

DE 01-271

PUBLIC SERVICE OF NEW HAMPSHIRE

**First Amended Contract No. NHPUC-105 between
Public Service Company of New Hampshire
and Summit Packaging Systems, Inc.**

Order Nisi Approving Amended Contract No. NHPUC-105

O R D E R N O. 23,999

June 25, 2002

I. BACKGROUND

On November 21, 2001, the Petitioner, Public Service Company of New Hampshire (PSNH), filed with the New Hampshire Public Utilities Commission (the Commission) a First Amended Contract No. NHPUC-105 (sometimes referred to as the amended special contract) between PSNH and Summit Packaging Systems, Inc. (Summit). Summit is a manufacturer of plastic aerosol valves for the packaging industry with a manufacturing facility located in Manchester, New Hampshire. The underlying contract, Contract No. NHPUC-105 (sometimes referred to as the underlying or original special contract), is a so-called special contract containing elements of both load retention and business expansion which was approved by the Commission in an Order Nisi dated May 8, 1995. See *Public Service Company of New Hampshire*, 80 NH PUC 259 (Order No. 21,647). The term of the original

contract was for ten years, beginning on July 1, 1995. The amended special contract does not revise the expiration date.

The underlying special contract granted Summit a 65% discount from the Rate LG demand charges otherwise payable. In addition, the maximum demand provisions of Rate LG were modified in respect to Summit by excluding base demand above the then current level (specifically, 1,647 kilovolt amperes) in order to provide an economic incentive for expansion. At the same time, the contract required minimum energy usage each month to ensure the retention of existing load. The contract did not provide any discount for Summit's energy usage.

According to information provided by PSNH and a representative on behalf of Summit, Summit has now acquired a second production facility in Manchester which it expects to operate if the amended special contract is approved. PSNH states that Summit plans to relocate approximately 50% of its production equipment to the second facility and subsequently continue to expand at both facilities. PSNH represents that in the absence of a special contract amendment, Summit "would begin to locate new production in Racine, Wisconsin, since they have fully utilized the space at their current facility." Further,

PSNH states, "if the Manchester Airport expansion forces Summit from their existing facility, existing production would be located in Racine, Wisconsin. The new facility would be sold. Summit does not know for certain if or when an expansion will [a]ffect their facility."

The amended special contract would change the original special contract provisions in certain respects. The discount percentage applicable to Summit's demand charges remains the same. However, the maximum demand provision would allocate the base demand specified in the original contract to each facility so that in aggregate all demand above the original specified level would be excluded from the determination of the maximum demands and would not be discounted. In addition, the minimum energy use provision has been changed to include kilowatt hour (kWh) usage from each facility in the calculation of Summit's total monthly kWh use. Under the special contract as amended, each facility would be billed as a separate account. Finally, the contract language regarding Rate LG would be changed to refer more generally to the "applicable tariff rate schedule."

Despite this last-mentioned change, PSNH states that based on Summit's current on-peak kilowatt demand and their production plans, it is "very unlikely" that Summit's on-peak kW

demand level at each facility would fall below the 1 megawatt threshold required for service under Rate LG. PSNH further states that energy usage at Summit's existing facility has never fallen below the required minimum.

According to PSNH, over the past six years Summit has expanded its production in New Hampshire, resulting in a thirty-eight percent increase in its annual kilowatt-hour usage, an eleven percent increase in its employment level, and the full utilization of its existing production space. PSNH further states that Summit "has and continues to promote a policy that mandates the purchase and use of energy efficient products" and "there are still no direct competitors to Summit's product line of plastic spray nozzle systems in New Hampshire."

II. COMMISSION ANALYSIS

We observe that the same processes given discounting under the original special contract executed in 1995 will continue to receive discounting under the amended special contract, and the demand charge discount percentage, the base demand ceiling amount, and the minimum energy use amount all remain the same under the amended special contract. Except for aggregation of the two facilities' load for purposes of calculating base demand and minimum energy usage, the other

terms and conditions remain essentially the same as in our previous approval.

The foregoing facts, and the continued risk of loss of the customers' business, support the conclusion that the amended special contract is an amendment of a special contract and not a "new" special contract within the meaning of RSAs 378:18-a, II and III. Our review is pursuant to RSA 378:18 which permits a public utility to enter into a special contract if special circumstances exist which render departure from tariffed rates just and consistent with the public interest. Based on the information provided by PSNH, we believe that the amended special contract continues to be in the public interest. We believe special circumstances endure which justify the continuation of the special contract as modified. Absent the continuation of this special contract, and its application to the new facility, there is a reasonable basis to conclude the customer would move its new facilities, and their jobs, to its location in Wisconsin. It was precisely this risk of economic loss to New Hampshire that the original special contract was intended to avoid. In order to carry out this original purpose, the proposed amendments are required. As in our original

approval, we are persuaded by the economic development and load retention aspects of this special contract as amended.

At the time of the initial contract approval, PSNH attested that Summit had implemented measures to maintain an energy efficient facility, and would continue to work with PSNH to refine and implement appropriate energy conservation measures, consistent with the Commission's checklist for approval of special contracts, set out in Order No. 20,882 (June 23, 1993). We note from the record that Summit is implementing several energy efficiency measures at its new facility and is promoting a policy that mandates the purchase and use of energy efficient products. Response to Staff Data Request NSTF-01, April 25, 2002. Additional energy efficiency or demand management opportunities may exist at the original and expanded Summit facilities. In addition, the operation of the wholesale competitive market makes peak demand more important than before as a driver of wholesale prices, which affect all consumers. In view of the foregoing, we will approve the special contract on the condition that Summit explore energy efficiency measures beyond those already planned, as may be appropriate under PSNH's core efficiency programs for customers of Summit's size, and to explore the possibility of participating in the Load Response

Program of the New England Independent System Operator, or its successor.

Finally, we note that PSNH has not requested to "recover from other ratepayers the difference between the regular tariffed rate and the special contract rate" pursuant to RSA 378:18-a. In Order No. 23,627, we determined that PSNH's revenue requirements will not be adjusted for alleged shortfalls resulting from the difference between special contracts and regular tariffed rates, and we specifically deferred this issue to the rate case anticipated at the end of the 30-month initial rate period in place under the provisions of the Settlement Agreement. See also Order No. 23,443, issued April 19, 2000, at 260-261. Our action in the present case is consistent with that determination, and any claim for recovery of this shortfall resulting from our decision here shall be subject to review in that rate proceeding.

Based upon the foregoing, it is hereby

ORDERED NISI, that the First Amended Special Contract No. NHPUC-105 is approved as filed so long as the customer explores participation as appropriate in available core electricity efficiency programs and the ISO-NE load response program; and it is

FURTHER ORDERED, that to the extent not inconsistent herewith, the other terms and conditions of Order No. 21,647 shall remain in full force and effect; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire report to the Commission no later than 60 days from the date of this order as to the plans of the customer relative to implementing additional energy efficiency measures and to participating in the ISO-NE Load Response Program; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than July 2, 2002 and to be documented by affidavit filed with this office on or before July 16, 2002; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than July 9, 2002; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than July 16, 2002; and it is

FURTHER ORDERED, that this Order Nisi shall be effective July 19, 2002, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of June, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary