

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

SIERRA CLUB'S BRIEF ON SCOPNG

As per the schedule approved by the Commission at the October 2, 2014 prehearing conference in the above-captioned proceeding, the Sierra Club submits the following brief concerning the proper scope of this docket. The proper resolution of this Docket will involve a broad assessment of the economic interests of ratepayers, including potential environmental compliance costs and risks, will assess impacts to all individual classes of ratepayers, will use a properly length time horizon to assess risks and costs running out to 2040, and will rely heavily on the factual analysis already performed by the Commission Staff in Docket No. IR 13-020.

BACKGROUND

During the prehearing conference, the Commission identified several key issues to be resolved at the outset of the docket, including the scope of the economic interest of ratepayers, the proper populations to be included when considering "ratepayers," the time horizon under which issues in this proceeding should be regarded, the proper use of the reports developed by the Commission Staff in the recent Docket No. IR 13-020, and what role the 1999 Settlement Agreement should play in this Docket, among others.

ARGUMENT

A. The Economic Interests of Ratepayers Are Broad

Ratepayer interests are far broader than just the amount paid per kilowatt hour on any particular bill. Accordingly, a meaningful evaluation of ratepayer interests must take into consideration a wide range of topics, including analysis of impacts on rates, customer migration, bills, environmental compliance costs, fuel price trends and volatility, and risks of future compliance requirements, as well as a thorough alternatives analysis including such things as demand-side program benefits, among other issues.

First and foremost, the Commission should recognize in this docket that the rates charged by a utility for electricity and the bills paid by ratepayers are two related but ultimately separate things. While higher or lower rates will raise or lower ratepayer bills when all else is equal, a proper consideration of ratepayer interests would consider that higher rates may be accompanied by demand-side programs to reduce ratepayers' consumption of electricity in a manner that can offset and ultimately result in lower bills. Rates can thus not be examined in a vacuum.¹

Similarly, changes in rates must be regarded over long time horizons, as decisions that may result in low rates in the short term could necessitate later increases in electricity costs to the detriment of ratepayers. For example, a decision to continue operation of extant coal-fired generation facilities rather than plan for a transition to lower risk, lower cost new generation sources may impose low short-term costs, while risking very large long-term costs, such as in the form of large-scale capital projects for environmental controls, or carbon costs associated

¹ Investment in demand-side programs, such as energy efficiency initiatives, can result in numerous economically significant non-energy benefits—including local economic growth, local job growth, and water savings—that can likewise redound to ratepayers.

with coal-fired generation in comparison with carbon-free generation sources.² Such a situation is already facing Merrimack Station in the form of a pending requirement for construction of cooling towers.

Indeed, any proper assessment of the economic interests of ratepayers must incorporate a thorough examination of such environmental risks. In addition to cooling water compliance expenditures at Merrimack, Schiller Station, and Newington, compliance with federal mercury emission standards, sulfur dioxide standards, ozone standards, effluent limitation guidelines, forthcoming coal ash regulation,³ and the pending federal Clean Power Plan to regulate carbon emissions from power plants such as those operated by PSNH,⁴ among others, should all be closely examined to ascertain impacts to costs at PSNH's generating assets and the larger New Hampshire power market.⁵ Failure to properly assess the risk of such costs may lead to poor

² PSNH has testified that carbon-fired generation sources—such as PSNH's Merrimack and Schiller Stations, emit far more carbon than other types of electrical generating units. *See, e.g.*, Docket No. DE 11-250 Hearing Trans. Day 1 Afternoon Session at 10:22-11:6 (Smagula) (admitting that a gas plant would emit only “50 to 60 percent the amount” of carbon dioxide as a similar coal plant); *id.* at 9:6-21 (testifying that sources such solar, wind, hydroelectric, and nuclear generators would not emit carbon dioxide “if they don't have a carbon-based fuel for their primary purposes of generating electricity”).

³ Whether or not PSNH or a successor entity disposes of coal ash directly, Merrimack and Schiller Station generate ash, and tightened regulation of its disposal will of course at least indirectly affect operating costs at those facilities.

⁴ Although New Hampshire already participates in the Regional Greenhouse Gas Initiative (“RGGI”), the proximate compliance vehicle for the Clean Power Plan in New England will likely involve strengthening of RGGI to achieve lower carbon targets through the 2016 Program Review.

⁵ The Commission should also be guided here by experience. PSNH's original estimate of costs for the wet scrubber it constructed at Merrimack Station was a not-to-exceed cost \$250 million, which itself included a sizeable buffer. However, as this Commission is well-aware, PSNH has argued that the reason that this original figure so dramatically underestimated the ultimate cost of the scrubber is because, in part, the estimate was flawed and insufficiently tailored to Merrimack itself. This now mitigates in favor of detailed analyses in this docket, and caution against considering only lower-end estimates of future capital expenditure requirements.

decisionmaking, and potentially higher accordant costs to be borne by ratepayers. *See, e.g.,* Docket No. DE 11-250, Ex. 19 (Sahu Prefiled Testimony).

Not only is a robust formulation of what constitutes the economic interests of ratepayers necessary to protect ratepayers, a simplistic focus on just rate impacts is not countenanced by the Legislature. A focus on broader concerns is emphasized and underscored by the language of the statute itself: in addition to the question of divestiture, the Legislature has directed this Commission to consider modification or retirement of PSNH's generating assets. *See* RSA 369-B:3-a II (indicating that PSNH should "modify or retire such generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so" prior to any divestiture). Thus, the economic interests of ratepayers must not be limited to just the question of whether or not PSNH should divest its generation assets (or which assets should be divested, and on what timescale), but whether modification or retirement of those assets may better protect ratepayer interests. Indeed, it is entirely likely that the best way to protect the interest of ratepayers may be through a result that provides for the transition away from costly, high-risk fossil-fuel based electrical generation towards cheaper and lower-risk clean energy such as energy efficiency, wind, and solar.⁶

B. The Population of Ratepayers Should Include All Individuals Impacted by the Resolution of this Docket

Looking at just default service customers of PSNH would result in an overly narrow assessment of the economic interests this Commission is charged with protecting; however, the different types of ratepayers impacted should be examined individually.

⁶ *See, e.g.,* Ceres, "Practicing Risk-Aware Electricity Regulation: What Every State Regulator Needs to Know," *available at* <http://www.ceres.org/resources/reports/practicing-risk-aware-electricity-regulation/view> (noting that long-term planning to lower risks and save ratepayer costs will involve increased focus on generation diversity and investments in clean energy).

Multiple classes of ratepayers exist in New Hampshire's partially deregulated electricity market: some are default service customers paying for both transmission and power from PSNH; others receive their power from competitive merchant suppliers while still paying for transmission. All are likely properly considered "ratepayers" under the divestiture statute. However, it would be inaccurate, and would mask important distinctions between ratepayer categories, to simply lump all such customers into the single category of "ratepayer." For example, while default service customers may be on the hook for generation capital costs that go into PSNH's rate base, customers receiving their power from competitive suppliers generally are not. Thus, considerations that may arise in this Docket concerning treatment of stranded costs must consider not just the impact on ratepayers writ large, but the differential impact on different types of ratepayers.

C. The Determination Should Be Based on a Long-Term Time Horizon

In making its determination in response to the directive from the legislature, this Commission should investigate the potential impacts to ratepayers on a long-term time horizon, out to at least 2040. To do otherwise runs the risk of shackling ratepayers with permanent decisions made on the basis of current conditions.

Divestiture, modification, or retirement of PSNH's generating assets all involve significant changes to the New Hampshire power market, and this Docket is necessitated by longstanding and worsening problems with the status quo. Indeed, the issues that this Commission is being tasked with resolving are not new, and have instead been developing for years: a settlement agreement (discussed in greater detail below) concerning potential divestiture of PSNH's generating assets was inked fifteen years ago. Thus, taking a short-term view of the consequences of the various courses of action under consideration is unlikely to be

able to sufficiently—or at all—protect the interests of ratepayers. Short-term thinking may base long-term decisions on the instant or temporary status of, for example, the gas or capacity market in New England, and thus improperly ignore forthcoming and readily foreseeable changes in those conditions, to the detriment of ratepayers.

Taking a longer-term view is likewise in keeping with the practice for utility planning in many other regions of the country. According to a recent study of utility planning requirements nationwide, “[t]he most common planning horizon spans a 20 year period,” with “half” the states requiring formal rate planning from their utilities “mandating this planning period.” Synapse Energy Economics, Inc., *Best Practices in Electric Utility Integrated Resource Planning, Examples of State Regulations and Recent Utility Plans* (June 2013), available at <http://www.synapse-energy.com/project/best-practices-electric-utility-integrated-resource-planning>, at 6. States as varied as Georgia, Hawaii, Idaho, Indiana, Louisiana, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Utah, Vermont, and Washington employ such long-term planning periods. *Id.*; see also Tennessee Valley Authority Integrated Resource Plan – Background, at <http://www.tva.com/environment/reports/irp/> (noting that the TVA IRP process’s purpose is to “create and test [a] 20-30 year vision to meet TVA’s power needs”); Tennessee Valley Authority, Supplemental Environmental Impact Statement—Integrated Resource Plan, 78 Fed. Reg. 65,416 (Oct. 31, 2013) (same); Minn. Stat. § 216C.7 subd. 2 (requiring utilities to annually provide “five-, ten-, and 15-year forecasts” of demand and facilities to meet that demand); Virginia SCC Order Establishing Guidelines for Developing Integrated Resource Plans, Case No. PUE-2008-00099 (Dec. 23, 2008), Attachment B at 2 (adopting guidelines for planning including use of a “three-year historical

record and a 15-year forecast”); F.A.C. § 25-22.072 (requiring ten-year site plans for electrical generators).

Here, this Commission has been tasked by the Legislature with making a decision that may well have much farther reaching and longer lasting implications than those involved in periodic utility rate planning; as such, the economic interests of ratepayers are best protected by using an even longer time horizon in assessing costs, risks, and benefits of different results under consideration. The Sierra Club believes that taking a long-term view of impacts out to 2040 is therefore the best course.

D. The La Capra Study Should Form the Factual Baseline for this Docket

The June 2014 “Preliminary Status Report Addressing the Economic Interest of PSNH’s Retail Customers as it Relates to the Potential Divestiture of PSNH’s Generating Plants” (the “La Capra Study”) represents a thorough and definitive investigation of many of the factual issues at play here in this Docket; as such, it should form the factual predicate for much of the analysis the Commission must undertake here.

In January of 2013, this Commission opened Docket IR 13-020, beginning a 15-month process to investigate “the market conditions affecting the default service of [PSNH] . . . and how PSNH proposes to maintain safe and reliable service [and to] explore the impact, if any, of PSNH’s continued ownership and operation of generation facilities on the competitive electric market in New Hampshire.” Order of Notice (Jan. 8, 2013), Docket No. IR 13-020. This process was robust: the Commission Staff and their contracting experts at Liberty Consulting Group collected data from not only PSNH but from a variety of stakeholders, and used that material to generate an initial Staff’s Report. This Report incorporated forecasts of electricity and capacity prices, assessments of fuel costs and availability, the status of the electricity

market in New Hampshire, a detailed look at PSNH's generating assets, and an investigation of likely forthcoming environmental costs. *See* Report on Investigation into Market Conditions, Default Service Rate, Generation Ownership and Impacts on the Competitive Electricity Market (June 7, 2013), Docket No. IR 13-020. The Commission then accepted eight different sets of comments from various stakeholders before issuing an order accepting the Report. *See* Order No. 24,545 (July 15, 2013), Docket No. IR 13-020. Subsequently, Commission Staff released in June of 2014 a revised set of reports prepared with the assistance of La Capra Associates and ESS Group, incorporating the information gathered thus far in the docket, in addition to more thorough analysis of asset valuation and forthcoming environmental compliance costs and risks facing PSNH.

Accordingly, the Commission already has at its disposal a thorough, well-researched assessment of many of the factual issues to be considered in this current proceeding, and one that is less than six months old. Rather than abandon this study—and the 15 months worth of investigation that the Commission Staff has already undergone—in favor of a new, replacement study, this Docket should employ the current La Capra Study as the factual baseline for the determinations the legislature has charged it with making. Instead, parties should be given the opportunity to, where appropriate, submit information to the Commission that supplements, if and where needed, the conclusions and data in the La Capra Study. To do otherwise would needlessly delay these proceedings while a new study is developed, in contravention of the directive from the Legislature that this Docket proceed in an expedited manner. *See* RSA 369-B:3-a I (requiring that that Commission “commence and **expedite** a proceeding to determine whether all or some of PSNH's generation assets should be divested”) (emphasis added).

E. The 1999 Settlement Agreement

While the August 2, 1999 Agreement to Settle PSNH Restructuring (the “1999 Settlement Agreement”) does have some relevance to this current proceeding, it would be wrong for this Commission to regard it as conclusive on all issues to be examined in this Docket. Instead, these proceedings should be guided first and foremost by the considerations to which the Legislature has directed the Commission concerning the interests of ratepayers.

Both governing law and the text of the Agreement itself support this conclusion. As per New Hampshire RSA 363:17-a, the Commission is required to act as “the arbiter between the interests of the customer and the interests of the regulated utilities.” As such, the Commission should be very cautious in assuming that a determination made over fourteen years ago as to a balance between those interests is still the appropriate assessment today. Similarly, the 1999 Settlement Agreement in numerous places indicates that it is to be effectuated only subject to approval by the Commission, and further specifically states that approval of the agreement does not necessarily cabin the PUC’s authority. *See* 1999 Settlement Agreement at 72 (“Acceptance of this Agreement by the PUC shall not be deemed to restrain the PUC’s exercise of its authority to promulgate future orders, regulations, or rules which resolve similar matters . . .”); *id.* at 73 (“The approvals contemplated by this Agreement shall not be construed as requiring the PUC to relinquish its authority to develop new policies and issue orders or to initiate investigations when it deems such actions are in the public good”). Quite clearly, many conditions impacting PSNH’s generation assets, the broader power market, and the economic risks they pose to ratepayers have changed in the ensuing more than 14 years, and thus it is particularly important that this Commission does not preclude consideration of those issues in this proceeding through an overly reductive reliance on the Agreement.

CONCLUSION

For the foregoing reasons, this Commission should ensure that this Docket will involve a broad assessment of the economic interests of ratepayers, including potential environmental compliance costs and risks, will assess impacts to all individual classes of ratepayers, will avoid using a short time horizon and instead will assess risks and costs running out to 2040, and will rely heavily on the factual analysis already performed by the Commission Staff in Docket No. IR 13-020.

Respectfully Submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Sierra Club's Brief on Scoping has been served electronically on the persons in the Commission's service list in accordance with Puc 203.11 this 5th day of December, 2014.

/s/
Zachary M. Fabish