

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

Docket No. DE 11-184

**Joint Petition  
for  
Approval of Power Purchase and Sale Agreements  
and  
Settlement Agreement**

Public Service Company of New Hampshire ("PSNH" or the "Company"), Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck-Alexandria, LLC (collectively the "Wood IPPs"), the New Hampshire Department of Resources and Economic Development ("DRED") and certain Staff of the New Hampshire Public Utilities Commission (the "Staff") (collectively, the "Joint Petitioners") seek approval from the New Hampshire Public Utilities Commission of:

(a) power purchase agreements between PSNH and five of the Wood IPPs pursuant to RSA 374:57 and the Public Utility Regulatory Policies Act, 16 U.S. Code 824a-3;

(b) ratemaking treatment of the cost of the power purchase agreements as set forth herein, and;

(c) a Settlement, Release and Support Agreement pertaining to these transactions in which, *inter alia*, PSNH grants a release of claims to the Wood IPPs.

In support hereof, the Joint Petitioners state as follows:

1. On April 18, 2011, the Commission issued its Order No. 25,213 in Docket No. DE 10-195 conditionally approving a power purchase agreement submitted by PSNH regarding a proposed biomass-fired generating station to be constructed in Berlin, New Hampshire. On June 23, 2011, the Commission similarly issued its Order No. 25,239 in that same docket approving an amended power purchase agreement (the "Amended PPA") and denying a motion for rehearing submitted by the Wood IPPs.

2. On May 17, 2011, the Wood IPPs filed an appeal with the New Hampshire Supreme Court with respect to Order No. 25,213 which has been docketed by the Court as Docket No. 2011-0348. Subsequently, on July 22, 2011, the Wood IPPs filed a second appeal with the New Hampshire Supreme Court with respect to Order No. 25,239, which the Supreme Court also included in its Docket No. 2011-0348. (Together, the "Pending Appeal").

3. On August 1, 2011, PSNH filed a Motion for Summary Dismissal of Docket No. 2011-0348 with the Supreme Court. That Motion was joined in by the City of Berlin, which also filed a Motion for Expedited Treatment with the Supreme Court.

4. On August 19, 2011, PSNH entered into individual Power Purchase Agreements (the "Wood IPP PPAs") with each of (i) Bridgewater Power Company, L.P., (ii) Pinetree Power, Inc., (iii) Pinetree Power-Tamworth, Inc., (iv) Springfield Power

LLC, and (v) Indeck Energy - Alexandria, LLC for the purchase of energy. Copies of the Wood IPP PPAs are being supplied to the Commission separately, pursuant to a Motion for Confidential Treatment.

5. Following lengthy negotiations between PSNH and the Wood IPPs that were facilitated and supported by Governor John H. Lynch, Resources and Economic Development Commissioner George Bald, certain members of the Executive Council, State Senators Jeb Bradley, John Gallus and Jeanne Forrester, , the Office of Energy and Planning, the Governor's staff, and Commission Staff, PSNH entered into the Wood IPP PPAs as part of a series of transactions to resolve the Supreme Court appeals filed by the Wood IPPs related to the Amended PPA and to support the continued operation of the Wood IPPs' generating facilities and related economic benefits..

#### **The Wood IPP PPAs**

6. PSNH has entered into five Wood IPP PPA documents each entitled a "Transaction Confirmation" to purchase unit contingent energy from Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG and Indeck-Alexandria, LLC in quantities and/or for terms specified in each Wood IPP PPA. Each of these Wood IPPs is a "qualifying facility" under the Public Utility Regulatory Policies Act ("PURPA") and the FERC's PURPA regulations found at 18 CFR, Part 292. Consistent with RSA 369-B:3,IV(b)(1)(A), the purchases under the Wood IPP PPAs constitute "supplemental power purchases."

