

DE 01-161

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Affiliate Transaction Under PSNH Restructuring Settlement

Order Nisi Approving Limited Waiver of the Affiliate Transactions
Rules Set Forth in PSNH Restructuring Settlement

O R D E R N O. 23,855

December 3, 2001

The petitioner, Public Service Company of New Hampshire (PSNH), filed a letter dated August 10, 2001 with the New Hampshire Public Utilities Commission (the Commission) requesting the Commission's approval of a limited waiver of the affiliate transactions rules, and specifically section V.D., of Appendix I contained in the Agreement to Settle PSNH Restructuring dated August 2, 1999, as revised and conformed in compliance with Order No. 23,549. The waiver would allow PSNH's affiliate, Northeast Utilities Service Company (NUSCO), to continue to provide fuel purchase support for PSNH's fossil-fired generating stations and Mount Tom Station, a coal fired plant in western Massachusetts owned by Holyoke Water Power Company (HWP), also an affiliate of PSNH.

PSNH provides transition and default service for its customers. To provide this service, it relies partly on its fossil-fuel fired plants, including Merrimack Station and Schiller Station, both of which burn coal, to generate electricity. Pursuant to Laws of 2001, Chapter 29:13, amending

Laws of 2000, Chapter 249:7,II, the sale of PSNH fossil generation assets may not take place before February 1, 2004 and therefore PSNH will need to purchase fossil fuel for generating plants until at least then.

According to PSNH, HWP is a manufacturing company not regulated by the Commonwealth of Massachusetts Department of Telecommunications and Energy or its predecessor, the Department of Public Utilities, and is not authorized to conduct business outside a limited area in Massachusetts.

According to PSNH, NUSCO's fuel management department, which currently consists of five employees, has reported to PSNH management since June 2000. NUSCO provides fuel procurement, inventory management and logistical support to both PSNH and HWP.

Reference is made to the following provisions of Appendix I:

- Section II.A (sic- A should be I) states that the affiliate transaction rules (the rules) should be interpreted broadly to effectuate the goals of fostering competition and protecting consumer interests.
- Section III.B limits transactions between PSNH and its affiliates to, among other things, tariffed products and services, the sale or purchase of property or services made generally available by the

utility or affiliate to all market participants through an open, competitive bidding process *or as provided for in Sections V.D and E (joint purchases and corporate support)(emphasis added)*.

- Section V.D provides that to the extent not precluded by any other rule, PSNH and its affiliates may make joint purchases of goods and services but not those associated with the "traditional utility merchant function." For purposes of the rules, to the extent PSNH would be engaged in the marketing of the commodity of electricity to customers, as opposed to the marketing of transmission and distribution services, it would be deemed to be engaging in merchant functions. An example of a joint purchase not permitted is "systems operations." All joint purchases must be priced, reported and conducted in a manner that permits clear identification of the PSNH and affiliate portions of such purchases, and in accordance with applicable allocation and reporting rules.
- Section III.E establishes the general principle that PSNH and NUSCO may share with their affiliates corporate support systems. However, any shared support must be priced, reported, and conducted in

accordance with the separation and information standards set forth in the rules, as well as other applicable pricing and reporting requirements. Furthermore, as a general principle, such joint utilization may not allow for the transfer of confidential information to an affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. "Systems operations" is an example of services that may not be shared.

The fuel procurement arrangement as described by PSNH may be prohibited by the rules. However, the arrangement does not cause us concern for the fostering of competition in the electricity generation and supply segments of the industry in New Hampshire at this time. The arrangement may benefit PSNH and its customers through cost saving synergies and economies of scale resulting from joint fuel purchasing activities, and we are confident that the potential for PSNH's cross-subsidization of its affiliates is minimal, given the limited size and scope of the transactions, and assuming the pricing, transfer, reporting, recordkeeping and other applicable provisions of the rules are complied with. For these reasons, we will grant PSNH's request for a limited waiver in order to allow NUSCO's fuel management

department to continue to purchase fuel for PSNH and HWP, as ordered below.

Based upon the foregoing, it is hereby

ORDERED NISI, that any limitations set forth in Sections III,D and III,E be waived in order to allow NUSCO's fuel management department to continue to purchase fuel for PSNH and HWP as described in the letter request. The waiver shall continue in effect until the earliest of the date when the PSNH fossil-fuel plants are sold, the final adoption of affiliate transactions rules by the Commission that would be inconsistent with this Order, or a finding by the Commission, after notice to PSNH and a hearing, that the waiver should be revoked. All other applicable rules set forth in Appendix I, including but not limited to pricing, transfer, reporting, recordkeeping and other provisions, shall remain in full force and effect notwithstanding the limited waiver granted herein.

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 13, 2001 and to be documented by affidavit filed with this office on or before December 27, 2001; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit

their comments or file a written request for a hearing on this matter before the Commission no later than December 20, 2001; and it is

FURTHER ORDERED, that the Executive Director shall cause a copy of this Order Nisi to be served on all parties to DE 99-099; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 26, 2001; and it is

FURTHER ORDERED, that this Order Nisi shall be effective January 2, 2002, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New
Hampshire this third day of December, 2001.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary