

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2013 TERM

Docket No. 2013-0307

APPEAL OF PSNH RATEPAYERS

**SUPPLEMENTAL APPENDIX
TO BRIEF OF APPELLEE
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

Public Service Company of New Hampshire

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TABLE OF CONTENTS

<i>Re Public Service Company of New Hampshire</i> , Order No. 26,614 (December 27, 2013).....	1
<i>Re Public Service Company of New Hampshire</i> , Order No. 25,380 (June 27, 2012).....	15
<i>Re Public Service Company of New Hampshire</i> , Order No. 25,313, 96 N.H. P.U.C. 780 (December 30, 2011)	23
<i>Re Public Service Company of New Hampshire</i> , Order No. 25,242, 96 N.H. P.U.C. 367 (June 28, 2011)	40
<i>Re Public Service Company of New Hampshire</i> , Order No. 25,187, 95 N.H. P.U.C. 668 (December 29, 2010)	47
<i>Re Public Service Company of New Hampshire</i> , Order No. 25,121, 95 N.H. P.U.C. 308 (June 28, 2010)	60
<i>Re Public Service Company of New Hampshire</i> , Order No. 25,061, 97 N.H. P.U.C. 760 (December 31, 2009)	71
<i>Re Public Service Company of New Hampshire</i> , Order No. 24,991, 94 N.H. P.U.C. 376 (July 24, 2009)	105
<i>Re Public Service Company of New Hampshire</i> , Order No. 24,924, 93 N.H. P.U.C. 611 (December 30, 2008)	113
<i>Appellants' Memorandum of Law in Support of Objection to Appellee's Motion for Summary Disposition and Summary Affirmance in New Hampshire Supreme Court Docket No. 2013-307 (May 30, 2012)</i>	<i>122</i>
<i>Public Service Company of New Hampshire's Motion to Strike and Objection to the December 17, 2012 Objection of Conservation Law Foundation in New Hampshire Public Utilities Commission Docket No. DE 10-261 (December 19, 2012)</i>	<i>137</i>

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 13-275

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Default Energy Service Rate for 2014

Order Approving 2014 Energy Service Rate

ORDER NO. 25,614

December 27, 2013

APPEARANCES: Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; Christophe G. Courchesne, Esq. on behalf of Conservation Law Foundation; Murtha Cullina LLP on behalf of North American Power and Gas, LLC by Robert J. Munnely, Jr. Esq.; Office of Consumer Advocate by Susan W. Chamberlin, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On September 27, 2013, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service rate to take effect with service rendered on and after January 1, 2014. Pursuant to RSA 369-B:3,IV(b)(1)(A), customers taking default energy service from PSNH are billed an energy service rate equal to PSNH's actual, prudent and reasonable costs of providing power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 0.896 cents per kilowatt-hour (kWh) for the 2014 energy service rate, but stated that a final proposed rate would be filed prior to the hearing to reflect the most recent estimates of fuel and energy costs. In support of its filing, PSNH submitted the testimony and related exhibits of Eric H. Chung, Director of Revenue Requirements for New Hampshire at Northeast Utilities, PSNH's parent company.

On October 11, 2013, PSNH filed supplemental testimony that stated that, due to certain settlements at the Independent System Operator-New England (ISO-NE), PSNH experienced an

under-recovery of approximately \$1 million. The inclusion of the under-recovery in rates for effect on January 1, 2014 resulted in an estimated energy service rate of 8.99 cents per kWh.

With its filing, PSNH also filed an updated generation report pursuant to Order No. 25,535. PSNH stated that the report contains confidential material and that such material was redacted from the public copy where appropriate. PSNH said that in lieu of immediately filing a motion for confidential treatment, the Company has a good faith basis for seeking confidential treatment of the materials, and that it would submit a motion for confidential treatment prior to the commencement of a hearing on this matter.

The Commission issued an Order of Notice on October 9, 2013 scheduling a prehearing conference for October 28, 2013. On October 11, 2013, the Office of Consumer Advocate (OCA) filed a letter of participation in this docket pursuant to RSA 363:28. Also on October 11, 2013, North American Power and Gas, LLC (NAPG) filed a petition to intervene. Conservation Law Foundation (CLF) filed a petition to intervene on October 23, 2013. On November 15, 2013, the Commission issued Order No. 25,596 granting the intervention of NAPG and CLF and setting the scope of the docket.

On November 27, 2013, Staff filed the testimony of Steven E. Mullen, assistant director of the Commission's electric division. NAPG filed the testimony of Kenneth E. Traum on December 2, 2013.

On December 5, 2013, PSNH filed a motion for confidential treatment of its response to data request OCA 1-17. According to the motion, OCA 1-17 seeks information about the projected operation of Wyman Station, a generating facility in which PSNH holds a minority interest. In its response, PSNH provided information otherwise available to the public, and identified as confidential only that portion of the response dealing with another entity's private

plan for the future operations of the station, of which PSNH is aware through its minority interest. The motion also requested confidential treatment of certain operating and maintenance (O&M) information contained in the generation cost report it filed on September 27, 2013 in compliance with Order No. 25,535 (June 27, 2013).

PSNH filed an update to its initial energy service calculation on December 12, 2013. The hearing was held on December 16, 2013 as scheduled. At hearing, the Commission granted PSNH's pending motion for confidential treatment.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Mr. Chung stated that the Company's current energy service rate was established by the Commission in Order No. 25,535 (June 27, 2013), PSNH's 2013 energy service filing. Based on the Company's preliminary calculations, Mr. Chung said that for the period January 1, 2014 through December 31, 2014, PSNH's prudent and reasonable costs of providing energy service was expected to result in an energy service rate of 8.96 cents per kWh. Mr. Chung testified that the estimated 8.96 cents per kWh rate includes the temporary rate of 0.98 cents per kWh approved by the Commission in Order No. 25,346 (April 10, 2012) for recovery of costs associated with the installation of the wet flue gas desulfurization (Scrubber) system at PSNH's Merrimack Station generation unit. *See*, Docket No. DE 11-250, *PSNH Investigation into Scrubber Cost and Scrubber Recovery*.

Mr. Chung testified that the major cost categories comprising the energy service costs are revenue requirements for owned generation assets and the costs of purchased power obligations, the fuel costs associated with PSNH's generation assets, the costs from supplemental energy and capacity purchases, certain ISO-NE ancillary service charges, the cost of compliance with the

New Hampshire Renewable Portfolio Standard (RPS) (RSA 362-F), and the costs of the Regional Greenhouse Gas Initiative (RGGI) (RSA 125-O:19, *et seq.*). The generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property and payroll taxes and a return on the net fossil/hydro investment.

PSNH included Independent Power Producer (IPP) generation as a source of power to meet PSNH's load requirements and stated that IPP power costs are based on projected market costs for energy and capacity. PSNH explained that over-market costs of purchases from the IPPs are recovered through Part 2 of the stranded cost recovery charge (SCRC). As market prices change, the value of IPP purchases recovered through the energy service rate also changes. At the same time, however, there is a corresponding change to the SCRC for the above-market value of IPP purchases. To properly match the recovery of IPP costs, PSNH said it also separately filed for a change in the SCRC for effect on January 1, 2014 (Docket No. DE 13-274).

PSNH's energy service rate included the costs associated with the five short-term Wood IPP contracts per Order No. 25,305 (Dec. 20, 2011). PSNH provided details of the "at-market" and "over-market" costs associated with those contracts. In addition, the filing included costs associated with the Burgess BioPower wood-fired generation station which PSNH expected to begin operation sometime in November 2013.¹

Mr. Chung testified that the level of migration (the percentage of customer load receiving energy supply service from competitive suppliers) assumed in the Company's initial filing reflected the actual August 31, 2013 migration level of 52.0%. In proposing an energy service

¹ In Docket No. DE 10-195, the Commission approved a contract for the purchase of energy, capacity and renewable energy certificates between PSNH and Berlin Station (formerly Laidlaw Berlin BioPower, LLC) in Order No. 25,213 (April 18, 2011). The generator is now known as Burgess BioPower.

rate for 2013, PSNH said it did not presume that customers will migrate more or less than the current level of 52%.

In its pre-filed testimony, PSNH stated that due to the region's experience with constrained natural gas supply during the winter of 2012-2013, the ISO-NE developed a Winter 2013-2014 Reliability Program. PSNH testified that the 2013-2014 Winter Reliability Program applies to the period beginning December 1, 2013 through February 28, 2014 and consists of four components: demand response; oil inventory service; incentives for dual-fuel units; and market monitoring changes. ISO-NE's June 28, 2013 filing with the Federal Energy Regulatory Commission (FERC) regarding the Winter Reliability Program indicated that these components are time-limited, discreet, out-of-market solutions. Consistent with a September 16, 2013 FERC order, the costs of the Winter Reliability Program will be recovered through energy load. PSNH calculated that the cost allocation of the Winter Reliability Program to its energy service customers for the period is approximately \$2.4 million.

PSNH said that it had submitted multiple bid blocks to provide oil inventory for oil-fired generation for the Winter Reliability Program from its dual-fuel unit at Newington Station. PSNH was awarded approximately 100,000 MWh (215,000 barrels) of oil inventory service at Newington Station for a price of \$4.8 million for the three month Winter Reliability Program period. Although the program itself has been approved, PSNH stated that at the time of its initial filing, the ISO-NE's contract awards were still awaiting FERC approval; however, at that time the net benefit to energy service customers resulting from PSNH's participation in the Winter Reliability Program was estimated to be approximately \$2.4 million. This estimate was revised in the updated filing.

PSNH updated its filing on December 12, 2013. The Company stated that based on the most recent data, it estimated the energy service rate for effect January 1, 2014 to be 9.23 cents per kWh, an increase of 0.24 cents per kWh over the initial estimated rate. PSNH attributed the increase to a reduction in forecasted retail sales of 149 GWh and a net decrease in actual and forecasted costs of \$3.1 million. PSNH attributed the change in forecasted retail sales to an increase in the migration rate from 52.0% in its initial filing to 53.7% in the updated filing. In addition, projected wood generation decreased due to the inclusion of a planned outage in the updated filing that had been omitted from the initial filing.

PSNH's December 12, 2013 filing incorporated an updated forecast of forward electric prices. In the update, PSNH forecasted an increase in forward electricity market prices as of November 20, 2013. Because of the increase in forecasted market costs of power, PSNH's updated filing included higher operation costs for its generation fleet because it expected the plants to run more than projected in its initial filing. This projection also resulted in PSNH decreasing expenses by \$26.0 million in spot purchases of power primarily due to higher generation and lower loads, and an increase in sales of surplus generation.

In response to Staff's testimony, PSNH's update addressed in detail the incremental costs and risks associated with the ISO-NE 2013-2014 Winter Reliability Program, and calculated that its participation in the program would result in a net benefit of \$1.2 million to customers. The Company said that it would not know until the end of February 2014 whether any of the risks actually materialize and that any revenues and costs attributable to the Program would ultimately be reconciled at some point at the end of 2014. PSNH reported that FERC had approved the Winter Reliability contract with Newington and that Newington was currently operating in the Winter Reliability Program.

PSNH's updated filing also took into account an issue raised in Staff's testimony regarding PSNH's initial proposal on how to allocate RGGI excess auction proceeds to all customers as required beginning with RGGI auctions taking place in 2014. Initially PSNH proposed to rebate those amounts through its default energy service rates and assumed that the competitive energy suppliers would credit applicable RGGI proceeds to their energy service customers. In its updated filing, PSNH removed the estimated RGGI rebate monies from the calculation of energy service rates for effect January 1, 2014 and said it would wait until the Commission determined the appropriate mechanism by which to credit all customers the relevant RGGI auction proceeds.

PSNH's update also included a \$100,000 under-recovery associated with the Alternate Default Service (ADE) rate that was approved in Docket No. DE 11-216. In that proceeding, the Commission approved a settlement agreement to establish Rate ADE on a pilot basis. *See* Order No. 25,488 (April 8, 2013). The settlement agreement provided that any over- or under-recovery would be included in PSNH's default energy service rates; the under-recovery experienced in the first six months of the operation of Rate ADE is therefore included in this filing.

Finally, PSNH included in its update an under-recovery of \$31,388.47 associated with the Renewable Default Energy Service Rate (RDES). PSNH noted that the Commission agreed that the RDES rate could be terminated if the program did not attract at least 1.0 percent of eligible PSNH customers. *See* Order No. 25,511 (May 15, 2013). PSNH noted that it had only 131 customers as of November 30, 2013, well below 1.0%, and that the rate would therefore be closed as of January 1, 2014. Consistent with the settlement agreement approved by the Commission by Order No. 25,080 (March 5, 2010), PSNH proposed in its filing to recoup the under-recovery associated with the RDES rate through PSNH's default energy service rate.

At hearing, PSNH addressed the additional issue of customer migration. In response to questioning, PSNH said that it did not forecast customer migration but preferred to use the customer migration rate extant at the time of the filing for purposes of calculating sales. According to the Company, if it modeled customer migration into sales forecasts, the effect would be a “self-fulfilling prophecy” in that if it predicted customer migration were to increase, energy prices would also increase thus causing more customers to migrate. In the inverse, if the Company were to predict customer migration to decrease, its price may be set so low as to encourage customers to forego competitive options and thereby create pressures on the Company’s energy supply portfolio and create the need for more spot market purchases.

PSNH also addressed the ISO-NE settlement issue that resulted in an under-recovery of approximately \$1 million, and stated that the costs associated with that particular settlement issue had been resolved and that issue is not expected to repeat. PSNH testified that its filing was consistent with its most recently filed and accepted Least Cost Integrated Resource Plan (LCIRP). PSNH requested approval of the energy service rate in its updated filing to be effective with services rendered on and after January 1, 2014.

B. Conservation Law Foundation

CLF stated that it did not support the energy service rate proposed by the Company and made three observations in its closing. First, CLF argued that the two-part process in setting rates for PSNH—the forecast estimated rate in this docket and the reconciliation of the rate in PSNH’s annual reconciliation docket—is grounded in the old paradigm that assumed PSNH’s generation units were operating as base load. CLF claimed that no mechanism exists to evaluate PSNH’s decision to dispatch its own generation to the detriment of customers. Second, CLF asserted that PSNH operated a “closed book” on discovery because it would not provide

information regarding the out-of-merit operations of its plants. Finally, CLF stated that PSNH should incorporate some measure of increased customer migration in the development of its rates. CLF concluded by stating that it looked forward to discussing these matters in future proceedings.

C. North American Power & Gas, LLC

In its prefiled direct testimony, NAPG stated that PSNH's customer migration rate had been rising steadily and consistently ever since PSNH's energy service rates began substantially exceeding prevailing electricity market rates in 2010, and especially into 2011. According to NAPG, PSNH based its 2014 energy service rate on the customer migration rate of 52% in its initial filing in this docket. NAPG argued that PSNH should apply a forecasting approach to migration data that is used in connection with other costs and rate elements in the energy service rate formula. If PSNH applied the historical trend in migration since August 2011 and assumed it continued into 2014, NAPG opined that the migration rate would be at least 56% in 2014, and the result would be an increase of the energy service rate of 0.35 cents per kilowatt hour (kWh). For the sake of conservatism, NAPG recommended that PSNH be directed to increase the energy service rate by 0.3 cents per kWh in order to recognize the trend in migration over the past several years.

In closing, NAPG stated that it does not have a preferred method of establishing a customer migration rate, but that PSNH should be required to forecast migration because assuming that the migration rate would be constant through the rate period results in artificially low rates.

D. Office of Consumer Advocate

The OCA argued that there have been market changes since the development of the two-part rate setting paradigm for PSNH and that the issue needs further examination. The OCA agreed with NAPG that customer migration forecasts should be considered in the calculation of forecast rates.

The OCA argued that PSNH's default energy service residential customers' interests were not being served by the uneconomic dispatch of its plants while shareholders continue to earn on their ownership interest in the Company. The OCA stated that it did not recommend any specific change in this docket but that it remained concerned about the effect on PSNH's default energy service residential customers.

E. Commission Staff

Staff's testimony dealt with two aspects of PSNH's filing. First, Staff disputed whether it was appropriate to credit RGGI rebates received in 2014 through PSNH's default energy service customers when the Legislature directed RGGI excess proceeds to be returned to all electric customers in the State. In response, PSNH in its update omitted the estimated RGGI amounts from the calculation of energy service rates. Second, Staff requested clarification of the estimated costs and risks associated with PSNH's participation in the ISO-NE 2013-2014 Winter Reliability Program and questioned whether PSNH's calculation of a net benefit to customers of \$2.4 million took into account all of those costs and risks. In its updated filing, PSNH detailed the costs and risks related to the Winter Reliability Program and adjusted its estimated net benefit to customers to \$1.2 million.

Staff also addressed the issue of forecasting customer migration in the calculation of estimated energy service rates for a future period. While Staff did not express agreement with

PSNH's notion of a "self-fulfilling prophesy", Staff took issue with NAPG's methodology in developing a customer migration trend line. Staff noted that the trend line did not take into account economic facts including market analysis or other items that could impact the rate of migration. In addition, Staff noted that the trend line offered by NAPG could be altered depending on the start date, the number of data points used in the trend line, and other factors. On that basis, Staff stated that it did not support any adjustment to rates based on NAPG's proposal. In conclusion, Staff said that the proposed rate was calculated in a manner consistent with the Company's past practice and that it did not object to the filing as modified by PSNH's December 12, 2013 update.

III. COMMISSION ANALYSIS

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price of PSNH's energy service shall be its "actual, prudent and reasonable costs of providing such power, as approved by the commission." The genesis of the two-part procedure for calculating default service rates, also referred to as energy service rates, and the reconciliation of those rates, lies in RSA 374-F, and the Settlement Agreement in Docket No. DE 99-009, which implemented electric utility restructuring for PSNH, Order No. 23,443 (April 19, 2000), and Order Nos. 24,117 (January 30, 2003) and 24,125 (Feb. 14, 2003) which further refined the mechanism for setting transition service rates, now energy service rates. Because PSNH is entitled to recover its *actual* costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting energy service rates. The first step, which is determined in this docket, is based upon an estimate of future costs for the following calendar year. The second step, which occurs after the power has been produced or purchased and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.

PSNH has requested an energy service rate of 9.23 cents per kWh for effect with service rendered on and after January 1, 2014 and the Company has provided supporting data and documentation that demonstrates that the rate was correctly calculated. Nonetheless, one of PSNH's competitors, NAPG, alleges that the rate is too low because PSNH did not forecast customer migration in its rates. As counter to that argument, PSNH said in its closing that, for the last half of 2013, the Company experienced an under-recovery of about \$103,000, an amount that has no impact on rates, thus demonstrating that, taken as a whole, its costs and revenues were appropriately aligned for the service period.

We have considered the issue raised by NAPG and though we find some merit to the use of a projected migration rate, we do not find the trend line developed by NAPG to be appropriate. We agree with Staff that the trend line developed by NAPG is overly simplified and omits important economic factors. Therefore, we will not require PSNH to make adjustment to its migration assumption in the energy service rate proposed for effect with services rendered on and after January 1, 2014. We do consider, however, that a projection of customer migration is a key factor for PSNH to utilize in estimating its load forecast for any upcoming service period. Therefore, we find it reasonable to require PSNH in its September 2014 filing (for the 2015 energy service rate) to include a migration forecast and testimony that discusses the Company's expectations regarding the movement of customer migration for the forthcoming period. We will not, however, direct PSNH to use a specific methodology in the development of a customer migration indicator, but instead leave to PSNH the development of a migration forecast methodology it deems sound. To allow full discovery on this issue, we require PSNH to make its 2015 energy service filing no later than September 15, 2014. Upon review of the Company's

customer migration forecast, we will consider whether it should be part of the overall rate calculation for 2015.

We appreciate the comments of CLF and the OCA regarding the continued use of the two-part ratemaking process for PSNH's rates. They are correct that the process is a vestige of restructuring and the result of our efforts to comply with the requirements of RSA 369-B:3, IV(b)(1)(A). Further, the process is required to a great extent because PSNH continues to own generation units. As the parties know, we have opened an investigation into PSNH's continued ownership of generation units. That investigation should continue in an uninterrupted and orderly manner. Given the investigation, we have concluded that it is inappropriate for the Commission to review the energy service rate-setting and reconciliation process currently in place until such time as that investigation is concluded. Depending on the results of the investigation, we will re-examine the merits of the current process used to set rates for PSNH and consider suitable alternatives that are consistent with statutory requirements.

In addition to the adjustment to the energy service rate, PSNH proposed an adjustment to its average stranded cost recovery charge rate also effective with services on and after January 1, 2014. We approved PSNH's stranded cost adjustment by Order No. 25,610 (Dec. 23, 2013). The effect of these rate changes for a residential customer using 625 kWh per month, the average usage for a residential customer taking default service from PSNH, is a monthly bill increase of 4.97%, or an increase from \$106.57 to \$111.87. We find this adjustment to be just and reasonable and consistent with RSA 378:5.

Because the request contained in PSNH's filing is an adjustment to rates, pursuant to RSA 378:40 we must consider whether PSNH's request is consistent with its most recently filed LCIRP that was found adequate by the Commission. The most recent LCIRP filed by PSNH in

2010 was found adequate by the Commission in Order No. 25.459 (January 29, 2013).

Consistent with RSA 378:41, we find that the proposed adjustment to the energy service rate in the instant proceeding is consistent with the LCIRP filed and found adequate in Order No. 25.459.

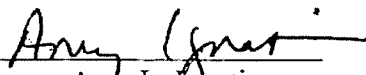
Based upon the foregoing, it is hereby

ORDERED, that the petition of Public Service Company of New Hampshire as amended on December 12, 2013 to adjust its energy service rate to 9.23 cents per kWh; and it is

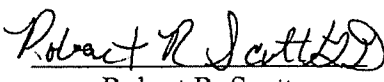
FURTHER ORDERED, that Public Service Company of New Hampshire shall include a customer migration indicator as discussed in this order in its filing for a 2015 energy service rate and the filing shall be due on September 15, 2014; and it is

FURTHER ORDERED, that that PSNH shall file tariffs conforming to this Order within 30 days of the date hereof.

By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of December, 2013.

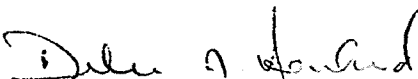


Amy L. Ignatius
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-215

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Interim Adjustment to Default Energy Service Rate

Order Following Hearing

ORDER NO. 25,380

June 27, 2012

APPEARANCES: Sarah B. Knowlton, Esq. on behalf of Public Service Company of New Hampshire; the Office of Consumer Advocate by Rorie E.P Hollenberg, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On May 2, 2012, Public Service Company of New Hampshire (PSNH) filed a request with supporting testimony and schedules to adjust its energy service rate effective with service rendered on and after July 1, 2012. The proposed energy service rate does not include costs associated with the wet flue gas desulphurization system (Scrubber) installed at PSNH's Merrimack Station which are being separately reviewed in Docket DE 11-250. At the time of the filing, PSNH estimated that the revised non-Scrubber portion of the energy service rate would be 6.85 cents per kilowatt-hour (kWh), a decrease from the current non-Scrubber energy service rate of 7.77 cents per kWh. PSNH stated that the proposed decrease in the non-Scrubber energy service rate is primarily due to lower market prices than the level reflected in the current energy service rate. PSNH said that it would file updated calculations of the energy service rate prior to hearing to reflect the actual results for April and May 2012.

The Office of Consumer Advocate filed a letter on October 12, 2011 in the first stage of this proceeding, stating that it would participate in this docket on behalf of residential ratepayers pursuant to RSA 363:28.

The Commission issued an Order of Notice on May 11, 2012 scheduling a hearing for June 19, 2012. On June 12, 2012, PSNH filed an updated non-Scrubber energy service rate with a technical statement and revised schedules.

II. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

PSNH testified that energy service costs include generation asset revenue requirements, entitlements and purchased power obligations, including the fuel used for generation; costs and revenues associated with market purchases and sales; New Hampshire Electric Renewable Portfolio Standard compliance costs (RSA 362-F); Regional Greenhouse Gas Initiative costs (RSA 125-O:19-28); independent power producer (IPP) power valued at market prices; and non-fuel operation and maintenance costs, property taxes and payroll taxes, depreciation, uncollectible costs attributable to energy service, and a return on net generation investment.

In its June 12, 2012 update, PSNH proposed a non-Scrubber energy service rate calculation of 6.95 cents per kWh, an increase of 0.10 cents per kWh from the initial rate of 6.85 cents per kWh estimated by the Company. PSNH attributed the increase to an increase in actual and forecast market prices for power.

PSNH testified that the proposed rate of 6.95 cents per kWh is a decrease from the current non-Scrubber energy service rate of 7.77 cents per kWh. The Commission approved that current non-Scrubber energy service rate in Order 25,346 (April 10, 2012) in Docket DE 11-250,

the docket opened for the purposes of investigating the costs and cost recovery for the installation of the Scrubber at PSNH's Merrimack Station. Order No. 25,346 also established a temporary Scrubber rate of 0.98 cents per kWh. The temporary Scrubber rate of 0.98 cents per kWh added to the proposed non-Scrubber rate of 6.95 cents per kWh results in a total proposed energy service rate of 7.93 cents per kWh. The proposed rate would be a decrease of 0.82 cents per kWh from the currently effective combined energy service rate of 8.75 cents per kWh.

PSNH attributed the decrease to two primary factors: (1) sale of an amount of oil inventory which resulted in a credit of \$8.5 million to default energy service rates, and (2) a partial refund of an over-collection of \$40 million in energy service revenues. In its filing, PSNH proposed to credit the \$40 million over-collection to default energy service rates over a period of 18 months beginning with rates for effect July 1, 2012 for purposes of smoothing expected changes in the energy service rate over that period of time. The Company testified that if the entire over-recovery was credited to default service rates beginning on July 1, 2012, the non-Scrubber portion of the energy service rate would drop to 6.13 cents per kWh, with an estimated potential increase back to 7.5 cents per kWh in 2013, depending on market prices. PSNH said that it expected that the Scrubber portion of the energy service rate will increase following the conclusion of the proceeding in Docket No. DE 11-250, which would further increase energy service rates for 2013. PSNH opined that a radical swing in rates is not in the best interest of customers, and that its proposal to defer a portion of the over-recovery provides reasonable rate continuity for the foreseeable future.

PSNH responded to numerous questions at hearing regarding its customer migration forecast, depreciation and capacity factors experienced by fossil fuel generation plants that were

included in its filing, and the measures that the Company was taking to economize in the operation of its generation units to manage costs for default energy service customers. PSNH testified that the customer migration rate used in its initial filing assumed that 36% of customer load had switched to the competitive market for supply, based on migration levels as of March 2012. In its June 12, 2012 filing, PSNH assumed that 38% of customer load had migrated to competitive supply, based on migration levels as of May 23, 2012. At hearing, PSNH said that the most recent calculation of customer migration was 38.5% as of the end of May. Responding to inquiry, PSNH said that it did not forecast customer migration but preferred to use the actual current customer migration rate in developing its forecast because the Company did not want to influence customer migration rates by projecting a certain level for the future which would impact cost and revenue projections.

The OCA observed that PSNH's generation units' depreciation rates was a subject discussed at the December 19, 2011 hearings in the instant docket. The OCA asserted and PSNH agreed that PSNH's 2012 reconciliation proceeding would be an appropriate docket in which to review PSNH's update to depreciation rates that impacted the 2012 energy service rate. Hearing Transcript of June 19, 2012 (6/19/2012 Tr.) at 22-23.

Staff asked PSNH to explain an expense associated with the cancellation of certain contracted coal deliveries. PSNH said that when the price of power on the market is less than the price of power generated by the coal units, the Company saves money by purchasing power on the market rather than running its coal-fired plants for energy production. That being the case, the Company decided not to take delivery of certain coal and attempted to sell the coal in the market for other purposes. When such a sale did not materialize, PSNH incurred an expense of

\$2.3 million for cancelling the delivery, pursuant to the terms of the contract for the purchase of coal. That expense, however, was offset by a larger amount of savings in energy expenses, resulting in a net benefit to customers. *Id.* at 39-41.

Staff also inquired about the projected changes in the operation of PSNH's coal units in 2012. PSNH said it forecasted reduced operation of its coal units for the remainder of 2012 because it is expected to be more economical at times to purchase power on the market than to operate the plants to serve load. PSNH agreed with Staff that the coal units have historically been considered base load units, but PSNH testified that it does not expect those units to be running over the course of a year as a base load unit would typically run. *Id.* at 43-44.

Staff noted that the response to Staff Set 2, question number 11 (contained in Exh. 14) provided a general description of the impact of the reduced operation of PSNH's fossil units on employment levels at the plant. *Id.* at 46. The Company testified that based on the price of different fuel commodities and the economy, PSNH has assessed the staffing needs as well as its maintenance and capital budget to align the expenses and costs of its fossil fuel units with each unit's capacity factor and the market. *Id.* at 50. PSNH said that while it had not filled open positions at the fossil fuel generation units, the Company did not have a formal plan or process whereby it reviewed staffing needs or unit operations to reduce costs to reflect the reduced operations of its fossil fuel plants. *Id.* at 52 and 86.

B. Office of Consumer Advocate

The OCA stated that 100% of the over-collection should be applied to rates for effect July 1, 2012 to most closely match the over-recovery to the time in which it occurred and to mitigate year-end over recoveries. The OCA also said that it agreed that the depreciation rates

for PSNH's generation plants could be reviewed in PSNH's reconciliation docket regarding calendar year 2012. The OCA stated that it otherwise had no objection to the filing.

C. Commission Staff

The Staff said it did not support the request as filed. Staff recommended that the Commission allocate the full over-recovery of \$40 million to energy service rates to take effect July 1, 2012.

III. COMMISSION ANALYSIS

Pursuant to RSA 369-B:3, IV(b)(I) (A), the price for PSNH's energy service shall be PSNH's actual, prudent and reasonable costs of providing the power, as approved by the Commission. Based on our review of the petition and the evidence in the record, we find that the calculations and related documentation support PSNH's request for a mid-term adjustment to its energy service rate. We disagree, however, with the Company's proposal to defer the \$40 million over-recovery to rates over an 18-month period.

RSA 369-B:3, IV(b)(I) (A) requires the Commission to consider PSNH's "actual" costs for providing power, which in this case includes the over-recovery that the Company estimates for calendar year 2012. In the hearing in Docket DE 11-217, regarding the proposed mid-year adjustment to PSNH's stranded cost recovery (SCRC), the Company took the position that a forecasted \$26 million under-recovery of SCRC costs for 2012 should be recovered over the remainder of 2012, to match the under-recovery to the time period in which it occurred. Transcript in Docket DE 11-217, June 19, 2012, at 25. We find that it is appropriate and consistent with RSA 369-B:3, IV(b)(I) (A) and the Company's position in Docket DE 11-217 to match any over- or under- recoveries in energy service revenues with the time period in which

they incur. Consequently, we deny PSNH's request to defer the over-recovery in energy service revenues. Instead, we require the Company to apply the entire \$40 million over-collection to energy service rates for effect July 1, 2012, which results in a non-Scrubber rate of 6.13 cents per kWh, using PSNH's calculations.

We also direct the Staff to review PSNH's revised 2012 depreciation rates for its generation units in the Company's reconciliation proceeding for calendar year 2012.

Finally, we direct the Company to undertake a systematic review of operation, materials and capital costs, including personnel costs, associated with the operations of its fossil fuel plants given the low capacity factors of these units in recent years and the current expectation of them remaining low over the next few years. The review should also include any costs that are billed to the fossil plants such as engineering and regulatory support. PSNH shall provide details regarding its review and analysis at the time it makes its next energy service rate filing. The Company shall also provide actual cost calculations for calendar year 2011 and develop an updated forecast of costs and expenses associated with the operation of its fossil fuel plants for calendar years 2012 and 2013 for the Commission's review and evaluation. For the units at Merrimack Station, the directive is limited to non-Scrubber related operations and other costs.

This is one of several orders we are issuing for PSNH rates for effect with service rendered on and after July 1, 2012: the instant proceeding, an adjustment to PSNH's energy service charge; Docket DE 12-110, distribution rates for additions to net plant and consultant costs, and an adjustment to collections to be deposited in PSNH's major storm reserve; Docket DE 11-217, PSNH's a mid-year adjustment to PSNH's stranded cost recovery charge; and Docket DE 12-159, an adjustment to PSNH's transmission cost adjustment mechanism. Overall,

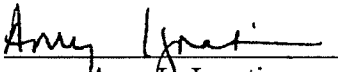
the average total bill impact of these rate changes effective July 1, 2012 is an approximate decrease of 4.4 % for a PSNH customer who takes energy service from PSNH (i.e., the customer does not purchase energy from a competitive supplier). We find these rates to be just and reasonable pursuant to RSA 378:7.

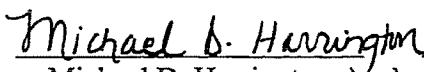
Based upon the foregoing, it is hereby

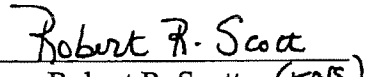
ORDERED, that Public Service Company of New Hampshire is authorized to adjust the non-Scrubber portion of its energy service rate from 7.77 cents per kWh to 6.13 cents per kWh effective with service rendered on and after July 1, 2012; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariff pages pursuant to Puc Part 1603 that conform with this order within 30 days hereof.

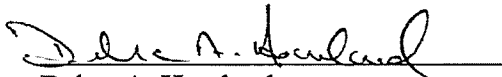
By order of the Public Utilities Commission of New Hampshire this twenty-seventh day of June, 2012.


Amy D. Ignatius
Chairman


Michael D. Harrington (KNS)
Commissioner


Robert R. Scott (KNS)
Commissioner

Attested by:


Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-215

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Default Energy Service Rate for 2012

Order Approving 2012 Energy Service Rate

ORDER NO. 25,313

December 30, 2011

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

I. PROCEDURAL HISTORY

On September 23, 2011, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service (ES) rate to take effect for service rendered on and after January 1, 2012. Pursuant to RSA 369-B:3, IV(b)(1)(A), customers taking ES from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 8.39 cents per kilowatt hour (kWh) for the 2012 ES rate, but stated that a final proposed rate would be filed prior to the hearing to reflect the most recent estimates of fuel and energy costs. In support of its filing, PSNH submitted the testimony and related exhibits of Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the Northeast Utilities operating subsidiaries, including PSNH.

The Commission issued an order of notice on October 5, 2011, scheduling a prehearing conference for October 17, 2011. On October 12, 2011, the Office of Consumer Advocate (OCA) notified the Commission of its participation on behalf of residential ratepayers consistent with RSA 363:28. On October 14, 2011, the Conservation Law Foundation filed a Petition to Intervene, which the Commission granted on October 20, 2011.

Also on October 14, 2011, PSNH filed an update of the ES rate with estimated costs of the wet flue gas desulfurization system (Scrubber Project) at Merrimack Station. In the update, PSNH claimed that the Scrubber Project began operation on September 28, 2011 and was used and useful as of that date. PSNH calculated that the then-current cost of the Scrubber Project would add 1.18 cents per kWh to the ES rate, and estimated the total ES rates for effect January 1, 2012 to be 9.57 cents per kWh, inclusive of the Scrubber Project costs. The updated filing included revised testimony of Robert A. Baumann and testimony of William H. Smagula, Director of Generation for PSNH. PSNH restated its intention to further update the ES rate based on more current forward market prices and Scrubber Project costs closer to the date of the hearing in this matter.

On October 19, 2011, Staff filed a proposed procedural schedule, which the Commission approved by secretarial letter dated October 20, 2011. The procedural schedule noticed a hearing for December 19, 2011.

On November 4, 2011, Commission Staff filed a letter requesting that the Commission either assign a separate docket for consideration of the Scrubber Project costs, or extend the time within the current docket for consideration of those costs. Staff indicated that all parties except PSNH agreed with its recommendations, while PSNH took no position but stated that it would file a response. In its November 4, 2011 response, PSNH said that while it agreed that the

prudence of and amount of Scrubber Project costs could be determined by the Commission in a separate docket, it would be in the best interest of PSNH customers to place the estimated Scrubber Project costs into ES rates as of January 1, 2012, to avoid deferral of approximately \$61 million in Scrubber Project costs that would accrue over the duration of a prudence review, which it estimated to be one-year.

On November 15, 2011, the Commission issued a secretarial letter stating that it would open a separate docket in which to consider the scrubber's in-service status, PSNH's prudence, the appropriate rate treatment and the costs of the Scrubber Project. The Commission said that the Company's October 14, 2011 filing would be treated as PSNH's petition initiating the separate docket, subsequently designated as Docket No. DE 11-250.

On November 16 and 17, 2011, PSNH filed motions for protective orders for information provided in response to certain data requests including: details concerning known supplemental power purchase contracts for the year 2012; information supporting the calculation of costs to comply with the New Hampshire Renewable Portfolio Standard (RPS) Law (RSA Chapter 362-F); and the dates and duration of planned maintenance outages at major generating stations during 2012.

Also on November 17, 2011, PSNH filed a motion for protective order regarding responses to Staff 1-15, which related to costs associated with the Scrubber Project. The OCA filed a letter on December 2, 2011, stating that the parties had agreed that certain discovery on the Scrubber Project propounded in the instant docket would be transferred to Docket No. DE 11-250, the docket designated for investigation of the Scrubber Project costs.

On December 14, 2011, PSNH filed a Motion for Postponement of the December 19, 2011 Hearings in the instant proceeding and in Docket No. DE 11-217, the docket to establish

PSNH's 2012 stranded cost recovery charge (SCRC) rate. The Motion was filed pursuant to a Request for Waiver of Puc 203.13(a). The Motion asserted that it is in the public interest to postpone consideration of the Company's ES rate and SCRC rate until a date close in time to the Commission's consideration of PSNH's request for temporary rates in the Docket No. DE 11-250 Scrubber Project docket.¹ PSNH recommended that the current ES rate of 8.89 cents per kWh be continued in the short term until review and Commission action occurs in the temporary rate portion of the proceeding in Docket No. DE 11-250.

On December 16, 2011, the Commission issued a secretarial letter stating that the hearings in Docket No. DE 11-217 and the instant proceeding would be held as scheduled, and notified the parties that the Commission would take up arguments on the Motion for Postponement at the outset of the hearing.

Following the hearing on December 22, 2011, PSNH filed a response to a record request made at hearing, reserved for identification as Exhibit 7. The Record Request sought the Company's legal and technical bases for its decision to change the average year of final retirement of certain generation plants, which resulted in a change to annual depreciation expense.

II. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

In prefiled testimony, PSNH witness Robert A. Baumann stated that the Company's current ES rate of 8.89 cents per kWh was established by the Commission in Order No. 25,242 (June 28, 2011). Based on preliminary calculations, Mr. Baumann said that, for the period

¹ PSNH's Motion stated that the proposed procedural schedule in Docket No. DE 11-250 included suggested hearing dates regarding temporary rates for February 15 and 16, 2012. The Company asked that the hearings in DE 11-215 and DE 11-217 be rescheduled to be close in proximity to the temporary rate hearing in DE 11-250 with the goal of having on simultaneous rate adjustment to be effective March 1, 2012.

January 1, 2012 through December 31, 2012, PSNH's prudent and reasonable cost of providing energy service was expected to be 8.39 cents per kWh. Mr. Baumann testified that this rate did not include an additional cost for the legislatively-mandated installation of the Scrubber Project at the Merrimack Station. At the time of the initial filing, PSNH expected to update its proposed ES rate calculation for January 1, 2012 billing, once the Scrubber Project was operating and reducing Merrimack Station emissions.

Mr. Baumann testified that the major cost categories comprising the ES costs are the revenue requirements for owned generation assets and the costs of purchased power obligations, the fuel costs associated with PSNH's generation assets, the costs from supplemental energy and capacity purchases, certain Independent System Operator-New England (ISO-NE) ancillary service charges and the cost of compliance with the New Hampshire RPS and the Regional Greenhouse Gas Initiative (RGGI). The generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance (O&M) costs, allocated administrative and general costs, depreciation, property and payroll taxes, and a return on the net fossil/hydro investment.

Mr. Baumann testified that the level of migration (the percentage of customer load receiving energy supply service from competitive suppliers) assumed in the Company's initial filing reflected the actual August 31, 2011 migration level of 33.4%. In proposing an ES rate for 2012, PSNH said it did not presume that customers will migrate more or less than the actual level.

PSNH included Independent Power Producer (IPP) generation as a source of power to meet PSNH's load requirements, and stated that IPP power costs are based on projected market costs for energy and capacity. PSNH said that the over-market costs of purchases from the IPPs

are recovered through Part 2 of the SCRC rate. As market prices change, the value of IPP purchases recovered through the ES rate changes. At the same time, however, there is a corresponding change to the SCRC rate for the above-market value of IPP purchases. To properly match the recovery of IPP costs, PSNH said it also separately filed for a change in the SCRC rate for effect on January 1, 2012 (Docket No. DE 11-217).

As provided in the procedural schedule, PSNH updated its ES rate calculations on December 14, 2011, which included a technical statement that explained the changes between the initial filing and the update. The update requested approval of an ES rate of 7.90 cents per kWh, a reduction of 0.49 cents per kWh from the energy service rate in the initial filing, and a reduction of 0.99 cents per kWh from the current rate of 8.89 cents per kWh. According to PSNH, the decrease in the ES rate calculated for 2012 was attributable to a reduction in the cost of power in updated actual costs and forecasted market prices along with a lower sales forecast and increased actual customer migration of 34.0%. Other factors contributing to the lower rate were lower expected O&M costs for 2012 due to fewer scheduled outages at PSNH's generation units, a one-time sale of excess coal resulting in \$5 million in additional revenue, a \$5 million reduction in depreciation based on the Company's recalculation of the useful life of several generation units, and a \$2 million lower return on rate base reflecting the latest actual debt service costs.

At hearing, PSNH reiterated the argument made in its Motion for Postponement regarding the merits of keeping the current ES rate of 8.89 cents per kWh in place until such time as the Commission arrived at a temporary rate associated with the Scrubber Project costs in Docket No. DE 11-250. According to PSNH, if the ES rate was decreased to 7.90 cents per kWh effective January 1, 2012 and the 1.18 cents per kWh requested by the Company as the

temporary rate for recovery of costs associated with the Scrubber Project was added to the rate shortly thereafter, it would result in a total ES rate of 9.08 cents per kWh. PSNH characterized these rate changes as volatile and not in customers' best interests.

By way of illustration, the Company depicted five rate scenarios to illustrate the ES rate trajectory over a twelve-month period based on different assumptions about timing of temporary rates for the scrubber. (Exh. 3)² At one extreme, PSNH assumed an ES rate 7.90 cents per kWh effective January 1, 2012 for the entire calendar year, which would result in a deferred balance of \$60 million by January 1, 2013. (Exh. 3, Case 1). In another scenario, PSNH assumed an ES rate of 7.90 cents per kWh for January 1, 2012 and an increase of 1.21 cents per kWh on March 1, 2012, the assumed effective date for temporary rates in Docket No. DE 11-250 (Exh. 3, Case 3); this scenario was undesirable, according to the Company, because it resulted in rates dropping almost a penny per kWh in January and increasing by just over a penny two months later, thus creating rate volatility for customers. The preferred scenario, according to PSNH, was to hold the current ES rate of 8.89 cents per kWh in place for the time being, and add the temporary rate for Scrubber Projects costs for a total ES rate of 9.15 cents per kWh effective March 1, 2012. (Exh. 3, Case 4). The Company argued that this last scenario provided the greatest benefits to customers by avoiding cost deferrals and that the resulting rates are consistent with the public policy goals of rate stability and continuity.

The OCA inquired as to a calculation on Exhibit 2, Attachment RAB-1, page 1. On that attachment, the OCA pointed out that there appeared to be an incorrect calculation and that the estimated ES rate of 7.90 cents per kWh should be 7.91 cents per kWh. The Company said that it had truncated the full calculation rather than rounding and that the appropriate rate is 7.91

² At hearing, the Commission said that it considered Exh. 3 to be merely illustrative and that the Exhibit would not be used to form an opinion as to whether any costs associated with the Scrubber Project are prudent.

cents per kWh. In response to further questioning, the Company's witnesses said that the difference between the two rates was about \$500,000 in revenue over the period of 12 months.

At the close of the hearing, PSNH asked that the Commission grant the relief requested in its Motion for Postponement and allow the ES rate to remain at 8.89 cents per kWh until such time as the Commission rules on temporary rates for the Scrubber Project. PSNH said that such relief was consistent with the Commission's traditional treatment of capital additions in PSNH's annual ES reconciliation proceedings.

B. Conservation Law Foundation

CLF argued in its closing that PSNH should not be allowed to include scrubber costs in the ES rate when those costs are being considered in a separate docket. According to CLF, PSNH's request largely relies on the ratemaking principles of rate stability and continuity but, in its view, the Commission should consider the policy in the State of New Hampshire that promotes competitive retail choice to customers rather than rate stability or continuity in determining the merits of PSNH's request.

CLF said that retail choice requires transparency in rates, and that allowing PSNH to "hide" what rates contain – in this case, some portion of the costs of the Scrubber Project— — hinders retail choice. Further, CLF said that because retail choice implies that customers do not have to take energy service from PSNH, no customer has the obligation to pay for the costs of the scrubber. CLF concluded by stating that PSNH should not be allowed to mask the scrubber costs in the ES rate, which is the intent of its proposal to continue rates at the current level.

C. OCA

The OCA expressed agreement with CLF's position. The OCA noted the statutory basis for setting PSNH's ES rates, which provides that PSNH can only recover through rates "the

actual, prudent and reasonable costs of providing such power.” RSA 369-B:3, IV(b)(1)(A). The OCA also pointed out that the testimony supported the calculation of the ES rate to be 7.91 cents per kWh, not 7.90 cents per kWh as contained in the Company’s updated filing.

The OCA said that the Company’s proposal to include a temporary rate for the Scrubber Project in ES rates negates the effect of the Commission’s decision to open a separate proceeding on scrubber costs and costs recovery, and disagreed with the assertion that allowing PSNH to begin recovery of those costs with rates effective January 1, 2012 is in the best interests of customers.

D. Staff

Staff said that it had reviewed the filing and that PSNH had calculated the updated ES rate in a manner consistent with its practice in past ES rate proceedings. Regarding the merits of whether to keep the rate at its current level or to decrease it to the updated rate of 7.90 or 7.91 cents per kWh, Staff said that it did not have any particular recommendation but that reducing the ES rate to the most recent updated level was the purest approach. Staff said that if the current rate were to be kept in place, the primary consideration would be to apply any over-recoveries to the benefit of customers. Finally, Staff said that PSNH’s change in the useful lives of certain of its generating units warranted additional review and that such review could be accomplished in the Company’s annual reconciliation filing or in its usual mid-year request for an adjustment to ES rates.

III. COMMISSION ANALYSIS

A. Motions for Protective Treatment

First we address PSNH’s requests for confidential treatment of certain information provided in response to data requests. Specifically, PSNH requested protective treatment for

responses to Staff 1-10, which provided information regarding details of the supplemental power purchase contracts entered into by PSNH for calendar year 2012; Staff 1-11, which described how PSNH planned to comply with its 2012 RPS requirements and provided a breakdown of associated costs; and Staff 1-8, which disclosed PSNH's 2012 major maintenance outage schedule. PSNH also requested confidential treatment for responses to Staff 1-15, which relates to Scrubber Project costs. Because we have opened a separate docket for consideration of the Scrubber Project, we will defer consideration of the request for confidential treatment for responses to Staff 1-15 to that proceeding.

PSNH claimed a privacy interest in the information provided in connection with each of these data requests. With respect to information regarding its proposed compliance with its 2012 RPS requirements provided in response to Staff 1-10 and the details of supplemental power purchase details provided in response to Staff 1-11, PSNH asserted that the information is confidential commercial information eligible for protection from public disclosure under RSA 91-A:5, IV. According to the Company, contracts with parties selling supplemental power and contracts for the sale of renewable energy certificates (RECs) for RPS compliance are kept confidential to protect both parties. PSNH said that release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power and RECs. Further, PSNH said that suppliers may not want to negotiate future supply contracts or RECs if they assume that the information in the final contract will be made public. According to PSNH, fewer suppliers means a less competitive market in which PSNH will procure RECs and supplemental power supplies. PSNH said that a similar motion was granted in a prior ES rate proceeding, citing Docket No. DE 10-257, *Public Service Company of New Hampshire*, Order No. 25,187 (December 29, 2010).

Staff 1-8 requested the Company's schedule for planned maintenance outages at its generating plants for calendar year 2012. According to PSNH, the dates and durations of scheduled plant outages are confidential commercial information potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH said that release of the information to the public, including competitive market participants, places PSNH at a distinct disadvantage when it plans to purchase energy to supply its customers during times when major generating stations are undergoing planned maintenance. The Company said that customers are harmed if the competitive market knows the distinct periods when PSNH must supplement its normal energy needs to replace the production from major generation stations. PSNH stated that this disadvantage will persist as long as PSNH is supplying energy service and as long as PSNH owns generation. PSNH noted that the Commission granted a similar motion in its 2010 ES rate setting proceeding, Docket No. DE 09-180, Order No. 25,061 (December 31, 2009).³

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We have had occasion to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382

³ PSNH's motion referenced the 2010 proceeding, Docket No. DE 10-257, but referenced the order in Docket No. DE 09-180, the 2009 default service proceeding. The Orders in both dockets recognized the confidential nature of PSNH's proposed outage schedule for the forthcoming calendar year.

(2008) in determining whether the information identified by PSNH should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure that interest is balanced against any privacy interests in non-disclosure. *Id.*

We have previously applied the analysis to the same types of information for which PSNH has requested confidential treatment in past ES proceedings. *See, e.g.*, Order No. 25,061 (December 31, 2009) in Docket No. DE 09-180 and Order No. 25,187 (December 29, 2010) in Docket No. DE 10-257. In the instant proceeding, we have reviewed *in camera* the responses to the data requests for which PSNH requests confidential treatment to assist in our deliberation of PSNH's motions for confidential treatment and we find that the information for which PSNH requests confidential treatment is confidential within the meaning of RSA 91-A:5, IV.

Next we assess the public's interest in the disclosure of the information. Some of the information for which PSNH seeks protection pertains to the costs incurred by the Company in connection with supplemental power supply and RECs contained in the responses to data requests Staff 1-10 and 1-11. PSNH uses these costs in the calculation of an estimated energy service retail rate and the public disclosure of these costs would allow for a detailed understanding of the various cost components in ES rates. Disclosure of those costs, however, sheds little light on the operation of government. As a result, we find that the public has a limited interest in the disclosure of this information.

Finally, in weighing the public interest in disclosure against privacy interest, we find that the harm to the Company and its customers from disclosure of this information outweighs the benefits of public disclosure. We therefore grant the motions for confidential treatment for the Company's responses to the data requests identified as Staff 1-10 and Staff 1-11.

