

DE 04-072

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2004 Least Cost Integrated Resource Plan

Order on Motion for Clarification

ORDER NO. 24,459

April 29, 2005

I. INTRODUCTION

On February 25, 2005, the New Hampshire Public Utilities Commission (Commission) entered Order No. 24,435 in this docket, denying a request from Public Service Company of New Hampshire (PSNH) for waiver pursuant to RSA 378:38 of certain otherwise applicable requirements related to PSNH's Least Cost Integrated Resource Plan for 2004. By motion filed on March 28, 2005, PSNH seeks clarification of the previous order.

Two intervenor electric utilities – Unitil Energy Systems, Inc. (Unitil) and New Hampshire Electric Cooperative, Inc. (NHEC) – filed timely responses to the PSNH motion. Both opposed the PSNH request for clarification.

Order No. 24,435 made three separate determinations. The Commission (1) instructed the Staff of the Commission to work with the parties with respect to reaching agreement on the extent to which PSNH is obliged to describe its distribution planning in its biennial least-cost planning document, (2) declined to waive any requirement that PSNH discuss generation planning in its biennial filing, while acknowledging that the scope and nature of such discussion would be different in light of industry restructuring than that which was previously applicable, and (3) declined to waive any requirement that PSNH discuss demand-side management efforts in the

biennial plan. PSNH's specific requests for clarifications of these determinations are discussed in turn.

II. DISTRIBUTION PLANNING

The first contention in the PSNH motion concerns the fact that Unitil and NHEC are wholesale customers of PSNH, taking service at the distribution voltage of 34.5 kV. Order No. 24,435 indicated that the Commission did not intend "to foreclose the possibility of any party bringing problems to the Commission's attention with respect to the adequacy of PSNH's coordination with Unitil and NHEC with respect to planning the future of the 34.5 kV system." Order No. 24,435, slip op. at 11. According to PSNH, this statement "raises a conflict between the jurisdiction of the Commission and the jurisdiction of the Federal Energy Regulatory Commission (FERC)." PSNH Motion at 2. According to PSNH, notwithstanding the fact that 34.5 kV is a distribution-level voltage, it is the FERC and not the Commission that has jurisdiction to regulate wholesale transactions between PSNH and other utilities.

In response, Unitil contends that PSNH has failed to acknowledge a distinction between wholesale *service* provided by PSNH, which is subject to FERC jurisdiction, and 34.5 kV *facilities* used by PSNH to provide that service, which have been classified as distribution facilities and are not subject to federal regulation or regional transmission planning. According to Unitil, the Commission may exercise its least-cost planning authority over the 34.5 kV facilities without impinging on the FERC's exclusive jurisdiction over transmission in interstate commerce. Unitil further contends that, because Order No. 24,435 simply indicated a willingness to hear the parties further on this subject in the future if necessary, as opposed to making any substantive determinations, any clarification addressed to the jurisdictional issue PSNH raises is unnecessary.

Likewise, NHEC dismisses PSNH's concerns as "purely speculative" and relating "only to some hypothetical future Commission action." NHEC Response at 5. NHEC suggests that PSNH is seeking to foreclose the possibility of parties bringing concerns about PSNH's 34.5 kV planning process and that such a determination is unnecessary for PSNH to file a revised least-cost planning document that is consistent with Order No. 24,435.

We agree with Unitil and NHEC that it is not necessary for us to clarify Order No. 24,435 with respect to distribution planning and, in particular, PSNH's 34.5 kV system. As the NHEC noted, the relevant discussion in Order No. 24,435 actually grants a PSNH request (that it not be required to amend or augment its 2004 least-cost planning document with respect to this issue) and relies upon a PSNH representation (that it is having ongoing discussions with Unitil and NHEC about system planning at the 34.5 kV level). This is a correct understanding of Order No. 24,435 and demonstrates that PSNH's assertions raising the spectre of federal preemption are baseless.

III. TRANSMISSION PLANNING

The next issue raised by PSNH concerns transmission planning. PSNH notes that its transmission facilities are all subject to the regional planning process overseen by New England's Regional Transmission Organization (ISO New England) and regulated by the FERC. The PSNH motion describes the planning process employed by ISO New England and discusses the series of FERC orders (Nos. 645, 888, 889, 888a and 889a) that set forth the federal requirements for such planning. According to PSNH, these orders prohibit PSNH, and any other utility owning both generation and transmission facilities, from conducting planning for these facilities on an integrated basis. Indeed, PSNH notes, the FERC requires such utilities to impose a functional separation of

these two aspects of their business. More generally, PSNH contends that the FERC has determined that bulk power facilities are beyond the purview of state utility commissions and that the state commissions are limited to authority over local service issues.

Therefore, PSNH requests that the Commission clarify Order No. 24,435 to recognize the preemptive nature of the existing regional transmission planning process and its regulation at the federal level. Second, PSNH requests that Order No. 24,435 be clarified to recognize that the FERC prohibits the integration of transmission and generation planning. Until and NHEC do not address this issue in their responses to the PSNH motion.

Our previous order with respect to the question of transmission planning was clear. Order No. 24,435 explicitly recognized that industry restructuring at the wholesale level will have an effect on what PSNH files by way of a least-cost planning document. *See id.* at 13 n. 2 (noting the FERC prohibition on PSNH planning its transmission system to favor its generation assets is “obviously relevant to the process of least cost integrated resource planning”) and 16 (instructing PSNH simply to “describe options available to it for assuring that safe and reliable electricity is available to its customers at the lowest possible cost”). The only determination Order No. 24,435 made with respect to the issue in question is that restructuring did not entitle PSNH to a blanket waiver of any requirement to discuss its generation assets in its least cost planning document. As we previously noted, industry changes and the nature of federal regulation of the restructured industry will affect that discussion.

IV. DEMAND-SIDE AND POWER SUPPLY PLANNING

PSNH also seeks clarification of the discussion in Order No. 24,435 to the effect that PSNH remains obliged to discuss demand-side management efforts notwithstanding the Company’s

participation, with the state's other electric utilities, in the "Core" energy efficiency programs funded by the System Benefits Charge imposed on all retail customers. According to PSNH, it appears this determination applies to the other three electric utilities in New Hampshire. PSNH seeks clarification of Order No. 24,435 to that effect.

Unitil did not address this question in its opposition to the PSNH motion. NHEC points out that the instant docket is specific to PSNH rather than being generic in nature. According to NHEC, whether the determinations in Order No. 24,435 with respect to PSNH would be the same or different than the requirements imposed on other utilities must either be resolved on a case-by-case basis or via a generic docket.

The argument in PSNH's so called Motion for Clarification is beside the point. It was clearly found in Order No. 24,435 that PSNH's participation in the Core Energy Efficiency Programs was not sufficient in and of itself to address demand side options. It was equally clear that PSNH was directed to take certain steps to file a revised plan. The obligations of other utilities will be addressed separately.

V. TIMING

A final point in the PSNH motion suggests that PSNH did not understand the final ordering clause in Order No. 24,435. According to PSNH, Order No. 24,435 "is not clear whether the Commission's directions therein are directing PSNH to revise and re-file its 2004 Least Cost Plan...or to incorporate the matters contained therein in the Company's 2006 Least Cost Plan filing." PSNH Motion at 7. The final ordering clause in Order No. 24,435 directs PSNH "to submit a *revised* least cost integrated resource plan." Order No. 24,435 at 17 (emphasis added). Furthermore, Staff was expressly directed to "work with the parties to recommend a procedural

schedule for the completion of the docket.” *Id.* The Order could not have been more clear. In the future, if the Company seeks rehearing or reconsideration of findings it should label its motion accordingly.

Based upon the foregoing, it is hereby

ORDERED, that the motion of Public Service Company of New Hampshire for clarification of Order No. 24,435 is DENIED.

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

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary