

DE 05-164

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Petition to Establish Energy Service Rates as of February 1, 2006**

**Order Granting Petition as Modified by Settlement Agreement**

**ORDER NO. 24,579**

**January 20, 2006**

Appearances: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; McLane, Graf, Raulerson & Middleton by Steven V. Camerino, Esq. on behalf of Constellation New Energy, Inc., and Constellation Energy Commodities Group, Inc.; August Fromuth on behalf of Freedom Partners, LLC; F. Anne Ross, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Wynn Arnold, Esq. of the Department of Justice on behalf of the Office of Energy and Planning; and Suzanne Amidon, Esq. of the Commission Staff.

**I. PROCEDURAL BACKGROUND**

On September 30, 2005, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a petition to establish the company's Transition Energy Service Rate and Default Energy Service Rate (collectively, Energy Service or ES) for bills rendered on or after February 1, 2006. Transition Service is for customers who have never chosen a competitive energy supplier. Default Service is for customers who previously switched to a competitive energy supplier but are now taking energy again from PSNH. *See* RSA 374-F:2, I-a and V (defining the two services).

Pursuant to RSA 369-B:3,IV(b)(a), the ES rate is currently set based on "PSNH's actual, prudent and reasonable costs of providing such power as approved by the commission." Effective February 1, 2005, the ES rate was set by the Commission in Order No. 24,427 (January 28, 2005) at 6.49 cents per kilowatt-hour (kWh). Upon receiving a petition from PSNH to adjust the ES rate effective August 1, 2005, and after reviewing evidence at hearing, the Commission set the ES rate at 7.24 cents per kWh for the period August 1, 2005 through January 31, 2006.

Order No. 24,498 (August 1, 2005). In this filing, PSNH requests that the Commission determine an updated, single ES rate for all customers effective February 1, 2006, based on a forecast of PSNH's costs of providing such service. PSNH also recommends that the 2006 and future ES rates be set for a calendar year rather than the February through January twelve-month period.

With its petition, PSNH filed the testimony and schedules of Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the operating subsidiaries of Northeast Utilities (NU), including PSNH. The initial PSNH filing did not specify a proposed new Transition Service rate, proposing to calculate such a rate closer to the hearing date to reflect then-current forecasts of the cost of wholesale energy and fuel. However, at the time of the filing PSNH estimated that its reasonable and prudent costs of providing Transition Service from February 1, 2006, through January 1, 2007, would be 8.96 cents per kilowatt-hour (kWh).

On October 20, 2005, the Office of Consumer Advocate (OCA) notified the Commission that it would be participating on behalf of residential ratepayers pursuant to RSA 363:28. The Commission issued an Order of Notice on October 20, 2005, scheduling a prehearing conference for November 2, 2005. On November 1, 2005, PSNH filed a Motion for Protective Order for a response to a data request regarding scheduled maintenance outages for its generating units during the ES period.

The following parties presented petitions to intervene prior to the prehearing conference: Constellation New Energy Inc. and Constellation Energy Commodities Group, Inc. (collectively, Constellation), Unitil Energy Systems, Inc., Direct Energy Services LLP (Direct

Energy), Freedom Partners LLC d/b/a/ Freedom Energy (Freedom Energy), Dominion Retail, Inc. (Dominion) and the State Office of Energy and Planning (OEP).

Following the prehearing conference, the Parties and the Commission Staff (Staff) met in technical session and established a proposed procedural schedule which was submitted to the Commission on November 4, 2005. The Commission approved the procedural schedule and granted the petitions to intervene via a November 10, 2005 secretarial letter. The Staff issued its first set of data requests on October 17, 2005, and additional discovery was issued by the Staff and the Parties pursuant to the procedural schedule. On November 23, 2005, PSNH filed a Motion for Protective Order for certain sales information in agreements for PSNH's sale of Renewable Energy Certificates (RECs).

On December 14, 2005, PSNH filed with the Commission a Stipulation and Settlement Agreement (Settlement Agreement) signed by PSNH, the Staff, the OCA and the OEP. On December 19, 2005, PSNH filed updated exhibits to the testimony of Mr. Baumann and a technical statement of David Errichetti and Mr. Baumann. The hearing was held on December 21, 2005. At the hearing, PSNH submitted an additional signature page to the Settlement Agreement containing the signature of Freedom Energy. On January 5, 2006, PSNH filed its response to a record request made during the hearing.

## **II. POSITIONS OF THE PARTIES AND THE STAFF**

### **A. Public Service Company of New Hampshire**

In its petition, PSNH noted that as of February 1, 2005, Transition Energy Service ended for PSNH's large commercial and industrial customers (Group 2 customers). Those large customers who elected not to receive energy from a competitive energy supplier now receive

Default Energy Service from PSNH. PSNH stated that on April 30, 2006, Transition Energy Service is scheduled to end for PSNH's residential and small commercial and street lighting customers (Group 1 customers). Beginning May 1, 2006, those customers will similarly receive Default Energy Service from PSNH unless they elect to receive energy from a competitive supplier, consistent with the principles of the electric utility industry restructuring statute (RSA 374-F). As the Default Energy Service rate is calculated in the same way as the Transition Energy Service Rate, PSNH collectively refers to both rates as the ES rate.

According to PSNH, every Group 1 customer that has not chosen to receive energy service from a competitive supplier will migrate from Transition Energy Service to Default Energy Service commencing with May 2006 bills. PSNH plans to inform Group 1 customers of the change in advance of the May billing date, and will stress that the change is only in the name of the service. PSNH further stated that, pursuant to RSA 369-B:3,IV(b)(1)(B)(iii), up to 25 percent of those customers may be randomly assigned to competitive energy suppliers at the end of the Transition Service period if the Commission finds such random assignment to be in the public interest. In PSNH's opinion, such random assignment at this time would not be in the public interest as the competitive market has not materialized for these small customers. In addition, PSNH pointed out that any such random assignment must be affirmatively approved by an individual customer, and that such affirmative approval is unlikely given the absence of lower price alternatives. PSNH concluded that a random assignment would only serve to create unnecessary customer confusion and an administrative burden for the Commission and for PSNH.

PSNH explained that, as in past proceedings, ES costs contain the generation asset revenue requirements, entitlements and purchased power obligations including fuel costs associated with PSNH generation, costs of market purchases, revenues from sales of electricity, and expenses assessed by the Independent System Operator-New England (ISO-NE). PSNH noted that the over-market portion of purchases from the Independent Power Producers is considered a stranded cost and is recovered as a Part 2 cost through the SCRC.

In its September 30, 2005 filing, PSNH presented a rate that would be set in the same manner as the 2005 ES rate, with the new ES rate in effect for twelve months beginning February 1, 2006. However, PSNH recommended that the 2006 and future ES rates be set for the calendar year because that is consistent with the SCRC annual reconciliation and would facilitate bilateral power contracting which typically has terms equaling a calendar year.

Based on the updated calculations of ES costs submitted on December 19, 2005, PSNH represented that the ES cost would be 9.13 cents per kWh for the period February 1, 2006, through December 31, 2006, or 9.24 cents per kWh for the period February 1, 2006 through January 31, 2007, if the Commission were to decide to continue with a twelve-month rate. PSNH noted that, consistent with prior years' ES proceedings, if a rate adjustment is deemed necessary mid-year, PSNH or any interested party could file a petition a month before the beginning of the second half of the ES year to request such an adjustment to be effective for the second half of the ES year. PSNH stated that it intends to continue to implement the new ES rate on a bills-rendered basis.

PSNH pointed out two additional items in its petition. PSNH testified that an accounting issue had arisen which may impact ES costs in this next twelve-month period,

related to accounting guidance issued earlier by the Financial Accounting Standards Board (FASB). The second issue related to the status of construction at the Northern Wood Power Project (NWPP).

According to PSNH, Financial Accounting Standard 143, Accounting for Asset Retirement Obligations (FAS 143), which became effective in 2003, requires the recognition of future retirement cost obligations related to long-lived assets (asset retirement obligations or AROs). PSNH characterized such assets as including generating stations, sub-stations, and utility poles. PSNH stated that in early 2005, FASB issued FAS Interpretation #47 regarding FAS 143 and that based on PSNH's preliminary assessment, NU subsidiaries, including PSNH, will have to reflect AROs in their 2005 financial statements. PSNH did not estimate the ARO value; however, PSNH indicated that it expected there would be balance sheet recognition of the ARO obligation at December 31, 2005, and additional ES costs beginning January 1, 2006. If, due to the timing of this issue, the amortization of ARO-related costs is not recognized in the February 1, 2006 ES rate, PSNH indicated that it would seek Commission approval for deferral treatment.

With respect to the NWPP, PSNH testified that the most significant modification to the plant is the replacement of the existing coal/oil burner with a new burner that is capable of efficiently burning low-grade wood, with coal as a back-up fuel. PSNH averred that while it anticipates the entire project will go into service sometime in the third quarter of 2006, it proposed to add certain segments of the project, totaling \$75,000,000, to this rate filing as an increase in rate base during the months those individual segments of the project are completed.

PSNH acknowledged that the actual costs of NWPP would be subject to future review by the Commission.

Finally, PSNH requested the Commission's final approval of the ES rate by January 31, 2006, in order to implement the new rate for bills rendered as of February 1, 2006.

PSNH filed two Motions for Protective Order. In its November 1, 2005 motion, PSNH requested protective treatment for the maintenance outage schedule for PSNH's major generating stations which was requested in Staff Data Request 1-009. PSNH averred that its response contained a schedule of weeks when the planned outages are scheduled to take effect with the specific days when the outage is planned to begin and end. PSNH noted that this information is submitted to the ISO-NE but is kept confidential and is not shared with the public or with other ISO-NE market participants.

PSNH asserted that the Commission uses a balancing test to weigh the importance of keeping the record public with the harm resulting from disclosure and that, in this case, release of the information would put PSNH at a distinct competitive disadvantage if the information were made public to competitive energy suppliers. In PSNH's view, the release of this information would harm PSNH's customers directly as disclosure would impede the ability of PSNH to negotiate for the lowest possible cost of energy it purchases on the market during maintenance outages. PSNH noted in its motion that the Staff and the Parties either took no position or did not oppose the motion for protective treatment.

The Motion for Protective Order, filed on November 23, 2005, relates to the response to Staff Data Request 2-008, which inquired into whether PSNH had any agreements in place regarding the sale of RECs in addition to the existing agreement with the Massachusetts

Technology Collaborative. PSNH asserted that another purchaser had contracted to buy RECs from PSNH; however, PSNH pointed out that the purchase contract contained a provision stating that the quantity of certificates sold, the sale price and certain other terms shall remain confidential and disclosed to a regulatory authority only with a request for protective order. PSNH further argued that PSNH and the purchaser must protect their negotiating positions with respect to future sales and purchases of RECs, and that disclosure of sale terms would put both PSNH and the buyer at a competitive disadvantage. PSNH therefore requested confidential treatment of the information pursuant to Puc 203.04.

At hearing, PSNH expressed its support for the Settlement Agreement and requested Commission approval of the proposed 9.13 cents per kWh ES rate. PSNH testified that it expected to report AROs in its financial statements for 2005 and agreed to provide prompt notification to the Commission, the Staff and the Parties to this docket of the recorded ARO values as soon as the information is available. In response to proposals made by Constellation during the hearing (discussed *infra*), PSNH stated that moving an estimated amount of some of the costs of uncollectible accounts from the delivery rate to the ES rate is one issue ratemaking, but that it would be appropriate to explore in PSNH's next delivery rate case. Regarding the proposed issue of quarterly rate adjustments, PSNH stated that it is opposed to the proposal because it would be difficult for PSNH to do and, in PSNH's view, customers want stable rather than fluctuating rates.

#### **B. Constellation**

At hearing, Constellation stated that while it did not oppose the Settlement Agreement (*see* discussion of the Settlement Agreement *infra*), it had two proposals (Hearing

Transcript of December 21, 2005 (12/21/05 Tr.), Ex. 4) that “would be layered on top of it.” 12/21/05 Tr. at 22 lines 19-21. The first proposal would require PSNH to adjust its Default Service rate on a quarterly basis – as opposed to the single mid-year adjustment outlined in the Settlement Agreement – for its Rate GV, Rate LG, Rate SR, Rate SKI and Rate OL customers (which Constellation referred to as PSNH’s “Large Business Customers”). For PSNH’s other customers, the Default Service rate would continue to be adjusted semiannually. As part of that proposal, PSNH would be required to file a quarterly update of its forecasted fuel and purchased power costs and any year-to-date over/under-collections of PSNH’s actual costs. For purposes of adjusting the Default Service rate for the Large Business Customers, a portion of the total amount of over/under-collection would be allocated to the Large Business Customers based on their proportionate share of total forecasted kWh sales for the next quarter. The resulting new quarterly Default Service rate for the Large Business Customers, when taking into account the updated cost forecast, would be calculated in a way designed to achieve a zero over/under-collection by the end of the quarter to which the rate would apply. Constellation further proposed that the quarterly filing and rate adjustment by PSNH would not require a separate hearing, but could be implemented automatically by PSNH unless (1) the proposed change would result in a Default Service rate that was more than 20 percent above or below the initial rate approved for the year by the Commission or (2) the Commission otherwise ordered.

The other modification proposed by Constellation was, effective with the anticipated August 1, 2006 adjustment to the Default Service rate, to shift an estimated \$2.1 million in uncollectible or “bad debt” cost attributable to PSNH’s sale of electric supply from the delivery rate (where they are currently collected) to the Default Service rate. According to

Constellation, such a change to the Default Service and delivery rates should occur simultaneously so that customers would experience no net change in their electric bills. Constellation calculated that, based on information provided by PSNH, the proposed change would result in an increase to the Default Service rate and a corresponding decrease to the delivery rate of 0.025 cents per kWh.

#### **C. Direct Energy and Dominion**

Although not in attendance at the hearing, Direct Energy and Dominion communicated with the Staff prior to the hearing and indicated that they had no objection to the Settlement Agreement. Staff reported this position during the hearing.

#### **D. Freedom Energy**

Freedom Energy expressed its support for the Settlement Agreement.

#### **E. The Office of Energy and Planning**

The OEP questioned PSNH with regard to FAS 143 and FIN 47, the lack of certainty regarding the value of the AROs and the resulting impact on rates. In response to data requests from the OEP, PSNH estimated the nominal value of AROs to be \$28 million, with the amount that may be deferred at December 31, 2005, to be \$15 million. The OEP recognized, however, that the reasonableness of the underlying cost assumptions and the incurrence of the underlying obligations are issues that will be explored in a future proceeding.

The OEP expressed its support for the Settlement Agreement. The OEP also stated that it concurred conceptually with Constellation's proposal for PSNH to perform quarterly reconciliations of Default Service costs for non-residential customers and would support an examination of that issue in an appropriate proceeding.

#### **F. The Office of Consumer Advocate**

The OCA inquired about increases in certain categories of costs contained in the December 19, 2005 updated schedules as compared with the original filing. Taking into account PSNH's responses, the OCA concluded that PSNH's forecast appeared to be reasonable. With respect to Constellation's proposals, the OCA took no position but indicated that an allocation based on energy consumption appeared reasonable although it would want to be assured that residential customers would not absorb any costs resulting from the separate treatment of large customers. Finally, the OCA expressed its support for the Settlement Agreement and requested that the Commission give it favorable consideration.

#### **G. Commission Staff**

At the hearing, the Staff asked additional questions about increases in certain categories of expense between the petition as originally filed and the December 19, 2005 update. On the issue of increased costs related to energy and capacity purchases from small power producers, upon questioning, PSNH clarified that the contract prices had not changed and the increase in ES was solely related to how those costs are collected, with more of the costs being collected in the ES rate and fewer above-market costs being collected in the Stranded Cost Recovery Charge. In addition, Staff inquired about certain other changes involving a revised operating schedule for PSNH's Newington Station and revisions to the maintenance schedules at the fossil-fired generating plants.

Staff noted its support for the Settlement Agreement. As for Constellation's proposals, it stated its concern that PSNH's large commercial and industrial customers would not be anticipating a quarterly change to their rates and agreed with OEP that such a change could be

explored in a future proceeding. Staff also expressed a concern that the estimated \$2.1 million of uncollectible costs may not be accurate and suggested that issue could also be more closely examined in a future proceeding.

### III. SUMMARY OF THE SETTLEMENT AGREEMENT

The Settlement Agreement filed with the Commission on December 14, 2005, sets forth the agreement of the Parties and Staff as to the particular treatment of certain issues, as will be discussed below. Considering that PSNH had yet to file its updated forecast at the time of the Settlement Agreement, there was no agreement as to the proposed ES rate.

In response to concerns by the Staff, the OCA and the OEP regarding PSNH's proposed phase-in of NWPP costs before the boiler was complete and in service, based on RSA 378:30-a, the Parties and the Staff agreed that all components of the NWPP conversion will not be included in rate base until the month when the boiler island testing is completed and the unit is released for dispatch by ISO-NE. In so doing, the revenue requirement for the forecasted ES rate period would be reduced by approximately \$1.7 million. In addition, according to the Parties and the Staff, Attachment 1 to the Settlement Agreement demonstrates that PSNH will be under-collecting its costs for the first half of the ES period and, therefore, none of the costs of the NWPP conversion will be collected prior to it becoming used and useful in the provision of service to PSNH's retail customers.

The Parties and the Staff also agreed with the concept requested by PSNH that the Commission allow PSNH to create, if necessary, a regulatory asset and/or regulatory liability to reflect the accounting for AROs required by FAS 143 and FIN 47 without, however agreeing to the details of the amount of dollars involved or the period for amortization. The Parties and the

Staff concurred that the accounting treatment preserves, and does not limit, the Commission's authority to scrutinize any and all costs of asset retirement for prudence once those costs are incurred.

In addition, the Parties and the Staff agreed that random assignment of PSNH's Group 1 customers to competitive energy suppliers at this time would not be in the public interest as the competitive market has not materialized for these small customers. While the Parties and the Staff recommended that the Commission find that such random assignment is not in the public interest at this time, they further agreed that no party shall be precluded from requesting that the Commission open a proceeding in the future to determine whether such random assignment is in the public interest.

Regarding PSNH's requested change from a twelve-month ES rate to a calendar year rate, the Parties and the Staff recommended that the ES rate for the instant proceeding be set for an eleven-month period from February 1, 2006, through December 31, 2006. In addition, PSNH will file a mid-term update with supporting data on or before July 1, 2006, with rights to any party to request an ES rate change based on the updated data. Any such requested rate change would be effective on August 1, 2006, and designed to produce an estimated reconciliation balance of zero on December 31, 2006. The Parties and the Staff agreed that subsequent ES rates would be set on a calendar-year basis subject to a mid-term update filed on or before June 1, with rates reset as of July 1.

Consistent with the implementation of Transition and Default Service rate changes since Competition Day, May 1, 2001, the Parties and the Staff recommended that the February 1, 2006 ES rate change be implemented on a bills-rendered basis.

Finally, the Settlement Agreement includes a recommendation for a change in the treatment of over/under-recoveries of PSNH's actual cost of providing energy to its retail customers. Those over/under-recoveries are current adjustments to PSNH's Part 3 stranded costs. In light of the current expectation that PSNH's Part 3 stranded costs will be fully amortized prior to the expiration of the ES rate period on December 31, 2006, the Parties and the Staff recommended that any incremental ES over/under-recovery accumulated in the rates established for effect on February 1, 2006, be carried forward and included as part of the calculation of the subsequent ES rate instead of any further adjustment to Part 3 stranded costs.

#### IV. COMMISSION ANALYSIS

This proceeding requires us to set Transition Service and Default Service rates for PSNH that reflect the company's "actual, prudent and reasonable costs" of providing the power. RSA 369-B:3, IV(b)(1)(B)(ii) (as to residential, street lighting and general delivery service Rate G customers) and RSA 369-B:3, IV(b)(1)(C) (as to all other customers). We make such a determination in the context of our overall obligation to assure that rates are just and reasonable pursuant to RSA 378:7, as well as our obligation to use the RSA 374-F:3 "interdependent policy principles" to guide us in regulating the electric industry as restructured under RSA 374-F.

We note that there is little in dispute in this proceeding. While there are additional proposals to be "layered on top of" the proposed Settlement Agreement, the Parties and the Staff have either signed or not opposed the Settlement Agreement. In addition, there is no dispute regarding PSNH's calculation of its proposed ES rate.

### A. Settlement Agreement

The statutory transition service period expires April 30, 2006, for all customers in the state. PSNH has proposed to price all Transition Service and Default Service through a single ES rate, which will be available to customers who choose not to obtain energy service from a competitive energy supplier at the end of the transition service period. As of May 1, 2006, the ES rate will be PSNH's Default Service proposal. The restructuring statute, in particular RSA 374-F:3(c), sets forth the elements we should consider to determine whether a Default Service proposal is in the public interest. According to the statute, Default Service must be designed to assure universal access and system integrity, should be procured through the competitive market, and the administrative costs should be borne by customers in a manner approved by the Commission. The statute further permits us to approve "alternative means of providing transition or default service which are designed to minimize customer risk; not unduly harm the development of competitive markets; and mitigate against price volatility without creating new deferred costs" as the competitive market develops. RSA 374-F:3(e).

We have reviewed the provisions of the Settlement Agreement and find that the petition, as amended by the Settlement Agreement, will result in just and reasonable rates and, therefore, is in the public interest. The Parties and the Staff appear to have reached a reasonable cost-reducing resolution of the concerns that arose related to the treatment of costs related to the NWPP. Regarding the accounting treatment for AROs, we find it reasonable to allow PSNH to follow the FASB guidance while recognizing that the details concerning the actual costs of the AROs and the implementation of the accounting guidance will be reviewed in a future proceeding.

We agree with the Parties and the Staff that a competitive market has not yet materialized for PSNH's residential, street lighting and general delivery service customers and, as such, it would not be in the public interest to randomly assign those customers to competitive suppliers at this time.

We further approve the recommended change to a calendar year ES period and the continued implementation of ES rate changes on a bills-rendered basis to avoid customer confusion. Finally, we find that the recommendation to include future incremental ES over/under-recoveries in subsequent ES rate calculations is logical given the expected demise of Part 3 of PSNH's Stranded Cost Recovery charge prior to the end of the upcoming ES rate period.

#### **B. Proposed ES Rate**

The increase in the ES rate from 7.24 cents per kWh to 9.13 cents per kWh results in a 12.2 percent increase in the average residential bill. The increase reflects the impact of current conditions in the energy and fuel markets on purchases PSNH made from the wholesale market and on fuel purchased for its own generation facilities. The 9.13 cents per kWh ES rate, however, is lower than the market-based monthly Default Service rates procured by Unitil Energy Systems and Granite State Electric Company through competitive bid processes. These rates range from 9.2 to 16.9 cents per kWh. *See Unitil Energy Systems*, Order No. 24,526 (October 11, 2005); *Granite State Electric Company*, Order No. 24,539 (October 31, 2005). Despite this forecasted rate increase, none of the parties or Staff disputed PSNH's calculation of the proposed ES rate. Taking that into account, along with our approval of a

change to a calendar year ES rate period, we find the result reasonable and approve the proposed ES rate of 9.13 cents per kWh for the upcoming period.

### **C. Constellation's Proposals**

We have considered Constellation's proposals and find it would not be in the public interest to adopt either recommendation at this time. Constellation is interested in PSNH conducting quarterly reconciliations of revenue and expense with corresponding adjustments to the ES rate. Constellation suggested that quarterly reconciliations would result in rates more reflective of the then-current market rates. However, PSNH is unlike other electric utilities in the state because it continues to own generating stations. Inasmuch as this proposal was not placed before us until the hearing and, thus, was not subject to discovery and cross examination, further details are needed to gain a clearer understanding of the potential implications. While we are not approving the proposal for quarterly rate adjustments at this time, we are not closing the door to future consideration of the issue.

Similarly, we find that the issue of shifting the costs of uncollectible accounts related to the provision of energy to customers to the ES rate from the delivery rate, also first placed before us at hearing and not subject to discovery and cross examination, requires greater development. For that reason, we do not address Constellation's proposal herein. However, the proposal may have merit and our decision does not preclude consideration of the issue at a later time.

### **D. Motions for Protective Order**

In its first Motion, PSNH stated that, as part of its discovery responses, it provided the maintenance schedule for PSNH's major generating stations as requested by Staff

Data Request 1-009. PSNH stated it requested protective treatment because this information, although submitted to the ISO-NE, is kept confidential and not shared with the public or with other ISO-NE market participants because the release of the information would put PSNH at a distinct competitive disadvantage and would impair PSNH's ability to negotiate the lowest possible costs of energy it purchases on the market during such outages. PSNH states that its request is made pursuant to N.H. Admin. Rules Puc 204.06, which governs the treatment of confidential information received by the Commission. There was no opposition to the Motion.

The New Hampshire Right to Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. The statute, however, exempts from disclosure certain "confidential, commercial or financial information." See RSA 91-A:5,IV. We agree with PSNH that the schedule of planned outages at its generation facilities constitutes sensitive and confidential commercial information protected from disclosure by RSA 91-A and Puc 204.06(c). We do not find the public's interest in review of this commercially sensitive information sufficient to outweigh the need for PSNH to maintain confidentiality of such information. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). We will, therefore, grant protective treatment to the schedule for planned outages.

The second Motion for Protective Order relates to contract information provided in response to Staff Data Request 2-008 relative to PSNH's agreement with another party for the sale of RECs. In its Motion, PSNH asserted that the agreement for the sale of RECs provides that the sales price, quantity of certificates sold and certain other terms remain confidential but may be provided to a regulatory authority only under a request for protective treatment.

As noted above, RSA 91-A and Puc 204.06(c) provide for the confidential treatment of utility information when the utility asserts facts that demonstrate that the information is commercially sensitive. PSNH argues that the price and quantity of RECs to be purchased represents confidential commercial information that would not be disclosed to the public, and that disclosure would compromise both PSNH and the contractor's ability to negotiate the purchase price of RECs in the future. Further, PSNH and the party purchasing the RECs specifically agree in the contract that sensitive information would be released only with a Motion for Protective Order. This Motion, too, was uncontested.

We find that this information is commercially sensitive information pursuant to Puc 204.06(c) and RSA 91-A:5,IV. We do not find the public's interest in review of this commercially sensitive information sufficient to outweigh the need for PSNH to maintain its confidentiality. We further note the parties have taken measures to avoid disclosure of the contract information to the public. Therefore, we grant the Motion for Protective Order as it relates to sensitive commercial information regarding the REC sale agreement. Consistent with our practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of the Staff, any party or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances so warrant.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Petition of Public Service of New Hampshire to establish Transition Service and Default Service rates as of February 1, 2006 as amended by the Stipulation and Settlement Agreement is hereby **APPROVED**; and it is

**FURTHER ORDERED**, that the Transition Service and Default Service rates shall be fixed at 9.13 cents per kilowatt-hour, effective with bills rendered on or after February 1, 2006; and it is

