

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Joint Petition for Approval of Power Purchase and     )     Docket DE 11-184  
Sale Agreements and Settlement Agreement             )

**JOINT PETITIONERS' CLOSING STATEMENT**

The Joint Petitioners seek approval of PSNH's entry into five PPAs with the Wood IPPs under RSA 374:57, which allows recovery of power purchase costs in rates unless the Commission finds that PSNH's "decision to enter into the transaction was unreasonable and not in the public interest." The Joint Petitioners also seek approval of a particular rate recovery methodology and the mutual release provisions of the Settlement Agreement entered into in conjunction with the PPAs. RSA 374:57 does not define "reasonable" or the phrase "in the public interest." Whether these terms are met must be determined by balancing factors set out in related statutes. The rulings in the case will affect the Wood IPPs; therefore, RSA 362-A:8, II(b) requires the Commission to consider several enumerated factors, including the following key factors:

- (i) Economic impacts such as job loss or creation through the use of indigenous fuels for electric generation;
- (ii) Community impacts such as property tax payments and job creation; and
- (iii) Enhanced energy security through utilization of mixed energy sources, including indigenous and renewable electrical energy production.

RSA 362-A:8, II(b); *see also*, 374-F:3, IX; *Appeal of Pinetree Power, Inc.*, 152 N.H. 92, 97

(2005) ("commitments to renewable energy resources are to be 'balanced against the impact on generation prices' and can have 'significant environmental, economic and security benefits. . . .

This statutory scheme supports the conclusion that the 'public interest of PSNH's customers encompasses more than simply rates.'). The five PPAs meet all of these public interest criteria.

The Settlement Agreement and PPAs comprise a significant part of the State's economic development strategy for the North Country region. First, the parties' entry into the Settlement Agreement and PPAs were conditioned upon the financing of the Berlin Station power plant, funding for Isaacson Steel, and the resulting preservation of substantial financial benefits to the North Country region. Second, the PPAs will permit the Wood IPPs to remain open during their contract terms, where it is likely that these plants otherwise would shut down. Consequently, the PPAs will result in statewide and local benefits through the retention of 120 jobs at Wood IPPs' facilities, the retention of hundreds of jobs for loggers, truckers, and other forest industry workers, and through state and local tax payments totaling at least \$1.6 million. (Exhibit 6, Attachment SEM-7). Senator Forrester commented that the total contribution of Wood IPP operations to the state exceeds \$110 million per year. Additionally, as Commissioner Bald testified, the markets for all forest products are interrelated and depend on each other. Consequently, the Wood IPPs' creation of a market for low grade wood benefits other markets and industries in New Hampshire, such as the market for high quality timber and its use in the manufacture of dimensional lumber and furniture. These markets and industries would also be damaged if the Settlement Agreement, PPAs, and rate recovery are not approved.

The Settlement Agreement and PPAs were negotiated with the active participation of Staff Advocates, Commissioner Bald, the Governor's office, the Executive Council, and members of the general court, all of whom have supported the Joint Petition either as parties or by filing public comments. No party in this docket has disputed the substantial public policy benefits to be obtained through approval of the PPAs and the continued operation of the Wood IPPs. Nor has any party challenged the reasonableness of the PPA pricing terms or the reasonableness of the initial wood prices. Staff Advocate Mr. Frantz reviewed cost and expense

information for the Wood IPPs and concluded that the pricing terms are just and reasonable under the circumstances. Non-advocate Staff verified the initial wood pricing, have not opposed the PPA pricing terms, and have concluded that the Commission has an adequate statutory and policy basis to approve the PPAs in view of the factors that must be considered and the unique circumstances of this case, as described above.

