSNH's ownership and operation of its generating plants and its supplemental power purchases remain to be recovered from a smaller set of ES customers, primarily residential and small commercial customers. As more customers migrate, the situation gets exacerbated and the resulting upward pressure on the ES rate increases. To address this situation, the parties put forth various proposals to deal with the issues, some that

could be implemented in the near term and others that can be viewed as more long-term measures.

Recognizing that the problem is one that exists today and is not simply theoretical, Staff recommends that near-term measures be instituted to address and help mitigate the issue as soon as possible. These measures could include a stay-out provision, separate ES pricing for customers returning to PSNH ES, reallocation of PSNH's ES costs to the various classes of customers, or the issuance of RFPs for at least a portion of PSNH's supplemental power purchases. Staff realizes that in order to fine tune each of the above measures, it may be necessary for the Commission to gather additional information. Staff suggests that it may be appropriate to continue the current proceeding for that purpose.

Staff's recommendation concerning near-term measures, however, does not dismiss the fact that longer-term issues are at play with respect to customer migration. Staff believes that issues such as divestiture and the potential movement to a Full Requirements Service model would require further investigation and analysis. If the Commission decided to further examine these long-term measures, Staff believes that the Commission should open a separate docket to fully explore the economic consequences of the potential divestiture of PSNH's generation assets as well as the full range of implications if PSNH were to adopt a Full Requirements Service model. In the event the Commission does open a proceeding to further pursue these longer-term remedies, Staff recommends that, in the interim, the Commission also implement one or more near-term measures to mitigate what has been referred to as the cost shifting that is occurring today.

Discussion of Statutory Issues

In its January 21, 2011 letter, the Commission identified several issues to be addressed in legal argument. Staff's brief analysis follows.

RSA 369-B is not a barrier to PSNH using a request for proposal (RFP) process to purchase at least some of its energy service power requirements.

Pursuant to RSA 369-B:3,IV(b)(1)(A), provides in part that "PSNH shall supply all, except as modified pursuant to RSA 374-F:3,V(f), transition service and default service offered in its retail electric service territory from its generation assets and, if necessary, through supplemental power purchases in a manner approved by the commission."

PSNH makes energy supply decisions on a daily basis. *See*, Docket No. DE 10-261, *Public Service Co. of N.H. Least Cost Integrated Resource Plan*, Petition at 33. In that filing, PSNH states that the Company typically sells surplus power into the market on a daily basis. *Id.* In the same filing, PSNH states that it also may make spot purchases for supplemental power needs as required and also purchases power through bilateral contracts. *Id.* Staff asserts that as RSA 369-B:3,IV(b)(1)(A) currently contemplates supplemental power purchases by PSNH "in a manner approved by the commission," the statute clearly does not prevent the Commission from requiring PSNH to procure some of its customers' power supply requirements through an RFP process. In fact, such procurement would be consistent with RSA 374-F:3,V(c) which provides in part that "[d]efault service should be procured through the competitive market. . ." Staff recommends that the Commission consider as one of the near-term measures requiring PSNH to use an RFP process to solicit its supplemental power supply requirements as the Company could issue an RFP for supplemental power requirements at any time before its next ES rate adjustment. The issue of whether PSNH could purchase all of its energy service power

requirements through an RFP process is much less clear and Staff suggests that the subject is one that would necessarily accompany the investigation into the longer-term measures of divestiture and the adoption of a Full Requirements Service, should the Commission decide to further examine those issues.

Costs to be recovered under a non-bypassable charge proposed by PSNH are not “stranded costs” as defined in RSA 374-F:2,IV and the proposed non-bypassable charge is a recovery mechanism inconsistent with the restructuring policy principles of RSA 374-F.

Staff opposes the implementation of a non-bypassable charge, a position previously put forth in the testimony of Steven Mullen filed in Docket No. DE 09-180. That docket is the initial docket where PSNH suggested that the Commission create a non-bypassable charge for some of the Company’s supply-related costs to alleviate some of the rate pressure experienced by small commercial and residential customers as a result of the migration of large commercial and industrial customers to competitive supply. In that proceeding, PSNH referred to the costs to be recovered through the non-bypassable charge as “stranded costs” that would be recovered “through a non-bypassable rate such as the S[tranded] C[ost] R[ecovery] C[harge].” (Docket No. DE 09-180, November 23, 2009 Supplemental Testimony of Robert A. Baumann at 6).

At page 5 of his testimony in that proceeding, Mr. Mullen questioned PSNH’s characterization of some of its supply-related costs as stranded costs. He pointed out that pursuant to RSA 374-F:2,IV, stranded costs “may only include: (a) Existing commitments or obligations incurred prior to the effective date of this chapter; (b) Renegotiated commitments approved by the commission; and (c) New mandated commitments approved by the commission, including any specific expenditures authorized for stranded cost recovery pursuant to any commission-approved plan to implement electric utility restructuring in the territory previously

serviced by Connecticut Valley Electric Company.” Mr. Mullen said that supply-related costs stemming from power purchases or from PSNH’s generating facilities do not appear to qualify under any of those restrictions. *See* Docket No. DE 09-180, Exhibit 22, at 5-6.

In testimony in the instant proceeding, PSNH stated that the Company considered stranded costs and non-bypassable costs to be two distinct issues. Hearing Transcript 11-30-10 at 147. PSNH has said in this docket that the non-bypassable costs are different than stranded costs and further asserted that the Commission had general authority to impose a non-bypassable charge. PSNH did not, however, provide any statutory authority for the latter assertion. In fact, the lack of such statutory authority is consistent with the restructuring principles of RSA 374-F which include, among other items, 1) customer choice and minimization of customer confusion (RSA 374-F:3, II); 2) market competition (RSA 374-F:1 and RSA 374-F:3, VII); 3) avoidance of cost-shifting among customers (RSA 374-F:3, IV); and 4) mitigation of stranded costs (RSA 374-F:3,XII). Simply stated, the imposition of a non-bypassable charge would dampen the attractiveness of low rates offered by competitive electric suppliers and deter PSNH customers from electing competitive supply and is inconsistent with the restricting principles. Staff, therefore, recommends that the Commission deny PSNH’s request for its proposed non-bypassable charge. It appears that by now attempting to create a distinction between “stranded costs” and the costs to be recovered through its proposed non-bypassable charge (unlike its testimony in Docket No DE 09-180), PSNH is now trying to have certain of its energy supply costs given the same preferential treatment in terms of recovery as stranded costs without labeling them as such.

Legal arguments aside, Staff also suggests that the implementation of a non-bypassable charge to recover certain of PSNH’s energy supply costs is, on its face, unfair from a customer

perspective. Assume a hypothetical situation involving two similar business customers that compete in the same industry, yet are located in the service territories of two different New Hampshire electric utilities, PSNH and Unitil. Further assume that both companies have been offered supply contracts from a competitive supplier at identical pricing terms, say 7 cents per kilowatt-hour, for the same period of time. All else being equal, the business customer in the PSNH service territory would be at a competitive disadvantage because in addition to paying the competitive supplier's rate for energy supply, that customer would also have to pay PSNH's non-bypassable charge for certain energy supply costs even though it was not taking energy service from PSNH. The business customer located in Unitil's service territory would only have to the 7 cents per kilowatt-hour charged by the competitive supplier. The proposed non-bypassable charge could also be considered anti-competitive in the power supply market. The presence of a non-bypassable charge would make PSNH's ES rate lower than it would otherwise be, therefore making it harder for competitive suppliers to beat PSNH's ES rate.

A stay-out provision is not prohibited by New Hampshire law.

PSNH has said that its generation assets constitute a hedge for customers who take power from competitive suppliers and then return to ES supply from PSNH. The concept of a stay-out provision is consistent with PSNH's assertion that its generation assets have value to customers taking service from competitive suppliers who may return to ES service. Under a stay-out provision, customers who migrate to competitive supply and then return to PSNH for energy service during the stay-out period would either pay a premium on the default energy service rate or have pricing that otherwise differs from those customers who have remained energy service customers. One question is whether a stay-out provision is an entry or exit fee within the

meaning of RSA 374-F:3,XII. Another is whether a stay-out provision would create an “undue or unreasonable preference or advantage,” something that is prohibited pursuant to RSA 378:10.

Although RSA 374-F:3,XII states in part: “Entry and exit fees are not preferred recovery mechanisms” the statute does not forbid the use of entry and exit fees. Properly designed, a stay-out provision could be established that would provide a means for PSNH to recover incremental supply costs from those customers causing the costs. Given the hybrid nature of PSNH’s energy service (i.e., the use of its own generation assets along with supplemental power purchases), a stay-out provision is a feasible way for PSNH to recover incremental supply costs from those customers for which it had not planned to provide energy service during the stay-out period without further burdening the remaining customers. Any question of an “undue or unreasonable preference or advantage” that is prohibited by RSA 378:10 can be avoided through a clear statement in PSNH’s tariff of the terms and conditions of a stay-out provision to put customers on notice of the costs they would incur upon returning to PSNH’s energy service during the stay-out period. Staff believes that a stay-out provision could be implemented in the near term to help mitigate the effects of customer migration on PSNH’s small commercial and residential customers.

There are no statutory barriers to the use of real-time pricing or to a purchase of receivables program.

Staff is not aware of any legal barriers to PSNH providing separate default service pricing based on real-time market prices for the largest customers who have hourly interval metering and who choose a competitive supplier. Further, Staff does not believe that there is any legal impediment to the implementation of a purchase of receivables program. However, both issues would require further examination to determine exactly how such pricing or programs would be

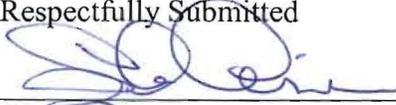
implemented. Further, with respect to a purchase of receivables program, careful attention would need to be given to the shifting of risk of non-payment from competitive suppliers to distribution companies and the implications of such risk shifting.

Conclusion

In summary, the Staff believes that while both near-term and long-term solutions to the effects of customer migration on customers who take ES from PSNH were put forth by the parties in this proceeding, given that PSNH has already testified in recent energy service proceedings that energy service rates are higher due to customer migration, the Commission should consider implementing some of the near-term measures described above as a way of mitigating upward pressure on PSNH's energy service rate currently being experienced. While the near-term measures may not eliminate the problem, they could at least provide some faster relief than the longer-term measures that were proposed.

Staff observes that the imposition of near-term measures does not obviate the need to examine long-term remedies such as procurement of all power requirements through an RPF process or divestiture. Staff recommends that, should the Commission wish to further pursue those issues, the Commission open a separate proceeding to fully examine the economic and other implications of such approaches.

Respectfully Submitted



Suzanne G. Amidon on behalf of Staff