

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

2024 Energy Service Solicitations

Docket No. DE 24-046

Motion for Rehearing of Order No. 27,022

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and moves pursuant to RSA 541:3 for rehearing of Order No. 27,022, entered by the Commission in this docket on June 20, 2024. In support of this request, the OCA states as follows:

I. Introduction

This proceeding concerns the default energy service provided by the subject utility, Public Service Company of New Hampshire (“PSNH”), for the six-month period beginning August 1, 2024. Default energy service (referred to in statute simply as “default service”) is “electricity supply that is available to retail customers who are otherwise without an electricity supplier,” provided either by a community power aggregation program under RSA 53-E or, as here, by an electric distribution utility. RSA 374-F:2, 1-a. Since 2018, when PSNH completed the divestiture of its generation portfolio, what was once a vertically integrated electric utility has acquired power at wholesale, for resale as default energy service, via a series of six-

month load-following contracts as directed by the Commission.

Via Order No. 27,022, entered on June 20, the Commission approved the results of the latest solicitation and resulting contracts. However, unlike similar semi-annual orders previously issued, this time the Commission did not approve new default energy service rates (though it noted, for “illustrative purposes,” that based on the approved solicitation results the new rate for residential customers was expected to be 10.458 cents per kilowatt-hour – an increase from the current rate of approximately 26 percent). Order No. 27,022 at 1-2. Instead, the Commission directed PSNH to make a filing by July 10, 2024 with updated rate calculations that “incorporate a Commission ruling regarding a prior-period under-collection arising in the Company’s Large Customer Group.” *Id.* at 1.

This “prior period under-collection” amounts to \$6.5 million, which PSNH proposed to recover from all default energy service customers (i.e., not just the Large Customer Group but also from the Small Customer Group that includes residential customers). We objected to the recovery of any of this \$6.5 million via charges for default energy service paid by residential customers. The Commission agreed this would amount to “unjust and unreasonable cross-subsidization and cost-shifting.” *Id.* at 9.

It is the next determination made by the Commission that is the subject of this motion for rehearing or clarification. The Commission directed PSNH to

- (1) place the \$6.5 million under-collection into a deferral account, with the Tariff-specified carrying charges to be assessed;
- (2) provide a recalculation of its ES [i.e., default energy service] Tariff rate elements and expected ES bill impacts based upon this deferral, to be filed no later than July 10, 2024, . . .

(3) provide a calculation of the estimated carrying charges associated with this deferral for the next calendar year as part of this July 10 filing; (4) prepare a proposal for the integration of the ES Reconciliation Adjustment Factor charges into collection through the SCRC to be filed thirty (30) days in advance of the Company's next SCRC petition filing.

Id. “SCRC” refers to PSNH’s Stranded Cost Recovery Charge, which is authorized pursuant to RSA 374-F:3, XII(d) (“Any recovery of stranded costs should be through a nonbypassable, nondiscriminatory, appropriately structured charge that is fair to all customer classes, lawful, constitutional, limited in duration, consistent with the promotion of fully competitive markets and consistent with these principles,” i.e., the “Restructuring Policy Principles” enumerated in RSA 374-F:3 generally).

PSNH made the required filing on July 3, 2024, via a document entitled “Technical Statement of Parker Littlehale, Luann Lamontagne, Yi-An Chen, and Scott Anderson” (tab 13) (“Technical Statement”). PSNH proposed a default energy service rate of 10.403 cents per kilowatt-hour and, as suggested by the Commission in Order No. 27,022, requested an order *nisi* placing that rate into effect on August 1, 2024. Technical Statement at 2.

Order No. 27,022 unlawfully provides for future recovery of the \$6.5 million via the SCRC for two reasons.

II. Due Process Issues

First, the Commission failed to provide public notice that revisions to stranded cost recovery charges were under consideration in this proceeding. Section

31 of the Administrative Procedure Act requires the Commission, when commencing an adjudicative proceeding¹ such as the instant case, to provide “reasonable notice” that includes, *inter alia*, “a short and plain statement of the issues involved.” RSA 541-A:31, III. The order via which the Commission placed parties on notice of this proceeding, entered on May 6, 2024 and captioned “Commencement of Adjudicative Proceeding and Notice of Hearing” (tab 5) “Order of Notice”), includes a recital of the issues to be determined in the docket at page 3. Those issues are whether the power supply procurement process is consistent with certain prior orders of the Commission and “whether the resulting rates are just and reasonable as required by RSA 374:2, and RSA 378:5 and :7.”² In context, “resulting rates” clearly means default energy service charges – not stranded cost recovery charges.

The notice requirement embedded in section 31 of the Administrative Procedure Act furthers the due process rights guaranteed by the federal and state constitutions. Although due process does not require notice to be “perfect,” it must be “reasonably calculated, under all the circumstances, to apprise interested parties

¹ There can be no doubt that this is an adjudicative proceeding. The Commission has already said so. *See* Order of Notice at 3 (noting that an “adjudicative proceeding will be convened” to address the issues enumerated in the order).

² The Order of Notice further stated that the Commission would be addressing “potential improvements to the proxy-price development methodology for the market-based 12.5 percent procurement tranche for the small customer group, including additional market-based tranches in future default energy procurements, and the potential extension of an ISO-New England market-based procurement component to the large customer group in the next default energy procurement rounds.” Order of Notice at 3. Those issues, indeed addressed both at hearing and subsequently in Order No. 27,022, are of keen interest to the OCA but are not implicated in the instant motion for rehearing.

of the pendency of the action and afford them the opportunity to present their objections. *Appeal of Blizzard*, 163 N.H. 326, 336 (2012) (citation omitted) (also noting that, on appeal, the inquiry would be “whether notice was fair and reasonable under the particular facts and circumstances of the case”). An Order of Notice drafted so as to cause the OCA (and the public generally) to assume that, as with all previous dockets of this vintage, the focus would be on the justness and reasonableness of default energy service rates, which customers are free to avoid, was not adequate to put our office (and the public) on notice that the Commission would be making rulings that add new costs to the Stranded Cost Recovery Charge, which is paid by all customers and is not bypassable.

III. Violation of the Electric Industry Restructuring Act

Additionally, even if there had been adequate notice, the Commission’s stranded cost determination is inconsistent with the Electric Utility Restructuring Act, RSA 374-F. “Stranded costs” is an elaborately and specifically defined term for purposes of the Restructuring Act, *viz*:

costs, liabilities, and investments, such as uneconomic assets, that electric utilities would reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric service continued and that will not be recovered as a result of restructured industry regulation that allows retail choice of electricity suppliers, unless a specific mechanism for such cost recovery is provided. Stranded costs may only include costs of:

- (a) Existing commitments or obligations incurred prior to the effective date of this chapter;
- (b) Renegotiated commitments approved by the commission;

(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, Inc.;

(d) Costs approved for recovery by the commission in connection with the divestiture or retirement of Public Service Company of New Hampshire generation assets pursuant to RSA 369-B:3-a; and

(e) All costs incurred as a result of fulfilling employee protection obligations pursuant to RSA 369-B:3-b.

RSA 374-F:2, IV.

The Restructuring Act, RSA Chapter 374-F, became law in 1996 and thus costs associated with default energy service procurement are not commitments that were incurred prior to the effective date of the statute. Nor are the costs “renegotiated” ones tied to such pre-1996 obligations. Nor are unrecovered default energy service charges “new mandated commitments” within the meaning of the definition. *Cf.* Order No. 26,450 (20210) in DE 20-136 (allowing inclusion of statutorily mandated net metering costs and group host costs to be included in PSNH’s SCRC as “new mandated commitments”), Order No. 25,305 in Docket No. DE 11-184 (2011) at 41 (allowing PSNH to recover over-market costs of statutorily required power purchase agreements with independent producers, via a non-bypassable charge, because they were “costs associated with public benefits that accrue to all PSNH customers, whether they take default energy service or competitive supply”); and Order No. 25,256 in Docket No. DE 10-160 (2011) at 28 (declining to authorize a non-bypassable charge covering fixed costs associated with

PSNH generation portfolio pre-divestiture – an “unfair cost-shifting to customers that have taken advantage of competitive supply” and a charge that “does not meet the definition of stranded costs” in RSA 374-F:2”).

III. Conclusion

An issue the Commission clearly noticed for decision in the proceeding is the justness and reasonableness of default energy service rates for this utility. A key element of just and reasonable rates as required by RSA 374:2 is the notion that, generally, those customers who incur costs should pay those costs. The default energy service rate for PSNH’s Large Customer class is not just and reasonable to the extent costs caused by this customer group are – for no apparent reason other than expediency – imposed on residential customers. The analogy offered by the PSNH witnesses at hearing – to the fact that all customers pay on a non-bypassable basis for the Electric Assistance Program (“EAP”) providing a discount to customers in poverty – is inapposite because, unlike the cost-shift approved here, the EAP is funded by the statutorily authorized system benefits charge. *See* RSA 374-F:3, VI-a (authorizing such a non-bypassable charge to “fund public benefits related to the provision of electricity” including “programs for low-income customers”).

Admittedly, PSNH’s concerns about a default energy service death spiral occurring in the Large Customer Class (with more and more migration from default energy service as unrecovered costs are imposed on a smaller and smaller group) is

a valid one. But nothing in New Hampshire law, and no principle implicated by the mandate for rates that are just and reasonable pursuant to RSA 374, makes this Large Customer death spiral the problem of residential customers.

The unreasonableness of the cost-shift of which the OCA complained at hearing becomes no more reasonable because it has migrated from a bypassable charge (default energy service) to a non-bypassable one (SCRC). From the perspective of residential customers, the change simply means an unfairly and illegally imposed cost will be spread among more customers. For the reasons stated above, the Commission must grant rehearing of Order No. 27,022.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant rehearing of Order No. 27,022;
- B. revise the order to hold that Public Service Company of New Hampshire cannot recover, via its non-bypassable stranded cost recovery charge, any unrecovered costs associated with procurement of default energy service for the company's Large Customer class as described by the Company's witnesses at hearing;
- C. put Public Service Company of New Hampshire on notice that the \$6.5 million in unrecovered default energy service costs the Company has now placed in a deferral account must be recovered, if at all, from the Large Customer class via default energy service charges; and

D. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,



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Certificate of Service

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



Donald M. Kreis