

DE 04-072

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2004 Least Cost Integrated Resource Plan

Order Following Pre-Hearing Conference

ORDER NO. 24,426

January 28, 2005

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Gallagher, Callahan & Gartrell, P.A. by Seth L. Shortlidge, Esq. for Newington Energy, LLC and Granite State Electric Company; Gary M. Epler, Esq. for Unitil Energy Systems, Inc.; Devine, Millimet & Branch, P.A. by Mark W. Dean, Esq. for New Hampshire Electric Cooperative; Office of Consumer Advocate by F. Anne Ross, Esq. on behalf of residential ratepayers and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On April 30, 2004, pursuant to RSA 378:38, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) PSNH's biennial Least Cost Integrated Resource Plan, discussing the Company's transmission system. The filing also included a request for a waiver pursuant to RSA 378:38-a with respect to a least cost plan for generation purposes.

RSA 378:38 provides that each electric utility's least cost integrated plan shall include, but not be limited to: a forecast of future electrical demand for the utility's service area; an assessment of demand-side energy management programs, including conservation, efficiency improvement and load management programs; an assessment of supply options; an assessment of transmission requirements; provision for diversity of supply sources; integration of demand-side and supply-side options; an assessment of plan integration and impact on state compliance with the Clean Air Act Amendments of 1990; an assessment of plan integration and impact on state

compliance with the National Energy Policy Act of 1992; and an assessment of the plan's long- and short-term environmental, economic and energy price and supply impact on the state. RSA 378:38-a authorizes the Commission to waive any requirement to file a least cost plan, except for plans relating to transmission and distribution.

In support of its request for a waiver regarding generation, PSNH contended in its filing that the Company's future as a generation provider is uncertain in light of RSA 369-B:3-a, which prohibits the sale of PSNH's fossil and hydro assets before April 30, 2006. PSNH argued that it would not be consistent with the concept of administrative economy to expend substantial resources on generation issues in this proceeding inasmuch as there may be a separate investigation at a later date concerning whether it should retain or divest its fossil and hydro assets.

The Commission entered an Order of Notice on December 3, 2004, duly published in a newspaper of statewide circulation, scheduling a Pre-Hearing Conference for January 5, 2005, and establishing a deadline for intervention petitions. The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers. The New Hampshire Electric Cooperative (NHEC), Unitil Energy Systems, Inc. (Unitil), Constellation Energy Commodities Group, Inc. and Newington Energy, LLC submitted timely intervention requests. No objections were interposed.

The Pre-Hearing Conference took place as scheduled. Granite State Electric Company (GSEC) requested intervenor status at the Pre-Hearing Conference, without objection. Following the Pre-Hearing Conference, the parties and Staff conducted a technical session, regarding which Staff filed a written report on January 5, 2005. The report included a joint

recommendation of the participants requesting that the Commission resolve certain threshold issues at the outset, after receiving written position papers from the parties.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

PSNH noted that the waiver it seeks here is identical to the one it received in connection with its 2000 and 2002 least cost plans. According to PSNH, the waiver is justified given the uncertainty over the future of PSNH's generation assets as well as the reliance on the competitive market generally, throughout New England, to provide wholesale generation. In the view of PSNH, should state policy change in the future in a manner that causes PSNH to remain in the generation business, the Commission could then take up the question of whether PSNH's least-cost plan should once again be that of a fully vertically integrated utility.

According to PSNH, the Company's RSA 378:38 obligations with respect to integrating demand-side options into its planning process are satisfied by the Company's participation in the statewide "Core" energy efficiency programs funded by the System Benefits Charge paid by all PSNH customers. PSNH also noted that on the same date it made the initial filing in this docket, it filed a Long Range Plan for Bulk Power Supply as required by RSA 162-H:17. According to PSNH, this filing included the forecast of future electricity demand in the PSNH service territory that is required by RSA 378:38.

With respect to transmission, PSNH noted that it is in compliance with directives from the Federal Energy Regulatory Agency (FERC), the Commission has classified as "transmission" all of PSNH's facilities at 115 kilovolts and above, with all other facilities, including those operating at 34.5 kilovolts, as "distribution." PSNH also noted that two of its wholesale transmission customers – Unitil and the NHEC – nevertheless take their service in

whole or in part at the “distribution” voltage of 34.5 kv. It is PSNH’s view that notwithstanding the taking of transmission service at what is nominally a distribution voltage, these two transmission customers should not be allowed to raise issues here or conduct discovery here with respect to transmission issues that arise in interstate commerce and are within the FERC’s regulatory jurisdiction.

PSNH also pointed out that transmission planning in New England is becoming more centralized, under the aegis of ISO-New England. PSNH noted that, on February 1, 2005, ISO-New England’s status under federal law would change from “independent system operator” to “regional transmission organization” (RTO) – a change that would vest more responsibility in ISO-New England for overseeing the operation of the transmission system. Although PSNH conceded that responsibility for designing substations and individual lines would remain with local owners and operators like PSNH, it argued that much of the transmission-related decision making will henceforth be made outside New Hampshire.

PSNH expressed an interest in discussing with other parties the question of whether distribution planning should be part of this docket and the Company’s Least Cost Integrated Resource Plan generally. PSNH noted that, as part of the settlement of the recently completed delivery service rate case, the Company agreed to hire a consultant to conduct an investigation of its distribution planning process. According to PSNH, that effort is well underway. Thus, in PSNH’s view, it may not be necessary to address distribution here.

B. Newington Energy, LLC.

Newington Energy indicated that it did not oppose the waiver of the requirement for PSNH to file a least cost plan related to generation. However, Newington Energy indicated

that if the Commission opted against such a waiver, it should consider issues of resource adequacy and reliability when reviewing PSNH's least cost plan.

C. Granite State Electric Company

GSEC also did not oppose a waiver of the requirement that PSNH file a least-cost plan addressing generation. GSEC noted that it is a distribution utility that owns no generation facilities. It expressed concerns about the implications for GSEC if PSNH were required to address generation issues in its least cost planning document.

D. Unitil Energy Systems, Inc.

Unitil took no position on PSNH's requested RSA 374:38-a waiver. Noting that it is a transmission customer of PSNH, Unitil stated that both it and its customers are directly affected by the transmission planning decisions made by PSNH. Thus, Unitil indicated that it has concerns about specific planning decisions made by PSNH to bring to the attention of the Commission.

E. New Hampshire Electric Cooperative

The NHEC indicated that it has no objection to the RSA 374:38-a waiver requested by PSNH. Beyond that, the NHEC indicated that, like Unitil, it is a transmission customer of PSNH with concerns about the planning and operation of PSNH's transmission system. The NHEC said it is not a party to any FERC proceedings that concern the PSNH transmission system, had no plans to become such a party and, rather, is simply interested in assuring that the needs of PSNH's wholesale transmission customers are incorporated into the Company's transmission planning process.

F. Office of Consumer Advocate

The OCA expressed opposition to PSNH's request for a waiver of the requirement that it address generation planning in its least cost integrated resource plan. Stressing that it did not currently have a position on whether PSNH should divest its generation assets, the OCA suggested that it is nevertheless appropriate to use this docket as an opportunity to examine PSNH's projections of its customers' future generation needs, how the Company's current generation portfolio addresses those needs and what additional upgrades and/or modifications (beyond the Commission's approval in Docket No. DE 03-166 of PSNH's plan to replace one of the coal- and oil-fired boilers at Schiller Station with one also capable of burning wood) PSNH may be contemplating. According to the OCA, such information would be helpful to the Commission in making its ultimate determination under RSA 369-B:3-a of whether PSNH should divest the generation portfolio.

The OCA further took the position that RSA 378:38 clearly requires PSNH to address distribution issues in its least cost integrated resource plan. But the OCA indicated that, in light of the recent completion of a distribution-related rate case, it would not insist on confronting distribution issues in this particular docket.

G. Staff

Staff drew the Commission's attention to RSA 369-B:3-a, which is the statute requiring PSNH to own its generation portfolio through at least April 30, 2006. According to Staff, nothing in that statute requires PSNH to seek the Commission's permission to keep the assets after that date, nor does the statute otherwise provide for an automatic review of the future of the generation portfolio. Therefore, according to Staff, the Commission must assume that PSNH will effectively remain a vertically integrated electric utility. Past waivers of the

requirement that PSNH address generation in its least cost integrated resource plan were appropriate, Staff suggested, because it was then reasonable for the Commission to assume that PSNH was in the process of divesting its generation assets and becoming simply a delivery service provider. Such an assumption is no longer justified, in the view of Staff. According to Staff, a full inquiry into PSNH's least-cost planning, including planning for generation activities, does not invade the FERC's jurisdiction under the Federal Power Act because this case does not involve any FERC-approved tariffs or any other regulatory realm preempted by applicable federal law. Rather, according to Staff, the Commission simply reviews the Company's least-cost planning efforts for consistency with the policy objectives stated in RSA 378:38, an inquiry that is distinct from federal law.

III. COMMISSION ANALYSIS

All of the pending intervention requests meet the RSA 541-A:32 requirement of demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the outcome of this proceeding. Accordingly, and in the absence of any objection, the pending intervention petitions are granted.

With respect to the merits of the case, we adopt the proposal of the participants in the technical session to invite written statements of position before deciding how to proceed. We will establish February 7, 2005 as the deadline for such filings.

Staff's letter indicated the existence of three outstanding issues that are the subject of disagreement among the parties and Staff: (1) The extent to which PSNH is obliged to discuss distribution issues in its least cost integrated resource plan, and the extent to which PSNH is obliged to take the needs of Unitil and the NHEC into account when creating this aspect of the plan, (2) whether the Commission should grant PSNH's RSA 378:38-a request for a waiver of

the requirement to discuss generation in its least cost integrated resource plan, and (3) the extent to which PSNH's participation in the Core Energy Efficiency programs, funded by the system benefits charge as paid by all PSNH customers, satisfies PSNH's RSA 378:38 and RSA 378:39 obligations to consider demand-side management efforts in making a least cost integrated resource plan. We agree that these are threshold issues that should be resolved at the outset.

Based upon the foregoing, it is hereby

ORDERED, that the Commission will accept written statements of positions from the parties and Staff on or before February 7, 2005 with respect to the three threshold issues set forth above.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of January, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary