

BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 07-108

Public Service Company of New Hampshire
2007 Least Cost Integrated Resource Plan

OFFICE OF CONSUMER ADVOCATE'S
MOTION FOR REHEARING OF ORDER NO. 24,945

The Office of Consumer Advocate (OCA) respectfully requests that the New Hampshire Public Utilities Commission (Commission) rehear and reconsider Order No. 24,945 as it relates to the requirement of a Continued Unit Operation Study for Merrimack Station, and certain unsupported findings in that order. In support, the OCA states the following facts and law:

1. On February 27, 2009 the Commission issued Order No. 24,945 (“IRP Order”) in Docket No. DE 07-108.¹
2. The IRP Order approved Public Service Company of New Hampshire’s (PSNH’s) Least Cost Integrated Resource Plan (“LCIRP”), with amendments and supplements, filed in September 2007 pursuant to RSA 378:38. It also approved a Partial Settlement Agreement entered into by certain parties and Staff.
3. RSA 541:3 provides that motions for rehearing are due within 30 days after the issuance of an Order by the Commission. The Commission grants rehearing when good cause is shown, in order to correct an unlawful or unreasonable decision. RSA 541:3. *See* Northern Utilities,

¹ The Order was suspended by the Commission on March 11, 2009 in order to consider a Motion for Rehearing filed by intervenors Freedom Logistics LLC and Halifax American Energy Company LLC. *See* PUC Secretarial Letter Suspending Order No. 24,945, March 11, 2009.

Inc. and EnergyNorth Natural Gas, Inc. D/B/A National Grid NH, 2007
Summer Season Cost of Gas Proceeding, Investigation of Indirect Gas Costs,
Order No. 24,901 (September 25, 2008) (granting rehearing in part).

Request for Reconsideration of Requirement for Merrimack Continued Operation
Study

4. The IRP Order includes a section on page 16 entitled “7. Merrimack Continued Unit Operation Study” (CUO Section). The CUO Section requires, in part, that PSNH conduct a Continued Unit Operation Study (“CUO Study”) for Merrimack Station. Specifically, the IRP Order states:

7. Merrimack Continued Unit Operation Study.

Early retirement of existing power plants for economic reasons is a practical option for utility planners if continued operation entails the expenditure of significant investment dollars. For this reason, we will require PSNH to include in future LCIRPs an economic analysis of retirement for any unit in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance. PSNH will not, however, be required to include an analysis of divestiture in its next LCIRP as set forth in Order No. 24,695.

5. The CUO section of the IRP Order requires the CUO Study for Merrimack Station in a “future” LCIRP, but not in the IRP due in February 2010. *See* IRP Order p. 16. As a result, a CUO Study will not be performed until at least 2012 under the IRP Order.
6. Although the IRP Order requires PSNH to perform a CUO Study for Merrimack Station, it also requires “an economic analysis of retirement for any unit in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance.” Order at p. 16.

7. The OCA requests reconsideration of this section of the IRP Order for two reasons. First, the language of the CUO Section which triggers the CUO Study for Merrimack Station (or any other unit owned by PSNH) is not sufficiently clear and objective. Instead, the language allows PSNH to make a subjective determination of what qualifies as an “investment of significant sums” and what are “new emissions standards.” Consequently, it is possible that PSNH will determine that no CUO Study will be conducted for Merrimack Station or any other plant at any time in the future.
8. Such a determination of whether a CUO Study is required under the CUO Section of the IRP Order should be made by the Commission, based upon clear and objective standards, which should be set out in the IRP Order.
9. Empowering PSNH to make the determination of whether or not it needs to conduct a CUO Study in order to comply with the IRP Order will result in an unlawful delegation of the Commission’s authority.
10. Secondly, the OCA takes exception to the CUO Section of the IRP Order because the timing of the CUO Study filing, if any, is contrary to the weight of the evidence in the record, and therefore is unlawful or unreasonable.
11. In his testimony in this case, Staff witness George McCluskey opined that PSNH's IRP was not complete for several reasons, including a lack of certain analyses of both demand-side and supply options. *See Redacted Prefiled Testimony of George R. McCluskey, June 6, 2008, pp. 2-4.* He also testified that the IRP did “not completely” comply with the

Commission's requirements from PSNH's last IRP order, Order No. 24,695. *Id.* at p. 6.² Regarding deficiencies with respect to its supply-side assessment, Mr. McCluskey testified that "Staff believes that the assessment is deficient in two important respects . . . [t]he second relates to the omission of any discussion of whether continued operation of PSNH's existing generating stations, particularly Merrimack, is in the public interest." *Id.* at 14.

12. Mr. McCluskey specifically recommended that a CUO Study should be performed for Merrimack Station. *See Id.* McCluskey testified that "a CUO study analyzes the economic value to customers of continuing to operate a unit under expected future market and operating conditions." McCluskey Testimony at p. 28, lines 10-18.

13. In addition, Mr. McCluskey testified that:

"[a]bsent CUO studies for the Merrimack units, PSNH runs the risk that the incremental costs to install and operate the scrubber, less SO₂ allowance savings, could make Merrimack Station operation uneconomic relative to market purchases. Given the large size of the scrubber capital investment (estimated in 2005 at \$250 million) plus the potential for increased operating costs, Staff believes that the prudent approach would be for PSNH to conduct a *CUO study for Merrimack prior to making any final commitment to the scrubber project.*"

McCluskey Testimony p. 30, lines 1-15 (emphasis added).

14. In addition, during the final hearing Mr. McCluskey reaffirmed his position that the retirement of Merrimack Station should be included and analyzed in a CUO Study. *See* Transcript of Final Hearing October 14,

² See also pages 28-30 of Mr. McCluskey's testimony for his discussion of how the Company's failure to discuss alternative compliance options for mercury controls, or rate impacts of mercury controls, fails to meet the requirements of the prior IRP Order.

“[I]f . . . such a cost/benefit analysis is to be useful, *it would have to be done prior to the Company making the investment.* The whole purpose of the analysis would be to determine what is the least cost option for ratepayers. If the analysis were done after the installation . . . the Company would be able to recover any stranded costs associated with the retirement from customers, which would essentially guarantee that the analysis would show that retirement is uneconomic. So, for the analysis to be at all useful, it would have to be *done prior to significant costs of the installation being done.*”

Transcript, p. 38, line 13 through p. 39, line 4 (emphasis added).

15. Despite all of the evidence in the record regarding the insufficiencies of PSNH’s IRP with respect to analysis of Merrimack Station, and despite the need for a CUO Study for Merrimack Station in order to protect ratepayers and engage in prudent planning for the future of the Station, the Commission failed to require a study within an appropriate time frame.
16. Moreover, in light of the preponderance of the evidence on this issue, the IRP does not meet the requirements of RSA 378:38 that its plan includes “an assessment of supply options,” because the company did not consider all potential options. RSA 378:38, II.
17. Before approving PSNH’s IRP, the Commission should have specified a date for PSNH to complete and submit a CUO Study for Merrimack Station.
18. A CUO study for Merrimack Station is a necessary and useful part of the statutorily required process employed by the Commission to oversee

PSNH's plan for the future of its generation plants and its customers' future electricity needs.

19. Based upon the evidence in the record, the Commission should require PSNH to perform a CUO Study for Merrimack Station as soon as practicable in 2009 to ensure that ratepayers, on whose behalf PSNH operates its generating plants, can participate in the decision making process.

Reconsideration of Unsupported Findings in the IRP Order

20. A Partial Settlement Agreement (Settlement) was signed by Staff, PSNH, Bridgewater Power Company, TransCanada Hydro Northeast, Freedom Logistics, LLC and Halifax American Energy Company, LLC in the case. Notwithstanding the Commission's findings in the IRP Order, the Settlement did not address the Merrimack CUO Study.³
21. In the section of the IRP Order summarizing the terms of the Settlement, the Commission states:

4. Merrimack Continued Unit Operation Study. Given the Commission's decision to open a docket to investigate issues related to the installation of scrubber technology at Merrimack Station, the **settling parties agree**, pending the outcome of that investigation, to withhold further comment in this proceeding on the Merrimack continuing unit operation issue.

IRP Order at 10.

22. The OCA submits that there is no support in the record for the Commission's finding of fact that the settling parties made such an agreement. There is no language in the Settlement to support such a

³ As the Commission describes in its Order, some settling parties "questioned PSNH witnesses concerning PSNH's decision not to include divestiture and retirement of the Merrimack Station generation facility as options in its supply-side assessment." Order at p. 11.

finding. There is also no language elsewhere in the record upon which to do so.

23. For the same reasons, the OCA requests reconsideration of the Commission's finding that the settling parties' so-called agreement to withhold comment on the Merrimack continuing operation issue formed the basis for their not including the CUO Study for the plant in the Settlement. Order at 10.⁴

24. Consequently, this section of the IRP Order should be stricken.

Wherefore, the OCA respectfully requests that the Commission provide the following relief:

- A. Require PSNH to commence a CUO Study for Merrimack Station as soon as practicable in 2009;
- B. Strike the findings in the IRP Order which refer to an agreement of the settling parties concerning the continued unit operations issue, as described above; and
- C. Grant such other relief as justice requires.

Respectfully submitted,



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⁴ Presumably the other docket that this section of the IRP Order is referring to is DE 08-103. At the time that the Commission issued its IRP Order, the Commission's final order in DE -08-103 was on appeal with the NH Supreme Court following a determination of the Commission that it lacks the authority to review certain costly modifications to Merrimack Station. *See* NH Supreme Court Notice Accepting Appeal in Case No. 2008-0897, January 23, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was forwarded this day to the parties by electronic mail.

March 27, 2009



Meredith A. Hatfield