In the case of the information regarding planned outages, Staff 1-8, PSNH stated that disclosure of this response would inform suppliers when PSNH would be looking to supplement its owned generation supply. If this information were made public, PSNH would be at a competitive disadvantage in securing supplemental power for the times when it needed supplemental power and would be impeded from providing service to its customers at reasonable rates. We find that disclosure of this information does not serve to inform the public concerning the rates reviewed in this proceeding and that disclosure could harm customers who may pay higher costs for replacement power if the outage schedule were disclosed. Therefore, we do not find that the public has an interest in disclosure of this information and grant the motion for confidential treatment to the response to data request Staff 1-8.

We note that the protection provided to the responses to Staff 1-10 regarding supplemental power purchases is limited by the reporting requirements of the Federal Energy Regulatory Commission (FERC). Pursuant to 18 CFR §35.10b, wholesale suppliers are required to file Electric Quarterly Reports (EQR) with FERC. In the EQR, suppliers must summarize contractual terms and conditions in their agreements for sales of wholesale electricity and transmission that is an unbundled part of a power sale. The reporting requirement applies to any unexpired agreement existing as of the reporting period. EQR data are public information and are not protected from disclosure. Therefore, the protective order we grant herein is in effect only until such time as the information provided in response to Staff 1-10 is disclosed by the

wholesale suppliers in the EQR reports. This limitation is consistent with prior rulings on the confidentiality of the terms of supplemental power sales. *See, e.g.* Order No. 25,167 (November 9, 2010) at 16. Similarly, while the response to Staff 1-11 provides details of PSNH's plan to procure RPS compliance for 2012, at some point in time the response to DR Staff 1-11 will be historical information that could be made available to the public upon request to the Commission.

Based on the foregoing analysis, and consistent with N.H. Code of Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order.

B. PSNH 2012 Energy Service Rate

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price of PSNH's ES shall be its "actual, prudent, and reasonable costs of providing such power, as approved by the commission." The genesis of the two-part procedure for calculating default service rates, which PSNH refers to as ES rates, and the reconciliation of those rates, lies in RSA 374-F and the Settlement Agreement in Docket No. DE 99-099, which implemented electric utility restructuring for PSNH, and Docket No. DE 02-166, Order No. 24,117 (January 30, 2003), which further refined the mechanism for setting transition service rates, now ES rates. Because PSNH is entitled to recover its *actual* costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting ES rates. The first step, which is determined in this docket, is based upon an estimate of future costs for the following calendar year. The second step, which occurs after the power has been produced or purchased

and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.

In its updated filing, PSNH estimated the actual cost of power for customers who continue to take electric service from PSNH to be 7.91 cents per kWh⁴, a reduction from the current rate of 8.89 cents per kWh, which is based on the lower actual and forecast cost of power, excluding recovery of Scrubber costs. At the same time, in its Motion for Postponement, PSNH requests that we allow the Company to hold the rate at its current level for the sake of rate stability and continuity in light of its requests for a temporary rate in Docket No. DE 11-250 and to begin recovering costs of the Scrubber Project with rates effective January 1, 2012.

To resolve PSNH's motion we must consider potentially competing policy goals, including the statutory guidance that PSNH's ES rate be its "actual" costs or providing power and the ratemaking principle of rate "[s]tability and predictability with a minimum of unexpected changes." PSNH Motion for Postponement at 3 (citations omitted). In that context, we are concerned about the volatility in rates that would result from decreasing the ES rate from 8.89 cents per kWh to 7.91 cents per kWh (a decrease of 0.98 cents per kWh) effective January 1, 2012, followed shortly by a substantial increase in rates of the magnitude sought by PSNH as temporary rates in Docket No. DE 11-250. At the same time, we are not inclined to maintain ES rates at their current level because they would be substantially in excess of actual costs and could arguably be construed to include costs of the Scrubber Project, which have been expressly reserved to Docket No. DE 11-250.

Based on the record before us in this docket, we have determined that there is an alternative approach that permits us to establish a cost-based rate at a level that can mitigate the effects of potential rate volatility. We begin the analysis with PSNH's December 14 updated

⁴ The rate of 7.91 cents per kWh assumes the elimination of the truncated calculation in PSNH's updated filing.

calculation of the estimated ES rate (Exhibit 2). PSNH calculates the ES rate as an average annual rate based on estimated forecasts of monthly energy costs and energy sales. PSNH's estimated monthly costs for January and February 2012 are 8.08 cents per kWh and 8.06 per kWh, respectively.⁵ The resulting average energy service cost for these two months is 8.07 cents per kWh. On Attachment RAB-1, page 1 of Exhibit 2, PSNH's calculation of the ES rate for 2012 included an under-collection of \$2.155 million carried over from 2011. Recovery of this under-collection over the total forecasted retail megawatt-hour (MWh) sales of 888,372 MWh for the months January and February 2012, instead of over the entire year, would add an increment of 0.24 cents per kWh to the ES rate, resulting in a total ES rate for those two months of 8.31 cents per kWh. We also acknowledge that the level of temporary rates sought by PSNH in Docket No. DE 11-250 represents the extreme in potential rate volatility and that there are other conceivable temporary rate levels that could be set that would be more conducive to rate stability.

Based on this analysis, we deny the Company's motion to postpone changes to both the ES and SCRC rates and we approve an ES rate of 8.31 cents per kWh for the months of January and February 2012. This ES rate includes an additional charge to recover the existing under-recovery over this two month period as described above. We will keep this docket open and will consider any further adjustments to the ES rate that may be needed, for effect on March 1, 2012, pending our determination of a temporary rate in Docket No. DE 11-250.

With respect to the discussion at hearing about the Company's changes to the average year of final retirement for several of its generating units and agree that it warrants additional investigation, we direct Staff to promptly pursue this inquiry. Finally, we will grant the OCA's December 2, 2011 request to transfer discovery from the instant proceeding to Docket No. DE

⁵ Exhibit 2, Attachment RAB-2, Page 1 (line 28).

11-250 and suspend any applicable deadlines regarding motions to compel regarding the subject discovery requests with such issues to be addressed in that docket according to the approved procedural schedule.

Based upon the foregoing, it is hereby

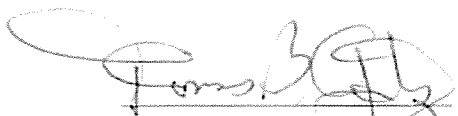
ORDERED, that Public Service Company of New Hampshire's Motion for Postponement is DENIED; and it is

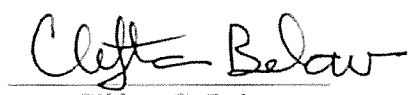
FURTHER ORDERED, that Public Service Company of New Hampshire shall establish an energy service rate of 8.31 cents per kWh for services rendered on and after January 1, 2012 until such time as the Commission approves any adjustment to that rate; and it is


FURTHER ORDERED, that Public Service Company of New Hampshire's motions for protective treatment are hereby GRANTED subject to the conditions discussed herein; and it is

FURTHER ORDERED, that that Public Service Company of New Hampshire shall file tariffs pursuant to New Hampshire Code of Admin Rules Puc 1603 conforming to this Order no later than 30 days hereof.

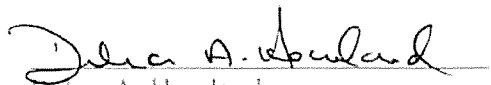
By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-257

Public Service Company of New Hampshire

Petition for Mid-Year Adjustment to the Energy Service Rate

Order Approving Adjustment

ORDER NO. 25,242

June 28, 2011

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

I. PROCEDURAL BACKGROUND

On May 4, 2011, Public Service Company of New Hampshire (PSNH) filed a petition with supporting testimony and schedules requesting an interim change to its energy service rate effective with service rendered on and after July 1, 2011. PSNH's current energy service rate is \$0.0867 per kilowatt-hour (kWh) as approved by the Commission in Order No. 25,187 (December 29, 2010). Pursuant to N.H. RSA 369-B:3, IV(b)(1)(A), the price for PSNH's energy service must reflect PSNH's actual, prudent and reasonable costs of providing the power. In prior energy service proceedings, the Commission has approved a twelve-month rate and has allowed any party to request a mid-term adjustment to the rate to avoid large over- and under-recoveries. In its filing, PSNH estimated that the new rate would be \$0.0874 per kWh, but noted that, as in past mid-year filings, it would update the projected costs and rate calculations in June, prior to the hearing.

The Office of Consumer Advocate (OCA) previously filed a letter on October 5, 2010, stating that it would be participating in the instant docket on behalf of residential ratepayers

consistent with RSA 363:28. An order of notice was issued on May 10, 2011 scheduling a hearing for June 23, 2011. PSNH updated its filing for a mid-year adjustment on June 13, 2011.

On June 3, 2011, PSNH filed a response to Staff data request Set 2-Q-02 with a statement that a portion of the requested information regarding maintenance outage schedules was filed under a motion for protective order dated November 4, 2010 in the instant proceeding.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In its June 13, 2011 update, PSNH proposed an updated energy service rate calculation of \$0.0889 per kWh to be effective July 1, 2011, which is an increase of \$0.0022 per kWh to the current energy service rate of \$0.0867 per kWh. PSNH's updated filing was based on actual results through the end of May 2011 and an updated forecast for the period June through December 2011. PSNH attributed the increase to a slight increase in current and forecast market prices plus additional customer migration.

PSNH also updated the rate of customer migration in the June 13 filing based on actual information available as of the end of May 2011. PSNH said that in its original filing, the then-known rate of customer migration was 32.2% of load, and that as of the end of May, the migration rate was 34.8 percent. In its update, PSNH used a migration rate at the 34.8% level. At hearing, PSNH said that the 34.8% migration rate was the highest that the Company had experienced. PSNH testified that it does not forecast migration but opined that the existing migration would not reverse. According to PSNH, the energy service rate for customers not taking service from a competitive supplier is projected to be approximately \$0.006 higher as a result of customer migration.

Numerous questions were posed to PSNH during the hearing regarding the operation of its Newington Station generating facility. In its May 4 filing, PSNH forecast operation of Newington Station at 85 gigawatt-hours (GWh), but decreased that forecast in its July 13 update to 46 GWh. PSNH said that the 2011 capacity factor for Newington was expected to be 5.6%. The Company said that Newington Station can burn oil or gas, and that while Newington is currently primarily burning gas, its 2011 capacity factor for oil is expected to be about 1.0 percent. PSNH testified that it maintains a residual fuel oil inventory at Newington Station and that, as of December 31, 2010, that inventory consisted of 331,324 barrels of oil with a value of \$18.5 million. PSNH acknowledged that it received a return on the value of the oil inventory as part of the return on rate base calculation.

PSNH said that the amount of oil in inventory would allow the plant to operate on-peak 16 hours a day for about 6 ½ weeks. On June 24, PSNH filed a letter clarifying that if Newington was called on to run at full load around the clock, the oil inventory on hand would be sufficient for the plant to run for approximately 21 days. In response to questioning at hearing, PSNH said that it had explored selling the oil but was not actively pursuing that option. PSNH also agreed that the capacity at its fossil plants was lower in 2011 than in recent years, in part due to the plants being uneconomic at certain hours.

PSNH said that it had proposed other rate changes for effect on July 1, 2011. Those changes include changes to average stranded cost adjustment charge (SCRC) rate (Docket No. DE 10-256), the transmission cost adjustment mechanism (TCAM) rate (Docket No. DE 11-133), and changes to the distribution rate pursuant to the settlement agreement approved by the Commission in Docket No. DE 09-035, PSNH's most recent distribution rate proceeding. *See*, Order No. 25,123 (June 28, 2010). The distribution rate changes include recovery for exogenous

events (Docket No. DE 11-070) and a step adjustment for additions to net plant (Docket No. DE 11-095). In addition, PSNH had requested recovery of wind storm expense (Docket No. DE 11-082) for effect on July 1, 2011. PSNH said that Docket No. DE 11-082 also includes a request to recover through distribution rates the incremental marketing costs associated with PSNH's renewable energy service option pursuant to a settlement agreement approved in Docket No. DE 09-186. *See*, Order No. 25,080 (March 5, 2010).

PSNH testified that the requested change in the energy service rate is a 2.54% increase from the current energy service rate. PSNH requested that the rate change be effective for service rendered on and after July 1, 2011.

B. Office of Consumer Advocate

The OCA stated that it did not support the increased rate. According to the OCA, the rate is over market and exceeds the energy service rate for the other distribution utilities in the state. The OCA pointed out that the effect of customer migration increased the rates by approximately \$25 million over the rate base. The OCA said these higher rates would be borne primarily by residential customers.

The OCA opined that PSNH should take aggressive steps to reduce the cost of service and reduce the inventories of oil and coal or voluntarily forgo a portion of the return – for example, the return earned on fuel inventory – typically included in its rates. The OCA concluded by stating that PSNH had the statutory duty to operate its generation fleet for the benefit of customers and that the results of this filing suggested that it was not meeting that responsibility.

C. Staff

Staff said that, based on its investigation of the filing, the Company calculated the estimated energy service rate for 2011 in the same manner as in prior energy service filings. Staff expressed concern that the trend in customer migration has resulted in increased costs for the customers remaining on PSNH default service. Staff pointed out that PSNH's estimated rates were based on its plans and proposed projects, and that the actual costs would be reviewed in the annual reconciliation of energy and stranded charge costs. Staff concluded by recommending that the Commission approve PSNH's estimated energy service rate of \$0.0889 per kWh for service rendered on and after July 1, 2011.

III. COMMISSION ANALYSIS

Pursuant to RSA 369-B:3, IV(b)(1)(A), PSNH's energy service rate must allow for recovery of the actual, prudent, and reasonable costs of providing the power, as approved by the Commission. Based on our review of the petition and evidence in the record, we find that the calculations and related documentation support PSNH's request for a mid-term adjustment to its energy service rate. We find PSNH's calculations to be reasonable and we approve the energy service rate of \$0.0889 per kWh effective with service rendered on and after July 1, 2011.

While we find the calculations reasonable, we remain concerned about the fact that migration of the large commercial and industrial customers to competitive supply results in higher rates being borne by the customers, principally residential and small commercial customers, remaining on PSNH's default service, compared with what such rates would be absent the high levels of migration. We will address this issue in Docket No. DE 10-160 that we opened to investigate the effects of migration of PSNH's large customers on energy service rates. We also note that the continued operation of Newington Station is being addressed in Docket No.

DE 10-261, PSNH's most recent least cost plan filing. As for the fuel inventory at Newington Station, we have not been presented with any definitive evidence that the level of inventory is excessive. The actual level of inventory held throughout the year can be taken under consideration in both the 2010 energy service reconciliation proceeding, Docket No. DE 11-094, as well as the 2011 reconciliation proceeding that will be filed in May 2012.

For the hearings held on June 23, 2011 in Docket No. DE 10-256, Docket No. DE 10-257, Docket No. DE 11-133 and Docket No. DE 11-082, the Commission takes administrative notice of the hearing record in each proceeding, including record requests, in each of the other dockets.

We note that PSNH filed a portion of its response Staff data request Set 2-Q-02 related to scheduled maintenance outages at its generation plan with a statement that the confidential portion had been redacted and was separately filed pursuant to a motion for protective order dated November 4, 2010. We have reviewed the response *in camera* and agree that is information similar to that for which we granted protective treatment in the earlier portion of this proceeding. *See* Order No. 25,187 (December 29, 2010) at 6-11. Therefore, we shall apply that ruling to the redacted portion of the response to Staff data request Set 2-Q-02.

Finally, this is one of six orders we are issuing for PSNH rates for services rendered on and after July 1, 2011: in the instant docket, a mid-year adjustment to PSNH's energy service rate; in Docket No. DE 10-256, a mid-year adjustment to PSNH's average SCRC rate; in Docket No. DE 11-070, an adjustment to distribution rates for exogenous events; in Docket No. DE 11-082, recovery of wind storm costs and the incremental cost of marketing the renewable energy service option; Docket No. DE 11-095, a step increase to distribution rates for changes to net plant; and Docket No. DE 11-133, an adjustment to the TCAM rate. Overall, the average impact

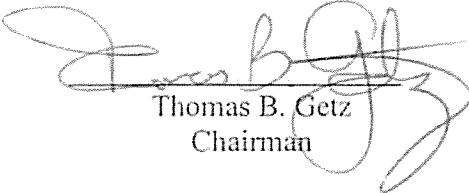
of these rate changes effective July 1, 2011 is an approximate decrease of 1.27% for a PSNH customer that takes its energy service from PSNH (i.e. they do not purchase energy from a competitive supplier).


Based upon the foregoing, it is hereby

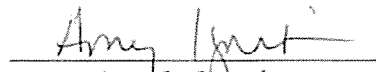
ORDERED, that the petition of Public Service Company of New Hampshire to adjust its energy service rate to \$0.0889 per kWh effective with service rendered on and after July 1, 2011 is hereby **APPROVED**; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariff pages pursuant to Puc Part 1603 that conform with this Order within 30 days hereof.


By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-257

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2011 Default Energy Service Rate

Order Approving 2011 Energy Service Rate

ORDER NO. 25,187

December 29, 2010

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

I. PROCEDURAL HISTORY

On September 22, 2010, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service (ES) rate to take effect for service rendered on and after January 1, 2011. Pursuant to RSA 369-B:3, IV(b)(1)(A), customers taking ES from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing the power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 8.68 cents per kilowatt hour (kWh) for the 2011 ES rate, but stated that a final proposed rate would be filed prior to the hearing to reflect the most recent estimates of fuel and energy costs. With the filing, PSNH included the supporting testimony and related exhibits of Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the Northeast Utilities operating subsidiaries, including PSNH.

The Commission issued an order of notice on October 1, 2010 scheduling a prehearing conference for October 21, 2010. On October 5, 2010, the Office of Consumer Advocate (OCA) notified the Commission of its participation in this docket on behalf of residential ratepayers consistent with RSA 363:28. The Staff filed a proposed procedural schedule on October 21, 2010, which the Commission approved by secretarial letter dated October 22, 2010.

On November 4, 2010, PSNH filed motions for protective orders for information provided in response to certain data requests including: fuel supply data for PSNH generating stations; details concerning supplemental power purchase contracts for the year 2011; information supporting the acquisition and sale of renewable energy certificates (RECs); and the dates and duration of planned maintenance outages at major generating stations during 2011.

On December 16, 2010, PSNH filed an updated ES rate calculation of 8.67 cents per kWh. The hearing took place on December 21, 2010.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Robert A. Baumann stated that the Company's current ES rate of 8.78 cents per kWh was established by the Commission in Order No. 25,121 (June 28, 2010). Based on preliminary calculations, Mr. Baumann said that, for the period January 1, 2011 through December 31, 2011, PSNH's prudent and reasonable cost of providing energy service was expected to be 8.68 cents per kWh. Mr. Baumann testified that the major cost categories comprising the ES costs are the revenue requirements for owned generation assets and the costs of purchased power obligations, the fuel costs associated with PSNH's generation assets, the costs from supplemental energy and capacity purchases, certain

Independent System Operator-New England (ISO-NE) ancillary service charges and the cost of compliance with the New Hampshire Renewable Portfolio Standard (RPS) and the Regional Greenhouse Gas Initiative (RGGI). The generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property and payroll taxes, and a return on the net fossil/hydro investment.

Mr. Baumann testified that the level of migration (i.e., the percentage of customer load receiving energy supply service from competitive suppliers) assumed in the Company's filing reflected the August 31, 2010 actual migration level of 30.7%. In proposing an ES rate for 2011, PSNH said it did not presume that customers will migrate more or less than the actual level. PSNH noted that the Commission had opened a separate docket (Docket No. DE 10-160) to address the effects that migration is having on the ES rate for those customers, predominantly residential and small commercial customers, who remain on PSNH's ES.

PSNH included IPP generation as a source of power to meet PSNH's load requirements, and stated that IPP power costs are based on projected market costs for energy and capacity. PSNH said that the over-market portion of purchases from the IPPs recovered through Part 2 of the stranded cost recovery charge (SCRC). As market prices change, the value of IPP purchases recovered through the ES rate changes. At the same time, however, there is a corresponding change to the SCRC rate for the above-market value of IPP purchases. To properly match the recovery of IPP costs, PSNH said it also separately filed for a change in the SCRC rate for effect on January 1, 2011.

PSNH made its updated filing of ES rate calculations on December 16, 2010 using the most recent market forecasts. In that filing, PSNH requested approval of an ES rate of 8.67 cents per kWh, a reduction of 0.01 cents per kWh from the energy service rate in the September 22, 2010 filing, and a reduction of 0.11 cents from the current rate of 8.78 cents per kWh.

In its updated filing and at hearing, PSNH provided explanations of certain changes to its cost projections. According to PSNH, market prices decreased slightly since the time of its initial filing. In addition, PSNH said it sold about 120,000 tons of coal which resulted in a \$5 million credit to energy service rates. PSNH explained that it had purchased the coal under contract and decided to sell the coal as that particular coal was attracting high prices in the metallurgical market.

PSNH identified certain cost increases as follows. According to PSNH, whereas in 2010 it credited energy service costs with \$15 million in insurance proceeds related to a 2008 outage at Merrimack Station, those credits will not appear in 2011. PSNH also stated that 2010 energy service rate included a small over-recovery from the prior year, while the updated proposed 2011 energy service rate includes a \$6 million under-recovery. In addition, PSNH said that pension costs and the ES share of uncollectible amounts also increased. Consistent with a settlement agreement in its most recent distribution rate case, Docket No. DE 09-035, PSNH, for the first time, included a portion of the Commission's annual assessment in its forecast of energy service costs. PSNH stated that the 2011 ES rates also include approximately \$4 million in additional costs associated with planned outages at its generation units. PSNH also revised the revenue associated with the sale of RECs from the wood-fired Unit 5 at Schiller Station generating plant. PSNH said that in its 2010 rates it used an estimate of \$31.00 per Class I REC, but for 2011 it

used an estimate of \$19.00 per Class I REC based on available market data. Finally, PSNH's updated rate filing included an updated load forecast as well as the November 2010 load migration level of 31.8%. Taking into account all of the changes, the final ES rate calculation yielded a slight reduction from the current ES rate of 8.78 cents per kWh to 8.67 cents per kWh.

PSNH concluded by stating that it had calculated the ES rate according to the methods previously approved by the Commission and requested that the Commission approve an ES rate of 8.67 cents per kWh for services rendered on and after January 1, 2011.

B. Office of Consumer Advocate

The OCA took no position on the filing. The OCA expressed the hope that energy service customers would benefit from PSNH's recovery of all insurance proceeds related to the 2008 forced outage at Merrimack Station. Finally, the OCA said that it did not object to PSNH's motions for confidential treatment.

C. Staff

Staff said that, based on its investigation of the filing, the Company calculated the estimated ES rate for 2011 in the same manner as in prior ES filings. The Staff said that customer migration continues to impact PSNH's ES customers but that customer migration is the subject of Docket No. DE 10-160. Staff said that any action of the Commission in Docket No. DE 10-160 will affect the implementation of the ES rate going forward and did not need to be addressed in the instant proceeding. The Staff recommended that the Commission approve PSNH's estimated energy service rate of 8.67 cents per kWh for service rendered on and after January 1, 2011. The Staff concluded by stating that it did not oppose the Company's motions for confidential treatment.

III. COMMISSION ANALYSIS

A. MOTIONS FOR PROTECTIVE TREATMENT

On November 4, 2010, PSNH filed three motions for protective treatment for responses the Company provided to certain data requests as follows: Staff 1-6(a) and Staff 1-11 which provided information regarding PSNH's fuel supply costs and information related to supplemental power purchases; Staff 1-12 which provided information related to the Company's acquisition and sale of RECs; and Staff 1-9 which disclosed PSNH's 2011 major maintenance outage schedule.

PSNH said that the confidential portions of the response to Staff 1-6 contain 2011 fuel prices and the quantity of fuel under contract for PSNH's generating stations for calendar year 2011. PSNH said the responses to Staff 1-11 contain supplemental power supply information including the contracting party, date of execution, duration, quantity and price of power secured through bilateral purchases that have been entered into for the upcoming energy service rate period. Similarly, Data Request Staff 1-12 requested information regarding PSNH's estimated costs of compliance with the New Hampshire RPS law, including a break-down of costs by class of RECs, details concerning any contracts PSNH had entered into to acquire RECs from other facilities, and information regarding PSNH's sale of RECs from its owned renewable energy resources.

According to PSNH, the information provided in response to Staff 1-6(a), Staff 1-11 and Staff 1-12 is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. According to the Company, contracts with parties selling supplemental power and contracts for the sale of RECs are kept confidential to protect both

parties. PSNH said that release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power and RECs. PSNH said that suppliers may not want to negotiate future supply contracts or RECs if they assume that the information in the final contract will be made public. According to PSNH, fewer suppliers means a less competitive market in which PSNH will procure RECs, supplemental power supplies and its coal supply. PSNH said that a similar motion was granted in its previous ES rate proceeding, Docket No. DE 09-180, *Public Service Company of New Hampshire*, Order No. 25,061 (December 31, 2009).

Data Request Staff 1-9 requested the Company's schedule for planned maintenance outages at its generating plants for calendar year 2011. According to PSNH, the dates and durations of scheduled plant outages are confidential commercial information potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH said that release of the information to the public, including competitive market participants, places PSNH at a distinct disadvantage when it plans to purchase energy to supply its customers during times when major generating stations are undergoing planned maintenance. The Company said that customers are harmed if the competitive market knows the distinct periods when PSNH must supplement its normal energy needs to replace the production from major generation stations. PSNH stated that this disadvantage will persist as long as PSNH is supplying energy service and as long as PSNH owns generation. PSNH noted that the Commission granted a similar motion in the previous ES rate setting proceeding, Docket No. DE 09-180, Order No. 25,061 (December 31, 2009).

