STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 08-066

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of 2007 Stranded Cost and Energy Service Charge

Order Approving Settlement Agreement

O R D E R N O. 24,931

January 16, 2009

APPEARANCES: Public Service Company of New Hampshire by Gerald M. Eaton, Esq.; Office of Consumer Advocate by Meredith A. Hatfield, Esq. of the on behalf of residential ratepayers; and Commission Staff by Suzanne G. Amidon, Esq.

I. BACKGROUND AND PROCEDURAL HISTORY

On May 1, 2008, Public Service Company of New Hampshire (PSNH) filed testimony and schedules in support of a proposed reconciliation of revenues and costs associated with its stranded cost recovery charge (SCRC) and its energy service (ES) charge for calendar year 2007. The SCRC is the mechanism by which PSNH recovers certain restructuring-related stranded costs as allowed under the Agreement to Settle PSNH Restructuring (Restructuring Agreement) approved by the Commission in 2000. *See, PSNH Proposed Restructuring Settlement*, (Order No. 23,443) 85 NH PUC 154, (Order No. 23,549), 85 NH PUC 536 and (Order No. 23,563), 85 NH PUC 645 (2000). PSNH recovers its costs of providing power from its generating units and supplemental power purchases through its ES charge.

In *Public Service Co. of New Hampshire*, Order No. 24,125, 88 NH PUC 65 (2003), the Commission approved a settlement that implemented PSNH's initial SCRC reconciliation, which covered the period from May 1, 2001 (the date on which the PSNH service territory was opened to retail competition among energy suppliers under the Restructuring Agreement) through

December 31, 2001. The Commission directed PSNH to submit, on or before May 1 of each year, its proposed reconciliation of the previous calendar year's SCRC and transition energy and default energy service revenues and costs.

Subsequent to Commission approval of the Restructuring Agreement, PSNH continued to recover costs related to the generation and delivery of electricity, but delivery costs were further segmented for ratemaking purposes. Thus, PSNH's customers now pay a distribution charge, a transmission charge and an SCRC. Additionally, customers purchasing their energy supply from PSNH have paid either a transition service or default service energy charge. As of May 1, 2006, transition service is no longer available to customers and all energy service supplied by PSNH is default service, referred to by PSNH and other electric utilities simply as "energy service."[1]

Previously, the difference between revenues and costs associated with providing transition energy service and default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. Pursuant to the Restructuring Agreement, Part 3 stranded costs were those stranded costs for which PSNH undertook some risk of non-recovery. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs and the Commission approved a reduction to the company's SCRC to reflect that development. *See Public Service Company of New Hampshire*, Order No 24,641, 91 NH PUC 295 (2006). In a prior order, the Commission had determined that, once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with transition

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[1] The Electric Utility Restructuring Act defines transition service as "electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive energy supplier and to others, as deemed appropriate by the commission." RSA 374-F:2, V. The timetable that resulted in the termination of transition service as a customer option is set forth in RSA 374-F:3, V(b) (referring to "at least one but not more than 5 years after competition has been certified to exist in at least 70 percent of the state," an event that took place on May 1, 2001). Default service is "electricity supply that is available to retail customers who are otherwise without an electricity supplier." RSA 374-F:2, I-a. The Commission authorized electric utilities to refer to their default service simply as "energy service" in Order No. 24,614 (April 13, 2006). *See Granite State Electric Company et al.,* 91 NH PUC 173 (2006).

service and energy service would be reconciled in the energy service rate. *See Public Service Company of New Hampshire*, Order No. 24,579, 91 NH PUC 17 (2006). The costs at issue in the ES reconciliation are those of owning, operating and maintaining PSNH's generating assets, certain costs related to mandatory purchases from independent power producers, and the cost of purchases and receipts for sales of energy made in the wholesale market.

The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers pursuant to RSA 363:28 on May 7, 2008. On June 6, 2008, the Commission issued an Order of Notice scheduling a prehearing conference for June 26, 2008. Following the prehearing conference, Staff filed a proposed procedural schedule that was approved by secretarial letter on June 27, 2008. The procedural schedule was later modified and the hearing was scheduled for November 20, 2008.

On August 25, 2008, PSNH filed a motion for Protective Order regarding responses to Staff data requests set 1, questions 3, 6 and a follow-up response to question 8. PSNH stated that the responses provided detailed data about the operation of Newington Station and PSNH's decision making process to determine whether to purchase supplemental power or operate the plant. In its motion, PSNH stated that the specific running time of Newington Station and the costs and revenues from the plant's operation in 2007 are details not publicly available. PSNH claimed that the disclosure of this information would put PSNH at a disadvantage with respect to suppliers of PSNH's supplemental power. According to PSNH, public knowledge of the Newington data and its decision making processes could affect PSNH's ability to arrange supplies of supplemental power that maximize customer savings.

Staff filed the testimony of its consultant, Michael D. Cannata, Jr., P.E. of The Liberty Consulting Group (Liberty), on October 24, 2008. On November 17, 2008, Staff filed a letter stating that PSNH and the Staff had agreed to terms of a settlement agreement. A Stipulation and Settlement Agreement was filed on November 19, 2008. The hearing was held as scheduled on November 20, 2008. On November 21, 2008, Staff filed a letter indicating that Mr. Cannata's testimony was not introduced into the hearing record as planned. Staff requested that the hearing record be opened for the sole purpose of including Mr. Cannata's testimony as an exhibit. PSNH supported Staff's request and the Office of Consumer Advocate (OCA) did not object.

II POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Robert A. Baumann provided an overview of the reconciliations between the revenues and expenses contained within PSNH's ES and SCRC filings for the twelve-month reporting period from January 1, 2007 through December 31, 2007. Mr. Baumann stated that 2007 ES revenues exceeded the related costs by $1.4 million (an over-recovery). Mr. Baumann attributed the over-recovery primarily to the decrease in market prices during 2007. According to Mr. Baumann's testimony, the SCRC revenues exceeded the related costs by $6.8 million. The SCRC over-recovery was attributed primarily to the recovery of a prior period under-recovery balance.

Mr. Baumann explained that the ES costs include the fuel costs associated with PSNH's generation as well as costs and revenues from energy and capacity purchases and sales, including the market value of power purchased from independent power producers (IPPs). The ES costs also include the non-fuel costs of generation including non-fuel O&M, depreciation, property taxes, payroll taxes and a return on the net generation investment.

Mr. Baumann testified that while the SCRC originally consisted of three types of costs (Parts 1, 2 and 3), only Parts 1 and 2 remain. Part 1 costs are those that have been securitized through the issuance of rate reduction bonds (RRBs) and consist of the over-market portion of Seabrook regulatory assets, a portion of PSNH's share of Millstone 3, and certain financing costs that were incurred in connection with procuring the RRB financing. Part 2 costs include "ongoing" costs consisting of over-market value of energy purchased from IPPs; up-front payments made for IPP buy-downs and buy-outs previously approved by the Commission; PSNH's share of the present value of the savings associated with those buy-down and buy-out transactions; a negative return on the credit for deferred taxes associated with the Part 1 securitized costs; and a return on the unpaid contract obligations to certain regional Yankee Atomic nuclear plants, net of related deferred taxes. PSNH testified that Part 1 recovery is expected to end in 2013 when the RRBs are scheduled to be paid off. PSNH said that the timing of Part 2 cost recovery is dependent on the type of costs, but that Part 2 costs have decreased and will continue to decrease as the rate orders for the various IPPs expire.

Finally, Mr. Baumann described an adjustment that was recorded in December 2007 that had the effect of increasing overall net costs by $1.941 million. He explained that the adjustment was to remove wholesale distribution service revenues PSNH received from Unitil Energy Systems, Inc. during 2007 from the ES reconciliation. According to Mr. Baumann, if that revenue is not removed from the ES reconciliation, then PSNH's customers would receive credit for the revenue twice – in both the distribution rate and the ES rate. PSNH stated that a similar error was also included in the 2005 and 2006 reconciliations but that it was only seeking to correct the 2007 reconciliation.

PSNH witness Richard C. Labrecque described how PSNH's generation resources and supplemental power purchases were used to meet the energy and capacity requirements of PSNH and its customers during calendar year 2007. Mr. Labrecque explained that PSNH, as a load-serving entity, is responsible for having sufficient energy to meet the hourly needs of its customers and is also required to have sufficient capacity available to satisfy its share of the ISO-NE capacity requirements.

According to Mr. Labrecque, PSNH meets its requirements through its owned generation, federally-mandated purchases under short-term rates and long-term rate orders, and through supplemental purchases of energy and capacity from the market. He testified that, on average, PSNH met 66% of peak period energy requirements and 80% of off-peak period energy requirements with its owned generation resources listed in an attachment to his testimony (RCL-1). Mr. Labrecque explained that the remaining peak and off-peak energy needs were met through a combination of fixed-price monthly contracts, a fixed-price unit-contingent contract with the Bethlehem generating plant, fixed-price short-term (e.g., daily, weekly) arrangements or spot market purchases. According to PSNH, the combined expense for all supplemental peak and off-peak energy purchases for calendar year 2007 was $214 million.

With respect to capacity, Mr. Labrecque testified that approximately 64% of PSNH's capacity needs were met with PSNH's own generation resources, including PSNH-owned assets, non-utility IPPs, a purchased power agreement with the Vermont Yankee power plant and capacity credits associated with the Hydro-Quebec interconnection. Mr. Labrecque explained that the remaining 36% was procured through the ISO-NE at the installed capacity transition rate of $3.05 per kilowatt-month for a total cost of $27.8 million.

PSNH witness William H. Smagula provided testimony regarding the performance of PSNH's generating units during 2007 including information on all outages that took place at PSNH's fossil–fired, biomass-fired and hydroelectric units and at FPL Energy's Wyman Station, Unit No. 4 in Maine, of which PSNH is a small minority owner. He reported that PSNH's generating units operated well in 2007, providing total generation equal to 4,890,326 megawatt-hours. He stated that the fleet's availability was 99.25% during the 30 highest-priced days when customers' exposure to high market prices was the greatest. Mr. Smagula testified that the base load units, Merrimack Unit Nos. 1 and 2 and Schiller Unit Nos. 4, 5 and 6, had a base load capacity factor of 84.5%, which is 6% higher than PSNH had modeled when performing its 2007 ES rate calculations. With his testimony, Mr. Smagula provided a list of all unplanned outages that took place during calendar year 2007 along with outage reports for outages in excess of two days at Newington Station or either of the two units at Merrimack Station, four days for any of the three units at Schiller Station and four days at Wyman Station Unit 4.

B. Staff

Michael D. Cannata, Jr., P.E. of Liberty served as Staff's consultant in the review of the market-based capacity and energy planning performed by PSNH during 2007, and of the outages that occurred at all of PSNH's generating units in 2007. Mr. Cannata also reviewed certain 2006 outages that remained to be reviewed from Docket No. DE 07-057, the reconciliation of PSNH's ES and SCRC revenues and expenses for 2006, to evaluate PSNH's analysis of the economics of proceeding with a biennial maintenance schedule at Merrimack-1.

In his testimony, Mr. Cannata stated that, in his opinion, PSNH made appropriate management decisions with regard to its capacity and energy purchases in a market environment and that the capacity factor projections used for 2007 market purchases were reasonable. He also concluded that PSNH's base load units ran well in 2007. With the exception of five minor outages, Mr. Cannata also concluded that the outages he reviewed were reasonable. For those five outages, he recommended disallowance of any related replacement power costs.

Mr. Cannata's testimony included eight recommendations regarding PSNH's plant operations based on his review of the outages at the generation plants. Most of those recommendations consisted of procedure or process improvements that, in his view, should be introduced to help avoid operator error in routine maintenance and operations and, therefore, unplanned outages. Mr. Cannata's recommendations included the following:

1) PSNH should review the foreign matter exclusion procedure and modify it to include a check for foreign materials at the end of each shift as well as the current end of job inspection;

2) PSNH should evaluate the use of a roving practices and procedure person during an outage to ensure that practices, procedures and safety requirements are being followed per PSNH instructions;

3) PSNH should evaluate original equipment that does not have an inspection schedule and determine if and when such a schedule should be established. Further, PSNH should also evaluate equipment that currently does have an established inspection schedule and determine if that schedule should change with the aging of components;

4) PSNH should not rely exclusively on aerial patrols for inspection of lines in rights-of-way and that all lines in a right-of-way should be inspected from the ground;

5) PSNH should consider moving check valves that show a propensity for sticking so that those valves may be unstuck without disturbing other systems, and to exercise care in the placement of check valves;

6) PSNH should identify potential problems with switching locations at its generating stations where there are two systems with different configurations;

7) PSNH should check the lightning protection in the area of the Canaan hydro unit to assure that its lightning protections practices will not result in lightning damage to the unit; and

8) PSNH should set distribution system protective settings in the future such that local generation is not impacted.

Mr. Cannata testified that one issue that continued to be of concern is PSNH's use of 50/50 load forecasts based on 30 years of weather history in its energy and capacity planning processes. According to his testimony, 50/50 load forecasts produced from shorter weather-based time frames may produce higher loads in the summer and lower loads in the winter, so an argument could be made that PSNH is currently over-buying in the winter and under-buying in the summer. Mr. Cannata said that this issue requires further review.

Pursuant to Order No. 24,805 (December 7, 2007) in DE 07-057, Mr. Cannata also reviewed certain outages for calendar year 2006 that were attributable to events that occurred on PSNH's transmission or distribution systems. Mr. Cannata concluded that PSNH conducted proper management oversight of those outages and included some of his observations in his recommendations for PSNH process improvements described above.

In addition, Mr. Cannata reviewed PSNH's analysis supporting its move to a biennial maintenance schedule at Merrimack-1. In his testimony, Mr. Cannata stated that PSNH found that the biennial maintenance schedule is more economic and would save customers \$6.0 million on a net present value (NPV) basis in 2008 dollars in replacement power costs and \$19.7 million in NPV in 2008 dollars in reduced maintenance outage costs over a ten-year period. After closely examining PSNH's analysis, Mr. Cannata concluded that the decision to go to a biennial outage schedule for Merrimack-1 was an economic one and in the best interest of customers.

III. STIPULATION AND SETTLEMENT AGREEMENT—POSITIONS OF THE PARTIES

A. Stipulation and Settlement Agreement

On November 19, 2008, PSNH and Staff filed a Stipulation and Settlement Agreement with the stated intention of resolving all areas of disagreement in the docket.

With respect to Mr. Cannata's review of the operation of PSNH's generating plants and the market-based capacity and energy planning performed in 2007, the settlement set forth the agreement with the conclusions expressed in Mr. Cannata's testimony. With respect to the five plant outages for which Mr. Cannata recommended disallowance of associated replacement power costs, PSNH agreed not to seek recovery of those costs without conceding that the outages were the result of imprudence.

As set forth in section IV.c. of the Stipulation and Settlement Agreement, PSNH agreed to accept all of Mr. Cannata's recommendations and, with respect to recommendations 1 through 7, committed to develop actions or policies to implement the recommendations or to take steps to improve its practices. With respect to recommendation number 8, PSNH will consult with Liberty and Staff to more clearly define the recommendation and to determine what steps PSNH might take to address Mr. Cannata's concerns.

Regarding Mr. Cannata's comments about PSNH's use of the 50/50 load forecasts based on 30 years of weather history, PSNH and Staff agreed that the issue needs further review.

1. Public Service Company of New Hampshire

At hearing, PSNH introduced as Exhibit No. 5 a summary of the five outages and associated replacement power costs for which Mr. Cannata recommended disallowance. The summary detailed PSNH's calculation of $8,145 in total replacement power costs associated with those outages. The Company testified that it agreed to forego recovery of those costs. PSNH concluded by requesting that the Commission approve the Stipulation and Settlement Agreement.

2. Office of Consumer Advocate

The OCA asked PSNH to discuss one particular outage – an outage that occurred with combustion turbine #1 at Schiller Station (Schiller CT1) – and the impact with respect to the ISO-NE Forward Reserve Market. According to PSNH, Schiller CT1 and other PSNH combustion turbines routinely participate in the ISO-NE Forward Reserve Market which obligates the generation units to provide a certain level of reserves in every peak hour of commitment. PSNH explained that Schiller CT1 was called to dispatch on December 13, 2007 by the ISO-NE in response to high prices. Schiller CT1 did not start and was declared unavailable until roughly 10:45 a.m. on the following morning. PSNH testified that, in addition to the replacement power costs, this particular outage of Schiller CT1 was assessed a failure to reserve penalty by the ISO-NE. The result, according to the Company, was a penalty calculated according to the economic impact of the "failure to reserve" event. With respect to this outage at Schiller CT1, the penalty was $6,591.

OCA inquired whether this 2007 event had any impact on the unit's capacity credits for 2008. PSNH affirmed that there would be an imperceptible decrease in the forced outage factor for Schiller CT1 with some resulting dollar impact to the capacity credit.

The OCA stated that although it did not sign the settlement agreement, it had participated in settlement discussions and had no objections to the settlement agreement.

3. Commission Staff

Staff asked PSNH to explain the qualifying language regarding more clearly defining Mr. Cannata's recommendation number 8 related to distribution systems protective settings and their impact on local generation. PSNH stated that while it understands the intent of the recommendation, it wanted to make sure that all parties had the same interpretation. In addition, PSNH's generation and distribution personnel will have to work together to implement the recommendation, so PSNH wants to ensure that everyone involved has the proper focus. In conclusion, Staff stated that it supported the Stipulation and Settlement Agreement and the reconciliations set forth in PSNH's filing.

IV. COMMISSION ANALYSIS

As a consequence of PSNH having entered into the Restructuring Agreement, the Commission issuing a financing order that securitized certain of PSNH's recoverable stranded costs. PSNH is therefore obliged to use its generation fleet for the provision of energy service and it may recover its "actual, prudent and reasonable costs" in connection with such use of these facilities. *See* RSA 369-B:3, IV(b)(1)(A) (noting that this obligation remains effective until PSNH divests its generation fleet); *see also* RSA 369-B:3-a ("subsequent to April 30, 2006, PSNH may divest its generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture"). To the extent that PSNH must procure retail energy from other sources, we review these costs as well. *See Public Service Co. of New Hampshire*, Order No. 24,695, 91 NH PUC 527 (Nov. 8, 2006), at 543.

Regarding the terms of the settlement agreement, we find that the public interest is served by PSNH's and Staff's ability to resolve the issues that have arisen and note PSNH's willingness to accept recommendations to improve its processes and procedures. Accordingly, in light of the record, we approve the settlement agreement as a reasonable resolution of the issues before us. In addition, we approve the ES and SCRC reconciliations submitted by PSNH.

For purposes of completing the hearing record, we grant Staff's request to open the record for purposes of including Mr. Cannata's testimony as an exhibit in the proceeding. Mr. Cannata's testimony will be identified as Exhibit No. 6.

We next consider the motion for protective treatment. The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exemption, invoked here, for "confidential, commercial, or financial information." RSA 91-A:5, IV. The Commission's rule on requests for confidential treatment, N.H. Code of Admin. Rules Puc 203.08, is designed to facilitate the implementation of the statute as it has been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See, e.g., Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997).

The information for which PSNH seeks confidential treatment relates to the dates that Newington Station was serving load in 2007 (Staff question 3), the 2007 costs and revenues associated with Newington Station (Staff question 6), and detail as to how PSNH modified the operation of Newington Station to maximize value to customers (PSNH's follow-up response to Staff question 8). With respect to suppliers of PSNH's supplemental power requirements, PSNH claims that it will be put at a disadvantage if this information is disclosed because the data contained and processes described in the responses give a close look at the decisions PSNH makes to run Newington Station or procure power. PSNH argues that if suppliers know the actual costs and operation of Newington Station and the details of how PSNH makes the decision to run Newington or go to the market, PSNH may not be able to arrange supplies of supplemental power that maximize savings to customers.

We note that no parties have objected to the motions for protective order and confidential treatment and that the information for which protective treatment is sought is similar to information for which the Commission has granted protective treatment in the past. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of PSNH in protection of the operational detail of Newington Station outweighs the public's interest in its disclosure, particularly since the disclosure of the information could impact customer rates. We will therefore grant confidential treatment to the responses to Staff data requests 3, 6 and PSNH's follow-up response to request 8. Consistent with our practice, the confidential treatment provisions of this Order will be subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party, or any other member of the public, to reconsider in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, the Stipulation and Settlement Agreement signed by PSNH and Commission Staff is hereby APPROVED; and it is

FURTHER ORDERED, that PSNH's reconciliations of its 2007 ES and SCRC costs and revenues are hereby APPROVED; and it is

FURTHER ORDERED, that PSNH's Motion for Protective Order is hereby GRANTED.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of January, 2009.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Clifton C. Below Commissioner

Attested by:

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