

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 13-020

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Investigation into Market Conditions, Default Service Rate, Generation Ownership
and Impacts on the Competitive Electricity Market**

Comments of TransCanada on June 7, 2013 Report

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, "TransCanada") and submits the following comments on the June 7, 2013 Report Jointly Prepared by Staff of the New Hampshire Public Utilities Commission and The Liberty Consulting Group in the above-captioned matter ("Report").

1. On January 18, 2013 the Commission opened an investigation to review the market conditions affecting the default service rates of Public Service Company of New Hampshire ("PSNH") in the near term and how PSNH proposes to maintain safe and reliable service to its default service customers at just and reasonable rates. The investigation was also undertaken to explore the impact of PSNH's continued ownership and operation of generation on the competitive electric market in New Hampshire.

2. On June 7, 2013 Staff and Liberty issued the Report. The Commission issued a secretarial letter that same day indicating that it would afford interested persons an opportunity to comment on the Report and the recommendations contained therein and that comments should be filed by the close of business June 28, 2013.

3. TransCanada believes that the Report provides good background on the issues that are the subject of this investigation, describes the current situation, and provides its best estimates based on currently available information of where things are likely to be headed in the future. TransCanada also believes that the Report accurately points out the increasingly dire downside to the current situation from a customer perspective: “There is not a great deal of time for the State to act to address what will become an increasingly onerous burden for what now comprises a majority of the state’s residents and many of its smaller businesses.” Report at 3. TransCanada believes that the Report accurately lays out the goals of competitive suppliers and merchant generators (“a market that is conducive to competition over the longer term” and that “operates under a stable policy framework and rules” – Report at 1) and what suppliers and independent generators believe the ultimate resolution ought to be (“to remove PSNH from the energy supply business, with PSNH remaining as a provider of electric distribution and transmission services” – Report at 2).¹ Finally, in terms of the options that are available (status quo, transfer of generation to an affiliate, and PSNH sale or retirement of some or all of its generation) we believe that the Report describes those options accurately and succinctly while clearly pointing out that the status quo is no longer a viable option.

4. TransCanada shares the view expressed in the Report that there is “no supportable basis for optimism that future market conditions will reverse” the customer migration trend that is ultimately unsustainable for PSNH. Report at 1. As the Report

¹ TransCanada and other suppliers have recommended in previous dockets before this Commission that power purchases to serve default service customers should be obtained through an RFP process that creates opportunities for and is fair to all suppliers and that will produce the lowest rate for customers. This is a process this Commission utilizes with Unitil and Liberty and a process that is used in many other states with many other distribution companies.

notes, PSNH's generating assets "transitioned from being a consistently below-market cost source to an above-market cost source." Report at 10. This has led to significant changes in how the assets are being operated. RSA 369-B:3, IV(b)(1) (A) provides:

"From competition day until the completion of the sale of PSNH's ownership interests in fossil and hydro generation assets located in New Hampshire, PSNH ***shall supply all***, except as modified pursuant to RSA 374-F:3, V(f), transition service and ***default service offered in its retail electric service territory from its generation assets*** and, if necessary, through supplemental power purchases in a manner approved by the commission" [Emphasis added],²

Despite this provision in the law capacity factors of these assets are down significantly. Power purchases are no longer just "supplemental"; because PSNH's generation costs too much the only way PSNH has to keep default service rates somewhat close to market rates is to obtain more and more of the power it needs to serve default service customers from power purchases from the market instead of from its own generation, a practice that

² It is instructive to look at the legislative history of SB 170 (which was enacted as Chapter 21 of the Laws of 2003 and which created RSA 369-B:3-a) from the 2003 legislative session. In a statement to the Senate Committee on Energy and Economic Development (found on page 6 of Appendix A to TransCanada's brief in DE 10-160) Senator Robert Clegg (one of the sponsors of SB 170) made it clear that the intent of the bill was that "if we find that it's not in the consumer's best interest to maintain power plants, that we have PSNH divest them."

On page 17 of that Appendix containing the legislative history Gary Long from PSNH is quoted as saying: "When we first settled our restructuring issues and implemented, we agreed to and fully expected and we are prepared to divest our generation plant... We do not want to go back to the old model."

Later during that hearing (page 21 of Appendix A) there was an exchange between Senator Ted Gatsas and Mr. Long in which Mr. Long says:

If the prices go down to three cents, this bill says, *if it becomes economic, then we go to the PUC and say it is time to do something, time to close the plants down, it's time to sell them.* So, this bill already answers that question. If the market changes, I think the Public Utilities Commission is quite capable of presenting information to them and saying, 'Okay, divest if you think there is a market' or 'They are old plants, shut them down'. You don't need to look at it every two years because *this sets the standard of economics for customers and I think it is a good standard.*"

[Emphasis added.]

Similarly on page 23 of Appendix A:

"[O]nce we get past this kind of moratorium that we can't divest, then as we go out in time, and we have to do what Senator Gatsas implied, which is, *as circumstances change, we may have to go back to the Commission and say circumstances changed.* But, if it continues to be that this is highly economic for customers, then we continue to serve customers, from that generation, as long as it is running. [Emphasis added.]

is clearly inconsistent with the law.³ In its most recent filing with the PUC for the update of its 2013 energy service rate, DE 12-292, PSNH reports an increase in migration from April to May of this year from 45.6% to 50.9% of load. As the Report notes, this is part of an upward migration trend that has now gone on for over four years. As the Report also clearly indicates, taking no action “threatens to leave a dwindling yet still substantial number of the state’s residents and small businesses facing ever higher costs for service relative to market alternatives and could eventually threaten the financial health of PSNH.” Report at 2. “The emergence of lower-cost supply competitors...since 2009, however, have served to turn economic advantage to disadvantage when it comes to the PSNH generation assets.” Report at 8. As the Report further notes: “there is a very high level of confidence that circumstances will not change enough to reverse the growing burden” of continued increases in default service that the Report projects. Report at 4.

5. In so far as PSNH’s continued ownership of generating units is concerned, TransCanada shares the view expressed in the Report that “PSNH fossil units face uncertainties that combine to create a risk of further, potentially substantial increases in costs”. Report at 1. As the Report also notes: “potential environmental rules create the possibility of substantial new capital investment and operating restrictions to be applied to the fossil units.” Report at 3 and more generally at 29-30. In other words, not only are the generating assets very costly and substantially above market at this point in time, they are also expected to get even more expensive to own and operate.

6. TransCanada submits that the best option available for PSNH ratepayers and the good of the competitive market in New Hampshire, and one that would be

³ Ideally supplemental power would be procured through a competitive bid process to avoid the significant over-market costs PSNH has incurred in the past for power purchases. See attached Exhibit A, PSNH response to data request Staff 1-2, DE 10-160.

consistent with the position that PSNH has taken in many different venues in recent years, where it has repeatedly proclaimed the value of these generation assets, would be for PSNH to “create a new competitive affiliate and transfer its plant to that affiliate.” Report at 43. As laid out in the Report, the PSNH affiliate would then operate the plants as a merchant owner,⁴ while the PSNH distribution company would obtain default service in the same manner as the other New Hampshire electric distribution companies, through a competitive bidding process. One of the advantages of this approach is that it “could be achieved in a much shorter timeframe than soliciting competitive bids [for the sale of generating assets].” Report at 44. In short, it is the simplest, shortest and most direct solution while still honoring PSNH’s long-held view of its assets. As the report later recommends (at 54-55) PSNH should “be asked to bring forth immediately proposals that would address a transfer of energy supply assets to an affiliate in accord with the optimistic views that the company has expressed with regard to the value of those assets.” With this in mind, TransCanada recommends that the Commission give PSNH 30 days to submit in writing its position on this approach. TransCanada supports the sale to an affiliate approach.

