

DE 99-099

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Restructuring Settlement

Order Denying Motion for Rehearing

O R D E R N O. 23,967

May 10, 2002

I. **BACKGROUND**

This docket concerns the PSNH Restructuring Settlement Agreement (Restructuring Agreement), according to which Public Service Company of New Hampshire (PSNH) agreed to the dismissal of a federal lawsuit it had filed against the New Hampshire Public Utilities Commission (Commission), and PSNH began the transition from a vertically integrated electric utility to a distribution company pursuant to RSA 374-F, the Electric Utility Restructuring Act. The Commission approved the Restructuring Agreement, with conditions, on April 19, 2000 in Order No. 23,443. *See PSNH Proposed Restructuring Settlement*, 85 NH PUC 154 (2000), *on reh'g*, 85 NH PUC 536 (2000) and 85 NH PUC 646 (2000; *see also PSNH Proposed Restructuring Settlement*, 85 NH PUC 567 (2000) (resolving financing issues and approving "securitization" of recoverable stranded costs through issuance of rate reduction bonds constituting fixed obligation of PSNH ratepayers). Both the substance of these orders and the procedural history of

this docket are complex and will only be repeated here as directly relevant.

On January 10, 2001, the Commission entered Order No. 23,617 in this docket. Order No. 23,617 denied a motion for clarification submitted by intervenor Freedom Partners, L.L.C. (Freedom). Freedom has asked the Commission to clarify a condition it has previously approved pursuant to RSA 369-B:3, IV (with regard to issuance of rate reduction bonds) requiring PSNH to effect a temporary reduction in its effective total rates¹ until the earlier of April 1, 2001 or "Competition Day" as that term is defined in the Restructuring Agreement.² Freedom noted that PSNH had advised certain customers taking service under rates ED, BR and LR that this rate change would not apply to them.

Freedom moved for rehearing of Order No. 23,617 on February 9, 2001. PSNH filed an objection to the motion on February 12, 2001, and a letter on March 1, 2001 withdrawing

¹ "Effective total rates" refers to the combination of PSNH's base rates plus additional charges associated with PSNH's Fuel and Purchased Power Adjustment Clause (FPPAC).

² Within the meaning of the Restructuring Agreement, "Competition Day" refers to the date on which the PSNH service territory was opened to retail competition in the area of energy supply. The timing of the Restructuring Agreement's approval was such that Competition Day occurred on May 1, 2001.

one of its arguments in opposition to the motion.³

II. POSITIONS OF THE PARTIES

a. Freedom Partners, L.L.C.

Freedom begins its argument in support of its clarification motion by objecting to certain language in Order No. 23,617 relative to its standing to seek the requested clarification. In opposing the underlying request, PSNH had noted that Freedom was not taking service from PSNH under any of the rates in question. Accordingly, the Commission found that Freedom had "not demonstrated how its interests may be affected by the [rate reduction] methodology proposed." Order No. 23,617, slip op. at 7. The Commission used Order No. 23,617 as an opportunity to put parties on notice that intervenor status "does not automatically confer a 'right' to 'address any and all issues' in a proceeding before the Commission" and that it is "well within the authority of the Commission commensurate with the efficient and reasonable management of [its] pending dockets to limit a party's participation to those issues which have been demonstrated to directly affect its rights and interests." Id. at 6-7. However, the Commission did not use Freedom's potential lack

³ Accordingly, we will neither summarize that argument nor address it in this Order.

of standing as a basis for deciding its motion, concluding that it would be in the public interest to reach the merits of Freedom's arguments. *Id.* at 6. Freedom now contends that the discussion of standing in Order No. 23,617 is a major and unlawful departure from the Commission's past practice, and that the Commission should take this opportunity to rehear these aspects of the Order.

With regard to the merits of Order No. 23,617, Freedom takes the position that the Commission misinterpreted RSA 378:11-a, which concerns "Economic Development" and "Business Retention" rates such as those at issue here, and its enabling legislation, 1996 Laws 186:1. The Commission noted that the Legislature made a finding that economic development and business retention rates "should be specific rates, not percentage discounts from future variations in tariffed rates," see 1996 Laws 186:1, IV, and therefore concluded that "the ED, BR and LR rates were to be a fixed schedule of rates for their full term that future discounts were not to apply to," Order No. 23,617, slip op. at 11. In response, Freedom now takes the position that the "specific rates" requirement does not appear in the statute itself, and that the finding to that effect "appears . . . to be related to the Legislature's concern with the potential rate shift

associated with economic development rates, retention rates and special contract rates that would arise if those rates were designed on a percentage discount basis and PSNH obtained future overall rate increases." Motion for Rehearing of Freedom Partners, L.L.C. (Rehearing Motion) at 2. Freedom points out that application of the rate reduction at issue here to Rate ED would not affect the rates of other customers.

Freedom further contends that (1) a legislative finding not "enacted into statutory law" has no binding effect, and (2) that even assuming the requirement of "specific rates" exists it is not the same as a "fixed schedule of rates" as the Commission "appears to have summarily and erroneously concluded." Rehearing Motion at 2. According to Freedom, specific rates within the meaning of the legislative finding are discrete rates that are not expressed as a percentage discount from other rates. In this regard, Freedom draws the Commission's attention to the fact that Order No. 23,617 referred to PSNH's having pointed out that "all customers taking service under rate LR and most under rate BR pay no demand charge, so that, effectively, they will receive the full benefit of the 5 percent reduction." Order No. 23,617, slip op. at 5. Accordingly, in the view of Freedom, the Commission's ruling that the ED, BR and LR rates

were to be a fixed schedule of rates not subject to future discounts is "palpably contrary" to the above-quoted assertion that some customers on these rates were seeing reduced rates. Rehearing Motion at 3.

According to Freedom, the "end result" of Order No. 23,617 is that customers on rate LR receive the 5 percent reduction while those on rate ED do not. Freedom contends this is unlawful because it does not "lead to a reasonable result in interpreting RSA 378:11-a and RSA 369-B:3, IV(b)(3)(G)." ⁴ Id.

b. Public Service Company of New Hampshire

PSNH makes two points in response to Freedom's motion. First, PSNH contends that the Commission properly warned Freedom with regard to its standing to raise the issue it advances here, particularly in light of the Commission's authority under RSA 541-A:32, III(a) to limit an intervenor's participation to specific issues in which it has an interest. Second, and with regard to the merits of Freedom's motion, PSNH contends that no good cause has been shown for granting rehearing. With regard to this second point, PSNH notes that

⁴ RSA 369-B:3, IV(b)(3)(G) specifies that a temporary rate reduction such as that clarified in Order No. 23,617 is a condition to moving forward with the securitization of PSNH's stranded costs through the issuance of rate reduction bonds.

the Commission's ratemaking authority is plenary, that the Commission is fully authorized to follow the legislative directions contained in 1996 Laws 186, and that customers taking service under rate ED know that they have been and are subject to a fixed schedule of rates for 2000, 2001 and 2002, subject only to FPPAC adjustments and nuclear decommissioning charges.

III. COMMISSION ANALYSIS

RSA 541:3 authorizes us to grant a motion for rehearing if "good reason for the rehearing is stated in the motion." Because we find no such good reason here, we must deny Freedom's motion.

The observations about standing in Order No. 23,617 form no basis of our decision in that Order, which dealt exclusively with the merits of Freedom's request. Accordingly, we decline to revisit the question of standing here.

Freedom's argument on the merits of Order No. 23,617 do not present good reason for revisiting our previous determination. The economic development and business retention rates authorized by RSA 378:11-a represent a departure from traditional, cost-of-service ratemaking principles; the purpose of such rates is "to attract new

industrial companies to the state and to encourage expansion of existing industrial load that would not otherwise occur in the state." RSA 378:11-a, I. The general, five-percent rate reduction called for in the Restructuring Settlement Agreement, and specified by the Legislature as a precondition to securitization under RSA 369-B:IV(b)(3)(G), has an entirely different purpose: to hasten the restructuring-related rate relief for customers who had been subject to unreasonably high energy costs under the cost-of-service principles that applied to PSNH as a fully vertically integrated utility.

Thus, the underlying policy reason for not applying the five percent decrease to all RSA 378:11-a customers is to minimize the extent to which certain customers could twice reap the benefits of competition in the provision of retail electricity - first by demonstrating that they would leave New Hampshire (or fail to expand in New Hampshire) absent a discounted rate, and second through the temporary rate relief in the Restructuring Agreement. To advance such public policy, Order No. 23,617 construes RSA 369-B:3, IV(b)(3)(G) in conjunction with 1996 Laws 186 - which, as noted in the Order, is an exercise in statutory construction that bears a clear judicial imprimatur. Order No. 23,617, slip op. at 10-11 (citing *State v. Farrow*, 140 N.H. 473, 475 (1995)) (noting

that statutes dealing with similar subject matter should be construed so as not to contradict each other, so as to lead to reasonable results and so as to effectuate the legislative purpose of the statute).

We are not persuaded by Freedom's argument that the legislative findings in Chapter 186 are of little or no consequence because they are merely findings and not part of the statute enacted by the measure. It is well-established that a legislative statement of purpose "is ordinarily accepted as a part of the act . . . unless incompatible with its meaning and effect." *Opinion of the Justices*, 113 N.H. 201, 203 (1973) (citations omitted). Here the legislative findings support rather than refute our general view that under applicable law and sound public policy ratepayers are entitled to benefit from the advent of competition-enabling electric industry restructuring - but only once. We agree with Freedom that one legislative concern is assuring that customers paying regular tariffed rates do not unduly subsidize RSA 378:11-a customers when tariffed rates are changed, hence the prohibition on percentage discounts. But this is not the only public policy related to rates advanced by the applicable statutes; overall fairness is also an

important objective.⁵

For the foregoing reasons, Freedom has not shown good reason for granting its motion to rehear.

Based upon the foregoing, it is hereby

ORDERED, that the motion of Freedom Partners, L.L.C. for rehearing of Order No. 23,617 is DENIED.

By order of the Public Utilities Commission of New Hampshire this tenth day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary

⁵ Contrary to Freedom's additional argument, the fact that some RSA 378:11-a customers pay no demand charge, and thus can be said to have already seen the benefit of the 5 percent rate reduction, advances rather than contradicts the legislative objective we discern to provide competition-rate relief in a fair and equitable manner.