**FURTHER ORDERED**, that PSNH's Motions for Protective Order are **GRANTED**; and it is

**FURTHER ORDERED**, that PSNH shall promptly notify the Commission, the Staff and parties to this docket when it has determined the value of the Asset Retirement Obligation for year-end 2005; and it is

**FURTHER ORDERED**, that PSNH shall file a compliance tariff with the Commission consistent with the requirements of this Order and N. H. Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this twentieth day of January, 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

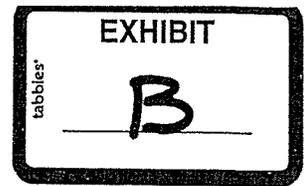
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Clifton C. Below  
Commissioner

Attested by:

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ChristiAne G. Mason  
Assistant Executive Director & Secretary



STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 13-108

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of Energy Service and Stranded Costs for Calendar Year 2012

Order Defining Scope of the Proceeding and Granting Motion to Intervene

ORDER NO. 25,540

July 9, 2013

**APPEARANCES:** Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire, the Office of Consumer Advocate by Susan A. Chamberlin, Esq. on behalf of residential ratepayers, and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

**I. PROCEDURAL HISTORY**

On April 10, 2013, Public Service Company of New Hampshire (PSNH) requested that the Commission open a docket for the annual reconciliation of PSNH's energy service and stranded costs for the calendar year 2012. The Office of Consumer Advocate (OCA) filed a letter on April 17, 2013, informing the Commission of its intent to participate in this docket pursuant to RSA 363:28. On May 9, 2013, PSNH filed testimony and schedules in support of its proposed reconciliation of revenues and costs associated with its energy service charge and stranded cost recovery charge for calendar year 2012. The Commission issued an Order of Notice on May 15, 2013, scheduling a prehearing conference and subsequent technical session on June 13, 2013. PSNH filed its affidavit of publication for the order of notice on May 23, 2013.

On June 10, 2013, Conservation Law Foundation (CLF) filed a petition to intervene. PSNH filed an objection to CLF's petition to intervene on June 13, 2013.

The prehearing conference was held as scheduled on June 13, 2013, before Commissioner Amy L. Ignatius. PSNH, OCA, and Staff participated. CLF did not appear. On June 13, 2013, Staff filed a report of the technical session that followed the prehearing conference and submitted a proposed procedural schedule for the docket, with the agreement of all participants, as follows:

Set 1 Discovery on PSNH's Filing	July 19, 2013
PSNH's Response to Discovery	August 9, 2013
Set 2 Discovery on PSNH's Filing	August 26, 2013
PSNH's Responses to Discovery	September 11, 2013
Technical Session	October 1, 2013 at 9:00 a.m.
Staff/OCA/Intervenor Testimony	November 15, 2013
Discovery on Staff/OCA/Intervenor Testimony	November 25, 2013
Responses to Discovery	December 9, 2013
Technical Session/Settlement Conference	December 13, 2013 at 9:00 a.m.
Rebuttal Testimony	January 10, 2014
Hearing on the Merits	January 23, 2014 at 10:00 a.m.

## II. POSITIONS OF THE PARTIES

### A. Conservation Law Foundation

CLF states that it is a membership organization that, among other things, represents the interests of its members in ensuring that environmental impacts resulting from the generation, production, distribution, and /or use of electricity in New Hampshire and the region are minimized. CLF states that its membership exceeds 3,000 members. CLF states that approximately 350 of those members live in New Hampshire, and further claims that the economic interests of its New Hampshire members as ratepayers are directly affected by this proceeding. CLF also claims that intervention will permit CLF to protect its members' substantial interests in the environmental and public health impacts resulting from PSNH's use of its generating resources and market purchases to supply its customers.

### **B. Public Service Company of New Hampshire**

PSNH objects to intervention. PSNH characterizes CLF's interests as relating only to environmental issues which are excluded from consideration in reconciliation dockets and as not relating to the economic, revenue and expense issues which the Commission has previously stated are the focus of proceedings such as this. *See* Order No. 25,375 (June 18, 2012) at 4-5. In the alternative, PSNH requests that CLF's participation in the docket be limited to the issues relevant to a reconciliation filing.

### **III. COMMISSION ANALYSIS**

The Commission considers petitions to intervene in accordance with the standards of RSA 541-A:32. *See* NH Code Admin. Rules Puc 203.17. The Commission reviews the facts alleged in the petition and determines whether the petition has demonstrated "rights, duties, privileges, immunities or other substantial interests [that] may be affected by the proceeding . . ." RSA 541-A:32, I(b). If it finds that the petition meets this test, and that the intervention would not impair the orderly and prompt conduct of the proceeding, then the Commission grants intervention. RSA 541-A:32, I(c). We find that the substantial interests of CLF may be affected by this proceeding, through its members that are PSNH ratepayers. We also find that CLF's intervention will not impair the orderly conduct of the proceeding so long as CLF refrains from exceeding the scope of the proceeding and the proper areas of inquiry as clarified below.

The scope of this docket is limited by its subject. The subject of this docket is the annual filing by PSNH to reconcile the revenues and expenses associated with its stranded cost recovery and the power generation and supplemental power purchases for 2012. Reconciliation involves a retrospective analysis of revenues and expenses associated with PSNH's stranded cost recovery and the power generation and supplemental power purchases for 2012. Reconciliation is

necessary because PSNH is authorized to recover its "actual, prudent, and reasonable costs" of providing service as approved by the Commission. RSA 369-B:3, IV(b)(1)(A). Each December, the Commission establishes energy service and SCRC rates for PSNH customers based on a review of PSNH's estimates of what costs will be in the next twelve months. Reconciliation allows PSNH to compare its estimated revenues and expenses with those actually incurred for the prior calendar year, and either credit an over-recovery back to customers or include an under-recovery amount in rates.

When these reconciliation filings are made, a prudence review is conducted to determine whether the Company should recover from ratepayers the costs claimed for a prior year. In connection with the costs of PSNH's generation fleet, the Commission reviews the planned outages and associated power purchases to determine whether PSNH acted in a prudent and reasonable manner. Similarly, with unplanned outages, the Commission investigates the cause of the outages and the associated replacement power purchases to assess whether PSNH could have taken reasonable steps to avoid the outages and to understand whether PSNH made purchases for replacement power that provided reasonable value to its customers. In so doing, the Commission also determines the extent to which costs claimed by PSNH should be recovered from customers. Therefore, 2012 plant performance, plant outages, replacement power purchases, and other purchases of power and capacity and stranded cost recovery are included in the scope of this docket. Also, the prudence and reasonableness of PSNH's incurred capital costs, and whether PSNH has otherwise appropriately accounted for and reconciled its energy service and stranded costs and any offsetting revenues for the period considered in accordance

with the Restructuring Agreement<sup>1</sup> and applicable law, are included in the scope of this docket.

Prospective costs are not considered in a reconciliation docket. With the exception of whether power purchases and generation decisions are consistent with the company's least cost integrated resource plan (LCIRP), PSNH's planning process and least cost procurement protocols will not be considered. Least cost planning, forecasts of power needs, costs, or related factors are considered in the context of PSNH's LCIRP filed pursuant to RSA 378:37 and 378:38, and will be considered in the context of an LCIRP docket or in a future energy service rate setting docket, as appropriate. Likewise, while the Commission appreciates that CLF's mission is primarily environmental, any environmental-compliance issues or environmental and health impacts associated with the operation of PSNH's generation fleet are beyond the scope of this docket. The Public Utilities Commission does not review or enforce environmental laws that should properly be reviewed by the New Hampshire Department of Environmental Services, the U.S. Environmental Protection Agency, or the courts. CLF, and all parties, must limit their discovery, testimony and examination to remain within the scope described herein.

We understand that the proposed procedural schedule contemplates that discovery will be issued on July 19, 2013. To the extent that there are disputes regarding the scope of discovery as described above, we will promptly act on motions to compel and objections. We have determined that the proposed schedule is in the public interest, and therefore approve it.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the scope of the proceeding shall be as specified in the body of this Order; and it is

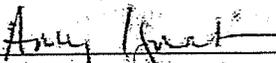
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<sup>1</sup> Agreement to Settle PSNH Restructuring in Docket No. DE 09-099 (Restructuring Agreement). See, *PSNH Proposed Restructuring Settlement*, 85 NH PUC 154, 85 NH PUC 536 and 85 NH PUC 645 (2000).

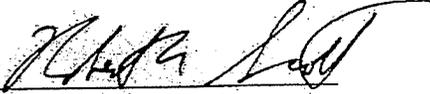
**FURTHER ORDERED**, that the procedural schedule proposed by Staff on June 13, 2013 is hereby **APPROVED**; and it is

**FURTHER ORDERED**, that Conservation Law Foundation's petition to intervene is hereby **GRANTED**.

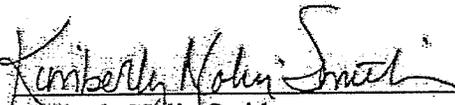
By order of the Public Utilities Commission of New Hampshire this ninth day of July, 2013.

  
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Amy Ignatius  
Chairman

  
\_\_\_\_\_  
Michael D. Harrington  
Commissioner

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

Attested by:

  
\_\_\_\_\_  
Kimberly Nolin Smith  
Assistant Secretary