

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Docket No. DE 09-174

PETITION FOR DECLARATORY RULING
PENACOOK LOWER FALLS PRICING

STIPULATION OF FACTS

1. Public Service Company of New Hampshire ("PSNH") is a New Hampshire corporation with its principal place of business in Manchester, New Hampshire. PSNH is primarily engaged in the business of generation, transmission, distribution and sale of electricity at retail in various cities and towns in New Hampshire.
2. New Hampshire Hydro Associates (NHHA) is a New Hampshire limited partnership which developed the Penacook Lower Falls Project ("the Project").
3. Briar Hydro Associates ("Briar") is a New Hampshire limited partnership which succeeded NHHA as owner and operator of the Project in June 2002.
4. The Project is a hydroelectric generating facility on the Contoocook River in the village of Penacook, New Hampshire (City of Concord and Town of Boscawen). It has a rated nameplate capacity of 4.11 megawatts.
5. In April 1982, PSNH and NHHA entered into a Contract for the Purchase and Sale of Electric Energy ("the Contract"), under which NHHA agreed to furnish and sell and PSNH agreed to purchase and receive all of the electrical energy produced by the Project for a term of 30 years. A copy of the Contract is attached hereto as Exhibit 1.
6. The instant dispute between the parties concerns the interpretation of Article 3 of the Contract ("Price"), and particularly Sections A, B, and D, which provide in relevant part:

The price charged by SELLER to PUBLIC SERVICE for sales of electric energy under this Contract shall be based on an index price of 9.00 cents per kilowatthour (KWH) and shall be determined as follows.

- A. For the first eight (8) years of the Contract, the Contract rate shall be 11.00 cents per KWH. This rate exceeds the index price by 2.00 cents per KWH; and all payments made by PUBLIC SERVICE to SELLER which exceed the index price must be recovered by PUBLIC SERVICE, during later Contract years, in accordance with Section

D.1., Article 3. This rate is subject to the adjustment provided for under Section D.2., Article 3.

B. If, during the first eight Contract years, 96% of PUBLIC SERVICE'S incremental energy costs has not exceeded the index price, the Contract rate beginning with the ninth contract year shall be the index price of 9.00 cents per KWH; and this rate shall remain in effect until superseded by the provisions of Section C, Article 3.¹ This rate is subject to the adjustment provided for under Section D.2, Article 3....

D. The Contract rates described in Sections B and C,² Article 3, are subject to the following provisions, in order to determine the Contract price to be charged by SELLER to PUBLIC SERVICE for sales of electric energy under this Contract.

1. *Beginning with the ninth Contract year, and continuing for the term of the Contract, a recovery amount equal to 5.47 cents per KWH shall be deducted from the Contract rate. This deduction allows PUBLIC SERVICE to recover the payments made under Section A, Article 3, which exceeded the index price. (emphasis added)*
2. For the first eight Contract years, the Contract rate shall be adjusted by subtracting 1.00 cents per KWH from the rate. For the ninth through the twentieth Contract years, the Contract rate shall be adjusted by adding 0.67 cents per KWH to the rate. The total of said additional payments, for any given year, shall not exceed one-twelfth (1/12) of the money subtracted during the first eight Contract years.

7. The parties disagree on the interpretation of Paragraph 3.D.1. PSNH believes the 5.47¢ deduction should continue “for the term of the contract,” as stated in the first sentence of Paragraph 3.D.1. Briar contends that the 5.47¢ deduction should continue only until PSNH has “recover[ed] the payments made under Section A, Article 3, which exceeded the index price,” as stated in the second sentence of Paragraph 3.D.1. Briar believes that a calculation is required to determine when PSNH has fully recovered its payments. PSNH contends no calculation is necessary under its interpretation of the Contract.

8. Generation, sales and payments under the Contract began in October 1983. See spreadsheet entitled “Generation and Article 3 Payment Terms Under the 1982 Contract,” attached as Exhibit 2. During the first eight (8) contract years, a period that consists of the ninety-six (96) months from October 1983 through and including September 1991, the Contract rate was 10.0¢/kWh. The

¹ Section C never superseded Section B and thus is not relevant to the dispute, because 96% of PSNH's incremental energy cost never exceeded the “index price” of 9.00 cents/kwh.

² See Footnote 1.

10.0¢/kWh Contract rate was based on the 9.0¢/kWh index price, increased by the 2.0¢/kWh positive adjustment described in Article 3.A and decreased by the 1.0¢/kWh negative adjustment described in Article 3.D.2.

9. The total energy delivered during the first eight Contract years was 148,869 MWh, for which PSNH made total payments of \$14,886,900.
10. The parties disagree about the interpretation and effect of the pricing adjustments specified in Article 3.A and Article 3.D.2 during the first eight Contract years.
11. Contract year nine (9) commenced in October 1991. The Contract rate in that year also consisted of the index price of 9.0¢/kWh and two adjustments. The first adjustment is the 5.47¢/kWh negative adjustment described in Article 3.D.1. The second is the positive adjustment described in Article 3.D.2, which requires the Contract rate to be increased by 0.67¢/kWh for Contract years 9 through 20. Thus, the Contract rate in October 1991 was 4.2¢/kWh, subject to the limitation in the last sentence of Article 3.D.2, noted in Paragraph 12 below.
12. In accordance with Article 3.D.2, the 0.67¢/kWh adjustment to the Contract rate was only in effect during contract years nine (9) through twenty (20). Furthermore, on an annual basis during each of these twelve (12) contract years, this adjustment was subject to the following contract language: "The total of said additional payments, for any given year, shall not exceed one-twelfth (1/12) of the money subtracted during the first eight Contract years."
13. The total "money subtracted during the first eight Contract years" under Article 3.D.2 was \$1,488,685. One-twelfth of the money subtracted is \$124,057. Therefore, in each of these twelve (12) years the initial Contract rate of 4.2¢/kWh was only effective until such time that the "additional payments" reached \$124,057. When that occurred, the 0.67¢/kWh adjustment was discontinued and the Contract rate was reduced to 3.53¢/kWh. In seven (7) of the twelve (12) Contract years the "additional payment" cap of \$124,057 was reached. In the remaining five (5) years the cap was not reached and, therefore, the 4.2¢/kWh rate was in effect for all months during those five years.
14. Notwithstanding the instant dispute between the Parties, the 5.47¢/kWh adjustment described in Article 3.D.1 has been in effect during every contract month starting from October 1991 and continuing through the most recently billed month of December 2009
15. During Contract years nine (9) through twenty (20), the total energy delivered was 218,631 MWh, for which PSNH made total payments of \$9,055,752.
16. Starting with Contract year twenty-one (21), i.e. in October 2003 and continuing to date, the Contract rate has been 3.53¢/kWh.

17. Between October 2003 and December 2009, the total energy delivered was 153,216 MWh, for which PSNH made total payments of \$5,408,525.
18. The total energy delivered between October 1983 and December 2009 was 520,716 MWh, for which PSNH made total payments of \$29,351,177.
19. The month of September 2013 will be the final month of the thirty (30) year term of the Contract.

Respectfully submitted,

Briar Hydro Associates
By their attorneys
Orr and Reno, P.A.

By: _____
Howard M. Moffett

Public Service Company of New Hampshire

By: Gerald M. Eaton 1/25/2010
Gerald M. Eaton, Senior Counsel

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Briar Hydro Associates
By their attorneys
Orr and Reno, P.A.

By: Howard M. Moffett 1/22/10
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