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We have had occasion to rule

on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unital Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by PSNH should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08 (b).

First, we review whether the information for which PSNH claims protective treatment is, indeed, confidential. We have reviewed *in camera* the responses to the data requests for which PSNH requests confidential treatment to assist in our deliberation of PSNH's motions for confidential treatment. In each motion, PSNH asserts that the information for which it seeks protection is potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH states that all such information is maintained as confidential by the Company and is not otherwise disclosed. With respect to the supplemental power supply contracts, the fuel supply contracts and the REC contracts, PSNH asserts that both parties to the contract expect the details of the contract to be held confidential and not disclosed to the public. Finally, PSNH states that it does not disclose the schedule of planned outages for its generation units. Based on these attestations, we find that the information for which PSNH requests confidential treatment is confidential within the meaning of RSA 91-A:5, IV.

Next we assess the public's interest in the disclosure of the information. Some of the information for which PSNH seeks protection pertains to the costs incurred by the Company in connection with the purchase of fuel, supplemental power supply, and RECs contained in the responses to data requests Staff 1-6(a), 1-11, and 1-12, respectively. PSNH uses these costs in the calculation of an estimated energy service retail rate and the public disclosure of these costs would allow for a detailed understanding of the various cost components in ES rates. As a result, we find that the public has an interest in the disclosure of this information.

The Company states in its motions, that the disclosure of this information would allow competitors to see the costs of PSNH supplemental power purchases, fuel purchases and REC purchases. The disclosure of this information could negatively impact the ability of PSNH to

secure fuel, supplemental power supply and RECs at competitive prices. Based upon these facts, we find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates than what they might otherwise be. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing the public interest in disclosure against privacy interest). We therefore grant the motions for confidential treatment for the Company's responses to the data requests identified as Staff 1-6(a), Staff 1-11 and Staff 1-12. In granting this motion, we also afford protective treatment to the average price for wood fuel which PSNH witnesses discussed at hearing.

We note that the protection provided to the responses to Staff 1-11 regarding supplemental power purchases is limited by the reporting requirements of the Federal Energy Regulatory Commission (FERC). Pursuant to 18 CFR §35.10b, wholesale suppliers are required to file Electric Quarterly Reports (EQR) with FERC. In the EQR, suppliers must summarize contractual terms and conditions in their agreements for sales of wholesale electricity and transmission that is an unbundled part of a power sale. The reporting requirement applies to any unexpired agreement existing as of the reporting period. EQR data are public information and are not protected from disclosure. Therefore, the protective order we grant herein is in effect only until such time as the information provided in response to Staff 1-11 is disclosed by the wholesale suppliers in the EQR reports. This limitation is consistent with prior rulings on the confidentiality of the terms of supplemental power sales. *See, e.g. Order No. DE 25,167* (November 9, 2010) at 16.

In the case of the information regarding planned outages, Staff 1-9, PSNH stated that disclosure of this response would inform suppliers when PSNH would be looking to supplement its owned generation supply. If this information were made public, PSNH would be at a competitive disadvantage in securing supplemental power for the times when it needed supplemental power and would be impeded from providing service to its customers at reasonable rates. We find that disclosure of this information does not serve to inform the public concerning the rates reviewed in this proceeding and that disclosure could harm customers who may pay higher costs for replacement power if the outage schedule were disclosed. Therefore, we do not find that the public has an interest in disclosure of this information and grant the motion for confidential treatment to the response to data request Staff Set 1-9.

Consistent with N.H. Code of Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order.

B. PSNH 2011 ENERGY SERVICE RATE

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price of PSNH's ES shall be its "actual, prudent, and reasonable costs of providing such power, as approved by the commission." The genesis of the two-part procedures for calculating default service rates, now referred to as ES rates, and the reconciliation of those rates, lies in RSA 374-F and the Settlement Agreement in Docket No. DE 99-099, which implemented electric utility restructuring for PSNH, and Docket No. DE 02-166, Order No. 24,117 (January 30, 2003), which further refined the mechanism for setting transition service rates, now ES rates. Because PSNH is entitled to

recover its *actual* costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting ES rates. The first step, which is determined in this docket, is based upon an estimate of future costs for the following calendar year. The second step, which occurs after the power has been produced or purchased and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.¹

We find that PSNH reasonably estimated the proposed 2011 ES, taking into account purchases for supplemental power, estimates of the costs related to the operation of its generation units, and associated fuel supply contracts. These calculations, as updated in the Company's December 16, 2010 filing, support a 2011 energy service rate of 8.67 cents per kWh, which is a reduction from the current ES rate of 8.78 cents per kWh. We note that the impact of the rate change will be a reduction of roughly 1.25% in the energy component of PSNH's rates.

Consistent with past practice, we will review the reasonableness of PSNH's operating expenses and the prudence of its capital expenditures in connection with the Company's separate filing reconciling actual ES costs and revenues.

¹ The energy service proceeding is somewhat analogous to a temporary rate proceeding or a cost of gas proceeding. In a temporary rate proceeding the rate is set employing a standard that is less stringent than the standard for permanent rates because of the reconciliation mechanism. In a cost of gas proceeding the rate is set based upon forecasts and estimates and is subject to reconciliation in the next cost of gas proceeding. In both temporary rates and cost of gas proceedings the reconciliation process allows the Commission to apply a more stringent standard and look closely at the reasonableness of costs and the prudence of decisions.

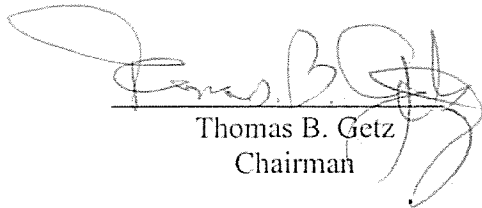
Based upon the foregoing, it is hereby

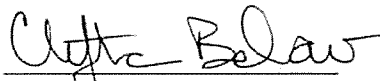
ORDERED, Public Service Company of New Hampshire's petition, as modified by its December 16, 2010 update, to establish an energy service rate of 8.67 cents per kWh effective for service rendered on and after January 1, 2011 is hereby APPROVED; and it is

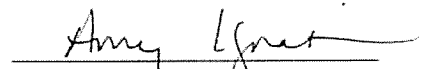
FURTHER ORDERED, that Public Service Company of New Hampshire's motions for protective treatment are hereby GRANTED subject to the conditions discussed herein; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariffs pursuant to New Hampshire Code of Admin. Rules Puc 1603 conforming to this Order no later than 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of December, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-180

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Mid-Year Adjustment to the Energy Service Rate

Order Granting Petition

ORDER NO. 25,121

June 28, 2010

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Orr and Reno P. A. by Douglas L Patch, Esq. on behalf of TransCanada Power Marketing Ltd.; Office of Consumer Advocate by Rorie E. P. Hollenberg, Esq. on behalf of residential ratepayers; and Suzanne Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL BACKGROUND

On May 4, 2010, Public Service Company of New Hampshire (PSNH) filed a petition with supporting testimony and schedules requesting an interim change to its energy service rate effective with service rendered on and after July 1, 2010. PSNH's current energy service rate is \$0.0896 per kilowatt-hour (kWh) as approved by the Commission in Order No. 25,061 (December 31, 2009). Pursuant to N.H. RSA 369-B:3, IV(b)(1)(A), the price for PSNH's energy service must reflect PSNH's actual, prudent and reasonable costs of providing the power. In prior energy service proceedings, the Commission has approved a twelve-month rate and has allowed any party to request a mid-term adjustment to the rate to avoid large over- and under-recoveries. In its filing, PSNH estimated that the new rate would be \$0.0857 per kWh, but noted that, as in past mid-year filings, it would update the projected costs and rate calculations prior to hearing. PSNH said that it requested the July 1, 2010 effective date to coincide with the

proposed effective date for permanent distribution rate changes requested in Docket No. DE 09-035, PSNH's distribution rate proceeding.

The Office of Consumer Advocate previously filed a letter on October 1, 2009 stating that it would be participating in the instant docket on behalf of residential ratepayers pursuant to RSA 363:28. Petitions to intervene were also filed by Freedom Logistics, LLC, Halifax-American Energy Company, LLC, TransCanada Power Marketing Ltd. and New England Power Generators, Inc.¹ The Commission issued an order of notice on May 28, 2010.

In addition to the mid-year adjustment to energy service rates, the filing addressed the effects of customer migration on energy service rates, a subject that was originally discussed in an earlier phase of the instant docket (see Order No. 25,061 (December 31, 2009)). PSNH said that in that prior phase, it was demonstrated that as customers migrated to third party supply during a time when the marginal cost to serve is lower than the average cost to serve, the energy service rate is increased for those customers who continue to take default energy service from PSNH. The affected customers are residential and small commercial customers who have less access to competitive supply than large commercial customers. To address this issue, the Commission, in Order No. 25,061, directed PSNH to develop a meaningful range of forecasts of customer migration commencing with its next energy service filing. In the instant filing, PSNH used a migration percentage of 29.7%, which, according to PSNH, was the actual migration level on its system as of March 31, 2010. In addition, for purposes of discussion, PSNH calculated the energy service rate using alternative migration scenarios of 33.7% and 25.6%, which resulted in energy service rates of \$0.0878 per kWh and \$0.0839 per kWh, respectively.

¹ For the procedural history and disposition of motions in the prior proceeding in this docket, see Order No. 25,061 (December 31, 2009).

In its prefiled testimony, PSNH opined that the phenomenon of increasing cost impacts of customer migration to residential and small commercial customers is unfair to those customers remaining on PSNH's default energy service and suggested that to address this problem a portion of energy service costs should be removed from energy service rates and recovered through a non-bypassable rate from all customers, including those who had migrated to competitive supply. In the May 28 Order of Notice in this proceeding, the Commission stated its intent to address the customer migration issue in a separate docket. On June 11, 2010, the Commission opened Docket No. DE 10-160 to commence a separate investigation of customer migration and PSNH's practices for procuring power not supplied by its owned generation facilities.

PSNH filed two motions for a protective order in connection with responses it filed to Staff data requests. The first motion, filed on May 27, 2010, requested confidential treatment for responses to Staff Data Request Set No. 03, Q-Staff-010 regarding a special arrangement PSNH made with one of its coal suppliers. On June 11, 2010, PSNH filed a motion to protect as confidential answers to a data request propounded at a technical session, Technical Session TS-01 Q Tech-001, which asked for actual and forecasted output from the Lempster Wind facility (Lempster) with whom PSNH had contracted to purchase power and renewable energy certificates (RECs).

On June 11, 2010, PSNH submitted updated attachments to its prefiled testimony along with a technical statement summarizing the changes from the initial filing, including the actual final revenues and expenses for May 2010 and a re-estimated forecast of kilowatt-hour sales and power costs from June through December 31, 2010. In its revised filing, PSNH requested a decrease to the energy service rate from \$0.0896 per kWh to \$0.0878 per kWh, an increase of \$0.0021 over the rate proposed in the Company's May 4, 2010 filing, effective with service

rendered on and after July 1, 2010. PSNH said the change in the energy service rate from the May 4 filing resulted primarily from a forecasted decrease in revenue due to additional customer migration, offset in part with higher forward market electricity prices as of June 4, 2010. A hearing was held as scheduled on June 23, 2010.

II. POSITIONS OF THE PARTIES

A. PSNH

PSNH's testimony at hearing addressed the June 11, 2010 revisions to its initial filing. PSNH said that the proposed decrease in the energy service rate from the current rate of \$0.0896 per kWh to \$0.0878 per kWh generally reflected the forecasted decline in revenue due primarily to additional customer migration and offset in part with higher forward market electricity prices as of June 4, 2010. According to the Company, in preparing its filing it inadvertently omitted approximately \$50,000 in telecommunications fees related to Independent System Operator-New England (ISO-NE) activities; however, PSNH said it would wait until the reconciliation of the 2010 revenues and expenses to recover the omitted sum, and would not seek recovery in the energy service rates proposed for July 1, 2010.

PSNH explained that the decline in the energy service rate was due to several factors. First, energy used by the Company at its non-generation facilities, the cost of which was formerly recovered through energy service rates, will now be recovered from distribution rates pursuant to a settlement agreement filed in its most recent distribution rate proceeding, Docket No. DE 09-035, and subject to Commission approval of that agreement. Second, PSNH updated the amount of anticipated insurance proceeds related to a plant outage at its Merrimack Station generating plant, resulting in an additional credit of \$3.4 million. Third, the Company decreased its fossil/hydro operation and maintenance costs by \$2.7 million to reflect actual results through

May 2010. Finally, the forecasted period June through December 2010 reflected a decrease of \$8.3 million to overall energy service costs due to many factors including lower forecasted coal and wood costs, and additional reductions including a credit related to the non-delivery and resale of previously scheduled contract coal (\$2.3 million), lower capacity costs and lower costs for compliance with the electric Renewable Portfolio Standard (RPS).

PSNH said these reductions in expenses were offset in part by cost increases proposed in the settlement agreement filed in Docket No. DE 09-035. Pursuant to that settlement agreement, PSNH agreed to allocate a portion of the annual utility assessment to the energy service expenses. In addition, the settlement agreement moved certain uncollectible expenses for recovery from the Company's distribution rate to the energy service rate. According to PSNH, the shift in uncollectible expense was retroactive to August 1, 2009 to coincide with the effective date of temporary distribution rates and resulted in an under-recovery of \$1.5 million for the recoupment period and a prospective expense of \$1.5 million for the period July through December 2010.

With its June 11 filing, PSNH updated the range of customer migration based on the May 31, 2010 actual migration level of 31.9%. Similar to its May 4, 2010 filing, PSNH also calculated the energy service rate using alternative migration scenarios. PSNH said that, for the forecast period, it used a rate of 0.92% per month in additional migration for each month to derive a high range for customer migration for the period July through December 2010. PSNH said the 0.92% migration rate was based on the actual month-to-month migration observed by the Company. Similarly, PSNH used a negative 0.92% rate per month to determine the low range of migration, to develop ranges for the July through December 2010 period. These calculations resulted in a range with a high customer migration rate of 35.6% and a low customer

migration rate of 28.3%, with the associated rate calculations being \$0.0890 per kWh and \$0.0868, respectively. Having provided this information, PSNH said it had not made any assumptions that customer migration would increase or decrease for the remainder of calendar year 2010.

In response to questions from the OCA, PSNH described its activity related to filing insurance claims and obtaining related payments associated with the operation of a new turbine installed at Merrimack Station during 2008. PSNH said that it took into consideration the lag time it experienced between filing a claim and the receipt of insurance payouts in applying the insurance payments to energy service revenues. The Company said its filing included \$15.2 million in outstanding claims, but recognized that it had reduced the anticipated insurance proceeds by 20% to reflect potential issues with timing and/or recovery of those amounts. PSNH said it expected to know more about the status of insurance proceeds by the end of the year.

The OCA also inquired about the Company's practice of applying revenues associated with use of the Hydro-Quebec transmission facilities to energy service rates – which are only paid by customers who do not take competitive electric service – when the costs associated with supporting those facilities are included in the transmission cost adjustment mechanism (TCAM) rate that is paid by all customers, even those on competitive supply. The Company said that the Hydro-Quebec revenues were allocated to Part 3 Stranded Costs and when the Part 3 Stranded Costs ended in 2006, any remaining components were reconciled in the energy service rate pursuant to the Restructuring Settlement Agreement. *Public Service Co. of New Hampshire*, Order No. 23,549, 85 NH PUC 536 (2000)

B. TransCanada Power Marketing Ltd.

TransCanada Power Marketing Ltd. expressed no position on PSNH's petition as it was simply monitoring the docket.

C. Office of Consumer Advocate

The OCA stated that it did not oppose the petition. However, in closing the OCA expressed its support for aligning the revenues and costs associated with the Hydro-Quebec facilities in a single rate component.

D. Commission Staff

Staff said it had reviewed the filing and supported PSNH's calculation of the energy service rate of \$0.0878 per kWh effective with service rendered on and after July 1, 2010.

III. COMMISSION ANALYSIS**A. Motions for Confidential Treatment**

The New Hampshire Supreme Court enunciated the standard for determining whether disclosure of public records is required under RSA 91-A:5, IV in *Lamy v. Public Utilities Commission*, 152 N.H. 106, 109 (2005). Referring to *N.H. Civil Liberties Union v. City of Manchester*, 149 N.H. 437 (2003), the *Lamy* Court described a three-step analysis for evaluating whether information is subject to disclosure. First, the court evaluates whether a privacy interest is at stake that would be invaded by the disclosure. Next, it assesses the public's interest in disclosure, that is, whether disclosure of the information informs the public about the conduct and activities of their government. In the final step, the Court balances the interest in disclosure and the interests in non-disclosure. The Commission uses the same three-step analysis in determining whether information it receives is subject to disclosure under the Right-to-Know

law. *See, e.g., Unitil Corporation and Northern Utilities Natural Gas*, Order No. 25,014 (September 22, 2009).

Staff Data Request Set No. 03, Q-Staff-010 asked for an explanation and supporting documentation for the “credit book-out from a supplier for a non-delivery of prior scheduled coal delivery” which result in a credit of \$2.3 million to energy service expense. According to the company, the supplier and PSNH entered into a side agreement with pricing terms that would govern in the event a scheduled coal delivery did not occur. PSNH asserted that these contractual terms are not otherwise made public and constitute confidential commercial and financial information exempt from disclosure pursuant to RSA 91-A:5, IV. PSNH stated that the supplier would not be willing to enter into similar arrangements in the future if the terms of the agreement were disclosed.

Applying the first step of the analysis, we agree that the response to this question is confidential commercial information not otherwise subject to disclosure and thus there is a privacy interest at stake. In applying the second step of the analysis, we do not find that the disclosure of the information would inform the public on the operations of the Commission. Disclosure would merely inform the public regarding the terms of the supplier contract that provides the Company a monetary credit for the non-delivery of previously scheduled coal provision. As PSNH points out, suppliers would not be willing to negotiate for such credits with PSNH if the terms of the contract were made public, and thus PSNH’s customers would not be able benefit from the offset to rates afforded by such credits in the future. In applying the final step of the analysis, we find that the harm of disclosure outweighs the benefits of disclosure and grant PSNH’s motion for protective order for the supplier side agreement on the non-delivery provision.

The second motion for protective order asks for confidential treatment of the actual and forecasted output from Lempster that Staff requested at a technical session. PSNH asserted that the response to Technical Session TS-01 Q-Tech-001 contains confidential commercial information that is exempt from disclosure pursuant to RSA 91-A:5, IV. In its motion, PSNH said that the Company and Lempster entered into an agreement for the sale of power and RECs from Lempster. PSNH noted that the Commission granted confidential treatment to the terms of its agreement with Lempster in Docket No. DE 08-077. In addition, the Company stated that the Independent System Operator-New England also treats electrical output and capacity factor as confidential information. According to the Company, public disclosure of this information would reveal information about Lempster that is not otherwise publicly available and would put PSNH at a disadvantage with respect to negotiating the best price for its customers with suppliers of supplemental power and RECs.

PSNH has provided sufficient facts for us to find that the information requested by Technical Session TS-01 Q-Tech-001 is confidential financial information that may be exempt from disclosure pursuant to RSA 91-A:5, IV. Applying the second part of the analysis, we find that the public disclosure of this information will not shed light on the operation of the Commission but would reveal information that is confidential to Lempster. Finally, in balancing the benefits and harm of disclosure, we find that the disclosure of the information would impede PSNH's ability to negotiate competitive rates in contracts with supplemental power suppliers, such as Lempster, for energy and RECs. The inability of PSNH to negotiate competitive prices in such situations will increase energy rates for its customers. Based on this analysis, we will grant the motion for protective order for the response to Technical Session TS-01 Q Tech-001.

Our grant of confidential treatment of both data responses is subject to reconsideration in the future should circumstances change.

B. Energy Service Rate

Pursuant to RSA 369-B:3, IV(b)(I)(A), the price for PSNH's energy service rate must allow for recovery of the actual, prudent, and reasonable costs of providing the power, as approved by the Commission. Based on our review of the petition and evidence in the record, we find that the calculations and related documentation support PSNH's request for a mid-term adjustment to its energy service rates. We find PSNH's calculations to be reasonable and we approve the energy service rate of \$0.878 cents per kWh effective with service rendered on and after July 1, 2010. We therefore grant the updated petition.

Regarding the revenues associated with use of the Hydro-Quebec facilities, we directed the Company to align the costs and revenues associated with those facilities in Docket No. DE 10-158, PSNH's petition to modify its transmission cost adjustment mechanism (TCAM) rate, Order No. 25,122 (June 28, 2010).

This is one of four orders we are issuing for PSNH rates for services rendered on and after July 1, 2010: in the instant docket, an interim adjustment to PSNH's energy service charge; in DE 10-158, an adjustment to PSNH's TCAM rate noted above; in Docket No. DE 09-179, an adjustment to PSNH's stranded cost recovery charge; and in DE 09-035, an adjustment to PSNH's distribution rates. Overall, the average impact of these rate changes effective July 1, 2010 is an approximate increase of 4.84% for a PSNH customer not purchasing energy from a competitive supplier.

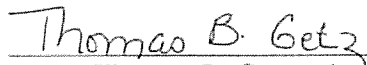
Based upon the foregoing, it is hereby

ORDERED, that the petition of Public Service Company of New Hampshire to adjust its energy service rate to \$0.0878 per kWh effective with service rendered on and after July 1, 2010 is hereby GRANTED; and it is

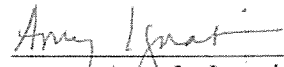
FURTHER ORDERED, that PSNH's motions for confidential treatment are hereby GRANTED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariff pages pursuant to Puc Part 1603 that conform with this Order within 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 2010.



Thomas B. Getz (KNS)
Chairman



Amy L. Ignatius
Commissioner

Attested by:



Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-180

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2010 Default Energy Service Rate

Order Approving 2010 Energy Service Rate

ORDER NO. 25,061

December 31, 2009

APPEARANCES: Gerald M. Eaton, Esq., on behalf of Public Service Company of New Hampshire; Orr and Reno Professional Association by Douglas L Patch, Esq., on behalf of TransCanada Power Marketing Ltd.; James Rodier, Esq., on behalf of Freedom Logistics LLC and Halifax-American Energy Company LLC; Office of Consumer Advocate by Meredith A. Hatfield, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On September 24, 2009, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service (ES) rate for effect with service rendered on and after January 1, 2010. With the filing, PSNH included the supporting testimony and related exhibits of Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the Northeast Utilities operating subsidiaries, including PSNH. Pursuant to RSA 369-B:3, IV,(b)(1)(A), customers taking ES from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing the power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 9.31 cents per kilowatt hour (kWh) for the 2010 ES rate, but stated that a final proposed rate would be filed prior to the hearing to reflect the most recent estimates of fuel and energy costs.

On October 1, 2009, the Office of Consumer Advocate (OCA) notified the Commission of its participation in this docket on behalf of residential ratepayers consistent with RSA 363:28. The Commission issued an order of notice on October 5, 2009 scheduling a prehearing conference on October 19, 2009. On October 16, 2009, the Commission received petitions to intervene from TransCanada Power Marketing Ltd. (TransCanada), and jointly from Freedom Logistics LLC and Halifax-American Energy Company LLC (collectively Freedom-Halifax). The New England Power Generators Association, Inc. (NEPGA) filed a petition to intervene on October 19, 2009.¹ The Staff filed a proposed procedural schedule on October 20, 2009, and filed a letter on October 27, 2009 summarizing the status of the petitions to intervene. On November 4, 2009, the Commission issued a secretarial letter granting the petitions to intervene with the limitation that TransCanada, Freedom-Halifax and NEPGA be denied access to confidential information.

On November 12, 2009, Freedom-Halifax filed a letter taking the position that Freedom-Halifax was entitled access to confidential information despite the Commission's ruling. PSNH filed a letter in response on November 17, 2009. On December 1, 2009 Freedom-Halifax filed a letter stating that it did not need the confidential information and that the Commission did not need to rule on its November 12, 2009 letter.

On November 12, 2009, TransCanada filed a motion to compel a response to its data request for information regarding PSNH's power purchase policies. PSNH objected to TransCanada's motion in a filing on November 17, 2009. Freedom-Halifax filed a motion to compel on November 18, 2009 regarding its request for PSNH's five year forecast of load

¹ The New England Power Generators Association, Inc. did not further participate in this docket.

demand and energy costs. PSNH filed an objection to Freedom-Halifax's motion on November 17, 2009.²

Due to the outstanding motions to compel, the Commission suspended the procedural schedule on November 23, 2009. On November 24, 2009, PSNH filed motions for protective treatment for the responses to Staff's data requests for: 1) supplemental power supply and coal supply contracts, 2) PSNH's summary of its acquisition of renewable energy certificates (RECs), and 3) its major maintenance schedule. On November 25, 2009, TransCanada filed a partial objection to the motion for confidential treatment challenging the confidential treatment of supplemental power supply and coal supply contracts.

On November 30, 2009, the Commission issued an Order denying Freedom-Halifax's motion and granting TransCanada's motion subject to PSNH's right to request confidential treatment of its response. In addition, the Commission modified the procedural schedule requiring Staff and Intervenor testimony by December 2, 2009, including a limited time for discovery and giving PSNH an opportunity to file rebuttal testimony on December 8. PSNH filed a motion for confidential treatment of its responses to TransCanada's data requests regarding its power purchase policies on December 1, 2009.³

On December 2, 2009, Staff filed the testimony of Steven E. Mullen, Assistant Director of the Commission's Electric Division and TransCanada filed the testimony of Michael E. Hachey, Vice President and Director of Eastern Commercial for TransCanada Power Marketing. PSNH filed its updated forecast of energy costs and additional months of actual costs on

² Freedom-Halifax made an electronic filing of its motion before it filed a paper copy with the Commission, leading to the dates appearing to be out of sync.

³ PSNH filed several motions for protective treatment which are discussed in the Commission Analysis section of this order.

December 7, 2009, and filed the rebuttal testimony of Robert A. Baumann and David A. Errichetti, Manager of Generation Resource Planning for NUSCO, on December 8, 2009.

Pursuant to New Hampshire Code of Admin. Rules Puc 203.27, TransCanada filed a motion to take administrative notice of the record in Docket No. DE 07-108, PSNH's 2007 Least Cost Integrated Resource Plan on December 7, 2009. No party objected to the motion. At hearing, TransCanada clarified that it was asking the Commission to take administrative notice of Exhibit 1 and Exhibit 2 in Docket No. DE 07-108, the initial filing made by PSNH on September 28, 2007 and the supplemental filing made on March 28, 2008, respectively.

The hearing was held as scheduled on December 10, 2009 and continued on December 11. On December 17, 2009, PSNH filed responses to record requests identified as Exhibits 5, 18, and 20 with accompanying motions for confidential treatment.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Robert A. Baumann stated that the Company's current ES rate of 9.03 cents per kilowatt hour (kWh) was established by the Commission in Order No. 24,991 (July 17, 2009). Based on preliminary calculations, Mr. Baumann said that, for the period January 1, 2010 through December 31, 2010, PSNH's prudent and reasonable cost of providing energy service was expected to be 9.31 cents per kWh. Mr. Baumann testified that the major cost categories comprising the ES costs are the revenue requirements for owned generation assets and the costs of purchased power obligations, the fuel costs associated with PSNH's generation assets, the costs from supplemental energy and capacity purchases, certain Independent System Operator-New England (ISO-NE) ancillary service charges and the cost of compliance with the New Hampshire Renewable Portfolio Standard (RPS) and the Regional

Greenhouse Gas Initiative (RGGI). The generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property and payroll taxes, and a return on the net fossil/hydro investment.

Mr. Baumann testified that the level of migration assumed in the Company's filing reflected the then-current actual level of approximately 23%, which is greater than the assumed migration level of 18% that was embedded in the current rates effective for services rendered on and after August 1, 2009. According to testimony, the increased migration levels have resulted in increasing the preliminary 2010 ES rate approximately 5% more than it would have been absent migration. Mr. Baumann said that this increase means that certain customers, principally residential customers, who are unable to elect third party electricity supply will bear additional fixed costs while those customers who have switched to competitive suppliers have been afforded the opportunity to choose lower rates.

PSNH testified that it is unknown whether customer migration will continue to exert upward pressure on ES rates in the future. Mr. Baumann noted that, during what he called the "current unprecedented market price decline," third party suppliers have been able to offer electric service to certain customers at prices lower than PSNH's ES rate. According to Mr. Baumann, if market prices increase in the future, customers who have migrated to competitive supply may return to receive service under PSNH's ES rate. In its original testimony PSNH did not offer a proposed solution to address the migration issue and suggested that the issue should be vetted by all interested parties through discussions at technical sessions. PSNH also offered its view that it did not believe that the restructuring law was intended to have one general group of customers shouldering additional costs as a result of another group securing lower rates.

According to PSNH, those additional costs may be an unintended consequence of electric energy restructuring. In his November 23, 2009 supplemental testimony, Mr. Baumann further addressed the issue of customer migration and its effect on ES rates. Baumann Supplemental Testimony at 1. Mr. Baumann stated that the 5% differential referred to in his prefiled testimony amounts to approximately \$28 million, but that value would change when PSNH updates its ES filing proposal on December 7, 2009. *Id.* at 2.

Mr. Baumann explained that PSNH has the obligation to have a reliable and cost effective energy supply at all times to meet its assigned load obligations for every hour of every day. To meet this obligation, PSNH said it maintains a portfolio of power sources to meet current and future load obligations. Those sources include PSNH's own generation and unit entitlements, independent power producer (IPP) generation from contracts and rate orders, contracted blocks of fixed purchase power sources, and anticipated market power purchases, mostly through the daily ISO-NE interchange process. *Id.* According to Mr. Baumann, over the past few years PSNH had planned and/or procured ahead of time a large portion of the load obligation with its own generation, purchase power and IPP supplies to minimize future market exposure risk from unsecured load obligations and to minimize over- and under-collections, which can lead to moderate to wide fluctuations in ES prices. *Id.* at 2-3.

Mr. Baumann stated that the Company's load obligation had declined significantly over the past 18 months, due in part to the migration of customers - mostly large customers - to third party suppliers, leaving the small customers - predominantly residential and small commercial customers - supporting the higher ES rate. As the load drops, the denominator in the ES rate calculation (sales in kWh) drops, thereby increasing the ES rate. Mr. Baumann explained that, as a partial offset, costs in the numerator of the ES calculation, drops due to the avoidance of

variable fuel costs, but not in the same proportion as the decline in the denominator. The result is that certain costs remain in both the pre- and post-migration ES calculation that do not go away as migration increases. Mr. Baumann identified the costs that do not go away with increased migration as costs from PSNH's owned generation and unit entitlements, the costs of IPP purchases, and fixed purchase power costs. *Id.* at 3.

PSNH offered two proposals, Method 1 and Method 2, to address migration and its effect on ES rates. Under Method 1, the Commission would approve some form of a non-bypassable charge for customers or groups that are shifting costs to other customer classes by the manner in which they participate in the energy market. Method 2 would remove the recovery of certain cost items from the ES rates, and recover those costs through more appropriate and non-bypassable charges such as the stranded cost recovery charge (SCRC), the transmission cost adjustment mechanism (TCAM) and distribution charges. *Id.* at 5.

According to PSNH, Method 1 would address the increase in ES rates created by migration by identifying the added costs being carried by residential and small commercial customers receiving service under PSNH's ES rate and recover all or part of the difference as stranded costs through a non-bypassable rate such as the SCRC. Mr. Baumann said that Method 1 is consistent with PSNH's belief that the restructuring law was not intended to have one general group of customers shoulder additional costs because another group obtained supply at a lower rate than PSNH customers, citing RSA 374-F:3, VI. *Id.* at 6. PSNH stated that implementing Method 1 would complicate the applicable calculations of the ES and SCRC rates but the additional work would be warranted. *Id.* at 7.

In describing Method 2, Mr. Baumann stated that PSNH believes there are several costs being recovered through ES rates that may be more appropriately recovered through SCRC,

TCAM or distribution rates. PSNH referred to three cost categories: 1) reliability costs such as VAR support (uplift costs) that relate to overall system reliability; 2) the above market-costs associated with the replacement agreement for Bio-Energy IPP purchased power agreement; and 3) company use energy costs not related to the generation segment of PSNH. *Id.* at 8. PSNH said that VAR support costs could be recovered through the TCAM, which is adjusted annually on July 1. As for the above-market costs associated with Bio-Energy, PSNH stated that those costs could be more appropriately recovered through the SCRC. Finally, with respect to company use, PSNH suggested that those costs could be recovered through its distribution rates.

PSNH proposed immediate implementation of Method 2 effective January 1, 2010 for the VAR support and over-market Bio-Energy costs. PSNH said that the company use adjustment could be implemented coincident with the anticipated change in PSNH's distribution rates on July 1, 2010 in PSNH's ongoing distribution rate case, DE 09-035. PSNH stated that Method 1 would require further discussion, but suggested that July 1, 2010 would be a reasonable target date for implementation. *Id.* at 9.

PSNH made its updated filing of ES rate calculations on December 7, 2009 using the most recent market forecasts, adjusting the rates for the actual results for the months of September and October 2009 and re-estimating the results for November and December 2009. Based on its updated 2010 ES rate calculations, which incorporated its proposed Method 2, PSNH requested approval of an ES rate of 8.96 cents per kWh. Absent the changes in cost recovery recommended in Method 2, PSNH stated that its proposed 2010 ES rate would be 9.21 cents per kWh.

On December 8, 2009, PSNH filed the rebuttal testimony of Mr. Baumann and Mr. Errichetti in response to the testimony of TransCanada's witness, Michael E. Hachey. According

to PSNH, Mr. Hachey stated that PSNH's power procurement for 2010 is inconsistent with PSNH's Least Cost Integrated Resource Plan (LCIRP) approved by the Commission in Docket No. DE 07-108. *See* Order No. 24,945 (February 27, 2009) (Order accepting LCIRP) and Order No. 24,966 (May 1, 2009) (Order denying rehearing). Rebuttal Testimony at 2.

PSNH testified that its supplemental power procurements for 2010 are consistent with Supplement 3 - Supplemental Power Procurement Strategy filed in Docket No. DE 07-108, PSNH's 2007 LCIRP filing, on March 28, 2008 (Supplement), which was appended to the end of Section V.B.6.2., page 91. According to PSNH, the Supplement states: "The following discussion provides an overview of the procurement strategy that PSNH implemented for its 2007 supplemental power requirement. This overview is indicative of PSNH's current procurement strategy; however, as discussed below, PSNH does not have a prescriptive hedging protocol. By retaining flexibility in its planning process, PSNH is able to respond to changes in planning criteria and create benefits for customers."

PSNH said the passage in that same Supplement that TransCanada insists is the inviolate procurement plan leads off by saying, "PSNH's current procurement plan is focused primarily on the subsequent annual period." PSNH asserted that the use of the word "current" refers to the earlier passage cited above and means that PSNH's procurement process is something that changes as PSNH evaluates market conditions, forecasted prices and forecasted procurement needs. PSNH said that it began building its supplemental power supply for 2010 in early 2008 based on the principle that market conditions, forecasted prices and procurement needs change. *Id.* at 3-4. PSNH said that the Mr. Hachey's recommendation to limit PSNH's cost recovery due to PSNH's alleged failure to strictly adhere to its LCIRP is illogical and unworkable. *Id.* at 3.

Regarding Mr. Hachey's recommendations that PSNH procure its supplemental power requirements through a competitive process, PSNH stated that it would have to propose that method of power procurement in an accepted LCIRP before it could be implemented, which could not be accomplished in time to serve its 2010 ES load. *Id.* In addition, PSNH pointed out the complexities of issuing a Request for Proposals (RFP) because it has a statutory obligation to use its generation assets to serve its ES load. PSNH opined that there would also be a risk premium associated with a supplier's bid to cover PSNH's power procurement needs, and that any supplier would add a profit margin to the price it offers for such power. As a result, PSNH stated that an RFP for supplemental power would not necessarily result in lower prices for its customers. *Id.* at 4.

With respect to Mr. Hachey's assertion that PSNH's energy purchases for 2010 are "expensive" and that the costs should be disallowed, PSNH said that it made the purchases at a time when it appeared that market prices would be higher in the future. PSNH said it could not have predicted that the market price for power would decline as it did. Finally, PSNH pointed out that cost recovery limitations are determined in a prudence review, which is not part of this docket. Instead, the purpose of this docket is to determine the ES rate for a prospective period. PSNH said that the determination of what is actual and prudent is done in an after-the-fact review conducted on an annual basis and any adjustments to PSNH's recovery of those costs is based on Commission findings that are included in the reconciliation of the actual and estimated costs. *Id.* at 6.

At hearing, TransCanada noted that PSNH does not forecast migration and questioned how the Company could reasonably decide what to purchase without such a forecast. Hearing Transcript of December 10, 2009 (12/10/2009 Tr.) at 83. PSNH responded by saying that it did

take its current migration into consideration when looking at procurement decisions. However, PSNH explained that it had not made the 2008 supplemental power purchase to address customer migration, but to acquire a portion of the power needed to fill the “gap” between its known existing power supplies and its forecasted needs for 2010. *Id.* The Company went on to say that it could not have foreseen the historic recession and retraction of the economy and the subsequent softening of energy prices. *Id.* at 85. PSNH said that, as it turned out, the 2008 purchases entirely filled the 2010 “gap” after the effects of customer migration and that no additional purchases were needed. *Id.* at 89. Originally, PSNH said that the 2008 purchases accounted for 5% of the gap and 2% of PSNH’s overall requirements. *Id.* at 95. PSNH later corrected an error in its calculations and testified that the 2008 purchases accounted for 15% of the gap, or 6% of PSNH’s overall power needs. *Id.* at 137.

PSNH concluded by recommending that the Commission reject TransCanada’s suggestion to limit PSNH’s cost recovery as being without merit, moreover, and made in the wrong docket. PSNH also recommended that the Commission reject TransCanada’s proposal that PSNH use an RFP process for procuring power for its supplemental energy requirements. Finally, PSNH recommended that the Commission accept PSNH’s proposed Method 2 to recover certain costs through other non-bypassable rate components. *Id.* at 7.

In response to Staff’s recommendation that PSNH prepare a continuing unit operation study, PSNH stated that while it did not oppose such a study, it stated that it would need more time to incorporate the study into its next Least Cost Plan which is due to be filed by May 3, 2010. PSNH suggested that, if the Commission requires PSNH to conduct the study for Newington Station, it postpone the required filing of PSNH’s next Least Cost Plan until at least September 2010.

B. TransCanada

In his prefiled testimony, Mr. Hachey stated that based on his review of PSNH's responses to TransCanada's data requests, it appeared that none of the 2010 supplemental power purchases were made in accordance with the procurement process set forth in PSNH's 2007 LCIRP in Docket No. DE 07-108. According to Mr. Hachey, PSNH's supplemental purchases for 2010 were made in 2002, 2007 and 2008, contrary to page 87 of PSNH's LCIRP where it states that such supplemental purchases for a year would be made "during May through the filing date of the final forecast (normally in November)." Hachey Testimony at 4-5.

Mr. Hachey explained his understanding of what PSNH said in its 2007 LCIRP about customer migration. He said that the narrative in the LCIRP states that "migration activity is more apt to accelerate during a softening of the energy market." Mr. Hachey opined that the fuel price increases in mid-year 2008 posed risk of customer migration in the event that the market price softened and that PSNH failed to reasonably or prudently prepare for "this situation" - e.g., migration of a large number of customers. In failing to do so, Mr. Hachey concluded that PSNH did not act in accordance with its 2007 LCIRP.

Mr. Hachey testified that PSNH spent \$97 million on its 2010 "known purchases" at an average price of \$93 per megawatt hour (MWh) and, due to the high levels of customer migration, may be forced to resell some of this power as "surplus energy sales." Mr. Hachey opined that PSNH's failure to adequately address migration risk calls into question whether the practices PSNH uses to procure power are reasonable and prudent and whether they are consistent with PSNH's 2007 LCIRP. *Id.* at 6. In addition, Mr. Hachey said that, based on his review of available information, PSNH may have also ignored its internal procedures regarding its hedging strategy.

Mr. Hachey noted that RSA 378:41 states as follows: “[A]ny proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission.” *Id* at 7. He stated that PSNH’s actions with respect to customer migration and the purchase of supplemental power do not conform to PSNH’s 2007 LCIRP. *Id*.

Mr. Hachey suggested that the additional costs that are borne by PSNH customers who have not migrated may not be fixed costs, but may be costs related to PSNH’s purchase power decisions. *Id*. at 8. Mr. Hachey also suggested that the Commission should consider requiring PSNH to purchase power using the same methodology that other New Hampshire distribution companies follow, that is, by issuing open and competitive RFPs for power on a schedule approved by the Commission. *Id*. In addition, Mr. Hachey opined that PSNH should not be able to pass the costs of the 2008 purchases that exceed current market prices on to customers because: 1) customers have a statutory right to choose their electric supplier, 2) the socialization of “utility inefficiency” does not promote good operating practice, and 3) the costs in this instance result from the power supply decision of PSNH and not any fault of customers. *Id* at 9.

Mr. Hachey said that, based on the costs of the purchases that PSNH made that are intended to be used to serve ES customers in 2010, the purchases appeared to be made either at or near the peak price of energy in 2008. According to Mr. Hachey, this purchase suggests a lack of reasonableness and prudence on PSNH’s part. Furthermore, Mr. Hachey pointed out that purchases were not made in accordance with PSNH’s 2007 LCIRP because the purchases for 2010 were made in January, August and September of 2008 and not in 2009. Mr. Hachey asserted that, had PSNH adhered to its 2007 LCIRP and made the purchases in 2009, its

customers would have benefited from the lower market prices that were available in 2009. *Id.* at 9-10.

Mr. Hachey concluded by recommending that the Commission require PSNH to use an RFP process to procure power that it needs to supplement the power from its generation assets to meet default service demand, or buy the entirety of its customer needs from the market on a competitive basis and sell its generation output to the market. *Id.* at 11-12. He also recommended that the Commission limit PSNH's recovery of the purchases that were not conducted in conformity with PSNH's 2007 LCIRP or that were not prudent or reasonable. In addition, he recommended that the Commission not allow PSNH to assess any additional costs to migrated customers other than as proposed in Method 2.

C. Freedom-Halifax

Freedom-Halifax questioned PSNH's witnesses on the issues of migration as well as how PSNH's supplemental purchases for 2010 compared to current market prices. Freedom-Halifax did not, however, present a formal position on PSNH's petition.

D. Office of Consumer Advocate

After various inquiries regarding migration and changes contained in PSNH's updated ES rate calculations, the OCA took no position on PSNH's proposed ES rate for effect January 1, 2010. The OCA stated that it was appreciative of PSNH bringing forward the issue of the impacts of migration on residential and small business customers who are captive to PSNH's ES rate as well as PSNH's proposal under Method 2 to shift recovery of certain costs to the TCAM and SCRC rate components. In addition, the OCA supported Staff's recommendation for a continued unit operation study for Newington Station and the continued review of the large customer migration issue. The OCA also supported Staff's proposal that the migration issues

raised in the proceeding be further considered in either a continuation of the instant proceeding or in a separate proceeding. In consideration of what PSNH termed the "undue burden" assumed by largely residential and small business customers resulting from migration and PSNH's management of its power portfolio, the OCA recommended that those issues be explored as soon as possible in 2010.

E. Staff

In his prefiled testimony, Mr. Mullen noted PSNH's testimony that the migration being experienced increased the 9.31 cents per kWh preliminary ES rate approximately 5% higher than it would have been absent migration. Regarding Method 1, described by Mr. Baumann in his November 23rd supplemental testimony, Mr. Mullen observed that the restructuring statute states that stranded costs may only include:

"(a) Existing commitments or obligations incurred prior to the effective date of this chapter [RSA Chap. 374-F, eff. May 1, 1996];
(b) Renegotiated commitments approved by the commission; and
(c) New mandated commitments approved by the commission, including any specific expenditures authorized for stranded cost recovery pursuant to any commission-approved plan to implement electric utility restructuring in the territory previously serviced by Connecticut Valley Electric Company." RSA 374-F:2, IV. *Id* at 5-6.

According to Mr. Mullen, supply-related costs stemming from power purchases or from PSNH's generating facilities do not appear to qualify for recovery as stranded costs. In addition, Mr. Mullen questioned whether the collection of certain supply-related costs could be considered a form of exit fee, something that is not a "preferred recovery mechanism" pursuant to RSA 374-F:3, XII (d). *Id.* at 6.

With respect to PSNH's proposed Method 2, which would shift certain costs to other rate components, Mr. Mullen said that the proposal had merit because it more appropriately aligned costs with existing rate components. However, Mr. Mullen stated that Method 2 merely lessens

the burden of the additional costs being borne by non-migrating customers rather than addressing the underlying issue. Mr. Mullen expressed his general agreement with PSNH's proposal to shift recovery from ES rates of the following costs: \$1.4 million in VAR (reliability costs) to the TCAM; \$12.5 million of above market costs of the Bio-Energy replacement agreements to the SCRC; and \$1.4 million in company use not related to generation to the distribution rate base.

Id. Mr. Mullen stated that all of these costs are incurred in relation to all customers without respect to potential migration and, as such, should not be avoided by those customers who choose to take their ES from third party suppliers.

In support of this assertion, Mr. Mullen noted that reliability costs, such as the VAR costs, are calculated based on PSNH's network load and could appropriately be recovered through the TCAM. Regarding the Bio-Energy replacement contract obligations, Mr. Mullen said all of the costs of the power contract that replaced the above-market rate order with the former Bio-Energy facility are currently being recovered from customers taking ES from PSNH. However, he noted that the replacement contract with Bio-Energy would appear to be a "renegotiated commitment" that qualifies for stranded cost treatment and, therefore, it would be appropriate that the over-market portion of the costs associated with the contract be recovered through the SCRC. Finally, Mr. Mullen said that the power used to supply PSNH's office buildings and distribution facilities support service to all of PSNH's customers and, as such, are more appropriate for recovery through PSNH's distribution charge, excluding any power use at general office buildings properly allocable to ES-related business. Those ES-related power costs, according to Mr. Mullen, should remain in the ES rate. *Id.* at 7.

Mr. Mullen opined that a meaningful discussion of the migration/cost avoidance/cost shifting issue should include, among other things, the consideration of pricing differentials for

the customer classes, stay-out provisions, utilization of competitive solicitations and cost allocation issues among the various rate classes. In addition, parties involved in any such discussions must recognize that PSNH continues to be obligated by statute to use its generation assets for the benefit of all of its customers and be cognizant of other restrictions found in RSA 369-B and RSA 374-F. Mr. Mullen said that the complexity of the issue warranted a more extensive review in a proceeding, unlike the instant proceeding, that does not involve a rate change deadline. *Id.* at 8.

Mr. Mullen also offered comments regarding Newington Station, one of PSNH's generating facilities. Mr. Mullen noted that Newington Station has become increasingly uneconomic and, as a result, its capacity factor has steadily declined from 55.9% in 2003 to 3.3% in 2008. Mr. Mullen pointed out that, as the capacity of the plant decreased, the revenues associated with the plant have been exceeded by the plant-related expenses. Mr. Mullen stated that this was not a one-year phenomenon, but a trend that has steadily worsened. He noted that the economic situation of Newington Station was briefly addressed by Staff's consultant, Michael D. Cannata, Jr., in the proceeding to review PSNH's 2008 reconciliation of its actual 2008 ES and SCRC costs and revenues in Docket No. DE 09-091. In that proceeding, Mr. Cannata observed that "if the subject is ripe for review that a separate proceeding be initiated that considers the complexities of valuing Newington going forward." *Id.* at 8. Mr. Mullen opined that it is time to review the continued operation of Newington Station. *Id.*

According to Mr. Mullen, in response to questions regarding the operation of Newington Station, PSNH has taken the position that Newington Station provides a valuable hedge against high energy prices. Although the value of the hedge can not be easily quantified, Mr. Mullen stated that the price of the hedge can be viewed as the excess of plant-related expenses over

plant-related revenues. Mr. Mullen observed that a significant benefit of Newington Station is the amount of capacity revenue PSNH receives based on the unit's capacity value. He noted that PSNH has estimated that it will receive slightly more than \$20 million in capacity revenue related to Newington Station in 2010. Mr. Mullen said that, with the end of the forward capacity market transition payments in May 2010, lower future capacity prices resulting from the forward capacity auctions may result in a widening of the gap between plant-related expenses and revenues. *Id.* at 9.

In light of the economic considerations related to Newington Station and its operation, Mr. Mullen recommended that PSNH prepare a study regarding the benefits and costs of its continued ownership and/or operation of Newington Station and whether the plant will continue to provide benefits to PSNH customers. According to Mr. Mullen, such a study should include a forecast of plant-related revenues and expenses as well as analyses of other relevant factors such as local or regional reliability, fuel diversity, fuel and energy price forecasts, the value of the hedge provided by Newington Station, whether the hedge could be provided through alternative means and at what cost, and similar issues. As for the timing of the filing of such a study, Mr. Mullen stated that it could be filed as part of PSNH's next Least Cost Plan, as part of the current ES docket, or independently. In any event, Mr. Mullen recommended that the study be filed early enough to be reviewed and analyzed before PSNH files its next ES rate filing. *Id.* at 9-10.

In response to questions regarding PSNH's supplemental power purchases, Mr. Mullen testified that some of the contracts, such as agreements with the Lempster and Pinetree facilities and the Bio-Energy replacement contract, had already been approved by the Commission. Mr. Mullen said that PSNH's 2008 purchases would be something that the Commission would review when it looked at how PSNH met its total supply obligations for 2010. *Id.* at 10.

Regarding the price of the 2008 supplemental purchases, Mr. Mullen said it is easy to challenge those purchases in hindsight but that existing circumstances and market conditions must be taken into consideration. *Id.* at 10-11.

As for the most recently approved LCIRP, Mr. Mullen testified that, in his view, PSNH's LCIRP indicates how the Company typically conducts planning. To illustrate how the planning process works, PSNH, in the Supplement to the LCIRP, used the 2007 calendar year to demonstrate how the plan was implemented during that year. In addition, Mr. Mullen stated that the Supplement indicates a number of market factors PSNH continues to monitor, including migration, to maintain flexibility going forward. *Id.* at 11-12. Mr. Mullen explained that when the Commission issues a ruling on a Least Cost Plan, it determines whether a utility's planning process is adequate. Mr. Mullen stated that if a utility's planning process did not allow for flexibility to adjust to changing market conditions, then he would question whether that planning process was adequate. *Id.* at 12. Mr. Mullen stated that, in his opinion, there is nothing to indicate that PSNH had acted out of conformance with its LCIRP. *Id.* at 13.