7. As an alternative, or assuming that PSNH makes it clear that it is not willing to create an affiliate for this purpose, TransCanada submits that the Commission should create an incentive for this matter to be resolved quickly, or a disincentive for it to be dragged out. Currently there is no incentive for PSNH to divest or to take steps to get this matter resolved. Time is on their side and against the interests of their remaining default service customers. PSNH currently earns a healthy rate of return on the

⁴ Assuming the affiliate could win a bid to provide the power for PSNH’s default service, it could thereby protect those customers if its projections of the future value of the generating facilities turns out to be accurate.

generating assets it owns at the expense of default service ratepayers. It may assume that at some point in time, even if it does have to divest, it will get full recovery of stranded costs. PSNH therefore has no reason to want to move expeditiously to address this issue, especially if it involves a scenario under which it would lose the rate of return that it currently enjoys on its ownership of generation. Because PSNH's continued ownership of the generating facilities is no longer used and useful to default service customers, TransCanada recommends that the Commission give PSNH a reasonable but aggressive, and very specific schedule under which PSNH must propose and then carry out a plan with respect to its generating assets. PSNH should be put on notice that if those deadlines are not met its rate of return on the generating assets will be reduced, ultimately to zero, on the basis that it is contrary to public policy and longstanding principles of public utility regulation for ratepayers to continue to pay a rate of return on generating assets that are no longer used and useful. The bottom line is that because it is not fair to default service ratepayers to continue to shoulder the burden of these uneconomic generation assets this needs to be expeditiously brought to closure. The Commission recognized its authority to take this kind of action almost two years ago in the migration docket, DE 10-260. "Independent of RSA 369-B:3-a, the Commission has authority to require PSNH to evaluate the economics of its generation units and to take appropriate action...in any relevant proceeding and at any time, if we determine that it is imprudent for PSNH under the circumstances to continue operation of any of its generation units, we can deny recovery of the associated costs through rates pursuant to RSA 369-B:3, IV(b)(1)(A)." Order No. 25,256 (July 26, 2011), 96 NH PUC 407, 428.

8. In terms of an ultimate solution independent of a sale to an affiliate TransCanada believes that the Commission and the Legislature may have to approve some form of stranded costs and securitization, which has worked successfully in New Hampshire and other places. As the Report notes, this would require legislation to amend the current definition of stranded costs. TransCanada also submits, however, consistent with the position laid out in paragraph 7 above, that recovery of any stranded costs from ratepayers should only be available if this can be resolved in a timely manner with full consideration to ratepayers, not just investors. If that is not the case, then PSNH/NU shareholders should share the costs and the responsibility for the unfortunate, arguably imprudent and expensive decisions that PSNH has made in recent years, particularly at its 40 year old coal-fired Merrimack Station, and for PSNH's continued resistance to efforts to bring the cost of energy down for PSNH ratepayers.

9. Although TransCanada recognizes that the Report's description of the asset values is only preliminary and "high level", we think the conclusion generally reflects the current market for such assets ("the fossil units have very little market value" – Report at 3). Obviously if divestiture is pursued the value of the fossil assets and the hydro assets (which clearly have more value than the fossil assets), as well as the purchase power agreements/entitlements, will be determined through the divestiture process and making these assets available for sale. TransCanada believes that the best format for a sale of the assets would be in appropriate groupings. TransCanada submits that this is probably the best way to determine the value of those assets, as opposed to going through an independent asset valuation process on a more detailed level than what this Report reflects prior to putting them up for sale. When the time comes to divest, an

experienced asset sale manager should be hired to assist in that process, in much the same way that the Seabrook Nuclear Plant was divested in 2001-2002.

10. The one area of disagreement that TransCanada has with the Report is the recommendations contained on page 4. TransCanada submits that it is unnecessary to have what it believes would be a lengthy proceeding to determine whether PSNH's default service rate remains sustainable on going forward basis; this would take a very long time to resolve while default service customers continue to pay for energy at a much higher rate than their counterparts who have participated in the market or who live in Unitil or Liberty's service area and obtain their default service through a competitive bidding process. There is no need to have a long drawn out process to evaluate whether to continue with default service in the current mode. The Commission has seen the evidence in numerous dockets over the last few years (for example DE 10-161, DE 10-260, as well as numerous energy service rate dockets) that default service based on continued ownership of generation by PSNH is not working. There is no need to have another docket to address these issues. TransCanada also believes that trying to decide what "just and reasonable" means with respect to default service is unnecessary; that is something that should be determined through a fair competitive bidding process for default service, like what Unitil and Liberty and most other distribution companies in New England, including PSNH's own affiliates, employ. As noted above, we think PSNH can quickly indicate whether it supports the sale of generation assets to an affiliate which will preserve their alleged long-term value. If it does not, then require the company to propose a plan for divestiture of its generation assets. The law clearly contemplated this long ago and even when the Legislature put a stop to further sale of generating assets in

2003, after the sale of the Seabrook Nuclear Plant, that was only a temporary halt that expired in 2006. RSA 369-B:3-a. The time has come to move forward.

11. TransCanada has a few comments on the section of the Report that covers the rate impact of the PPA with Burgess BioPower. Report at 28. TransCanada submits that the cost and risk impact of the contract needs to be better developed. The Report assumes benefits from the contract based on the discount to the Class I ACP. However, the Burgess project is capable of producing about the entire requirement New Hampshire's Class I RPS. Since the two major REC markets in New England, CT and MA, have both undertaken to significantly disadvantage biomass eligibility, the value of credits assumed by the Report may be overstated. The Report does not address the capacity payments that PSNH must make to the project. These payments are \$2.95/kW-month for two years, and \$4.25/kW-month thereafter. These prices are well above forward capacity auction prices beginning in the third year, and the termination of the price floor in FCA 8 may increase the out-of-market nature of the project. The contractual fuel cost of Burgess is tied to PSNH's Schiller plant. The supply/demand balance of the wood chip market in NH must also be considered to evaluate additional cost risk that may result from a market demand that may exceed New Hampshire's prior experience for procurement of wood chips at reasonable cost. As the radius of available supply continues to expand the presumption is that whole tree chips will likely reflect those additional costs.

12. The Report recommends that consultation with legislative and executive leadership begin. TransCanada agrees. With this in mind, the Commission could hire an experienced mediator to work with stakeholders. Legislative representation could come

through the Legislative Oversight Committee on Electric Restructuring established under RSA 374-F:5. Participation by a contingent from this Committee in the stakeholder process would be consistent with the Committee's responsibility related to: "the structure, effectiveness, and competitiveness of wholesale and retail electricity markets for New Hampshire". RSA 374-F:6, III. Such a process could be given a limited time frame, perhaps 90 days, to see if it can produce an agreement that will help to move this forward. In order for this to be meaningful, however, there needs to be a good faith commitment from PSNH that it is willing to work through such a process. To date PSNH has expressed no such willingness. In the absence of this, TransCanada submits that it would be best to establish a litigated docket and a predetermined list of discrete issues. Its purpose would be to determine the fairest process for accomplishing the divestiture of the generation assets. If PSNH is unwilling to work with the stakeholders then the PUC should proceed expeditiously to resolve the outstanding scrubber prudence docket, DE 11-250, and the outstanding issues related to PSNH's continued ownership of Newington Station from the last IRP docket, DE 10-261, while at the same time pursuing expeditiously a docket to establish a process for the divestiture of PSNH's generation.

13. TransCanada agrees with the statement in the Report that the parties want certainty. As it notes: "Whether it be PSNH customers, retail or wholesale competitors, or other stakeholder groups, continued uncertainty with respect to PSNH's generation ownership and its role in the competitive market makes planning future electricity purchase and other business decisions difficult, if not impracticable." Report at 5. How the Commission handles this process, the scope and the timing of the process in particular, is critical to the future of NH's economy and its energy competitiveness

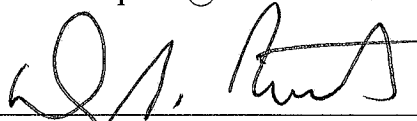
regionally and nationally. For this reason, any new proceedings to address these issues need to be a high priority for the Commission.

WHEREFORE, TransCanada respectfully requests that this honorable Commission:

- A. Require PSNH to provide a response on the issue of selling generation assets to an affiliate in 30 days;
- B. Require PSNH to respond within 30 days as to whether it will participate in good faith in a stakeholder process to come up with a plan for divestiture;
- C. Open a proceeding to address divestiture; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

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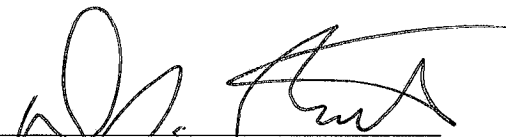


Douglas L. Patch

June 28, 2013

Certificate of Service

I hereby certify that on this 28th day of June, 2013 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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