

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 09-174

ORDER OF NOTICE

On September 18, 2009, Public Service Company of New Hampshire (PSNH) filed a petition seeking a declaratory order with respect to its 1982 Power Sale Contract with Briar Hydro Associates (Briar). In its petition, PSNH states that Briar is a successor in interest to New Hampshire Hydro Associates (NHHA). NHHA had owned and operated the Penacook Lower Falls Project, a 4.1 MW hydroelectric generating facility on the Contoocook River in Penacook and Boscawen, New Hampshire, until its purchase by Briar in 2002. PSNH further states that in accordance with the federal Public Utilities Regulatory Policies Act of 1978 (16 U.S. Code 2601 *et seq.*) and/or the state Limited Electric Energy Producers Act (RSA Chapter 362-A), it was required to purchase the output from small power producing facilities such as Penacook Lower Falls. According to PSNH, in 1982 PSNH and NHHA entered into a thirty-year contract for the purchase and sale of the output from Penacook Lower Falls (the Contract). PSNH has purchased the output from the facility, and paid the rates called for under the Contract, since the facility began operating.

PSNH states that the pricing terms in the Contract included an index price of 9.00 cents per kilowatt hour (kWh) with an upward adjustment of 2.00 cents per kWh for the first 8 years of the contract. To allow PSNH's recovery of the amount it paid over the index price of 9.00 during the initial 8 years, the Contract provides as follows: "Beginning in 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." PSNH takes the position that the 5.47 cent per kWh

reduction to the Contract rate remains in effect until the Contract terminates in September 2013. PSNH's petition asserts that Briar has claimed that the reduction terminates once PSNH has been fully reimbursed for the 2.00 cents per kWh premium paid during the initial 8 years of the Contract. PSNH states that the total amount of money at issue in this dispute is approximately \$4,700,000 through the duration of the Contract. PSNH requests that the Commission review the Contract and determine whether the deduction of 5.47 cents per kWh from the index price continues for the remainder of the Contract term.

The filing raises, inter alia, issues related to the Commission's jurisdiction over the Contract, and the interpretation of the pricing terms in the Contract governing PSNH's purchase of power from the Penacook Lower Falls facility.

Each party has the right to have an attorney represent them at their own expense.

**Based upon the foregoing, it is hereby**

**ORDERED**, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on December 8, 2009 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

**FURTHER ORDERED**, that, immediately following the Prehearing Conference, PSNH, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow PSNH to provide any amendments or updates to its filing; and it is

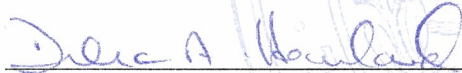
**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.12, PSNH shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than November 13, 2009, in a newspaper with general circulation in those portions of the

state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before December 8, 2009; and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to PSNH and the Office of the Consumer Advocate on or before December 4, 2009, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before December 8, 2009.

By order of the Public Utilities Commission of New Hampshire this sixth day of November, 2009.



Debra A. Howland  
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

GERALD M EATON  
PUBLIC SERVICE COMPANY OF NEW H  
780 N COMMERCIAL ST  
PO BOX 330  
MANCHESTER NH 03105-0330

SUSAN GEIGER  
ORR & RENO PC  
ONE EAGLE SQUARE  
PO BOX 3550  
CONCORD NH 03302-3550

HOWARD M MOFFETT  
ORR & RENO PA  
1 EAGLE SQ  
PO BOX 3550  
CONCORD NH 03302

Docket #: 09-174      Printed: November 06, 2009

**FILING INSTRUCTIONS:    PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**  
**WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:**  
DEBRA A HOWLAND  
EXEC DIRECTOR & SECRETARY  
NHPUC  
21 SOUTH FRUIT STREET, SUITE 10  
CONCORD NH 03301-2429