In closing, Staff recommended that, based on its investigation of the filing, the Commission approve PSNH's calculated energy service rate of 8.96 cents per kWh for services rendered on and after January 1, 2010. Staff recommended that the Commission approve the adjustments in Method 2 to move some costs from the ES rate to the TCAM, SCRC and distribution charges. Staff agreed that the issue of customer migration needs to be addressed in early 2010 with sufficient notice to parties who may be interested in the issue. Staff also recommended that PSNH be required to study whether continued ownership and operation of Newington Station is economically sound. Finally, Staff stated its view that there is nothing in this filing that is inconsistent with the most recent LCIRP approved by the Commission.

III. COMMISSION ANALYSIS.

A. MOTIONS FOR PROTECTIVE TREATMENT

We note that we have disposed of motions to compel discovery responses in Order No. 25,048 (November 30, 2009) denying Freedom-Halifax's motion to compel and granting TransCanada's motion to compel in part with respect to its data request Set 01-Q-TC-013 requesting certain information regarding PSNH's procedures for power purchases.⁴

PSNH filed a motion for protective treatment when it provided its response to data request Set 01-Q-TC-013 on December 1, 2009. In its motion, PSNH stated that the internal documents relied on by personnel who make power purchases for PSNH are confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. According to PSNH, the procedures include information unrelated to the procurement of power which PSNH would like to protect from disclosure, as well as strategic considerations utilized in the procurement of supplement power supplies for PSNH's ES. PSNH stated that there are specific dollar limits, volume limits and authorization limits associated with when certain purchases can be made. PSNH stated that if this information were made available to the public, all potential suppliers of supplemental power to PSNH would know of the day-to-day procedures employed by personnel who procure supplemental power supplies for PSNH. If disclosed, PSNH said it would be at a disadvantage with respect to all other participants in the ISO-New England markets and may not be able to optimize its purchases on behalf of ES customers.

⁴ For the record, we note that PSNH filed letters on November 23 stating that it had incorrectly labeled responses to the following data requests as confidential and had made the information available to all parties in the proceeding: Set 01-Q-OCA-011 (Bio Energy forecasted above-market costs) and Set 01-Q-STAFF-005 (price assumptions for fuel supplies).

On November 13, 2009, PSNH filed a motion requesting protective treatment for “2010 forecasted total revenue requirements associated with Newington Station.” Staff Set No. 2, Q-STAFF-001. In its motion, PSNH asserted that Newington occupies a pivotal position in PSNH’s resource mix. According to the Company, it must balance the market price of Newington’s fuel with the market price of purchased power when planning ahead or deciding on a day-to-day basis whether to operate Newington Station. PSNH asserted that the details on revenue requirements contained in the response are not publicly available elsewhere, including from ISO-NE, which must adhere to the confidentiality provisions of the ISO-NE information policy. Because PSNH is in competition with competitive suppliers and wholesale generators for the ability to acquire supplies of power, PSNH stated that it would be competitively disadvantaged if the details of the analyses were made public or provided to parties other than the Staff or the OCA. PSNH said it does not widely circulate the revenue requirements of any particular plant within the Company and that the information is not disclosed outside of PSNH. PSNH also noted that the Commission has previously afforded protective treatment to operational information and revenue requirements of Newington Station. *See* Docket No. DE 08-066, *Public Service Company of New Hampshire*, Order No. 24,931 (January 16, 2009) at 13. No objection was made to this motion for protective order.

On November 24, 2009, PSNH filed a motion for protective treatment of its response to Staff data request Set No. 1, Q-STAFF-013, requesting a list of contracts, dates they were executed, the duration of the contracts, the contracting party, the quantity purchased and the purchase price. In the same motion, PSNH requested protective treatment for its response to Staff data request Set No. 1, Q-STAFF-021, which requested a list of all coal contracts currently

in effect, including the contracting party, the source of the coal, sulfur content, price per ton, and additional regarding the source of the coal and the plant where it was to be delivered and used.

According to PSNH, the information is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. PSNH said that release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power. The supply contracts and purchase power agreements have been kept confidential to protect both suppliers and purchasers. PSNH said that suppliers may not want to negotiate future supply contracts if they assume that the information in the final contract will be made public. According to PSNH, fewer suppliers means a less competitive market in which PSNH will procure supplemental power supplies and its coal supply. PSNH said that a similar motion was granted in its previous ES rate proceeding, Docket No. DE 08-113, *Public Service Company of New Hampshire*, Order No. 24,920 (December 12, 2008) at 6.

PSNH stated that it should be permitted to negotiate and enter into power supply and fuel supply contracts with the same level of confidentiality that other businesses have in conducting their own procurement activities. While PSNH said it was appropriate for Staff and the OCA to have access to such information, it has been customary to restrict competitive suppliers' access to this information. TransCanada filed a partial objection to the motion for protective order on November 25, 2009, stating that it believed that some or all of the information that Staff seeks through the data request should be made available to TransCanada and the public. According to TransCanada, at a minimum PSNH could leave out the name of the supplier and provide the other requested information to TransCanada. It could also aggregate the purchases in each month and provide one overall monthly value for the price, megawatt-hours, volume and term. In addition, PSNH could describe the financial assurances in the contracts, as the last sentence of

the data request asks. Providing this information, while leaving out the supplier's name, should alleviate PSNH's concerns, TransCanada said. TransCanada's partial objection was overruled at the December 10, 2009 hearing.

Also on November 24, 2009, PSNH filed a motion for protective treatment of responses to data request Staff Set No. 1, Q-STAFF-010, which requested the Company's schedule for planned maintenance outages at its generating plants for calendar year 2010. According to PSNH, the dates and durations of scheduled plant outages are confidential commercial information potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH said that release of the information to the public, including competitive market participants, places PSNH at a distinct disadvantage when it plans to purchase energy to supply its customers during times when major generating stations are undergoing planned maintenance. PSNH stated that this disadvantage will persist as long as PSNH is supplying energy service and as long as PSNH owns generation. The Company said that the harm to customers results from the competitive market knowing the distinct periods when PSNH must supplement its normal energy needs to replace the production from major generation stations. PSNH noted that the Commission granted a similar motion in the previous ES rate setting proceeding, Docket No. DE 08-113, Order No. 24,920 (December 12, 2008) at 6. No party filed an objection to PSNH's motion to protect.

PSNH filed another motion for protective order on November 24, 2009 regarding its response to data request Set 1, Q-STAFF-014, which requested information regarding PSNH's estimated costs of compliance with the New Hampshire Renewable Portfolio Standard (RPS), including a break-down of costs by class of renewable energy certificates (RECs), details concerning any contracts PSNH had entered into to acquire RECs from other facilities, and

information regarding PSNH's sale of RECs from its owned renewable energy resources. In support of its motion, the Company said that release of the responses to data request Set No. 1, Request Q-STAFF-014 would put PSNH at a disadvantage with respect to future negotiations with suppliers of RECs. According to the Company, contracts with parties selling RECs are kept confidential to protect both parties. PSNH said that if the information were disclosed, fewer REC suppliers would want to negotiate contracts with PSNH if they assumed that the contract terms would be made public. Fewer suppliers would mean that PSNH would not be able to procure the increasing REC obligations in a competitive market. PSNH noted that a similar motion was granted in the previous ES rate setting proceeding in Docket No. DE 08-113, Order No. 24,920 (December 12, 2008) at 9. No party objected to this motion for protective order.

Finally, PSNH filed on December 17, 2009 a motion for protective order for the responses it provided to record requests made at hearing. Those record requests are: the calculation of the above-market costs of the three purchases for 2010 using the December 7, 2009 market prices used to calculate the above market costs of the Bio-Energy replacement contract (Exhibit 5); the summer 2008 internal memorandum describing PSNH's procurement strategy for the 2010 energy service year (Exhibit 18); and the last four quarterly accounting reports where mark-to-market of energy purchases was reported (Exhibit 20). In its filing, PSNH stated that Exhibit 5 and Exhibit 20 should be considered as part of PSNH's motion for protective order regarding supplemental power purchases and coal supply contracts filed on November 24, 2009 and Exhibit 18 should be considered as part of PSNH's motion for protective order regarding PSNH's power purchasing supplies provided in response to the Commission's order on TransCanada's motion to compel.

The Right to Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unital Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by PSNH should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not service that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighted against the benefits of disclosure to the public. Puc 203.08 (b).

First, we will review whether the information for which PSNH claims protective treatment is, indeed, confidential. The categories of such information are: PSNH's internal power purchase guidance, including the 2008 memorandum regarding power purchases for 2010; revenue requirements for Newington Station; power supply and coal supply contracts, including the over-market calculation for the 2008 strips of energy purchased for 2010 and mark-to-market information on PSNH power purchases; specific information regarding planned maintenance outages for PSNH generating units; and price information regarding PSNH's purchases and sales of RECs.

In each motion, PSNH asserts that the information for which it seeks protection is potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH states that all such information is maintained confidential by the Company and is not otherwise disclosed. Regarding the revenue requirements for Newington Station, PSNH states that the information is not available elsewhere, including from ISO-NE. In addition, with respect to the supplemental power supply contracts, the coal supply contracts and the REC contracts, PSNH asserts that both parties to the contract expect the details of the contract to be held confidential and not disclosed to the public. Finally, PSNH states that it does not disclose the schedule of planned outages for its generation units. Based on these attestations, we find that the information for which PSNH requests confidential treatment is confidential within the meaning of RSA 91-A:5, IV.

Next we assess the public's interest in the disclosure of the information. Some of the information for which PSNH seeks protection pertains to the costs incurred by the Company in connection with the purchase of coal, supplemental power supply and RECs contained in the responses to data requests Set 1, Q-STAFF-021, Set 1, Q-STAFF-013, Set 1, Q-STAFF-014,

respectively. PSNH also includes in this category of information the calculation of the over-market price of the strips of power it purchased in 2008 for 2010 default service load, and the mark-to-market analysis of its purchases filed as Exhibit 20. PSNH uses these costs in the calculation of an estimated energy service retail rate and the public disclosure of these costs would allow for a detailed understanding of the various cost components in ES rates. As a result, we find that the public has an interest in the disclosure of this information.

The Company states in its two motions, the disclosure of this information would allow competitors to see the costs of PSNH supplemental power purchases, coal purchases and REC purchases. The disclosure of this information could negatively impact the ability of PSNH to secure fuel, supplemental power supply and RECs at competitive prices. Based upon these facts, we find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing the public interest in disclosure against privacy interest). We therefore grant the motion for confidential treatment.

Next, we evaluate the confidentiality of PSNH's internal power purchase guidelines (data request Set 01-Q-TC-013) and the 2008 internal memo (Exhibit 18) regarding purchases recommended for that year. The benefit to the public in disclosing this information is that, as customers, they would understand PSNH's supplemental power purchasing strategy and, specifically, the rationale for the purchases made in 2008 for the 2010 default service load. As a result, we find that the public has an interest in disclosure of this information.

We also conclude that disclosure would damage PSNH's ability to negotiate competitive prices for its supplemental power purchases and would impair the Company's ability to provide service to its customers at reasonable rates. As a result, we find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates. We therefore grant the motion for confidential treatment.

In the case of the information regarding planned outages (data request Staff Set No. 1 Request Q-Staff-010), disclosure of this information would inform suppliers when PSNH would be looking to supplement its owned generation supply. If this information were disclosed, PSNH would be at a competitive disadvantage in securing supplemental power for the times when it needed supplemental power and would be impeded from providing service to its customers at reasonable rates. Disclosure of this information does not serve to inform the public concerning the rates reviewed in this proceeding and therefore we do not find that the public has an interest in disclosure of this information. We therefore grant the motion for confidential treatment.

Finally, with respect to the revenue requirements for Newington Station (data request Staff Set No. 2, Q-STAFF 01) these costs would assist customers in understanding the basis for the ES rates being considered in this docket. Thus, the public has an interest in the disclosure of this information. On the other hand, disclosure of these revenue requirements to PSNH's competitors would affect the ability of PSNH to operate Newington to the maximum economic benefit to its customers. When weighed against the public's interest in disclosure, we find that the revenue requirements for Newington Station should remain confidential.

Consistent with N.H. Code of Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own

motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order.

B. PSNH 2010 ENERGY SERVICE RATE

Pursuant to RSA 369-B:3, IV (b)(1)(A), the price of PSNH's default service shall be its "actual, prudent, and reasonable costs of providing such power, as approved by the commission." The genesis of the two-part procedures for calculating default service rates, now referred to as energy service rates, and reconciling those rates, lies in RSA 374-F, the Settlement Agreement in Docket No. DE 99-099, which implemented electric utility restructuring for PSNH and Docket No. DE 02-166, Order No. 24,117 (January 30, 2003), which further refined the mechanism for setting transition service rates, which later became default service rates. Each year in the energy service proceeding, PSNH provides an estimate of the energy service rate for the following calendar year and the Commission approves what it determines to be a reasonable estimate. Because PSNH is entitled to recover its *actual* costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting ES rates. The first step, which is determined in this docket is based upon an estimate of future costs. The second step, which occurs after the power has been produced or purchased and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.⁵

⁵ The energy service proceeding is somewhat analogous to a temporary rate proceeding or a cost of gas proceeding. In a temporary rate proceeding the rate is set employing a standard that is less stringent than the standard for permanent rates because of the reconciliation mechanism. In a cost of gas proceeding the rate is set based upon forecasts and estimates and is subject to reconciliation in the next cost of gas proceeding. In both temporary rates and cost of gas proceedings the reconciliation process allows the Commission to apply a more stringent standard and look closely at the reasonableness of costs and the prudence of decisions.

We find that PSNH reasonably estimated the proposed 2010 ES, taking into account purchases for supplemental power, estimates of the costs related to the operation of its generation units, and associated fuel supply contracts. These calculations, as updated by PSNH's December 7, 2009 filing, support a 2010 energy service rate of 8.96 cents per kWh. Consistent with past practice, we will review the reasonableness of PSNH's operating expenses and the prudence of its capital expenditures in connection with the Company's separate filing reconciling ES costs and revenues.

TransCanada contends that PSNH made unreasonable decisions to purchase three strips of supplemental power for 2010 in 2008. PSNH countered that the 2008 purchases were made at market prices and were reasonable at the time, given then-existing indications that market prices could go higher than the price it paid. Furthermore, PSNH said that it had made the 2008 purchases as part of its strategy to provide rate stability, consistent with the Commission's previous recommendation that PSNH take appropriate measures to avoid excessive over- and under-recoveries in the reconciliation of ES rates. As noted above, rulings on the reasonableness and prudence of the underlying components of the ES rate will occur during the reconciliation of the actual energy service related expenses and revenues for 2010. In this order, our finding relates to the reasonableness of the estimate of PSNH's 2010 ES rate.

In approving the rate, we are also approving PSNH's proposed Method 2 as described in the testimony it filed on November 23, 2009. Consequently, PSNH may recover the over-market costs of the Bio-Energy replacement agreement through the SCRC because the nature of the costs meets the definition of stranded costs in RSA 374-F:2, IV. We also approve PSNH's recovery of the VAR reliability costs through the TCAM and instruct the Company to cease collection of those costs through the ES rate beginning January 1, 2010. When PSNH makes its

TCAM adjustment filing, the under-collections for the months beginning January 1, 2010 through the effective date of the new TCAM charge can be reconciled in the calculation of the TCAM rate. Finally, we agree that the value of company use of energy not related to generation should be removed from the ES rate and recovered through distribution rates, and advise the Company to take appropriate action to implement that change.

It is clear that approving Method 2 alone, however, does not fully address the effects of the migration of large customers to competitive suppliers on PSNH's small commercial and residential customers who have less of an opportunity to choose an electric supplier. We are not persuaded that PSNH has yet taken measures sufficient to address potential migration and, therefore, we will require the Company to develop a meaningful range of forecasts of customer migration as it prepares to recommend a mid-year adjustment to its ES rate effective July 1, 2010.

Having reviewed the revenues and expenses related to Newington Station, we agree with Staff that the Company should conduct a study of the costs of continuing the ownership and operation of the plant. Because PSNH stated that it will need additional time to conduct the study, and because the status of Newington Station will impact PSNH's least cost integrated resource plan currently scheduled for filing in May 2010, we direct PSNH to incorporate the study in the LCIRP to be filed no later than September 30, 2010.

Pursuant to RSA 378:41, "[a]ny proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the Commission." The most recent plan was approved by the Commission in Docket No. DE 07-108 by Order No.24,945 (February, 27, 2009). According to TransCanada, PSNH should not be

allowed to recover the costs of the 2008 supplemental power purchases because PSNH did not conduct the purchases in accordance with the 2007 LCIRP. We disagree.

PSNH asserts that the 2007 LCIRP presented an historical narrative of how PSNH conducted its demand and supply side planning in 2007. The supplemental filing of March 28, 2008, moreover, stated that the overview it presented “is indicative of PSNH’s current procurement strategy; however, as discussed below, PSNH does not have a prescriptive hedging protocol. By retaining flexibility in its planning process, PSNH is able to respond to changes in planning criteria and create benefits for customers.” (Emphasis added) Hearing Exhibit 9 at 1. The filing goes on to state: “To optimize the energy service power supply, PSNH continuously forecasts, monitors and makes adjustments for a number of critical factors, including operation and maintenance schedules at its generation facilities, fuel purchasing decisions, customer load forecasting, migration uncertainty, supplemental power purchasing decisions and management of the renewable portfolio supply obligation.” *Id.* at 2-3.

We understand this section to provide PSNH the flexibility necessary to make supplemental power purchases based on the dynamics and trends in the market and factors related to the operation of its generation units. The flexibility described in the March 28, 2008 supplement permits PSNH to participate in an informed manner for the benefit of its customers. Based on the record in this docket, we find that PSNH purchased supplemental power in a manner that is not inconsistent with its most recently approved LCIRP and that this filing is in conformity with that plan.

In this order we are not adopting TransCanada’s recommendation that PSNH be required to employ an RFP for power purchases. Nonetheless, we intend to explore the interplay of customer choice and migration issues with power procurement options for PSNH, including

current practices, competitive procurement through RFPs, purchasing through the spot market, or other market based options. We also intend to pursue the issues identified in Docket No. DE 06-061, in Order No. 24,819 (January 22, 2008) regarding time-of-use rates and advanced metering infrastructure (smart metering) and their possible impact on load and procurement options. We will develop these issues and a process to consider them in greater detail in a subsequent order in a separate docket.

Based upon the foregoing, it is hereby

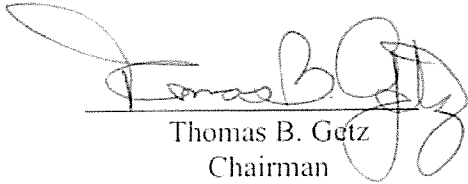
ORDERED, Public Service Company of New Hampshire's petition as modified by its December 7, 2009 update to establish an energy service rate of 8.96 cents per kWh effective January 1, 2010 is hereby APPROVED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire's motions for protective treatment are hereby GRANTED subject to the conditions discussed herein; and it is

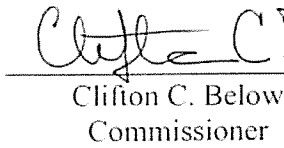
FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariffs pursuant to New Hampshire Code of Admin. Rules Puc 1603 conforming to this Order no later than 30 days hereof; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010 and shall include a continuing unit operation study for Newington Station in that filing.

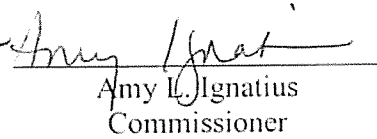
By order of the Public Utilities Commission of New Hampshire this thirty-first day of
December, 2009.



Thomas B. Getz
Chairman

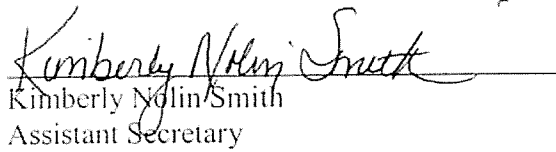


Clifton C. Below
Commissioner



Amy Ignatius
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 08-113

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Mid-Term Adjustment to 2009 Energy Service Rate

Order Approving Petition

ORDER NO. 24,991

July 24, 2009

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

I. PROCEDURAL BACKGROUND

On May 20, 2009, Public Service Company of New Hampshire (PSNH) filed a petition with supporting testimony and schedules requesting an interim change to its energy service rates for services rendered on and after August 1, 2009. PSNH's current energy service rate is \$0.0992 per kilowatt-hour (kWh). *See* Order No. 24,930 (December 30, 2008). Pursuant to N.H. RSA 369-B:3, IV(b)(1)(A), the price for PSNH's energy service must reflect PSNH's actual, prudent and reasonable costs of providing the power. In prior energy service proceedings, the Commission has approved a twelve-month rate and has allowed any party to request a mid-term adjustment to the rate to avoid large over- and under-recoveries. In its filing, PSNH estimated that the new rate would be \$0.0894 per kWh, but noted that, as in past mid-year filings, it would update the projected costs and rate calculations prior to hearing. PSNH said that it requested the August 1, 2009 effective date to coincide with the proposed effective date for temporary rates that it requested in Docket No. DE 09-035, PSNH's distribution rate proceeding.

The Office of Consumer Advocate had previously filed a letter on September 19, 2008 stating that it would be participating in the instant docket on behalf of residential ratepayers pursuant to RSA 363:28. The Commission issued an order of notice on June 11, 2009.

On June 19, 2009, PSNH submitted updated attachments to its prefiled testimony along with a technical statement summarizing the changes from the initial filing, including the actual final revenues and expenses for May 2009 and an updated forecast of kilowatt-hour sales and power costs through December 31, 2009. In its revised filing, PSNH requested an interim adjustment to the energy service rate from \$0.0992 per kWh to \$0.0903 per kWh, a decrease of \$0.0089 or 9%, effective with service rendered on and after August 1, 2009.

II. POSITIONS OF THE PARTIES

A. PSNH

PSNH's testimony at hearing addressed the June 19, 2009 revisions to its initial filing. PSNH said that the decrease in energy service rates from the current rate of \$0.0992 per kWh to \$0.0903 per kWh generally reflects the declining market price for energy. PSNH said that the proposed rate is an estimated rate that would be subject to a review for prudence in the separate annual reconciliation process for 2009 energy service rates that will be filed in 2010.

Regarding migration of its customers to competitive suppliers, PSNH testified that it expects migration for the remainder of 2009 to exceed that experienced in prior years. The Company estimated that 16 percent of its large customers (18 percent of its peak power load) now take energy from competitive suppliers. PSNH opined that the increased migration resulted from third party suppliers offering a better rate in light of declining market prices. PSNH also noted that it sets its default service rate effective January 1 of each year based on its forecast of power costs, whereas competitive suppliers can offer prices based on then-existing market prices.

PSNH stated that it used the approximate 18 percent at peak migration, which is the Company's most recent data, as its forecast of migration for the remainder of 2009. PSNH testified that the Company does not try to predict market movements, but attempts to reflect the best known information in its filing. PSNH noted that the energy service price is decreasing, which may result in fewer customers migrating to competitive supply, but overall market conditions are unpredictable. PSNH affirmed that it had agreed to meet with the OCA and Staff prior to filing its 2010 energy service rate to discuss the issue of the impact of migration on residential and small business customers who do not have the opportunity to take advantage of competitive supply opportunities.

PSNH provided an update concerning insurance proceeds related to damage to the new turbine that occurred after it was installed at Merrimack Station in 2008.¹ The Company testified that it has two insurance policies — one covering malfunctions or equipment problems with boiler and machinery equipment and another covering replacement power costs. With respect to the turbine damage, the claim for costs incurred to analyze the problem, inspect the equipment, order parts and conduct the repairs was made under the boiler and machinery equipment policy for operation and maintenance (O&M) costs. PSNH testified that under that policy, which has a \$1 million deductible, a claim was made for \$3 million, which was paid by the carrier in 2008. According to PSNH, it will make additional claims for future O&M expenses.

With respect to the policy covering replacement power costs, PSNH explained that such claims are subject to a 60-day waiting period, and that the policy contains a daily maximum allowance and an overall insurance policy limit of \$31 million. PSNH testified that it submitted claims for the costs of replacement power, including costs for replacement power associated with

¹ For a summary of the outage, see Order No. 24,924 (December 30, 2008) at 5-6.

the difference between the actual production of the turbine and the expected production of the turbine had it functioned correctly, following the 60-day waiting period through the month of October 2008, for which it received payment of \$3 million. In addition, PSNH said it had submitted claims for the months of November and December 2008 and for the first quarter of 2009, and will continue to make quarterly claims through the duration of the fall 2009 outage scheduled at Merrimack 2 for purposes of repairing the turbine. PSNH said that it had experienced lags in the insurance company payments. Therefore, in developing the rates, PSNH estimated that some of the claims for replacement power costs incurred in 2009 would likely be paid in 2010, and, therefore, had included in its 2009 energy service rate calculations only those payments it reasonably expected to receive from its insurance carrier, taking into account the waiting period and payment delays.

PSNH said the extended outage to repair the Merrimack 2 turbine would take place in connection with its annual planned four-week maintenance outage during the months of August through December 2009, resulting in a total outage duration of eighteen weeks. PSNH estimated that the replacement power costs associated with the outage, excluding those associated with the normal four-week outage, are estimated to be \$5.2 million. Regarding the timing of the planned outage, the OCA asked whether PSNH was concerned that it would be taking place at a potential summer peak time. PSNH responded that such an event was considered but the requisite length of the outage required the Company to schedule it at a time when replacement parts are available and when it made sense in terms of weather conditions. PSNH pointed out that the middle of the winter is not a good time for an outage because the equipment can freeze and the startup could take additional days or weeks. Based on projections of the replacement power costs that were predicted for the August time frame, and knowing that the Company wanted to avoid the

unknown risks of working in a cold period start-up, PSNH concluded that its chosen time frame was the best time to conduct the outage.

With respect to its costs of complying with the Regional Greenhouse Gas Initiative (RGGI), PSNH explained that RGGI is a cap and trade program through which allowances for CO₂ emissions are purchased either at auction or in a secondary market. PSNH said it can also use allowances allocated to it through the 2002 New Hampshire Clean Power Act (CPA) to comply with RGGI. Under the CPA, PSNH was granted certain CO₂ allowances earned through energy efficiency and renewable energy investments made prior to 2009. The projects that qualified for those allowances are the replacement of a runner at PSNH's Smith Hydro plant and the conversion of one of the boilers at Schiller Station from coal-fired to wood-fired, referred to as the Northern Wood Power Project. PSNH testified that for 2009, the first RGGI compliance year, it will use 2.5 million RGGI allowances earned pursuant to the CPA and has or will purchase the remaining required allowances. PSNH explained that the improvements at Smith Hydro were funded by customers and, therefore, 100 percent of the value of the allowances associated with the improvements is credited to customers. With respect to the Northern Wood Power Project, PSNH explained that, in accordance with an agreement² related to that project, 50 percent of the value of the allowances earned from that project is credited to customers. *See Public Service Company of New Hampshire*, Order No. 24,327 (May 14, 2004) 89 NH PUC 294.

In response to questioning, PSNH explained a \$12.7 million credit related to the coal inventory at Merrimack Station that was included in the filing. According to PSNH, it conducts

² The "agreement" referred to by PSNH was not a "settlement agreement" but a recommendation contained in a joint motion for reconsideration filed on March 3, 2004 in Docket No. DE 03-116, *Public Service Company of New Hampshire*. The substance of the recommendation described how to allocate the risks and rewards associated with the project's incremental costs and incremental revenues. The Commission accepted the recommendation in Order No. 24,327 (May 14, 2004) 89 NH PUC 294.

a physical inventory of its fuel once a year to reconcile with the booked inventory. While PSNH had previously estimated an inventory adjustment at the end of 2008, it found that the required adjustment was larger than originally estimated. PSNH testified that while there is always some amount of error that occurs during the year, it discovered that due to an error with a coal scale at the bottom of one of its conveyors, the amount of coal being burned in the plant had been overstated. PSNH said it is in the process of replacing the scale and will be conducting two physical inventories in 2009 in order to avoid large adjustments.

Regarding compliance with the Renewable Portfolio Standard (RPS) for 2009, PSNH said that it currently plans to comply through a combination of its own resources, purchases and alternative compliance payments, with the actual mix of those compliance methods varying among the various renewable energy classes.

B. Office of Consumer Advocate

At the conclusion of the hearing, the OCA stated that it took no position on PSNH's petition. The OCA said it was pleased that the resulting rates are decreases, and that market rates are lower. The OCA reiterated its concern about migration and the potential impact of increased migration on residential customers.

With respect to the replacement power costs necessitated by the extended outage at Merrimack Station, the OCA opined that the customers should not have to pay for both the cost of insurance and the cost of replacement power, and wait for later reimbursement from the insurance carrier. The OCA said it would prefer that the Company try to more accurately forecast the insurance recoveries and would like to see customers immediately receive the benefits of the insurance proceeds.

C. Commission Staff

Staff said it had conducted an investigation of the filing and had determined that PSNH had appropriately calculated estimated energy service costs in its filing. It recommended that the Commission approve the petition.

III. COMMISSION ANALYSIS

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price for PSNH's energy service rate must allow for recovery of the actual, prudent, and reasonable costs of providing the power, as approved by the Commission. Based on our review of the petition and evidence in the record, we find that the calculations and related documentation support PSNH's request for a mid-term adjustment to its energy service rates. We find PSNH's calculations to be reasonable and we approve the energy service rate of 9.03 cents per kWh for the period of August 1, 2009 through December 31, 2009. We therefore grant the petition as amended.

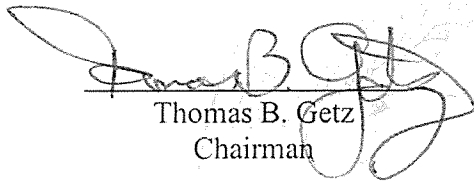
This is one of four orders we are issuing for effect for service rendered on and after August 1, 2009: in the instant docket, the energy service rate adjustment; in DE 08-114, an adjustment to PSNH's stranded cost recovery charge; in DE 09-114, an adjustment to PSNH's transmission cost adjustment mechanism; and in DE 09-035, a temporary adjustment to PSNH's distribution rates. Overall, the average impact of these rate changes effective August 1, 2009 is an approximate decrease of one percent for a PSNH customer purchasing energy from PSNH. PSNH customers purchasing from competitive suppliers will not pay PSNH's energy service rate and will therefore experience different overall rate impacts due to changes in the rates resulting from the other three dockets cited above.

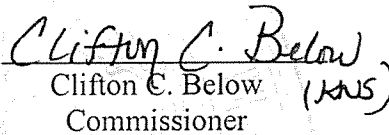
Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's requested energy service rate of \$0.0903 per kWh effective with service rendered on and after August 1, 2009 is hereby APPROVED; and it is

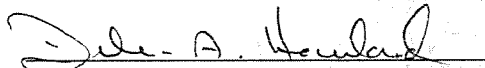
FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariff changes that conform with the Order within 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of July, 2009.


Thomas B. Getz
Chairman


Clifton C. Below (HNS)
Commissioner

Attested by:


Debra A. Howland
Executive Director

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 08-113

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Request for Approval of 2009 Energy Service Rate

Order Approving Energy Service Rate

ORDER NO. 24,924

December 30, 2008

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

I. PROCEDURAL HISTORY

On September 12, 2008, Public Service Company of New Hampshire (PSNH) filed testimony and related attachments and exhibits to support an energy service (ES) rate for service rendered on and after January 1, 2009. Pursuant to RSA 369-B:3, IV,(b)(1)(A), customers taking energy service from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing the power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 10.51 cents per kilowatt hour (kWh) for the 2009 ES rate, but further stated that a final proposed rate would be filed just prior to the hearing to reflect the most recent estimates of fuel and energy costs.

On September 19, 2008, the Office of Consumer Advocate (OCA) notified the Commission of its participation in the docket on behalf of residential ratepayers consistent with RSA 363:28. The Commission issued an order of notice on September 22, 2008, scheduling a prehearing conference for October 6, 2008. On October 2, 2008, petitions for intervention were jointly filed by Freedom Logistics, LLC, and Halifax-American Energy Company, LLC (Joint

Intervenors). The intervention petitions were granted by the Commission at the prehearing conference.

Staff filed a proposed procedural schedule on October 7, 2008, which was approved by secretarial letter dated October 9, 2008. Pursuant to the procedural schedule, a technical session was held on November 6, 2008 followed by a discovery period. On October 23, 2008, PSNH filed motions for confidential treatment for its responses to Staff's data requests numbered 001, 002, 004, 008, 009, 011, and 017. The Commission issued Order No. 24,920 on December 12, 2008 ruling on the various motions.

PSNH filed updated calculations of its proposed 2009 ES rate on December 2, 2008, together with a technical statement explaining the differences between the September 12 filing and the updated filing. In the updated filing, PSNH proposed a 2009 ES rate of 9.92 cents per kWh, a decrease of 0.59 cents per kWh from the filing of September 12, 2008. On December 3, PSNH filed a document which depicted the cost per kWh of various components of the ES rate. The hearing took place as scheduled on December 4, 2008.

Subsequent to the hearing on December 8, 2008, the Joint Intervenors filed a letter in which they addressed certain issues raised by PSNH in its motion to dismiss in Docket No. DE 08-145¹ that they believed had some relevance to the instant proceeding.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Robert A. Baumann noted that, as of February 2004, the ES rate for all retail customers has been based on the forecast of PSNH's "actual, prudent and reasonable costs" consistent with RSA 369-B:3, IV(b)(1)(A). The current ES rate of 9.57 cents

¹ DE 08-145 was opened in connection with the Joint Intervenors' petition asking the Commission to determine whether certain modifications to PSNH's Merrimack Station are in the public interest.

per kWh was established in Docket No. DE 07-096, *Public Service Company of New Hampshire*, Order No. 24,871 (June 27, 2008). Based on its preliminary calculations, PSNH estimated that the 2009 ES rate would be 10.51 cents per kWh. According to Mr. Baumann, the proposed rate of 10.51 cents per kWh was due to higher forecasted fuel and purchased power costs, increases in the cost of compliance with the New Hampshire Renewable Portfolio Standard (RPS) (RSA Ch. 362-F) and new costs associated with the Regional Greenhouse Gas Initiative (RGGI) (RSA 125-O:19-28).

In its updated filing of December 2, 2008, PSNH requested that the Commission approve an ES rate of 9.92 cents per kWh for effect January 1, 2009. According to the Company, this rate represents a 2.4% increase to overall rates. PSNH testified that the primary reasons for the increase from the current rate of 9.57 cents per kWh were the same as in its original filing (i.e., higher forecasted fuel and purchased power costs, increases in the cost of RPS compliance, and the new costs associated with RGGI compliance) plus the incremental operation and maintenance (O&M) and replacement power costs (RPC) associated with the Merrimack Unit 2 outage that is expected to occur in the summer and fall of 2009. PSNH said that those increased costs were partially offset by decreased costs associated with power purchases from independent power producers (IPPs) and a \$10 million coal inventory adjustment which will be flowed through as a reduction to energy costs in 2009.

PSNH explained that the Company's updated sales forecast, as compared with the forecast used in the September 12 filing, predicts a 3% drop in total retail sales for 2009. PSNH also revised its forecast of the amount of its customer load served by competitive suppliers. That forecast increased by approximately 427,000 megawatt-hours (MWh), from 156,000 MWh to just under 583,000 MWh. PSNH explained that the net impact of the revised sales forecast and

the revised customer migration forecast on default ES sales forecast is approximately an 8.3% decrease in ES sales for 2009 as compared to 2008.

PSNH explained the reasons for the decrease in overall costs and the resulting decrease in the ES rates as compared to its initial filing in a technical statement attached to the updated filing. The changes described in the technical statement were as follows:

- 1) \$12.7 million increase in Newington fuel oil expense due to an increased forecast of economic operation;
- 2) \$5.5 million net increase to projected O&M costs, partially offset by estimated insurance claim payments, related to a planned outage Merrimack Unit 2 in 2009 to repair turbine damage;
- 3) \$44.3 million decrease in supplemental power purchase expense, primarily related to the revised sales forecast;
- 4) \$38.8 million decrease in coal generation expense, primarily related to forecasted transportation fuel adjustment surcharges, lower forecasted SO₂ allowance expense and a revised Merrimack Unit 2 outage schedule;
- 5) \$14.1 million decrease in forecasted ISO-NE capacity costs, RPS compliance costs and RGGI compliance costs;
- 6) \$10.0 million decrease related to a physical coal inventory adjustment for Merrimack Station;
- 7) \$9.1 million decrease related to estimated insurance claim payments for the replacement power cost associated with the Merrimack Unit 2 turbine damage;
- 8) \$7.1 million decrease in fossil-hydro O&M expenses that were erroneously double-counted in the September 12 filing;
- 9) \$4.5 million decrease in IPP costs due to lower forward market prices;
- 10) \$4.3 million decrease related to the true-up to actual revenues and expenses for August-October 2008 (\$2.8 million) and a revised forecast of November and December 2008 (\$1.5 million); and
- 11) \$1.3 million of other minor cost changes.

According to PSNH, the increases resulting from items 1 and 2 above were more than offset by the decreases shown in items 3 through 11.

At the hearing, PSNH explained the reasons for the extended outage planned in 2009 for Merrimack Unit 2. According to PSNH, it typically schedules an annual outage of Merrimack Unit 2 in April and May to get the unit ready for summer loads. PSNH said that Merrimack Unit 2, as part of a cyclic process, was due for an extended outage of eight weeks, as compared to the normal four weeks, to perform turbine maintenance. Taking advantage of that schedule, PSNH chose to replace the high pressure/intermediate pressure turbine to increase its operational efficiency. PSNH testified that the new turbine would improve Merrimack Unit 2 operations in three areas. First, the new turbine would be more efficient, which would result in less fuel cost for the same amount of output. Second, the turbine would be capable of increasing output to support the planned scrubber installation at Merrimack without decreasing overall net energy output from the plant. Third, the turbine would have a much longer maintenance cycle which would extend the major maintenance cycle from 5 to 10 years.

According to PSNH, following installation of the new turbine, Merrimack Unit 2 was returned to service on May 22, 2008. PSNH said it was immediately apparent that something was wrong with the turbine operation. PSNH explained that, because the turbine was new, the source of the problem was hard to diagnose, even with the assistance of outside experts. PSNH testified that the unit was brought offline on June 20 for a more thorough investigation which revealed wear and tear erosion on what had been a brand new turbine. PSNH said that abrasive debris was found in the turbine and in the boiler area. PSNH stated that, although the turbine was repaired to the extent possible and restored to power on July 14, 2008, the turbine is operating below expected levels.

PSNH testified that it entered into discussions with the vendor and the insurance company and filed a claim with the insurance company. The Company said that its goal is to restore the turbine to “as new” condition. PSNH explained that, to achieve that level of restoration, the Company has two options: 1) replace the unit in the 2010-2011 time-frame with an outage comparable to the 2008 outage, or 2) repair the unit in 2009 with an extended outage of 17 to 18 weeks. PSNH said that the insurance policy would cover the repair or replacement of the turbine, as well as the replacement power costs incurred in connection with the outage.

For the 2009 ES filing, PSNH modeled the costs associated with the turbine to be consistent with repairing the turbine in 2009. PSNH said that during this planned outage it would also perform normal annual O&M activities. According to PSNH, the outage would begin in mid-August 2009 and continue for 17 or 18 weeks until December 2009.

PSNH testified that its ES calculations include assumptions regarding the amount and timing of potential insurance proceeds related to the turbine repair. However, the actual amounts and timing of any such payments are subject to the ongoing settlement negotiations with the insurance carrier and vendor. In any event, PSNH said that its costs of providing energy service, including its replacement power costs related to the planned outage, are subject to reconciliation.

In response to questions about the planned increased operation of the Newington plant during 2009, the Company said that there had been a dramatic decline in the cost of residual fuel oil that Newington burns. PSNH noted that it had been able to purchase some oil at prices that, when converted to electricity at Newington, are less expensive than the forecasted cost of making additional supplemental power purchases. PSNH further said that it had included in its cost estimates additional RGGI allowance requirements to support the increased operation of Newington Station.

PSNH explained that the \$10 million adjustment in coal inventory was a result of a physical inventory that took place at Merrimack Station in the summer of 2008. The Company said this adjustment will be recorded as a credit to fuel expense in November or December 2008.

PSNH concluded by requesting that the Commission approve its petition as revised by its December 2, 2008 filing.

B. Freedom Logistics, LLC and Halifax –American Energy Company, LLC

The Joint Intervenors did not participate in the hearing.

C. Office of Consumer Advocate

At the hearing, the OCA observed that PSNH's own use of power at its various facilities (also called "company use"), including non-generation facilities, is collected through the energy service charge. In response to questioning, PSNH stated that customers who migrate to competitive suppliers would avoid their proportionate share of company use related costs. The OCA asked PSNH whether it had any objection to discussing the issue of the recovery of PSNH's own power use through ES rates in conjunction with PSNH's next rate case. PSNH replied that it would have no objection.

The OCA said that it does not object to PSNH's 2009 ES rate request. The OCA also stated that it would like to be notified of major events with PSNH's generation units, such as the outage at Merrimack Unit 2, when Staff is notified. Finally, the OCA opined that ratepayers should not have to pay the repair costs or the replacement power costs associated with the extended turbine repair outage in 2009 rates because ratepayers had already paid for the insurance premium covering the costs associated with the outage. The OCA said that the Company should wait to see what it recovers from its insurance policy and then come to the Commission with a request to recover any costs not covered by insurance.

D. Commission Staff

Staff stated that it had reviewed PSNH's original and updated filing and believed that PSNH has provided sufficient information to support its proposed 2009 ES rate of 9.92 cents per kWh. Staff recommended that the Commission approve PSNH's request as amended by the December 2, 2008 filing.

With respect to the turbine repair and planned extended outage at Merrimack Unit 2, Staff said that PSNH could provide updated information to the Commission when the Company files its mid-year adjustment of the ES rate. Staff also said that the outage and associated costs would be reviewed in connection with PSNH's filing for reconciliation of its 2008 ES and stranded cost recovery charge costs.

III. COMMISSION ANALYSIS

Pursuant to RSA 369-B:3, IV (b)(1)(a), PSNH is required to establish the price of its default energy service according to its actual, prudent and reasonable costs of providing such power, subject to our approval. We find that PSNH appropriately calculated the proposed 2009 ES rate to be 9.92 cents per kWh and that its calculation is supported by its December 2, 2008 updated filing. Therefore, we will approve the rate. As has been our practice, we will review the reasonableness of PSNH's operating expenses and the prudence of its capital expenditures in connection with the Company's separate filing reconciling ES costs and revenues.

At hearing, PSNH testified regarding problems related to the installation of a new turbine at Merrimack Unit 2 including a planned extended outage to repair the turbine during 2009. We will closely monitor further developments related to the turbine problems including incremental O&M costs, replacement power costs and insurance reimbursements. We agree with Staff that the outage will be a subject for review in PSNH's reconciliation of ES and stranded cost charges

for 2008, and therefore will allow the estimated net outage-related costs as calculated by PSNH to be included in the 2009 ES rate, subject to that later review. We expect PSNH to reflect in its mid-year ES rate filing any cost implications regarding the outcome of negotiations with the insurance carrier and any other related developments.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's requested energy service rate of 9.92 cents per kWh effective with service rendered on and after January 1, 2009 is hereby approved; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariff changes that conform with this Order within 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2013 TERM

Docket No: 2013-0307

APPEAL OF PSNH RATEPAYERS

APPELLANTS' MEMORANDUM OF LAW IN SUPPORT OF
OBJECTION TO APPELLEE'S MOTION FOR
SUMMARY DISPOSITION AND SUMMARY AFFIRMANCE

In its Motion for Summary Disposition and Summary Affirmance ("Motion") and its accompanying Memorandum of Law in Support of Motions for Summary Disposition and Summary Affirmance ("Memorandum"), Public Service Company of New Hampshire ("PSNH") asserts that the claims of George Chase, Alexandra Dannis, James Dannis, William Hopwood, Amy Matheson, and Janet Ward (together "PSNH Ratepayers") were not preserved and that the PUC properly approved PSNH's 34% rate increase despite its failure to comply with RSA 378:37 *et seq.* For the reasons discussed below, the PSNH Ratepayers are entitled to maintain the instant appeal pursuant to N.H. Supreme Court Rule 10 with respect to all questions presented in its Appeal by Petition, and, accordingly, this honorable Court should deny PSNH's motion.

I. The Issue of the PUC's Interpretation of RSA 378:38 was Properly Preserved for Appellate Review.

The issue in this case is whether, under RSA 378:40, the Public Utilities Commission ("PUC" or the "Commission") could lawfully approve PSNH's requested rate change in the absence of PSNH either complying with the biennial Least Cost Integrated Resource Plan ("LCIRP") requirements of RSA 378:38 or seeking and

obtaining a waiver under RSA 378:38-a. Instead of directly addressing the statutory provisions at issue,¹ PSNH attempts to portray the questions presented in this case, involving a rate change order in PUC docket DE 12-292, as a “collateral attack” on the Commission’s order in an entirely different docket – an order which approved PSNH’s 2010 LCIRP. *Memorandum* at 3; *Order Approving 2013 Energy Service Rate*, Order No. 25,448 (Dec. 28, 2012) [hereinafter “Order”], *Appendix to Appeal By Petition* at 42 [hereinafter “A.”]. The order referenced by PSNH was issued in PUC Docket DE 10-261 nearly a month after the Commission order approving PSNH’s rate increase and is not directly relevant to the issues in this case except that it contains information regarding the LCIRP process in general. *Order Accepting Integrated Resource Plan, and Delineating Parameters for Succeeding Integrated Resource Plans* (Order No. 25,459), Supplemental Appendix of Public Service Co. of New Hampshire at 2 [hereinafter “Supp. A.”]. The PSNH Ratepayers plainly preserved their right to appeal PSNH’s 34% rate increase by filing a timely motion for rehearing of the rate order. *Conservation Law Foundation’s and Ratepayers’ Motion for Rehearing of Order No. 25,448* (Jan. 28, 2013), A. at 54. Thus, PSNH’s argument that the Appellants failed to preserve the issue for appeal is without merit.

The PSNH Ratepayers had no obligation to move for rehearing of the 2010 LCIRP approval order to preserve the question of PSNH’s rate increase. In December 2012, when the Commission approved the rate increase at issue in this case, PSNH had not submitted an LCIRP within two years of its last filing as required by RSA 378:38 and had not obtained a waiver from that requirement pursuant to RSA 378:38-a. As a result,

¹ PSNH devotes two and a half pages of its memorandum addressing a docket which is simply of no consequence to this appeal.

pursuant to RSA 378:40, the Commission did not have authority to approve the 34% rate increase. In short, although PSNH claims that the PSNH Ratepayers' appeal is a "collateral attack" on the 2010 LCIRP approval order, it fails to recognize that the questions presented in this appeal arose in PUC Docket DE 12-292, the docket at issue here, and specifically pertain to the PUC's authority to approve rate changes in light of the statutory prohibition contained in RSA 378:40 and the related requirements of RSA 378:38 – issues that were properly preserved in the Appellants' motion for rehearing. *Conservation Law Foundation's and Ratepayers' Motion for Rehearing of Order No. 25,448* (Jan. 28, 2013), A. at 54. Thus, there was no need for the Appellants to move for rehearing of the LCIRP approval order.

II. A Substantial Question of Law is Presented in this Appeal and PSNH has Failed to Demonstrate that Summary Affirmance is Appropriate.

As set forth in the Appeal by Petition and incorporated by reference here, the PSNH Ratepayers have enunciated substantial questions of law which must be decided by this Court, and for which the standard of review is *de novo*. *Appeal of Union Telephone Co.*, 160 N.H. 309, 314 (2010). RSA 378:40 forbids rate increases unless the subject utility has complied with RSA 378:38, which includes the requirement of filing an LCIRP with the commission "at least biennially." RSA 378:40; RSA 378:38. PSNH had not complied with the statutory biennial filing requirement and the PUC had not granted a waiver from that requirement when it approved PSNH's requested rate change. As a result, the Commission did not have authority to approve PSNH's request for a 34% rate increase. *See Appeal by Petition* at 8-11.

The statutory LCIRP filing requirements were established in furtherance of New Hampshire's Energy Policy, which was enacted together in 1990 with other LCIRP-related requirements, including RSA 378:38 and :40. The policy states that

it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities.

RSA 378:37. To meet these legislatively-mandated goals, including providing the PUC with all of the information that it needs about a utility's planning framework, the Legislature determined that biennial LCIRP filing requirements were mandatory. RSA 378:38. When the planning process is too attenuated, or is not ongoing, the value of the resulting statutorily-required analysis is diminished. *See Order Accepting Integrated Resource Plan, and Delineating Parameters for Succeeding Integrated Resource Plans* (Order No. 25,459), Supp. A. at 15 (stating that as a result of the long time between filing and acceptance, "this order addresses circumstances that in some cases no longer reflect the electric market"). The issue presented in this case – i.e., a utility's obligation to meet the biennial filing requirement before it seeks significant rate increases – raises a substantial question of law for the Court to determine.

As set forth below, PSNH has failed to demonstrate that there is no substantial question of law presented regarding whether the PUC properly approved its rate increase in contravention of RSA 378:38 and :40. Therefore, summary affirmance is improper.

A. PSNH's Reliance on So-Called "Long-Standing Precedent" is Unfounded.

PSNH's reliance on the administrative gloss doctrine is erroneous.

The doctrine of administrative gloss is applied to "an ambiguous clause when those responsible for its implementation interpret the clause in a consistent manner and apply it to similarly situated applicants over a period of years without legislative interference." *In re Stewart*, __ N.H. __, 2013 WL 1769800, *3 (April 25, 2013) (quoting *Petition of Kalar*, 162 N.H. 314, 321 (2011)). In *In re Stewart*, this Court refused to apply the administrative gloss doctrine where the agency had not claimed that statute was ambiguous. *Id.*

Similarly, in this case, the statutory language is not ambiguous. PSNH's claim that the relevant statutory language is "of doubtful meaning because it does not define the date or event from which the two-year period applicable to LCIRP filings is to run" ignores the plain meaning of the term "biennial." *Memorandum at 7; Town of Bartlett Bd. of Selectmen v. Town of Bartlett Zoning Bd. of Adjustment*, __ N.H. __, 2013 WL 1497323, *3 (April 12, 2013) (considering "common and approved usage" of a word not otherwise defined). "Biennial," is defined as "occurring, appearing, or being made, done or acted upon every two years." *See Webster's Third New International Dictionary at 213 (1986); see also Merriam-Webster Online Dictionary*, <http://www.merriam-webster.com/dictionary/biennial> (last visited May 5, 2013) (defining "biennial" as "occurring every two years" or "continuing or lasting for two years; *specifically*: growing vegetatively during the first year and fruiting and dying during the second").

In addition, to support its position, PSNH also ignores the plain language of one of the orders it cites which clearly supports the conclusion that the biennial requirement

means a filing made every two years. The PUC has previously directed PSNH that “[b]eginning with its next filing, *and every two years thereafter*, [the Company] shall file an LCIRP” *Order Approving Partial Settlement Agreement and Resolving Disputed Issues*, Order No. 24,695 (Nov. 2006), Supp. A. at 106 (emphasis added). The term biennial is not ambiguous and it does not require recurring “triggering events”; once the biennial filing requirement is in effect, it repeats indefinitely. As a result, PSNH’s claim of administrative gloss cannot stand.

Furthermore, PSNH’s claim that biennial filings are an “absurd” obligation illustrates PSNH’s misconceptions regarding the LCIRP process. *Memorandum* at 4, n. 3. The Legislature’s admonition that planning documents must be filed biennially is a product of its obvious intent that the planning process should be ongoing. The most recent PSNH LCIRP docket, which took more than two years to complete, was riddled with extension requests and postponements, many of which were sought by PSNH. *See Order Accepting Integrated Resource Plan, and Delineating Parameters for Succeeding Integrated Resource Plans* (Order No. 25,459), Supp. A. at 15 (“The length of time from filing to final order has been longer than optimal, with significant revisions, multiple rounds of discovery, each with protracted discovery disputes, PSNH’s request to postpone hearings until all three Commission positions were filled, and five days of hearings over a 30 day period.”). Order No. 25,459 plainly indicates that the information reviewed and accepted was outdated by the time of the Commission’s decision to approve PSNH’s requested rate change. *Id.* As a result, the Commission concluded that “this order addresses circumstances that in some cases no longer reflect the electric

market.” *Id.* This underscores the need for current LCIRPs. Stale, out-of-date information is of limited value to the PUC when it is considering a rate increase.

PSNH’s claim that the biennial requirement should be calculated from the PUC’s acceptance of the last LCIRP provides the clear (and absurd) incentive for utilities to prolong the LCIRP process so that they can avoid engaging in the ongoing, recursive planning process, thereby depriving the PUC of current, up-to-date information. Further, if extensions are truly required, RSA 378:38-a provides the Commission with authority to provide a waiver of the biennial requirement. Presumably, such a waiver would be granted in the context of a public process which would allow interested parties, such as the Appellants in this case, to participate and provide their views as to whether the Company is meeting its statutory planning obligations and whether the waiver would deprive the Commission of critical information. In this case, for example, and in light of RSA 378:40’s strict prohibition against rate-change approvals absent compliance with statutory LCIRP requirements, PSNH could have sought an extension under RSA 378:38-a from its LCIRP filing requirement as part of its 2013 Default Energy Service Rate request. It failed to do so.

Furthermore, PSNH’s claim, presumably under the administrative gloss doctrine, that the Commission was merely relying on long-standing precedent is unfounded. According to PSNH, “[t]he Commission has repeatedly determined that the requirements of the statute are met if a new LCIRP is filed within two years of the date the first LCIRP was ruled upon.” *Memorandum* at 6. PSNH provides no cases in which the utility is given two years from the date that the PUC accepts an LCIRP to file its next plan. Instead, the two orders cited by PSNH require, respectively, that it file its LCIRP 27

months and 29 months after the last LCIRP was filed. See *Order Accepting Integrated Resource Plan*, Order No. 24,945 (Feb. 27, 2009), Supp. A. at 46; *Order Approving Partial Settlement Agreement and Resolving Disputed Issues*, Order No. 24,695 (Nov. 8, 2006), Supp. A. at 115. In both cases, the Commission's acceptance of the previous LCIRP filing occurred well before the subsequent biennial deadline. In each order, the utility was given a year or less (not two years) from the date of the approval to file its next LCIRP; the final order on the last LCIRP filing served as a waiver, granting the utility an extension of the biennial requirement of three months and five months respectively. *Id.* These cases certainly do not stand for the proposition that the biennial filing requirement is tolled during the Commission's review of the last LCIRP filing.

Finally, other cases demonstrate that other utilities have properly interpreted the statute and make biennial filings, thereby undercutting PSNH's administrative gloss argument. For example, Granite State Electric Company d/b/a National Grid submitted an LCIRP in May 2005 and another one in May 2007 (even though the earlier filing had not yet been acted upon), and both LCIRPs were addressed by the Commission in February 2008. *Order Approving Plans*, Order No. 24,826 (Feb. 29, 2008), attached hereto as Exhibit A. Therefore, PSNH's claims regarding administrative gloss must fail.

B. A Plain Reading of RSA 378:40 Supports the Conclusion that Biennial Filings are Required.

Attempting to avoid the biennial filing obligation requirement in RSA 378:38, PSNH asserts that the second sentence of RSA 378:40 abrogates this requirement. *Memorandum* at 7-8. However, the plain meaning of the statute demonstrates the error in PSNH's analysis. RSA 378:40 states:

No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39. However, nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

RSA 378:40. It is indisputable that the first sentence requires an LCIRP to be “filed and reviewed” pursuant to RSA 378:38 and :39 before any rate change is made. The second sentence provides an exception to the “and reviewed” requirement, allowing rate changes to go into effect even if the PUC is pursuing an ongoing review of the “required plan filing in compliance with RSA 378:38. . . .” RSA 378:40. PSNH’s conclusion that the “required plan filing” had been made in this case is erroneous. The phrase “required plan filing in compliance with RSA 378:38” incorporates the requirement that the LCIRP be filed biennially. At the time that the PUC approved PSNH’s 34% rate increase, PSNH’s last LCIRP had been filed two years and three months earlier and no waiver had been granted. Therefore, RSA 378:40 did not permit the PUC to grant PSNH’s rate increase request.

C. RSA 369-B Does Not Render the LCIRP Filing Requirements a Nullity

PSNH’s claim that RSA 369-B abrogates the limitation on raising rates if a utility has not complied with RSA 378:38 fails to recognize that the two statutes are procedurally and substantively related and fully complementary. Citing *Professional Fire Fighters of Wolfeboro v. Town of Wolfeboro*, 164 N.H. 18, 22 (2012), PSNH asserts this court should consider RSA 378:40 repealed by implication. *Memorandum* at 8-11. “Repeal by implication occurs when ‘the natural weight of all competent evidence

demonstrates that the purpose of [a] [new] statute was to supersede [a] former statute,' but the legislature nonetheless failed to expressly repeal the former statute." *In re Regan*, 164 N.H. 1, 7 (2012) (quoting *Ingersoll v. Williams*, 118 N.H. 135, 138 (1978)). Repeal by implication is "disfavored." *Professional Fire Fighters of Wolfeboro*, 164 N.H. at 22. The Court recently identified two exceptions to this general rule: (1) where the "later act conflicts with the earlier act" and (2) "the later act is intended to occupy the entire field covered by the prior enactment." *Professional Fire Fighters of Wolfeboro*, 164 N.H. at 22. Neither of these exceptions to the general rule disfavoring repeal by implication exists in this case.

Chapter 378 and Chapter 369-B work together to protect ratepayers by assuring that PSNH conducts a periodic and comprehensive planning process to ensure that energy needs are met at the lowest reasonable cost and the rates it charges for default service are actual, reasonable and prudent. As such, they are not contradictory statutes and may properly be read together. *Grand China v. United Nat'l Ins. Co.*, 156 N.H. 429, 431 (2007) ("When interpreting two statutes that deal with a similar subject matter, [the Court will] construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes.").

RSA 378:38 *et seq.* identify and provide the planning obligations for all utilities in the State of New Hampshire. "The primary objective" of the LCIRP process is to "develop and implement an integrated resource plan that satisfies customer energy service needs at the lowest overall cost consistent with maintaining supply reliability." *Order Approving Partial Settlement Agreement and Resolving Disputed Issue*, Order No. 24,695 (Nov. 8, 2006), Supp. A. at 106. It is "a 'spot-check' of PSNH's planning efforts

in the various statutory areas of consideration” *Order Accepting Integrated Resource Plan, and Delineating Parameters for Succeeding Integrated Resource Plans*, Order No. 25,459 (Jan. 29, 2013) Supp. A. at 18. Part of the Legislature’s requirement regarding planning is that it occurs on an ongoing basis, biennially. RSA 378:38. In the context of this biennial requirement, the Legislature provided an enforcement mechanism – rates cannot be changed unless a utility is meeting its ongoing planning obligation. RSA 378:40.

Meanwhile, RSA 369-B was enacted as part of the state’s efforts to restructure the electric industry and to “securitize” the rights of PSNH’s bondholders. *See* RSA 369-B:1. When the Legislature halted the divestiture of PSNH’s electric generation facilities it directed the PUC to issue a financing order in accordance with the General Court’s dictates. *See Generally* RSA 369-B:1. RSA 369-B:3 states that PSNH’s default service rates must be based on PSNH’s “actual, prudent, and reasonable” costs. RSA 369-B:3, IV(b)(1)(A). In determining whether PSNH’s costs are “prudent[] and reasonable” the PUC must consider whether the utility’s power supply activities comply with its most recent LCIRP. *See* RSA 369-B:3, IV(b)(1)(A); RSA 378:41 (requiring the PUC to indicate conformity with LCIRP in its orders); *Order Approving 2010 Energy Service Rate*, Order No. 25,061 (Dec. 31, 2009), Supp. A. at 80-81 (discussing compliance with LCIRP in context of PSNH ratesetting); *Proposed Default Energy Service Rate for 2013*, Order No. 25,448 (Dec. 28, 2012), A. at 50-51 (same).

The statutory requirement that utilities file their LCIRPs biennially does not conflict with the “prudent[] and reasonable” cost requirement – rather, the two statutes are interrelated. *See* RSA 369-B:3, IV(b)(1)(A). PSNH is the only electric utility in New

Hampshire which continues to be vertically integrated – it continues to own generation facilities. *Order on Request for RSA 378:38-a Waiver*, Order No. 24,435 (Feb. 25, 2005), A. at 137. RSA 369-B permitted PSNH to maintain ownership of its generation resources at a time when other utilities divested. RSA 369-B:3, IV(b)(1)(A); RSA 374-F:3, III. The fact that PSNH continues to be vertically integrated underscores the need for the utility to engage in proper planning. *Cf. In re Statewide Elec. Utility Restructuring Plan*, Order No. 22,514 (Feb. 28, 1997) (indicating that need for LCIRP is diminished when utility is not vertically integrated), selection attached hereto as Exhibit B. The LCIRP process, including the timing requirement, is one part of the analysis that the PUC must undertake when it sets rates; to determine the prudence of PSNH’s actions, the Commission must take into account whether the utility acted in accordance with the statutory requirements set forth in RSA 378:37 *et seq.* Thus, there is no conflict which would permit the repeal by implication urged by PSNH. *Professional Fire Fighters of Wolfeboro*, 164 N.H. at 22. To the contrary, RSA 369-B:3 and RSA 378:38-41 complement one another and can be read harmoniously.

Further, PSNH provides no evidence that “the later act [RSA 369-B:3, IV] is intended to occupy the entire field covered by the prior enactment.” *Professional Fire Fighters of Wolfeboro*, 164 N.H. at 22. RSA 369-B makes no mention of planning requirements, and no reference to how the PUC must determine that PSNH’s costs are “prudent[] and reasonable.” RSA 369-B:3, IV(B)(1)(a). Under PSNH’s analysis, the PUC would be compelled to find that PSNH acted prudently even though it failed to meet a legislatively-mandated planning requirement. This surely would be an impermissible

and illogical result. *See State v. Rollins–Ercolino*, 149 N.H. 336, 341 (2003) (court will not interpret statute to require an illogical result).

The Legislature intended the LCIRP process to occur on an ongoing basis, with a biennial filing. The process serves, *inter alia*, to provide the PUC with an ongoing understanding of the utility’s internal planning processes, and to ensure that decisionmaking – including decisions related to cost-based rates – is not based on stale information. Furthermore, the PUC has continued to require LCIRP filings, and the Legislature has not amended the requirements set forth in RSA 378:38 and :40, even though ten years have passed since RSA 369-B:3 was enacted. The Legislature has long recognized that part of ratesetting is determination that costs have been prudently incurred, and that rates should not be changed if a utility has not met its obligations regarding utility planning. *See, e.g.*, RSA 378:38 and :40. RSA 369-B provides no exemption from this requirement and plainly does not repeal it.

III. The PSNH Ratepayers Properly Preserved Their Arguments Regarding the Commission’s Failure to Act on their Motion for Rehearing for 67 Days.

PSNH asserts that the PSNH Ratepayers did not properly preserve for appeal the issue regarding the PUC’s failure to comply with its statutory deadline for ruling on the properly filed motion for rehearing. *Memorandum* at 3. The PUC had a clear obligation to act in accordance with RSA 541:5. *See Appeal by Petition* at 6, 11. PSNH’s claim that the six residential ratepayers should have filed a writ of mandamus, and their failure to do so excuses the Commission from its obligation under law, misses the mark. Mandamus is an extraordinary remedy, *Rockhouse Mountain Property Owners Association v. Town of Conway*, 127 N.H.

593, 602 (1986), and it would be unreasonable to require the ratepayers to expend the time and expense required to pursue it in this case.

PSNH also claims, without any knowledge regarding the facts and circumstances of the individual ratepayers – and without concern for its residential customers who are paying its increased rates – that \$24.30 is an insignificant amount of money and that payment of that amount is not a “substantial injury.” *Memorandum* at 12, n. 6. The fact remains that the Commission failed to meet its statutory obligations under RSA 541:5 and there was a direct harm to customers. Whether or not this Court rules in the PSNH Ratepayers’ favor, the Commission extended by 57 days the amount of time that the PSNH Ratepayers had to wait to exercise their appellate rights. In addition, PSNH’s claim that the PSNH Ratepayers should have just migrated to competitive suppliers if they did not want to pay the higher Energy Service rate ignores the fact that its ratepayers have a right to keep PSNH as their default service provider and have a right to assurance that their default service rates are set fairly – i.e., that they are based upon prudent and reasonable costs. RSA 369-B:3, IV(b)(1)(A); *see supra*. The PSNH Ratepayers should have to bear no further burden in bringing this procedural issue before the Court.

CONCLUSION

For all of the reasons set forth above, the PSNH’s Motions for Summary Disposition and Summary Affirmance must be denied.

WHEREFORE, for the reasons discussed above and the reasons set forth in the accompanying Objection to Appellee's Motion for Summary Disposition and Summary Affirmance, the PSNH Ratepayers respectfully request that this honorable Court:


- A. Deny PSNH's Motions for Summary Disposition and Summary Affirmance; and
- B. Grant such further relief as it deems just and appropriate.

Respectfully Submitted,
George Chase, Alexandra Dannis, James
Dannis, William Hopwood, Amy Matheson,
and Janet Ward

By their attorneys,

ORR & RENO, P.A.

May 30, 2013

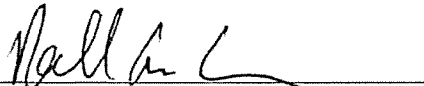
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2012, I caused a copy of the foregoing Memorandum of Law to be sent via first class mail to the parties of record in this Appeal.


Rachel A. Goldwasser, Esquire

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Least Cost Integrated Resource Plan

Docket DE 10-261

Public Service Company of New Hampshire's
Motion to Strike and Objection to
the December 17, 2012 Objection
of
Conservation Law Foundation

Public Service Company of New Hampshire ("PSNH" or the "Company"), in accordance with Rule Puc 203.07, hereby moves to strike, and in the alternative, objects to "Conservation Law Foundation's Objection to Public Service Company of New Hampshire's Motion to Strike CLF's November 29, 2012 Supplemental Filing" dated December 17, 2012 (the "CLF Objection"). The reason for this Motion is that CLF's Objection addresses issues beyond the scope of PSNH's December 6, 2012, Motion to Strike, in an attempt to introduce new issues without following the procedural requirements of the Commission's administrative rules.

In support of this motion, PSNH states as follows:

1. On September 30, 2010, PSNH filed its LCIRP consistent with RSA 378:38 and Commission Order No. 24,945, as amended by Order No. 24,966 and Order No. 25,061. Notably, the cited Orders initially established, then amended, the date for the filing of the Company's 2010 LCIRP. ("FURTHER ORDERED, that Public Service Company of New

Hampshire file its next least cost integrated resource plan on or before February 28, 2010, consistent with the determinations made herein.” Order No. 24, 945 at 21; “FURTHER ORDERED, that Public Service Company of New Hampshire file its next least cost integrated resource plan on or before May 3, 2010, consistent with the determinations made in Order No. 24,945.” Order No. 24,966 at 8; “FURTHER ORDERED, that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010 and shall include a continuing unit operation study for Newington Station in that filing.” Order No. 25,061 at 33.)

2. On November 3, 2010, the Commission issued an Order of Notice opening this docket. Thereafter, numerous parties petitioned to intervene and over the ensuing year and a half, extensive discovery was conducted, testimony was filed and a multi-day hearing was held. By Secretarial letter, the Commission established a deadline for filing of briefs of June 13, 2012. Such post-hearing briefs were filed by numerous parties, including CLF, in accordance with that deadline, and the case is awaiting the Commission’s decision.

3. On November 29, 2012, CLF filed a request for the Commission to take administrative notice pursuant to Rule Puc 203.27 of various regulations adopted by the Massachusetts Department of Energy Resources in August 2012. CLF argued that these regulations may impact the ability of Schiller Station Unit 5 (“Northern Wood Power Project” or “NWPP”) to sell renewable energy certificates (“RECs”) in Massachusetts in the future, and, therefore, the regulations are relevant to PSNH’s 2010 LCIRP filing. In other words, CLF contended that newly adopted regulations, which may affect the NWPP at some point in the future, are somehow relevant to a determination on PSNH’s 2010 LCIRP, which has been pending for more than two years. In a December 6, 2012, Motion, PSNH moved the Commission to strike CLF’s

November 29th filing from the record because it was deficient in numerous respects, most notably that, “[t]he information provided in the filing is neither new nor relevant to the review of the 2010 LCIRP.”

4. On December 17, 2012, CLF filed what it captioned as “Conservation Law Foundation’s Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing.” In the CLF Objection, CLF agreed with PSNH that the information in its November 29 Supplemental Filing was not available at the time PSNH prepared and filed its 2010 LCIRP. Indeed, CLF admits that the information in question was **“new information which CLF did not have at the time of the hearing in this proceeding.”** CLF Objection at ¶1. If CLF **“did not have** [this information] **at the time of the hearing in this proceeding”** - - hearings which ended on May 10, 2012 - - it is inconceivable how this information is relevant or should be considered by the Commission to determine the adequacy of PSNH’s 2010 LCIRP filing filed nearly two years earlier, which is the purpose of this proceeding under RSA 378:39.

5. Rather than addressing the issues contained in PSNH’s December 6 Motion to Strike, the CLF Objection attempts to interject entirely new issues into this proceeding. The vast majority of the CLF Objection focuses on its allegation that “PSNH was required to file an LCIRP ***within two years of the date when it previously filed one.***” CLF Objection, ¶4 (emphasis in original). The CLF Objection states, “RSA 378:39 (sic) required PSNH to file a new LCIRP before September 30, 2012 by mandating that ‘[] each electric utility shall file a least cost integrated resource plan with the commission at least biennially.’” (The correct statutory reference is to RSA 378:38.) In a footnote, CLF asserts, “While not necessarily relevant to the

instant proceeding, PSNH's failure to submit a timely (sic) LCIRP also (sic) precludes the Commission from approving an increase in rates charged by PSNH. RSA 378:40."

6. The CLF Objection, by requesting that the Commission "[g]rant such further relief as it deems appropriate," may be read as a request for an order or ruling regarding the biennial filing schedule of RSA 378:38, and the applicability of RSA 378:40 to the instant proceeding. Procedurally, per Rule Puc 102.08, "a request made to the commission or a presiding officer after the commencement of a contested proceeding for an order or ruling" is defined to be a "Motion." Rule Puc 203.07 sets forth the procedural requirements for the filing of a "motion." The requirements of Rule Puc 203.07 were not complied with by CLF in either its original request for administrative notice or the CLF Objection. Hence, the Commission should strike the CLF Objection, to the extent it seeks to interject new issues for which it desires an order or ruling.

7. In the event the Commission decides to address the new issues interjected by CLF in the CLF Objection, PSNH objects. CLF's statement of the law is incomplete, incorrect, and misleading.

8. CLF's main argument is that RSA 378:38 requires a utility "to file an LCIRP at least every two years." CLF Objection, ¶4. However, the statute does not address when the two-year period begins. CLF contends that utilities are required to file least cost plans every other year, regardless of whether the Commission's review and approval process for previously filed least cost plans has been completed. CLF's interpretation of the law could, and would lead to the absurd result of "pancaking" of least cost plan filings by the state's electric utilities. *See Re Granite State Electric Company dba National Grid*, 93 NH PUC 96 (2008) (order addressing both the 2005 and 2007 plans filed by National Grid.) New plans would be filed before the

Commission and intervening parties have had an opportunity to review and comment on prior plans, and before the Commission has completed its review of the adequacy of each utility's planning process as required by RSA 378:39. CLF's interpretation of the least cost plan filing requirement would result in inefficiencies and the wasting of resources (both time and money) by the state's electric utilities, the Commission and its staff, and other parties.

9. The Commission has previously addressed the ambiguous language contained in RSA 378:38. In *re Public Service Co. of New Hampshire*, 91 NH PUC 527 (2006), the Commission decided the adequacy of the LCIRP filed by PSNH on June 30, 2005. In that Order, the Commission ordered PSNH to file its next LCIRP filing by September 30, 2007 - - a period greater than two years from the date of the prior filing. Notably, the Commission stated, "We view this change as consistent with the requirement in RSA 378:38 that such plans be filed at least biennially." *Id.* at 538. Similarly, in *re Public Service Co. of New Hampshire*, 94 NH PUC 103 (2009), the Commission decided the adequacy of the LCIRP filed by PSNH on September 28, 2007 (pursuant to the 2006 Order). In that Order, the Commission directed PSNH to file its next LCIRP - the one that is the subject of the instant proceeding -- "one year from the date of this order" (*Id.* at 110), on or before February 28, 2010, [a period 29 months from the previous filing]. (*Id.* at 113). Subsequently, in *re Public Service Co. of New Hampshire*, 97 NH PUC 760 (2009), the Commission delayed the instant filing, ordering "that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010." Thus, the Commission directed that the LCIRP that is the subject of this proceeding be filed 19 months from the February 27, 2009 approval of the previous plan (97 NH PUC 760), but more than three years from the date of the Company's previous September 28, 2007, filing.

10. From the Commission precedent cited above, it is clear that the Commission has deemed the least cost plan filing requirement of RSA 378:38 to be met if a utility files a new plan within two years of the date that the Commission approves that utility's prior LCIRP. "It is a well established principle of statutory construction that a longstanding practical and plausible interpretation given a statute of doubtful meaning by those responsible for its implementation without any interference by the legislature is evidence that such a construction conforms to the legislative intent. *Trice v. City of Cranston, R.I.*, 297 A.2d 649, 652 (1972); see *Bellows Falls etc. Co. v. State*, 94 N.H. 187, 190, (1946)." *New Hampshire Retail Grocers Ass'n v. State Tax Comm'n*, 113 N.H. 511, 514 (1973); see also *Hamby v. Adams*, 117 N.H. 606, 609 (1977) ("[W]here a statute is of doubtful meaning, the long-standing practical and plausible interpretation applied by the agency responsible for its implementation, without any interference by the legislature, is evidence that the administrative construction conforms to the legislative intent."). The Commission's interpretation of RSA 378:38 is indeed "practical and plausible," has been in effect for years, and has not been interfered with by the legislature. As a result, CLF's opinion regarding the filing requirements of RSA 378:38 is incorrect.

11. Moreover, CLF's footnoted suggestion - - which CLF itself expressly notes is "not necessarily relevant to the instant proceeding" - - that "PSNH's failure to submit a timelt (sic) LCIRP als (sic) precludes the Commission from approving an increase in rates charged by PSNH. RSA 378:40," is similarly incorrect. The second sentence of RSA 378:40 expressly provides that "nothing contained in this subdivision shall prevent the commission from approving a change [in rates], otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed." In the instant proceeding, "the

process of review is proceeding in the ordinary course but has not been completed” for the LCIRP timely filed by PSNH in accordance with the Commission’s Order at 97 NH PUC 760.

12. Further, given that PSNH timely filed the LCIRP, CLF assertions that “[w]hile PSNH cites in its Motion to Strike a number of Commission rules, there is no rule that addresses the manner in which matters germane to least cost integrated resource planning for a utility are to be addressed after the utility fails to comply with the statutory mandate for it to file an IRP,” should be disregarded. CLF Objection, ¶6. PSNH maintains that the issues raised by CLF are not, in fact, germane to this LCIRP proceeding and, as noted above, that PSNH has not failed to comply with any statutory mandate. Moreover, in the instant proceeding, the Commission has already ruled that regulations (NH DES’s Regional Haze Plan) that were not finalized prior to the submission of PSNH’s LCIRP were “beyond the scope of this docket.” Order No. 25,220 (May 4, 2011). The Commission should adhere to that decision regarding the Massachusetts DOER regulations presented in CLF’s supplemental filing.


WHEREFORE, PSNH respectfully requests that the Commission:

- A. Strike the November 29, 2012, Supplemental Filing of Conservation Law Foundation;
- B. Strike the December 17, 2012, “Conservation Law Foundation Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing;”
- C. In the alternative, grant PSNH’s objection to the new issues CLF seeks to interject into this proceeding by its November 29, 2012 Objection; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

Public Service Company of New Hampshire

December 19, 2012
Date

By: 
Robert A. Bersak
Assistant Secretary & Associate General Counsel


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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the above pleading to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

December 19, 2012
Date


Robert A. Bersak