PSNH would not agree to enter the PPAs unless it could be assured of full cost recovery without putting upward pressure on its energy service (“ES”) rates. All parties to the settlement accepted this condition and identified a rate recovery mechanism that meets PSNH’s legitimate business needs. As proposed, PSNH will recover the full cost of its power purchases, including any over-market costs and carrying charges, from ES ratepayers. To minimize the impact on the ES rate, the Joint Petitioners support a ratemaking mechanism through which the liquidated amount of \$8.5 million per year in uncollectibles expense and regulatory assessment charges are reallocated from the ES rate to the distribution rate. This reallocation allows \$8.5 million per year of any above-market costs to be recovered through the ES rate without an increase in that rate. The remainder of the above-market costs, if any, would be deferred and recovered through the ES rate in subsequent years, subject to the \$8.5 million annual cap applicable to both current and deferred above-market cost recovery. The deferred amounts would be subject to a carrying charge equal to PSNH’s generation segment weighted average cost of capital. The reallocation of common costs, along with the deferral mechanism, allow for a more rapid recovery of supplemental power costs within the ES rate without increasing that rate. Recovery of PPA costs through the ES rate is fully consistent with the power purchase cost recovery provisions of RSA 369-B:3, IV(b)(1)(A).<sup>1</sup>

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<sup>1</sup> Under RSA 369-B:3, IV(b)(1)(A), PSNH currently supplies all “default service offered in its retail electric service territory from its generation assets and, if necessary, through supplemental power

The above-noted reallocation of \$8.5 million of common costs to the distribution rate is within the Commission's plenary jurisdiction. See Exhibit 4 at 8-9. Common costs are not directly related to PSNH's generation expenses, and may be allocated and reallocated as the Commission sees fit without violating any statute or the Commission's holding in Order No. 25,256 issued in Docket DE 10-160. Further, until recently these common costs have been included entirely in PSNH's distribution rates. The proposed temporary reallocation of these costs to distribution rates need be in effect only so long as necessary for all above-market costs of the PPAs to be recovered through ES rates. Mr. Frantz and non-advocate Staff agree that there is no statute that requires the current allocation of uncollectible and regulatory expenses to the ES rate and that every allocation methodology is imperfect (Exhibits 13 and 14). Non-advocate Staff witness Mr. Mullen maintains, however, that the proposed common cost reallocation is inconsistent with statutory policies favoring competitive price signals. The Joint Petitioners believe that any such price signal effects are inconsequential given the temporary duration and *de minimis* rate impact of the reallocation (Exhibit 1, Frantz at 7), and that to the extent these effects even exist, they are substantially outweighed by the important public policy benefits to be obtained by continued operation of the Wood IPPs under the PPAs. *Cf. In re: PSNH*, Order No. 24,276 at 57-58 (Feb. 6, 2004) (policy principles set forth under RSA 374-F:3 are not intended to be rules, but interdependent guidelines, and are part of an evolving statutory scheme that takes into account changing circumstances).

If the Commission finds the rate recovery proposed in the Joint Petition unacceptable, PSNH witness Hall has described an alternative ratemaking approach in which the above-market portion of energy purchases under the PPAs would be recovered through a new and distinct non-

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purchases in a manner approved by the commission. The price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission."

bypassable charge assessed to all PSNH distribution customers without any deferral or carrying charge (Exhibit 4 at 7-9). This alternative ratemaking approach also could be approved under the Commission's plenary ratemaking authority. As Mr. Hall testified during the public hearing, this new temporary charge is not required to be separately stated on customers' bills and its inclusion in general rate components would result in greater administrative efficiency. The Joint Petitioners request that PSNH not be required to separately state such charges on customer bills.

The Joint Petitioners strongly prefer the ratemaking treatment described in the Joint Petition because it does not require the Commission to create a new recovery mechanism, but instead allows for recovery of the full cost of supplemental power purchases through PSNH's ES rate, where these costs are normally recovered, consistent with the provisions of RSA 369-B:3, IV(b)(1)(A).

The Joint Petitioners also request that the Commission approve the provisions of the Settlement, Release and Support Agreement in which PSNH releases certain types of claims, "whether asserted or unasserted, whether known or unknown, and whether now or hereafter existing" against the Wood IPPs, the Berlin Station power plant developers and related parties (Exhibit 10). These are common provisions in commercial settlements and are similar to releases approved by the Commission in prior dockets (Exhibit 11). These release provisions were necessary to achieve the related public policy benefits and allow the commercially reasonable "finality" to their transactions with each other.

The Joint Petitioners respectfully request that the Commission approve PSNH's entry into the five PPAs, the cost recovery mechanism set forth in the Joint Petition, and the mutual release provisions of the Settlement Agreement on an expedited basis so that the substantial public policy benefits of the PPAs may be realized at the earliest possible time.

Dated: December 5, 2011

Respectfully Submitted,

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