

**STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION  
INTER-DEPARTMENT MEMORANDUM**

Date: October 19, 2011

**TO:** Commissioners  
**FROM:** F. Anne Ross, Hearing Examiner  
**RE:** DE 11-216 Public Service Company of New Hampshire  
Alternative Default Energy Service Rate for 2012



**HEARING EXAMINER'S REPORT**

At your request, I presided over the October 17, 2011 prehearing conference in the above referenced case.

On September 23, 2011 PSNH filed a proposed method for calculating its alternative default energy service (ADE) rate for 2012 with a proposed effective date of January 1, 2012. On October 14, 2011 PSNH filed an update of the ADE rate including estimated costs of the wet flue gas desulfurization system (Scrubber Project) at Merrimack Station and proposed an ADE rate of 7.86 cents per kWh. PSNH claimed that the Scrubber Project began operation on September 28, 2011 and was used and useful as of that date. PSNH proposed to further update the ADE rate based on more current forward market prices close to the date of the final hearing in this matter.

OCA noted its participation in this docket on October 12, 2011 and Freedom Logistics, LLC d/b/a Freedom Energy Logistics (FEL) and Halifax-American Energy Company, LLC (HAEC) filed a joint petition for intervention on October 13, 2011.

On October 14, 2011 PSNH filed an objection to FEL and HAEC's joint intervention request.

**Appearances**

Gerald M. Eaton for PSNH  
Sarah B. Knowlton for PSNH  
Meredith A. Hatfield for Office of Consumer Advocate  
James T. Rodier for FEL and HEAC  
Suzanne G. Amidon for Commission Staff

**Intervention Requests**

FEL and HAEC petitioned to intervene claiming that FEL as a licensed electric aggregator with numerous customers in New Hampshire and HAEC as a licensed electric supplier with numerous customers in New Hampshire each have a substantial interest in the competitive electric markets. FEL and HAEC assert that PSNH's proposed ADE rate will have an adverse impact on competitive electric markets and thus may adversely impact FEL and HAEC. Further, FEL and HAEC claim that their participation would not delay the conduct of the proceeding. In response to the PSNH objection, FEL and HAEC argued that: (1) Order 25,526 left much to be decided in a subsequent docket on an ADE; and (2) competitive harm was a sufficient basis for intervention in a number of Commission dockets involving regulated energy offerings in the competitive electric markets.

### **Objections to Intervention**

PSNH objected to FEL's and HAEC's intervention claiming that they had not demonstrated that their rights and privileges will be affected by this proceeding. PSNH further asserted that FEL and HAEC could not assert any injury in fact resulting from the ADE rate and further that a competitive harm was not legally sufficient to meet the intervention standard. PSNH also claimed that Order 25,526 (July 26, 2011) was final and directed PSNH to make the current filing using a specified rate methodology. Thus, FEL and HAEC could not challenge the resulting rate methodology for the ADE rate in this proceeding. PSNH requested an opportunity to file a reply to FEL HAEC's response to the PSNH Objection.

OCA supported FEL's and HAEC's request for intervention and stated that the Commission needs competitive electric suppliers represented in this docket. OCA asked that it be permitted to respond to PSNH's objection to FEL's and HAEC's joint intervention request.

Staff took no position on FEL's and HAEC's request.

### **Initial Positions**

PSNH reiterated its request for the ADE rate and pointed out that the ADE rate is filed in compliance with Order No. 25,526 in DE 10-160; the PSNH migration docket. PSNH indicated that it would update the ADE rate request closer to hearing.

OCA did not have a position on the proposed ADE rate at this early stage, however, Ms. Hatfield expressed concern at the difference in rates between the ES rate of 9.57 cents per kWh and the ADE rate of 7.86 cents per kWh.

Staff took no position on the initial filings and indicated that it would be conducting discovery on the ADE rate.

### **Technical Session**

As reported by Staff, by letter of October 19, 2011 the parties met in a technical session following the prehearing conference and agreed upon a proposed procedural schedule.

**Recommendations**

I recommend that FEL and HAEC be granted intervention.

I recommend that the Commission deny OCA's request to file a reply to PSNH's objection and PSNH's request to file a reply to FEL and HAEC. If the Commission wishes to allow such responses the parties have agreed to file written responses by close of business on October 24, 2011.

I recommend that the Commission approve the proposed procedural schedule.

By  \_\_\_\_\_  
F. Anne Ross, Hearing Examiner