

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

DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

**INITIAL COMMENTS OF THE OFFICE OF THE CONSUMER ADVOCATE**

**A.     INTRODUCTION**

The above-captioned docket was opened pursuant to the legislative directive to "commence and expedite a proceeding to determine whether all or some of PSNH's generation assets should be divested." RSA 369-B: 3-a. The Commission is expressly granted the authority to order Public Service Company of New Hampshire (PSNH) to divest "...all or some of its generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture." *Id.*

On September 16, 2014 the Public Utilities Commission (Commission or PUC) issued an order of notice in the above captioned docket, stating that the docket raises issues related to:

the economic interest of PSNH's retail ratepayers; RSA 369-B:3-a; the sale value of PSNH's generation assets; the likely proceeds of a sale of some or all of PSNH's generation assets; the treatment of stranded costs resulting from a sale of PSNH's generation assets; the rate impacts of retaining or selling PSNH's generation assets; RSA Chapter 374-F; and the consistency of any disposition of PSNH's generation assets with the Restructuring policies pursuant to RSA 374-F:3 and with RSA 369-B:3-a.

Order of Notice (September 16, 2014) at 3-4.

On October 30, 2014, the Commission issued a secretarial letter authorizing parties to file initial briefs on the scope of the adjudicatory proceeding by December 5, 2014. Secretary Letter Approving Procedural Schedule (October 30, 2014).

The Office of the Consumer Advocate (OCA) files these initial comments on the scope of DE 14-238 Determination Regarding PSNH's Generation Assets.

B. THRESHOLD DETERMINATIONS

As a threshold matter, the Commission should make a finding as to what evidence is to be considered under the standard of “economic interest.” The Commission should also define the phrase “retail customers of PSNH” as it is this population whose economic interests are being considered.

1. “Economic Interest” Refers To The Rate Impact of The Commission’s Decision In This Proceeding;
  2. “Retail Customers of PSNH” Means The PSNH Customers Receiving Bundled Energy And Distribution Service At The Retail Level- The Default Energy Service Customers
- 1) “Economic Interest” Refers To The Rate Impact of The Commission’s Decision In This Proceeding

The plain meaning of the word “economic” is that it is a financial consideration. Merriam-Webster’s online dictionary defines economic as: “...relating to the process or system by which goods and services are produced, sold, and bought.” <http://www.merriam-webster.com/dictionary/economic>. In the context of RSA 369-B: 3-a the goods and services being produced, sold and bought is the electricity generated by PSNH assets. For utility customers, the logical financial consideration is that of rates – how much is the consumer paying for the PSNH goods and services compared to other providers of the same goods and services?

The “economic interest” in RSA 369-B: 3-a is the rate impact of divestiture on the customers buying the electricity generated by PSNH assets.

The legislative choice of “economic interests” in referring to divestiture must be interpreted to limit factors under review compared to those of a “public interest” determination.

When reviewing an earlier version of the statute, the New Hampshire Supreme Court held:

...whereas divestiture of PSNH's generating assets after 2006 will require an analysis of the economic interests of customers, modifications to PSNH's generation assets require an analysis of the public interest of its retail customers. See *id* [RSA 369-B: 3-a (Supp.2004)]. By the plain language of the statute, the public interest standard for modification is broader than just economic interests.

*In re Pinetree Power, Inc.*, at 97.

The broad “public interest” standard for the Schiller Project included analysis of project cost, incremental revenue generated by the project, rate relief, a sustainable market for low-grade wood products, lower emissions, fuel diversity and improved reliability. *Id* at 98-99. It follows that the “economic interest” does not include all of those factors.

In its analysis, the Court compared the phrase “economic interest” in the first sentence of RSA 369- B: 3-a (Supp 2004) to the phrase “public interest” in the second sentence of the same statute. *Id* at 95. The use of two different standards in the same paragraph indicates a legislative intention for different standards to apply for each scenario. The Court also reviewed the law as part of an overall statutory scheme, including RSA chapter 374-F, and found that “... [t]his statutory scheme supports the conclusion that the ‘public interest’ of PSNH’s customers encompasses more than simply rates.” *Id*. A reasonable extension of this logic is that the customer’s “economic interest” is confined to the rate impact.

2.) “Retail Customers of PSNH” Means the PSNH Customers Purchasing Bundled Energy and Distribution Service at the Retail Level- The Default Energy Service Customers

Under current New Hampshire law, the default Energy Service (ES) customers of PSNH pay all of the costs of the PSNH owned generation assets. RSA 369-B: 3(IV) (1) (a) (“The price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission”) This was the state of the law in 2014 when the legislature passed HB 1602 authorizing the Commission’s “economic interest” review and affirming the Commission’s authority to allocate the costs of PSNH asset divestiture. RSA 369-B: 3-a (as amended). The state of the law also included RSA 125-O: 18 which allocates the prudently incurred costs of the Scrubber Project to the ES customers of PSNH. (“During ownership and operation by the regulated utility, such costs [allowed Scrubber Costs] shall be recovered via the utility's default service charge. In the event of divestiture of affected sources by the regulated utility, such divestiture and recovery of costs shall be governed by the provisions of RSA 369: B: 3-a.” *Id.*) Therefore all of the costs of the existing portfolio of PSNH generation assets plus all of the prudently incurred costs of the newly built Scrubber Project will be paid for by PSNH default ES customers, unless and until divestiture takes place. RSA 369: B: 3-a (as amended).

It follows that these PSNH default ES customers are the customers referred to in RSA 369-B: 3a as the “retail customers of PSNH.” It makes sense that the interest of the customers paying all of the costs of PSNH generation assets is the same “economic interest” of the “retail customers of PSNH” when the Commission considers selling those generation assets. *Id.*

The other former retail customers of PSNH that left bundled service for competitive suppliers chose the path of competitive electric service as being in their own economic interests.

Those customers, the majority of which are large commercial and industrial (C&I) customers, have had the opportunity to protect their economic interests since Competition Day in May 2001. Those customers elected not to pay the generation costs of the PSNH assets. Therefore their interests are not the ones that should drive the Commission's decision regarding divestiture. It is the customers who have shouldered the economic costs of the PSNH generation assets, whether above market or at times below, whose interests are at the heart of the Commission's divestiture decision. If divestiture is in the economic interest of PSNH ES customers, then the Commission should order PSNH to divest its generation assets.

Another state utility commission was called upon to consider whether the phrase "retail customers" used in legislation meant the utility's bundled service customers or all electric distribution customers. The Illinois Commission determined:

We are to presume, however, that the legislature did not intend absurdity, inconvenience or injustice. *Michigan Avenue Nat'l Bank v. County of Cook*, 191 Ill.2d 493, 732 N.E.2d 528 (2000). The Commission is compelled to observe that a construction of the term "retail customer" that includes only the utility's bundled customers averts the problem altogether. Illinois courts have held that if the language of a statute admits of two constructions, one of which makes the enactment mischievous, if not absurd, and the other renders it reasonable and wholesome, the construction leading to an absurd result should be avoided. *Secco v. Chicago Transit Authority*, 2 Ill.App.2d 239, 119 N.E. 2d 471 (1st Dist. 1954). ...Thus, Rate GAP will be modified in application such that ComEd will only provide the GA with the customer data of those residential and small commercial customers that are receiving commodity service from the electric utility, i.e. its bundled customers.

*Illinois Commerce Commission On Its Own Motion v. Commonwealth Edison Company, Respondent* 2012 WL 1066319 Ill.C.C., (February 03, 2012).

Here, as in Illinois, interpreting the phrase "retail customers" to signify only the bundled ES customers avoids an undesirable and illogical construction. Competitive supply customers who bypassed the costs of PSNH owned generation by leaving PSNH's vertically integrated system had their economic interests previously considered in the restructuring legislation of RSA 374-F. It would be redundant and illogical to again give deference to competitive supply

customer interests by including them in the definition of “retail customers of PSNH” when the Commission reviews the financial impact of selling those assets.

3) Analysis of The Rate Impact of Divestiture on The PSNH Default ES Customers Is Consistent With The Statutory Scheme of Electric Utility Deregulation

The legislature identified policy considerations of restructuring in RSA 374-F:3. The initial legislation provides that restructuring should provide benefits for all customer classes. It states:

Restructuring Policy Principles:

VI. Benefits for All Consumers. Restructuring of the electric utility industry should be implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another. Costs should not be shifted unfairly among customers...

RSA 374-F: 3 VI.

The rate benefits of restructuring have gone primarily to the large C&I customers. From 2001 until about 2008-09 there were little to no competitive offerings for residential consumers in New Hampshire. It was not possible for the residential class of customers to participate in or benefit from competitive electricity supply services. Since 2008-09 competitive suppliers have offered competitive alternatives to residential consumers. However, because of the operation of RSA 369-B: 3, IV (b) (a) and RSA 125-O: 18, the migration of residential customers, in addition to the previously migrated C&I customers significantly increases rates for the remaining PSNH default ES customers. The costs of PSNH assets, including any prudently incurred scrubber costs, are being shifted unfairly onto the default ES customers, contrary to the Restructuring Policy Principle discussed above. Even if customers may avoid these generation costs by migrating, there is a level at which it is simply unfair to require default ES customers to pay all of the PSNH generation costs. With over 50% of PSNH load having migrated, New Hampshire has reached that point of inequity.

C. CONCLUSION

Interpreting RSA 369:B:3-a (as amended) to require commission analysis of the rate impact of divestiture on PSNH default ES customers considers the implementation of electric utility restructuring in “a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another,” fulfilling a major policy principle of the original restructuring statute.

The Commission stated that in interpreting the legislative amendments, the Commission:

will be guided by the purposes of HB 1602 which include: maximizing economic value for PSNH's retail customers; minimizing risk to those customers; reducing stranded costs; settling issues surrounding stranded costs; and if appropriate, providing for the continued operation or possible repowering of PSNH's generation assets.

Order of Notice (September 16, 2014) at 3-4.

The purposes of HB 1602 are best fulfilled by defining “economic interest ” as a review of the rate impact of divestiture on “the retail customers of PSNH;” that is, the PSNH default ES customers as described above.

Respectfully submitted,

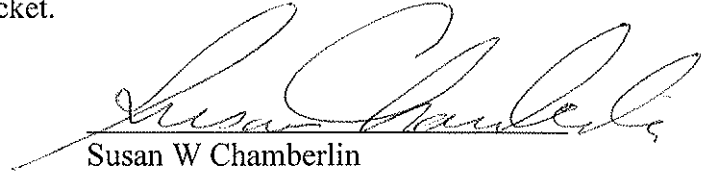
A handwritten signature in cursive script, appearing to read 'Susan W Chamberlin', written in dark ink.

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Certificate of Service

I hereby certify that a copy of this brief was provided via electronic mail to the individuals included on the Commission's service list for this docket.

12/5/14  
Date

  
Susan W Chamberlin