7. The pricing of these power purchases has been negotiated pursuant to 18 CFR 292.301 (b). The accompanying prefiled direct testimony of Thomas C. Frantz, Director of the Electric Division at the New Hampshire Public Utilities Commission discusses and supports the pricing provisions of the Wood IPP PPAs, and explains why they are “just and reasonable to the electric consumer of the electric utility” as contemplated by 18 CFR 292.304(a)(1)(i), RSA 374:57 and RSA 369-B:3,IV(b)(1)(A).. George Bald, Commissioner of the New Hampshire Department of Resources and Economic Development (“DRED”), explains in his accompanying prefiled direct testimony why these purchases are supportive of state public policy and are in the public interest, also as contemplated by 18 CFR 292.304(a)(1)(i).

8. Each of the Wood IPP PPAs includes a “Fuel Price Adjustment” mechanism. The “Initial Wood Price” for each of the individual Wood IPP PPA’s is subject to verification, review and approval by the Commission.

9. In order to achieve the public interest goals described by Commissioner Bald without adversely affecting PSNH’s Energy Service rate, the Wood IPP PPAs are conditioned upon the Commission’s approval of a ratemaking methodology which provides for full recovery of all costs of these transactions by PSNH without increasing the Company’s Energy Service rate. The Joint Petitioners have agreed upon seeking the following cost recovery methodology to satisfy this condition. The costs of the Wood IPP PPAs would be recovered as part of PSNH’s Energy Service rate. To avoid any increase in the Energy Service rate that may result from these Wood IPP PPAs, the

Parties request that the Commission authorize PSNH to transfer a liquidated amount of \$8.5 million of costs associated with uncollectible and certain administrative expenses from its Energy Service rate to its distribution rate.<sup>1</sup> By doing so, up to \$8.5 million of above-market power costs from the Wood IPP PPAs can be included in PSNH's Energy Service rate annually without adversely impacting that rate. To the extent that the above-market costs of the Wood IPP PPA's exceed \$8.5 million during any Energy Service rate year, the Parties request that the Commission authorize PSNH to defer for future recovery any such excess. Any deferral created under this mechanism would accrue interest at the Company's weighted cost of capital for its generation segment, and would continue to be recovered through the Energy Service rate annually until fully recovered, with annual recovery limited to the extent that above-market costs attributable to the Wood IPP PPAs and the deferral recovery do not in total exceed the \$8.5 million annual limit. Finally, the Parties request that the Commission authorize PSNH to begin recovery of the \$8.5 million transferred to its distribution rates effective as of the first day of the month following the earliest start date of any of the Wood IPP PPAs, in a manner that results in full recovery thereof.

10. PSNH's obligation to purchase power under the Wood IPP PPAs is contingent upon two fundamental conditions precedent:

a. Receipt of a final, nonappealable decision from the New Hampshire

Public Utilities Commission, approving this Petition as submitted without

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<sup>1</sup> Recovery of uncollectible expense through the Energy Service rate was required by Order 24,750 (May 25, 2007) *slip op.* at 9. The Company is recovering a portion of the PUC assessment through its Energy Service rate based on an adjustment made by Staff during an audit of the Company's filing in DE 09-035.

alteration, modification or condition, and allowing for full cost recovery of the rates, terms and conditions of the Wood IPP PPAs by PSNH in a manner not to increase PSNH's energy service rate as set forth in this Petition; and,

- b. Closing on the construction debt financing for a proposed wood-fired power plant of approximately 67 MW to be located in Berlin, New Hampshire which is the subject of the Amended Power Purchase Agreement with PSNH approved by the New Hampshire Public Utilities Commission in Docket No. DE 10-195, such that no less than \$2.25 million of the New Markets Tax Credits in the debt financing transaction are allocated to the community loan fund and \$500,000 for use by the City of Berlin that will be the source of funding for certain community benefits and economic development resources related to the Berlin Station project, as described in the New Hampshire Site Evaluation Committee's "Decision Granting Site and Facility with Conditions" dated November 8, 2010, in its Docket No.2009-02 at page 44, and the closing of which must occur on or prior to August 30, 2011.

11. Mr. Richard Labrecque discusses the Wood IPP PPAs and requested ratemaking treatment on behalf of PSNH in his accompanying prefiled testimony.

### **The Settlement, Release and Support Agreement**

12. As part of a comprehensive settlement of all claims arising out of Orders 25,213 and 25,239, the Wood IPPs, Berlin Station, LLC, Laidlaw Berlin BioPower, LLC, Cate Street Capital, Inc., and PSNH (collectively, the "Settling Parties") entered into a "Settlement, Release and Support Agreement" (the "Settlement"), a copy of which is attached hereto as Attachment 1. PSNH seeks Commission approval of the Settlement because in that agreement, PSNH would release all claims for now and all time that arise under or are related to the Commission's approval of the Amended PPA, or Docket DE 10-195 and the Settling Parties' participation therein (including any Claims that were made therein or could have been made therein), the Pending Appeal and the Settling Parties' participation therein, the Amended PPA (with the exception of any contractual obligations between the parties to the Amended PPA arising thereunder), the IPP Power Purchase Agreements (with the exception of any contractual obligations between the parties to any of the IPP Power Purchase Agreements arising thereunder), and their negotiation, execution and delivery, and any conduct, communications, negotiations, meetings, course of dealing or other actions related to any of the foregoing, on or before the date of the Settlement (collectively, "Released Claims").

### **Confidential Treatment**

13. The financial terms of the Wood IPP PPAs are the product of negotiations and include confidential, commercial, financial information as set forth in RSA 91-A:5,IV. Contemporaneous with this Joint Petition, the Wood IPPs are filing with the

Commission a Motion for Confidential Treatment to which redacted and unredacted versions of the Wood IPP PPAs are attached.

**WHEREFORE, for the reasons set forth in this Joint Petition and the accompanying prefiled direct testimony, all of which is incorporated by reference, the Joint Petitioners respectfully request that the Commission issue an order approving this Petition:**

- A. Finding the Wood IPP PPAs and the Settlement, Release and Support Agreement in the public interest and approving same;
- B. Verifying, reviewing and approving an "Initial Wood Price" for each of the individual Wood IPP PPA's;
- C. Authorizing PSNH to transfer the liquidated amount of \$8.5 million attributable to uncollectible and certain administrative expenses from its Energy Service rate to its distribution rate;
- D. Authorizing PSNH to increase its distribution rates upon the first day of the month following the earliest effective date of any of the Wood IPP PPAs to recover the \$8.5 million in costs transferred thereto, in a manner that results in full recovery thereof;
- E. Authorizing PSNH to recover through its Energy Service rate the market value of purchases under the Wood IPP PPAs as well as up to \$8.5 million annually of any above-market costs associated with purchases under the Wood IPP PPAs;



- F. Authorizing PSNH to defer with a return at the Company's weighted cost of capital for its generation segment for future recovery through its Energy Service rate any above-market costs associated with the purchases under the Wood IPP PPAs which exceed the \$8.5 million annual cap; and further authorizing PSNH to recover all such deferred amounts through the Energy Service rate annually until fully recovered, with annual recovery limited to the extent that above-market costs attributable to the Wood IPP PPAs and the deferral recovery do not in total exceed the \$8.5 million annual limit;
- G. Ordering such further relief as may be just and equitable.

Dated: August 22, 2011

Respectfully Submitted,

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By: \_\_\_\_\_



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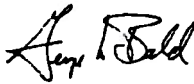
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**NEW HAMPSHIRE DEPARTMENT OF  
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By: 

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Amended Certificate of Service

I hereby certify that on this 23<sup>rd</sup> day of August, 2011, a copy of this Joint Petition has been forwarded by electronic mail to the Office of Consumer Advocate.

  
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