

**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 Approving Settlement Agreement

ORDER NO. 25,647

April 8, 2014

APPEARANCES: Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; Christophe G. Courchesne, Esq. on behalf of Conservation Law Foundation; the Office of Consumer Advocate by Susan W. 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 of participation in this docket pursuant to RSA 363:28, on April 17, 2013. On May 9, 2013, PSNH filed testimony with related schedules in support of a proposed reconciliation of revenues and costs associated with its stranded cost recovery charge (SCRC) and its energy service (ES) charge for calendar year 2012.

The SCRC is the mechanism by which PSNH recovers certain restructuring-related stranded costs as allowed under the Agreement to Settle PSNH Restructuring (Restructuring Agreement) approved by the Commission in 2000. *See, PSNH Proposed Restructuring Settlement*, Order No. 23,443 (April 19, 2000) 85 NH PUC 154, Order No. 23,549 (September 8,

2000) 85 NH PUC 536 and Order No. 23,563 (September 29, 2000) 85 NH PUC 645. PSNH recovers the cost of providing power from its generating units and supplemental power purchases through its ES charge.

In *Public Service Co. of N.H.*, Order No. 24,125 (February 14, 2003) 88 NH PUC 65, the Commission approved a settlement agreement that implemented PSNH's initial SCRC reconciliation, which covered the period from May 1, 2001 (the date on which the PSNH service territory was opened to retail competition under the Restructuring Agreement) through December 31, 2001. The Commission directed PSNH to submit, on or before May 1 of each subsequent year, its proposed reconciliation of the previous calendar year's SCRC and transition service¹ and default service revenues and costs.

Previously, the difference between revenues and costs associated with providing transition energy service and default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs. See, *Public Service Co. of N.H.*, Order No. 24,641 (June 30, 2006) 91 NH PUC 295. In a prior order, the Commission had determined that once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with default service would be reconciled in the ES rate. *Public Service Co. of N.H.*, Order No. 24,579 (January 20, 2006) 91 NH PUC 17. The costs at issue in the ES reconciliation are those of owning, operating and maintaining PSNH's generating assets, certain costs related to purchases from independent power producers (IPPs), and the cost of purchases and revenues from sales of energy made in the wholesale market.

The Commission issued an Order of Notice on May 15, 2013, scheduling a prehearing conference on June 13, 2013. On June 10, 2013, Conservation Law Foundation (CLF) filed a

¹ Transition Service ended on April 30, 2006.

petition to intervene. PSNH filed an objection to CLF's petition on June 13, 2013. On July 9, 2013, the Commission issued Order No. 25,540 defining the scope of the proceeding, granting CLF's motion to intervene and approving a procedural schedule proposed by the parties.

Following a period of discovery, on November 20, 2013, Commission Staff (Staff) filed the testimonies of Steven E. Mullen, assistant director of the Commission's electric division, and Michael D. Cannata, Jr. of the Accion Group (Accion), a consultancy group working on behalf of Staff. Also on November 20, 2013, the OCA filed the testimony of Stephen R. Eckberg.

PSNH filed rebuttal testimony on January 10, 2014 and, on January 16, 2014, it filed a motion for protective treatment of certain fuel cost information provided in response to Staff data request 1-7. No party objected to PSNH's motion. The Commission granted the motion for protective treatment at the merits hearing that was held on January 23, 2014 and continued on January 27, 2014. The Commission directed the Parties to address in written briefs positions related to the "fully used and useful" concept advanced by the OCA. PSNH, the OCA, CLF and Staff filed briefs on February 4, 2014.

II. POSITIONS OF THE PARTIES

1. Public Service Company of New Hampshire

PSNH-sponsored witness Michael L. Shelnitz provided an overview of the reconciliation between the revenues and expenses reported in PSNH's ES and SCRC filings for the twelve-month period from January 1 through December 31, 2012.

During calendar year 2012, ES costs exceeded revenues by \$57.2 million. \$50.1 million of the under-recovery relates to the deferral of costs of the wet flue gas desulfurization system (Scrubber) at Merrimack Station for calendar year 2012. PSNH is not seeking recovery of the deferred costs associated with the Scrubber in this docket because recovery of costs associated

with the Scrubber is being considered in Docket DE 11-250. As a result, the deferred Scrubber costs are not included in this reconciliation of 2012 energy service costs.

During calendar year 2012, PSNH experienced an under-recovery of \$11.7 million associated with migration greater than that forecast in the 2012 mid-year ES rate adjustment. PSNH also experienced an over-recovery of \$9.3 in RPS compliance costs resulting from a reduction in the Class III (existing biomass) RPS requirement for 2012. Altogether, with other changes from forecasted revenues and expenses as compared with actual revenues and expenses occurring during 2012, the ES resulted in an under-recovery of \$7.1 million.

The SCRC recovers costs categorized as “stranded” by RSA Chap. 374-F and Chap. 369-B. Although PSNH’s stranded costs initially consisted of three types of costs (Parts 1, 2 and 3), only Parts 1 and 2 remain for the year 2012. Part 1 costs are those that have been securitized through the issuance of rate reduction bonds (RRBs) and consist of the over-market portion of Seabrook regulatory assets, a portion of PSNH’s share of Millstone 3, and certain financing costs that were incurred in the procurement of the RRB financing. Part 1 recovery ended in May 2013 when the RRBs were fully amortized. Part 2 stranded costs include “ongoing” costs consisting of the over-market value of energy purchased from IPPs, the up-front payments made for IPP buy-downs and buy-outs previously approved by the Commission, PSNH’s share of the present value of the savings associated with those buy-down and buy-out transactions, a negative return on the credit for deferred taxes related to the Part 1 securitized stranded costs, and a return on the unpaid contract obligations to certain regional Yankee Atomic nuclear plants, net of deferred taxes. Part 2 costs have decreased and will continue to decrease as the IPP rate orders expire.

For the period January 1 through December 31, 2012, the SCRC resulted in a net over-recovery of \$8.1 million. The over-recovery resulted from lower than forecasted above-market

IPP costs, higher than forecasted sales, and an unanticipated disgorgement refund from Constellation Energy.

PSNH-sponsored witness Frederick B. White described how PSNH met its energy and capacity requirements during 2012. PSNH met its requirements through its owned generation, purchases mandated by the Public Utility Regulatory Policy Act (PURPA) under short-term rates and long-term rate orders, and supplemental purchases of energy and capacity from the market. As of December 2012, PSNH's generation resource portfolio utilized the following resource groups: hydroelectric (57 megawatts (MW)) from nine stations, coal and wood (577 MW from Merrimack and Schiller), gas/oil (419 MW from Newington and Wyman 4), combustion turbines (83 MW from five units), wind (2 MW from Lempster Wind) and non-utility generation (26 MW from numerous PURPA-mandated purchases, 10 MW from one IPP buy-out replacement contract, and 80 MW from five independent wood-fired power producers). PSNH's power purchase agreement with Vermont Yankee expired March 21, 2012.

On average, PSNH met 57% of on-peak energy requirements and 63% of off-peak energy requirements with its owned generation resources during calendar year 2012. PSNH does not own sufficient generation to supply all of its customers' energy needs. Any unmet requirements for 2012 were satisfied through bilateral or spot market purchases through ISO-NE. In 2012 the combined expense for all supplemental energy purchases was \$71.8 million. PSNH also experienced hours when its supply resources exceeded its customers' energy needs. For those hours, PSNH sold excess energy into the ISO-NE spot market. The total combined revenue for all surplus energy sales in 2012 was \$6.4 million.

Regarding PSNH's capacity requirements for 2012, approximately 87% of PSNH's capacity needs were met with generation resources, including PSNH-owned assets, non-utility

IPPs, the Vermont Yankee purchase power agreement, and the Hydro-Quebec Interconnection Capacity Credits. The remaining 13% was procured through ISO-NE at a total net cost of \$6.7 million. Also during 2012, PSNH's owned resources provided 12,122 MW-months of capacity to ISO-NE which created over \$38.2 million in revenue credited to the ES rate.

PSNH participated in auctions for financial transmission rights (FTR) as a method of hedging the congestion price differential between its major fossil stations (Merrimack, Schiller and Newington) and the New Hampshire load zone. An FTR is a financial instrument available to ISO-NE participants seeking to manage congestion costs or those wishing to speculate on the difference in congestion between two locations. In 2012 PSNH procured 1,407 gigawatt-hours of FTRs at a net cost of \$27,264. Settlement of the FTRs resulted in elimination of \$80,753 in congestion charges, resulting in an overall decrease in ES expense of \$53,489.

