

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-216

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Alternative Default Energy Service Rate

Order Denying Motion to Dismiss

ORDER NO. 25,372

June 8, 2012

I. PROCEDURAL HISTORY

On January 26, 2012 the Commission issued Order No. 25,320 directing Public Service Company of New Hampshire (PSNH) to “file a redesigned Rate ADE [alternative default energy rate] by June 30, 2012....” The Order required that the redesigned ADE be cost-based, non-discriminatory and not have an adverse effect on competition. The Order also allowed the redesigned ADE to exceed PSNH’s marginal costs of default service.

In response to the Order 25,320, on April 27, 2012 PSNH filed a redesigned Rate ADE which included its marginal costs to serve returning PSNH energy service rate customers plus an adder based upon the non-operating costs of the wet flue gas desulfurization system (scrubber) at PSNH’s Merrimack Station. PSNH forecasted its marginal costs for these returning customers at 5.37 cents per kWh and proposed that the adder be set at 1.03 cents per kWh. These rate elements produced an initial ADE rate of 6.40 cents per kWh. In addition, PSNH proposed a number of limitations on availability of the ADE as well as a six month market adjustment mechanism to keep the ADE closer to market rates.

On May 3, Freedom Logistics, LLC d/b/a Freedom Energy Logistics (Freedom) filed a motion to dismiss PSNH's redesigned ADE claiming that the rate was unlawful. On May 14, 2012 PSNH filed an objection to Freedom's motion.

II. POSITIONS OF THE PARTIES AND STAFF

A. Freedom

Freedom first alleges that PSNH's motive in proposing the redesigned ADE is not as stated in its cover letter, "to provide customer who have migrated from PSNH's default service an attractive opportunity to return to the Company for energy service, which in turn is beneficial to those customers who remain on the default energy service rate." Instead, according to Freedom, PSNH has proposed the Rate ADE out of its concern that continued customer migration will cause PSNH to be unable to support the cost of its generation facilities through its energy service rate.

Freedom argues that PSNH's proposed Rate ADE is contrary to RSA 374-F:2, I-a, RSA 374-F:3, V(c), RSA 369-B:3, IV(b)(1)(A), and RSA 378:10. Freedom asserts that RSA 374-F:2, I-a provides that default service is for customers who are otherwise without an electricity supplier and not to lure customers who already have an energy supplier back to PSNH. Freedom argues that RSA 374-F:3, V (c) establishes that default service should be a safety net and not a service designed to encourage long term use of default service by customers. Freedom maintains that RSA 369-B:3, IV(b)(1)(A) requires PSNH to provide default service at its actual prudent and reasonable costs and that in this case PSNH's actual costs are its marginal costs and should not include an adder for non-operational scrubber costs. Finally, Freedom argues that PSNH's redesigned Rate ADE is more favorable than its default service rate and thus causes an unlawful disadvantage to some customers who have not chosen to switch to a competitive supplier.

B. PSNH

PSNH objects to Freedom's motion and asserts that its Rate ADE conforms to the legal standards enunciated in Order No. 25,320. Further, PSNH argues that the facts stated in its April 27, 2012 filing support its conclusion that the redesigned Rate ADE is consistent with the Order. PSNH states that Freedom has waived its right to object to the legal basis for the Rate ADE by failing to request a rehearing of Order No. 25,320, or of the earlier Order No. 25,256 (July 26, 2011) in Docket No. DE 10-160 (investigation into customer migration for PSNH). According to PSNH both of these orders described the legal principles governing the alternative default energy service rate the Commission sought to have PSNH develop for customers returning to PSNH default service from competitive suppliers.

III. COMMISSION ANALYSIS

In ruling on a motion to dismiss, we, like the New Hampshire Supreme Court, ascertain whether the allegations pleaded in the plaintiff's petition are reasonably susceptible of a construction that would permit recovery. *Pesaturo v. Kinne*, 161 N.H. 550, 552 (2011). In this instance, we assume that all facts pleaded by PSNH are true, and we construe all reasonable inferences drawn from those facts in its favor. *Id.* We then engage in a threshold inquiry that tests the facts in the petition against the applicable law and if the facts fail to constitute a basis for legal relief, granting the motion is proper. *Id.*

In Order No. 25,256 the Commission explained the principles to be followed in PSNH's design of an alternative default energy rate:

To help defray the costs of this risk, it is reasonable that PSNH be allowed to charge customers who return to its default service an alternative default service rate reflecting the marginal cost to serve that load. The proper design of a separate rate or rates will discourage the misuse or long-term use of default service and allow PSNH to recover the actual costs of providing that service consistent with RSA 369-B:3, IV(b)(1)(A).

To be consistent with the policy principles of RSA 374-F, such rates must be cost-based and non-discriminatory and should not have an adverse effect on competition. In designing such a rate or rates, PSNH will also have to consider which customers would pay the alternative rate or rates and for what period of time customers would have to remain on such alternative default service rates before the customer would be eligible for PSNH's regular default energy service, if ever. PSNH may consider having one or more such alternative default service rates, and may consider having a separate tariff and default service rate for its largest classes of customers generally. There are two circumstances that should be addressed: (1) when the default ES rate is less than market rates; and (2) when the default ES rate is greater than market rates. *Id.* at 31-32.

In Order No. 25,320 the Commission rejected PSNH's first proposed ADE and directed a redesign of the rate to address the following concerns:

Our first concern is that the pricing of Rate ADE may not reflect market prices. PSNH proposes to adjust Rate ADE twice a year, in January and July, which is the schedule for its adjustments to the ES and stranded cost adjustment charge rates; and it proposes to establish those rates based on forecasts of power costs. If market prices suddenly increased or decreased, for example, in March or August of any year, under PSNH's proposal, Rate ADE would remain unchanged. *Id.* at 15.

Our second concern is that the Company designed Rate ADE so that that any customer returning to Rate ADE following 12 consecutive months of taking energy from a competitive supplier must remain on Rate ADE for a 24-month period; however, during that 24-month period, a customer would be able to move between competitive supply and Rate ADE on a monthly basis, as long as the customer did not stay with a competitive supplier for a consecutive 12-month period. The risk that customers will switch from PSNH's Rate ADE to competitive supply, whichever is at lowest cost – a form of “gaming” – is inherent to the rate design. *Id.* at 16.

Finally, we find that the record does not support the calculation of the adder at one cent per kWh. Furthermore, there is enough uncertainty in the rate design to suggest that the one cent per kWh may not collect enough revenue to cover unexpected price spikes in the marginal cost of electricity that would be used to supply Rate ADE load. *Id.*

In its supporting testimony PSNH alleges that its redesigned ADE: (1) is based upon its marginal cost to serve the returning customers, (2) will only be available to customers that have been on competitive supply or self-supply for 12 months in order to prevent gaming, (3) will be limited to a 24 month term, (4) will base the adder to the ADE on the non-operating costs of the scrubber, (5) will be adjusted both upward and downward at six month intervals if market rates

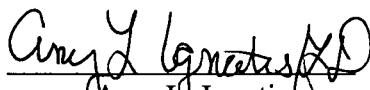
change more than 75% of the adder, and (6) will be temporarily be closed to new entrants if rates increase more than 75% of the adder after the six month adjustment. According to PSNH, these changes to the ADE “attempt to balance the need to reduce risk for all other customers with the need to make the rate attractive to migrated customers, thereby producing benefit for all other customers.” PSNH April 27, 2012 testimony at 17.

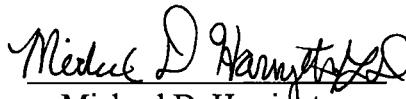
Based upon our review of the record developed thus far in this docket, and assuming all facts asserted by PSNH are true, we cannot find that PSNH has failed to propose a rate methodology for which relief may be granted. PSNH’s testimony in support of its redesigned Rate ADE purports to address the concerns outlined in our earlier orders. Many factual issues will need to be developed in order for the Commission to determine, pursuant to RSA 369-B:3, IV(b)(1)(A), RSA Chapter 374-F, and RSA 378:7, whether the proposed redesigned ADE is reasonable and serves the public interest. Nonetheless, we find PSNH’s petition sufficient to support further investigation and will deny the motion to dismiss.

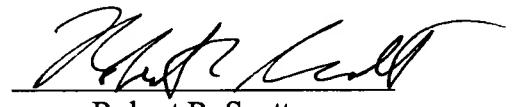
Based upon the foregoing, it is hereby

ORDERED, that the motion to dismiss by Freedom Logistics is DENIED.

By order of the Public Utilities Commission of New Hampshire this eighth day of June, 2012.


Amy D. Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
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- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.