

Public Service Company of New Hampshire
Docket No. DE 10-195

ORIGINAL	
Case No. DE 10-195	Record Request HD-01
Exhibit No. #12 PSNH	Dated: 01/25/2011
Witness Panel 1	Q-RR-002
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Witness: Richard C. Labrecque, Gary A. Long, Terrance J. Large
Request from: New Hampshire Public Utilities Commission Staff

Question:

(Exhibit PSNH-12): Please answer the following questions regarding the PPA: (i) What is the intention of Article 24.2? (ii) Does Commission approval of the PPA preclude the Commission's authority to amend the PPA? (iii) Why is Article 24.1.2 in the agreement, what does it mean, and does it preclude further Commission review of the PPA? (iv) What is the purpose of Article 3.3?

Response:

This request includes four separate questions, and we take each in turn:

- (i) The PPA is a wholesale power sales agreement, and therefore falls under FERC's regulatory jurisdiction under the Federal Power Act. The Facility is too large to qualify for the regulatory exemptions from the Federal Power Act provided under PURPA at 18 C.F.R. 292.601, and will thus be required to file the PPA as a FERC tariff. However, PSNH has conditioned its obligations under the PPA on receipt "from the NHPUC [of] a final, non appealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement." (Article 4.1.3). Article 24.2 ties into Articles 24.1 and 24.3, by providing that both PSNH and Seller have waived any right to petition FERC or the Commission to change any term of the PPA, and as a result, any mandated changes to the PPA ordered by FERC or the Commission must be grounded in some legal authority *other than* the authority to respond to a petition or complaint filed by PSNH or Seller seeking a change to the PPA. The reference to the Commission here is merely precautionary, given (as explained above) the preemptive effect of FERC jurisdiction over wholesale power agreements under the Federal Power Act.
- (ii) As noted in the response to (i), above, the PPA is a wholesale power agreement subject to the regulatory jurisdiction of FERC pursuant to the Federal Power Act, which must be filed as a FERC tariff. The Commission's authority to amend the PPA would be governed by the Federal Power Act and FERC's regulations.
- (iii) Article 24.1.2 follows Article 24.1.1, which recites the intended application of the "*Mobile-Sierra Doctrine*" to the PPA. That doctrine generally provides that FERC will not consider requiring changes to a negotiated wholesale contract merely because one party to the contract petitions for contractual relief; rather, any required change must be grounded in a finding that some aspect of the contract has a material and detrimental effect on the larger public interest. This subsection simply provides that any ancillary agreements entered into by the same parties in connection with the PPA will be governed by the same standards.
- (iv) Article 3.3 requires that the Facility must be a "qualifying facility" under PURPA. The purpose of this requirement is to ensure that the Facility maintains the exemptions provided under FERC's PURPA regulations at 18 C.F.R. 292.602.