PSNH witness William H. Smagula testified regarding the performance of PSNH's generating units during 2012 including information on all outages that took place at PSNH's fossil-fired, hydroelectric, and biomass units, and at NextEra Energy Resources LLC's Wyman Station Unit No. 4 in Maine, in which PSNH owns a minority interest. PSNH's generating units provided total generation in 2012 equal to 2,012,658 megawatt-hours (MWh). The fleet's availability was 98.2% during the 30 highest priced days when customer's exposure to high market prices was the greatest.

The Company managed planned outages and forced outages during 2012 such that Merrimack Unit 1 and Unit 2's annual equivalent availability factors were 86.3% and 74.5%, respectively. Schiller Unit 5, which is fired by biomass, completed a run of 155 consecutive days, the longest run in its 6 years of operation, and produced 337,901 MWh, its highest annual generation output. Schiller Units 4 and 6 had equivalent availability factors of 83.6% and

90.2%, respectively. PSNH's hydroelectric facilities generated 334,761 MWh in 2012, and Newington Station completed the year with 95.3% equivalent availability. In addition PSNH sold 199,482 barrels of oil resulting in a net customer benefit of approximately \$5.7 million (the sale price of \$8.4 million less the Company's carrying costs of \$2.7 million).

PSNH listed unplanned outages and provided outage reports for all unscheduled outages in excess of two days at either Newington Station or at the two units at Merrimack Station, and in excess of four days at the three units at Schiller Station and at Wyman Unit 4. PSNH also provided the planned outage schedule for Staff's review. Finally, the Company provided documentation of its compliance with existing stipulated agreements. *See* Order No. 25,466 (February 27, 2013).

2. Office of Consumer Advocate

OCA filed the testimony of Stephen R. Eckberg, a utility analyst. OCA did not support PSNH's reconciliation as filed. OCA questioned whether: (1) PSNH should be allowed to recover \$900,000 that PSNH paid for services provided by NSTAR Electric and Gas Corporation (NSTAR-EGC) when no affiliate agreement is on file with the Commission, (2) the Commission should approve PSNH's proposed changes to the average year of final retirement (AYFR) for generation assets and any resulting depreciation reserve imbalance, (3) PSNH's sale of #6 oil inventory was prudent, and (4) PSNH shareholders should earn a return on the full net plant value of its generation assets when certain assets were not "fully" used and useful in providing energy service in 2012. Hearing Ex. 11 at 2-3. At hearing, the OCA withdrew its concern regarding the AYFR issue based on its review of Staff's testimony and additional documentation provided by PSNH. Hearing Transcript Jan. 27, 2014 (Tr. 1/27/14) at 31-32.

With respect to its concern about the payments to NSTAR-EGC, the OCA noted that Northeast Utilities (NU), PSNH's parent company, had completed a merger with NSTAR in 2012. Although PSNH had filed an affiliate agreement with NUSCO, PSNH did not file an agreement with NSTAR-EGC. According to the OCA, because no affiliate agreement between PSNH and NSTAR-EGC was filed with the Commission, the Commission should disallow recovery of \$900,000 as permitted by RSA 366:4.

Addressing the issue regarding oil sales, Mr. Eckberg stated that the Company did not provide certain details regarding the transactions that the OCA requested in discovery. OCA recommended that the Commission direct the Company to provide additional analytic support for its oil sales decision and allow the OCA to make a recommendation, after reviewing the analytical support, and before the Commission issues a decision on the Company's 2012 ES reconciliation.

The OCA also claimed that the entirety of PSNH's generation assets do not meet the requirements of RSA 378:27 and 28 which limit the recovery of return on investment to assets that are "used and useful" in the provision of service to customers. In developing this argument, the OCA relied on information provided in Mr. Smagula's testimony which demonstrated that each of PSNH's fossil plants had historically higher capacity factors during the time period 1993-2001 than in the more recent time period of 2009-2013.

Mr. Eckberg developed and compared an "average capacity factor" for the two time periods for Merrimack Units 1 and 2, Newington, and Schiller Units 4, 5 and 6. Based on the overall downward trend in capacity factor of the plants as reflected in his selected time periods, Mr. Eckberg concluded that PSNH's generation assets are no longer fully used and useful. *Id.* at 11.

Mr. Eckberg recommended that only the used and useful fraction of each generation asset be used to calculate the return on rate base. He recommended that for each identified generation unit, the 1993-2001 average historical capacity factor be used as the denominator, and the average capacity factor for the period 2009-2013 be used as the numerator to develop the “used and useful” fraction. He proposed that the fraction be multiplied by the net plant value for each plant, and that the return be calculated based only on the used and useful fraction of each fossil generating plant. Mr. Eckberg stated that if his proposal was adopted, the Company’s earned return on rate base would be reduced by approximately \$8.4 million.

At hearing, although the OCA did not support the Settlement Agreement between Staff and PSNH, the OCA modified certain aspects of its testimony and withdrew some of its objections to PSNH’s positions. First, the OCA agreed with PSNH’s calculation of the net benefit to customers resulting from the sale of oil inventory at Newington Station. Hearing Transcript Jan. 27, 2014 (day 2) (Tr. 1/27/14) at 16-17. Second, the OCA withdrew its objection to PSNH’s AYFR adjustments.

The OCA’s written brief on its used and useful proposal addressed three issues: (1) the Commission’s authority to reduce shareholder returns by applying an “economic” used and useful analysis to utility assets, (2) the Commission’s exercise of that authority, and (3) the Commission’s use of the OCA’s methodology to proportionately reduce shareholder return.

According to the OCA, the used and useful rate recovery principle is flexible, citing *Appeal of Conservation Law Foundation* 127, N.H. 606 (1986). The OCA argued that if utility property has decreased in value, the Company should bear a share of that decreased value, citing *Bluefield v. Public Service Comm.*, 262 U.S. 679 (1923). The OCA stated that because economic and market conditions change from time to time, the Commission should exercise its ratemaking

authority in light of changed circumstances, and this docket is an appropriate proceeding to adjust PSNH's return on its assets that no longer operate economically.

The OCA pointed out that ratepayers pay a return on 100 percent of the value of plants that self-schedule and that have low to very low capacity factors. In the absence of limiting the return, the OCA argued that PSNH has no incentive to make economic decisions that benefit consumers as well as shareholders.

3. Commission Staff

In his testimony, Mr. Mullen reviewed the changes made by PSNH with respect to the AYFR of certain of its generating plants. Mr. Mullen testified that based on his review of the discovery materials and his discussions with Staff's consultant, Mr. Cannata of the Accion Group, he determined that the AYFRs from the most recent technical update do not appear to be unreasonable given recent capital additions and current physical and operating conditions at the plants. Mr. Cannata's testimony reviewed PSNH's power procurement activities and the operation of its generating units. The testimony also addressed Mr. Cannata's investigation of PSNH's capacity and energy transactions in 2012. In general, Mr. Cannata concluded that PSNH made sound and prudent management decisions with regard to its capacity and energy purchases consistent with the Company's least cost plan. Mr. Cannata also determined that PSNH made additional progress in reducing short-term sales of excess energy and capacity. According to Mr. Cannata, the net cost to customers for supplemental energy purchases decreased from \$91.4 million in 2011 to \$65.3 million in 2012.

Mr. Cannata concluded that PSNH's capacity factor projections used in 2012 were reasonable and that PSNH had appropriately modeled its short reliability outages for 2012 and incorporated the impact of economic reserve status in its forecasts. While customer migration

remained reasonably constant throughout the year, Mr. Cannata said customer migration still introduced some uncertainty into the supplemental energy procurement process.

Mr. Cannata also examined PSNH's outage reports and conducted interviews with PSNH's employees regarding the operation and maintenance of its generating plants and entitlements. With regard to planned and forced unit outages, Mr. Cannata noted that the base-load units on the PSNH system ran well in 2012, but the running times of the coal units were further reduced compared to 2011 due to economic reserve shutdowns. He explained that operating the plants on "economic reserve status" referred to the times when the price of energy at the market was less than the price of energy produced from PSNH's generation units. There were a few PSNH unit outages in 2012 that Mr. Cannata found to be unreasonable and Mr. Cannata recommended that PSNH not recover the costs of replacement power for those outages.² Finally, Mr. Cannata had several recommendations related to unit operation, which PSNH agreed to in the Settlement Agreement.

In response to CLF's comments, Staff stated that, for the time being, the Commission had to review the actual costs incurred by PSNH in providing energy service to its customers as required by statute.

Regarding the Newington oil sales, Staff opined that there is sufficient information in the record to evaluate the sales and to conclude that the sales were appropriately made. In addition, Staff concluded that the proposed changes in AYFR were appropriate. Finally, as to the OCA claims regarding affiliate agreements, Staff pointed out that PSNH, a public utility, had filed its affiliate agreement with NUSCO pursuant to RSA 366; however, because neither NUSCO nor NSTAR-EGC are public utilities, they are not subject to the jurisdiction of the Commission.

²These outages are detailed in the summary of the Settlement Agreement in Section III of this Order.

In its brief on the OCA's used and useful proposal, Staff referenced *Appeal of Conservation Law Foundation, supra*, and pointed out that the Court had said that “[t]he application of any rate-making standard without reference to [reasonable] return would be inconsistent with statutory mandate. Thus, the customers’ interest may not be recognized to the derogation of a reasonable return . . .,” *Conservation Law Foundation* at 639. Staff argued that the OCA's proposal does not balance customers’ interest with shareholders’ interests; and that its proposal asks the Commission to second-guess the use and usefulness of PSNH's fossil-fueled plants. .

Staff pointed out that the principal use of the economic used and useful plant standard applied to instances where utilities had abandoned construction of nuclear plants, and not to investments used and useful and in rate base. Staff also opined that the adoption of OCA's proposed recovery methodology would create market uncertainty and affect utility earnings and financial stability for any New Hampshire utility to which the theory may be applied.

4. Conservation Law Foundation

CLF did not support the Settlement Agreement. CLF expressed concern about the failure of PSNH to conduct any meaningful evaluation of its decisions to self-dispatch generation into the market when plants were not operating on an economic basis as compared to the market. CLF requested that the Commission instruct the Company and Staff to pay closer attention to the issues surrounding decisions leading to self-dispatch in future dockets and to require the Company to justify any daily self-scheduling decisions that resulted in above-market charges to ratepayers. CLF also requested that the Commission take administrative notice of a 2012 order from the Connecticut PURA which required an entity to file a daily report for its peaking generation that allowed for a meaningful review of self-scheduling decisions.

In its memorandum on the OCA's used and useful proposal, CLF asserted that while the prudence of PSNH's past investments was not at issue here, the reconciliation proceeding is an appropriate opportunity for the Commission to review whether and to what extent PSNH fossil plants remained used and useful in 2012. CLF pointed out that the "used and useful" principle has been applied by other state public utilities commissions to protect ratepayers from the financial burdens associated with excess capacity. CLF claimed *Appeal of Conservation Law Foundation, supra*, authorized this approach.

CLF claimed that the OCA's proposal to reduce PSNH's return on equity is a reasonable approach to address the sustained decline in the economic usefulness of PSNH's fossil plants to PSNH's default service customers. In the alternative, CLF recommended that the Commission adopt a similar mechanism to disallow recovery of a portion of PSNH's generation costs to reflect the recent reduction in economic usefulness of its fossil plants.

5. PSNH's Response to Arguments by OCA and CLF

PSNH's rebuttal testimony, addressed the three issues raised by the OCA: (1) recovery of certain affiliate costs; (2) depreciation changes and depreciation reserve imbalance; (3) Newington Station fuel oil sales; and (4) return on generation assets not fully used and useful.

With respect to the first issue, PSNH acknowledged that it had received services from NSTAR Electric and Gas Corporation (NSTAR-EGC), the service company for NSTAR, following the April 2012 merger between Northeast Utilities, PSNH's parent company, and NSTAR. PSNH pointed out that no such written agreement exists. According to PSNH, there is an agreement between NUSCO (NU's service company) and NSTAR-EGC which arranged for NSTAR to provide services to NU's affiliates where NUSCO could not provide the required

service. Nonetheless, because neither NUSCO nor NSTAR-EGC is regulated by the Commission, the contracts between them are not required to be filed with the Commission.

Regarding depreciation, PSNH stated that the change in the average year of final retirement (AYFR) was appropriate and did not result in an imbalance in the depreciation reserve.

According to PSNH, the \$7,690,191 used by the OCA in calculating the benefits to customers of fuel oil sales is not relevant to the cost paid by customers because customers do not pay for fuel until it is burned. The only cost to customers for fuel in inventory is the return the Company earns on the asset. PSNH attested that the credit to customers of \$8.4 million (the difference between the proceeds of the sale less the cost of the fuel) included in the ES calculation of these fuel oil sales far exceeded the amount of return earned by the Company.

PSNH disagreed with OCA's testimony regarding its proposed "used and useful" fractional disallowance for two reasons: (1) PSNH had demonstrated that it is entitled to a reasonable return on rate base that includes its generation assets, and (2) the OCA's proposal is flawed. PSNH examined the mechanics of the OCA's proposal to develop a fractional used and useful finding by comparing the average capacity factor for each of PSNH's plants during 2009-2012 to an average capacity factor for the years 1993-2001. According to PSNH, the OCA offered no justification for why those years were appropriately representative for a comparison. PSNH argued that basing a disallowance of millions of dollars on a concept that has been inadequately developed is not sound policy. Further, PSNH claimed that the OCA did not take into account such factors as the value of power plants that can ramp up and down, and plants that run on different fuels, and can operate under different conditions.

PSNH also noted that OCA's proposal lacked internal logical consistency. For example, the OCA proposal would allow recovery of operations and maintenance expense, property taxes, etc. but not a return on capital.

Finally, PSNH pointed out that if the OCA proposal is adopted, prudently incurred costs could be disallowed at any time in the future, while the ability of the utility to recover its costs will shift over time as markets change. Despite these added risks, utilities would not be permitted to profit from advantageous decisions. PSNH predicted that with the risk of disallowance, without any offsetting benefits, PSNH's bond rating would likely decline, meaning that PSNH's cost to obtain capital and finance its operations will rise, resulting in long-term increased costs to customers.

In its memorandum, PSNH elaborated on its arguments made at hearing. Citing *Conservation Law Foundation*, 127 N.H. 606 (1986), PSNH pointed out that under New Hampshire law, decisions regarding whether a utility's property is used and useful are made at the time that the value of the property is placed in rate base. PSNH's fossil-fired plants have been in rate base for decades, and PSNH argued that a change to the evaluation of whether the property is used and useful at this time would demonstrate a marked departure from Commission's prior practice, and would be contrary to the principle that a utility is entitled to a return on those assets in the public service. PSNH also contended that to make an arbitrary determination about the return allowed on a specific subset of PSNH's assets would be akin to a taking and would raise serious constitutional questions.

PSNH said that the concept of classifying certain public utility assets as something less than "fully" used and useful is not a new concept; however, the effect of allowing a second look at plant assets based whether an asset was "economically" used and useful would subject prudent

investments to an uncertain environment where a utility may be stripped of its ability to recover a return at any time. In addition, the concept would place additional risk on the utility from the uncertainty of potential disallowances and would likely result in higher costs to the utility and ultimately to consumers. Further, PSNH argued that under the OCA's proposal, all risk would fall on the utility, which is inconsistent with the Commission's role in balancing the interests of utilities and customers (RSA 363-17-a).

PSNH objected to CLF's request that the Commission take administrative notice of a Connecticut PURA order from over two years ago regarding self-scheduling. PSNH referenced CLF's request for a daily review of PSNH's decisions regarding its generation fleet and suggested that such a detailed analysis would result in some entity other than PSNH making decisions which are really in the purview of the Company. PSNH questioned how providing more detailed information on daily dispatch decisions would assist in the review of PSNH decisions in future reconciliation dockets.

A. Settlement Agreement Between Staff and PSNH

PSNH and Staff agreed that PSNH made sound management decisions with regard to capacity and energy purchases in 2012 and that the capacity factors projected for 2012 market purchases were reasonable. In addition, PSNH agreed not to seek recovery of replacement power costs totaling \$30,694 for six outages identified as unplanned. PSNH and Staff agreed to close all action items from previous reconciliation dockets except for item 2012-12 from Docket No. DE 12-116 (concerning coordination studies and transient stability studies) and item 2012-7 (regarding seasonal temperature settings at PSNH's hydro stations).

PSNH and Staff agree that PSNH's method of updating the AYFRs is reasonable and that the AYFRs used by PSNH following its 2012 Technical Update are reasonable given the capital

additions and the physical and operational characteristics of PSNH's generating plants. PSNH stated that there was no contract between PSNH and NSTAR-EGC and, therefore, no contract had to be filed pursuant to RSA 366. PSNH also agreed with Staff that the issue of Newington oil sales was closed.

III. COMMISSION ANALYSIS

Based upon the Restructuring Agreement with PSNH, *PSNH Proposed Restructuring Settlement*, Order No. 23,443 (April 19, 2000) 85 NH PUC 154, Order No. 23,549 (September 8, 2000) 85 NH PUC 536 and Order No. 23,563 (September 29, 2000) 85 NH PUC 645, which resulted *inter alia* in the Commission issuing a financing order that securitized certain of PSNH's recoverable stranded costs, PSNH is obligated to use its generation fleet for the provision of its energy service and may recover its "actual, prudent and reasonable costs" in connection with such use of these facilities. RSA 369-B:3, IV(b)(1)(A) (noting that this obligation remains effective until such time as PSNH may divest its generation fleet); *see also* RSA 369-B:3-a ("subsequent to April 30, 2006, PSNH may divest its generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture"). To the extent that PSNH must procure retail energy from other sources, we review the prudence of those costs as well. *See* RSA 369-B:3, IV(b)(1)(A).

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order or default. N.H. Code Admin. Rules Puc 203.20(b) requires the Commission to determine, prior to approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest. In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and

compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 (March 10, 2011) at 18. Even where all parties join a settlement agreement, however, the Commission cannot approve it without independently determining that the result comports with applicable standards. *Id.* We have reviewed the Settlement Agreement, testimony of the parties and the record, and we have determined that the Settlement Agreement is a just and reasonable resolution of the issues identified in that agreement. We understand that CLF and the OCA have continued concerns about PSNH's ownership and operation of its generating plants, but this proceeding is conducted to look back at the Company's operation of the plants in 2012 and to determine whether the costs that it incurred are the "actual, prudent and reasonable costs" consistent with the requirements of RSA 369-B:3, IV(b)(1)(A). Until such time as the legislature amends the methodology by which PSNH provides default energy service to its customers, and by which default service rates are established, we must follow the statutory requirements.

By approving the Settlement Agreement, we find that PSNH has provided adequate information to support the oil sales from Newington and we consider this matter closed. We understand that the OCA's initial concern regarding PSNH's modification of the AYFR was addressed by Mr. Mullen's testimony. Mr. Eckberg testified at hearing that the issue had been resolved. The Settlement Agreement, however, did not address the additional issues raised by CLF with respect to dispatch decisions made by PSNH and by the OCA regarding the affiliate contract between NUSCO and NSTAR-EGC, and regarding whether generation plants were "fully" used and useful in 2012.

In its closing statement, CLF made a request that the Commission take administrative notice of a 2012 decision of the Connecticut PURA. CLF's notice request is both procedurally and substantively deficient. CLF did not inform the other parties to this docket that it would make such a request. Pursuant to New Hampshire Code Admin. Rules Puc 203.27, the Commission shall take administrative notice of a code or standard adopted by an agency of another state provided that it notify the parties and afford the parties an opportunity to contest the material noticed. Puc 203.27 (b) and (c). We did not have the document before us at hearing and the other parties did not have an opportunity to review or comment on the document. Further, the authority CLF seeks notice of is apparently a decision in a litigated case by another state commission, not the type of authority normally accorded administrative notice. Based on the foregoing, we deny the request for administrative notice.

CLF claimed that PSNH had not provided sufficient information to justify its decisions to self-dispatch in 2012, a year in which the coal-fired generation units, in particular, were uneconomic as compared with the market. CLF issued data request CLF-1 asking PSNH to provide dispatch or operating instructions for each day during calendar year 2012, for each unit at Merrimack and Schiller Stations, including copies of PSNH's log for each such instruction. When PSNH objected to the data request, CLF filed a motion to compel. In Order No. 25,595, we denied CLF's motion to compel a response to CLF-1 because PSNH had provided responses to discovery requests on the same subject, and we found that requiring PSNH to provide the daily information would be burdensome. In its closing, CLF argued that, in future filings, PSNH should be required to justify its daily dispatch decisions. While we will not impose such a requirement on PSNH, we agree that PSNH should provide in its pre-filed testimony a more detailed explanation of the reasons that it elects to self-dispatch certain generation units when

those units are uneconomic, so the parties and the Commission have this information at the outset of the proceeding. Therefore, we direct the Company to provide such testimony in its next reconciliation filing.

We agree with Staff and PSNH that the agreement between NUSCO and NSTAR-EGC is not an affiliate agreement within the meaning of RSA 366 and, therefore, PSNH was not obligated to file the agreement as a condition to recovery of the expenses it incurred under that agreement. Given that PSNH incurred \$900,000 in costs associated with the services provided by NSTAR-EGC through its contract with NUSCO, however, we believe that it would have been appropriate for the Company to provide an explanation of the services received. Therefore, to the extent that PSNH incurs costs in the future for services provided by NUSCO or by an agent of NUSCO, we direct the Company to provide an explanation of the services provided and the costs associated with each service, or category of service.

As noted above, the OCA advanced the argument that PSNH should be disallowed a full return on its generation capital investment because the generation units were not “fully” used and useful. We have reviewed the briefs submitted on this issue and we are not persuaded that it is appropriate or reasonable to adopt the concept of used and useful advanced by the OCA. First, the relevant statute, RSA 378:27, regarding temporary rates, states that “rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service . . .” The statute does not require the property to be “fully” used and useful. No party disagrees on this point. Second, the concept of a partially used and useful status is contrary to rate setting principles of the New Hampshire Supreme Court. *See Conservation Law Foundation*, 127 N.H. 606 (1986) at 633-640. In the Court’s analysis of the rate-setting process, the Court explained that “prudence judges an investment or expenditure in

the light of what due care required at the time an investment or expenditure was planned or made[;] usefulness judges its value at the time its reflection in the rate base is under consideration. Under the ‘used and useful’ principle, the commission is not asked to second-guess what was reasonable at some time in the past, but rather to determine what can reasonably be done now with the fruits of the investment.” *Conservation Law Foundation* at 638. Unlike CLF and the OCA, we do not believe that a reconciliation docket is an appropriate proceeding to second-guess the use and usefulness of PSNH’s fossil-fueled plants placed in service decades ago.

Third, the OCA’s proposal is not sufficiently developed. The OCA itself admitted that it was subject to change, and suggested that the “fully” used and useful concept may only be applicable to PSNH assets. In particular, the OCA could not explain why it selected some years and ignored other years in developing the “useful fraction” to be applied to each fossil-fueled plant. We find that adopting an undeveloped proposal which does not fully address the need to balance the interests of ratepayers and shareholders is not in the public interest.

Fourth, we agree with Staff and PSNH that to change the manner of this Commission’s evaluation of the “used and usefulness” of utility assets would likely create market uncertainty and affect utilities’ earnings and financial stability, and increase borrowing rates. Based on the foregoing, we will not adopt the OCA’s proposal regarding the use and usefulness of PSNH generation plant. In so deciding, we are not precluding any party from presenting an argument to revisit the use and usefulness of utility plant in service in any other docket in the future, however, we would expect that any such proposal would be based on a fully-developed argument that addresses the issues we noted herein.

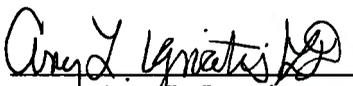
Based upon the foregoing, it is hereby

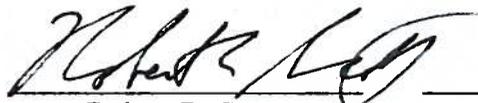
ORDERED, that the Settlement Agreement between Public Service Company of New Hampshire and Commission Staff is hereby APPROVED; and it is

FURTHER ORDERED, that in its next reconciliation filing, Public Service Company of New Hampshire shall include in pre-filed testimony a detailed explanation of how it makes decisions to dispatch generation units during periods when the units are not economic when compared with the regional electric markets.; and it is

FURTHER ORDERED, that in its next reconciliation filing, Public Service Company of New Hampshire shall include in pre-filed testimony a detailed explanation of PSNH incurred costs services provided by NUSCO or by an agent of NUSCO, including an explanation of the services provided and the costs associated with each service, or category of service.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 2014.


Amy L. Ignatius
Chairman


Robert R. Scott
Commissioner


Martin Honigberg
Commissioner

Attested by:


Debra A. Howland
Executive Director