

DE 04-177

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Transition and Default Service Rate, Midyear Adjustment

Order Establishing Revised Transition Service Rate

ORDER NO. 24,498

August 1, 2005

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; F. Anne Ross, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 1, 2005, Public Service Company of New Hampshire (PSNH) filed a request with the New Hampshire Public Utilities Commission (Commission) to increase PSNH's Transition and Default Service rates, effective from August 1, 2005 through January 31, 2006, from 6.49 cents per kilowatt-hour (kWh) to 7.34 cents per kWh. The two rates, which are, and are proposed to remain, identical, compensate PSNH for obtaining energy to provide to its customers as opposed to distribution rates that compensate PSNH for distribution of energy to customers. Transition Service is for customers who have never chosen a competitive energy supplier. Default service is for customers who previously switched to a competitive energy supplier but are now taking energy again from PSNH. *See* RSA 374-F:2, I-a and V (defining the two services). When the Commission set the Transition and Default Service rates at 6.49 cents effective on February 1, 2005, the Commission specifically contemplated a midyear adjustment of the sort requested by PSNH. *See* Order No. 24,427 (January 28, 2005) and Order No. 24,484

(July 5, 2005).¹

Pursuant to the procedural schedule established in Order No. 24,484, the parties and Commission Staff conducted a technical session on July 15, 2005, and, on July 21, 2005, Staff submitted prefiled direct testimony in response to the PSNH request. In connection with discovery conducted by the parties and Staff, PSNH filed a motion for confidential treatment of certain documents on July 14, 2005.² The Commission conducted an evidentiary hearing on July 26, 2005, and heard testimony from witnesses for PSNH and Staff. On July 29, 2005, Constellation filed a letter urging the Commission to reject the deferral of certain stranded cost charges.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

PSNH estimated that it would under-collect its Transition Service costs by approximately \$35.3 million as of January 31, 2006, absent a change to the current Transition and Default Service rate. The proposed rate change would increase the bill for a residential customer using 500 kWh per month by \$4.25 and would increase overall rates by 6.5 percent, according to PSNH.

According to PSNH, approximately \$16.1 million of the under-collection is attributable to increases in the cost of buying coal and getting it to the two PSNH facilities that burn it, Schiller and Merrimack stations in Portsmouth and Bow, respectively. PSNH described events at two coal mines used by PSNH: the Mina Norte mine in Venezuela and the Pocahontas

¹ In Order No. 24,427 (January 28, 2005), the Commission declined to exercise its authority under RSA 369-B:3, IV(b)(1)(C) to extend the availability of Transition Service to large commercial and industrial customers. Accordingly, Transition Service ceased being available to those customers on February 1, 2005; any such customers not taking service from a competitive supplier began taking Default Service on that date. Transition Service for all customers ceases on April 30, 2006. *See* RSA 374-F:3, V(b) and Order No. 24,427, slip op. at 17 (extending Transition Service from February 1, 2006 through April 30, 2006 pursuant to RSA 369-B:3, IV(b)(1)(B)).

mine in Virginia. At the latter, the problem was “a large rock fall behind the longwall mining section . . . [that] created a large air pressure wave that disrupted the ventilation at the Mine and caused ignition of methane gas in the area.” At Mina Norte, the problem was torrential rain. Fuel Manager Jody J. TenBrock testified on behalf of PSNH that, in each instance, the mine had a valid right under its contract with PSNH to declare a force majeure event that had the effect of excusing the mine’s performance and force PSNH to buy coal on the spot market, incurring significant additional costs. According to Mr. TenBrock, the owners of the Mina Norte mine did not actually make a force majeure declaration but, rather, agreed to provide the unsupplied coal to PSNH in 2006 at the current contract price. Overall, Mr. TenBrock testified, these problems increased PSNH’s current coal costs by roughly \$10 million.

The remaining \$6 million in increased coal costs is attributable to transportation problems and other charges, according to PSNH and its witnesses. The cited problems included (1) the need to reroute trucks from the Cucuta mine in Colombia as the result of washed-out bridges, (2) diverting certain barged coal from Schiller Station to the port of Providence and then trucking it from Providence to Merrimack Station in Bow, because of “physical yard constraints” at Schiller Station, (3) the delivery of coal with a lower sulphur content than anticipated, giving suppliers the right to charge more money for such fuel in light of the ability of low-sulphur coal to reduce air pollution, and (4) the purchase of a test shipment of coal from Russia, purchased in part because slow rail service reduced the coal inventory at Merrimack Station.

PSNH cited seven other factors that have the effect of increasing the cost of supplying energy to customers and reported that it incurred an additional \$3 million in rising fuel costs to supply oil to Newington Station. According to PSNH, higher prices on the regional spot

² PSNH filed a second such motion on July 27, 2005. Inasmuch as the time for responding to this motion has not yet run, it is not considered in this Order.

market for wholesale electricity caused PSNH's net expenses to grow by \$8.4 million. PSNH cited a projected additional \$2.2 million in costs as the result of higher than anticipated spot market prices during June, November and December. PSNH reported an additional \$1.3 million in the cost of environmental allowances PSNH must purchase because its coal- and oil-fired generation produces the air pollutant sulphur dioxide. PSNH stated that the market value of its required purchases from local independent power producers (IPPs) increased by \$6.1 million, which increases Transition and Default Service costs but triggers a corresponding reduction in recoverable stranded costs (because the difference between the contract price of IPP power and the prevailing market price is treated as such a stranded cost). PSNH indicated that it faces an additional \$3 million in increased miscellaneous charges payable via the regional wholesale electricity market. Finally, PSNH proposes to include \$1.7 million in its cost estimate to reflect the January 1, 2006 advent of LICAP (Locational Installed Capacity) charges as recently approved by an administrative law judge at the Federal Energy Regulatory Commission (FERC). PSNH witness David A. Errichetti, manager of resource planning, said that PSNH is adopting a wait-and-see posture with respect to actually making advance purchases of installed capacity for 2006, given the impending requests from a variety of sectors, including the New England Conference of Public Utilities Commissioners, that the FERC overturn the administrative law judge's decision. According to Mr. Errichetti, PSNH has not taken a position on the merits of the LICAP decision. He also noted that the anticipated capacity charges relate only to the portion of PSNH's retail energy that it must purchase through the regional market, as opposed to the portion generated by PSNH itself.

PSNH also referenced three decreases in its expected revenue requirement for Transition and Default Service: \$3 million in lower costs charged to PSNH by ISO-New

England, \$2.2 million in lower operating costs and \$1.3 million in lower costs associated with the return on PSNH's investment in its generation assets. With regard to the latter issue, PSNH had previously been applying an 11 percent return on equity, as had been previously established by the Commission. In this filing, PSNH applies the 9.63 percent return on equity approved by the Commission in Order No. 24,473 (June 8, 2005), even though PSNH has sought rehearing of the June 8 order under RSA 541:3 and continues to press its request for an 11.4 percent return.

B. Office of Consumer Advocate

The Office of Consumer Advocate requests that the Commission not include projected LICAP charges for January 2006, given the controversial nature of the initial FERC decision. This would have the effect of reducing the proposed rate from 7.34 cents to 7.30 cents per kWh.

C. Staff

Staff witness Steven E. Mullen, an analyst with the Commission's electric division, made two recommendations for changes in PSNH's proposal. Mr. Mullen's first proposal concerns the amount by which PSNH's actual cost of providing Transition and Default Service over the previous six-month period exceeded the projected cost used in January to fix the 6.49 cent rate. Mr. Mullen noted that PSNH projected that costs would exceed revenues during the first six months that the 6.49 cents per kWh rate was in effect, because PSNH scheduled certain maintenance outages at its generation facilities during this period. According to Mr. Mullen, this projected under-collection should be included in the Transition and Default Service revenue requirement for the final portion of the year, while the additional \$4.3 million under-collection from the period that had not previously been forecast (at the time the rate currently in effect was established) should be excluded.

Mr. Mullen discussed his rationale for making this recommendation, which is similar to one he made and the Commission approved a year ago. He noted that RSA 369-B:3-a requires that PSNH's Transition and Default Service rates be based on PSNH's actual, prudent and reasonable costs. He also referred to a previous Commission determination that minimizing deferrals furthers the policy objectives of the Electric Industry Restructuring Act, RSA 374-F. According to Mr. Mullen, it would be a deviation from the 'actual cost' principle to include in the rate for the next five months costs that are neither incurred during that period nor previously allocated to that period by the Commission. Mr. Mullen testified that it furthers the goal of minimizing deferrals – *i.e.*, the postponement of cost recovery to a time after the relevant expenses are incurred – simply due to the process of revising the Transition and Default Service rate for the final six months of the rate year.

According to Mr. Mullen, his recommendation would take \$4.3 million of under-collections attributable to the first five months of the rate year out of the revenue requirement for the remainder of the rate year. He noted that, assuming these costs were prudently incurred, PSNH would ultimately recover them via the Part 3 component of the Company's Stranded Cost Recovery Charge (SCRC). Part 3 stranded costs are those stranded costs for which PSNH undertook some risk of non-recovery in connection with PSNH's restructuring agreement approved by the Commission and the Legislature in 2001. According to PSNH's projections, it will have recovered all of its Part 3 stranded costs by the end of 2006 and, thus, the risk of non-recovery is presently unlikely to materialize.

Mr. Mullen's second proposal is that the Commission lift its requirement that PSNH maintain certain minimum coal inventory levels at Schiller and Merrimack Stations. He noted that, in 2003, the Commission relaxed these requirements somewhat, such that PSNH is

now required to maintain a 45-day supply at Merrimack Station and an average minimum supply of 45 to 60 days at Schiller Station. He also noted that, in 2004, the Commission modified the requirement on a temporary basis to account for reduced storage space arising out of a major construction project at the facility, *i.e.*, the replacement of one of the three boilers at Schiller Station.

According to Mr. Mullen, the Commission first imposed coal inventory requirements on PSNH in the 1980s, when PSNH was in a precarious financial position under its previous owners. Mr. Mullen stated that these financial circumstances no longer exist and that, accordingly, it is appropriate to leave PSNH with the discretion, and the obligation, to manage its coal inventory in a prudent manner. As a part of this recommendation, Mr. Mullen suggested that PSNH be required to make monthly reports to the Commission, electronically, of its fossil fuel costs and inventory levels. On behalf of PSNH, Mr. TenBrock indicated that PSNH concurred with Mr. Mullen's recommendations and that the monthly reports would also be made available to the OCA.

III. COMMISSION ANALYSIS

A. Legal Framework and General Economic Conditions

By statute, as the result of the restructuring of PSNH in 2001, PSNH is entitled to rates for Transition and Default Service that reflect the utility's "actual, prudent and reasonable costs" of providing power to its customers. RSA 369-B:3, IV(b)(1)(A) (as to Default Service; RSA 369-B:3, IV(b)(1)(B)(ii) (as to Transition Service for residential, street lighting and general delivery service Rate G customers) and RSA 369-B:3, IV(b)(1)(C) (as to Transition Service for all other customers). We establish these rates in the context of our overall obligation to assure that rates are just and reasonable pursuant to RSA 378:7 as well as our obligation to use the RSA

374-F:3 “interdependent policy principles” to guide us in regulating the electric industry as restructured under RSA 374-F.

When we last established Transition and Default Service rates for PSNH in January, we declined to exercise our authority under RSA 369-B:3, IV(b)(1)(C) to extend the availability of Transition Service for large commercial and industrial customers beyond January 31, 2005. Accordingly, as of that date, any such customers not obtaining power from a source other than PSNH began taking Default Service. Then, as now, without objection from any other party PSNH proposed a Default Service rate that is identical to the Transition Service rate. Such equality is appropriate, absent evidence suggesting PSNH incurs varying costs for the two types of energy service.

Neither the OCA nor Staff questioned the factual bases for PSNH’s requested rate increases. In January, the principal driver of the rate increase we approved at that time was volatility and upward pressure in fuel prices and wholesale energy markets. The same upward pressure accounts for approximately half of PSNH’s projected increase of \$35 million in costs over the course of the rate year, when compared to the projection applied in January. PSNH has faced, and reasonably anticipates facing, increases in both the cost of acquiring oil for Newington Station and in the cost of purchasing wholesale energy to meet demand that its owned generation cannot serve.

At a time when such increased fuel and energy costs at the wholesale level are the subject of significant public concern, it is worth pausing to make clear that some \$6 million of PSNH’s projected cost increases will essentially have no net effect on customer bills. This \$6 million represents an increase in the market value of IPP power that PSNH is obliged to purchase as the result of longterm rate orders approved in the 1980s under the federal Public Utility

Regulatory Policy Act of 1978. To the extent that the cost of this power under the rate orders exceeds the market value of the power, PSNH recovers the sum via its Stranded Cost Recovery Charge. Thus, as the market value of the power goes up and therefore increases the cost of Transition and Default Service, there is a corresponding decrease in recoverable stranded costs.

B. Coal Procurement

As was the subject of much discussion at hearing, nearly half of the pending request for rate adjustment is the result of increased costs of procuring coal for PSNH's Schiller and Merrimack stations. As PSNH's technical statement and the testimony of Mr. TenBrock make clear, notwithstanding contractual entitlements, PSNH has experienced significant and troubling difficulties in coal procurement. There appears to be agreement, and we have no basis for questioning, that as a result of these difficulties PSNH has reasonably revised its projections for the cost of providing Transition and Default Service over the course of the rate year. In so determining, we stress what was also made clear on the record: A finding that the change in cost projections is appropriate does not constitute a finding regarding the prudence of PSNH's coal procurement efforts. Although we will make the relevant prudence determination when we conduct the reconciliation of PSNH's Stranded Cost Recovery Charge in 2006, we note with approval that Staff has already commenced its prudence investigation.

C. Coal Inventory Requirements

We adopt Staff's recommendation to discontinue the Commission's longstanding practice of maintaining specific coal inventory requirements for PSNH, in favor of a commitment by PSNH to make monthly reports to Staff and to the OCA of fossil fuel costs and coal inventory. As noted by Mr. Mullen, these specific coal inventory requirements are historical artifacts, arising out of a previous era in which financial precariousness under prior

ownership led to concerns that PSNH could actually run out of coal to burn at its facilities.

There is no evidence to suggest that the difficulties PSNH has experienced managing its coal contracts have led to any dangerous deficiencies in coal inventory. PSNH is obliged to operate its generation facilities in a prudent manner, which requires vigilant oversight of fuel procurement efforts. The prudence standard is typically enforced on an after-the-fact basis. Thus, it facilitates rather than hampers the enforcement of the standard to eschew efforts to limit the utility's discretion in operating its facilities according to applicable law and good practice.

D. Capacity Purchase Obligations

We next take up the OCA's proposal that we not permit PSNH, in forecasting its Transition and Default Service costs for the remainder of the rate year, to assume it will have to begin making the LICAP payments on January 1, 2006 under the proposal that has received preliminary approval at the FERC. We do not adopt the OCA's proposal, although we are hopeful that the LICAP effective date is deferred by FERC.

The LICAP proposal received preliminary FERC approval from one of the agency's administrative law judges on June 15, 2005. This Commission is among the many policymakers and elected officials with concerns about this preliminary approval. The concern, simply stated, is that the ISO's LICAP proposal will result in huge sums of money flowing from customers to generators – by some estimates, energy costs will increase by 25 percent – with no assurance that the result will be the development of generation in the right place at the right time.

Exceptions to the ALJ's decision have been submitted to FERC by numerous parties and the New England Governors, as well as the entire New England Congressional Delegation, have urged FERC to defer implementation. Nevertheless, in the meantime, that determination remains in effect. Thus, it is reasonable for PSNH to project it will incur a LICAP

obligation for the month of January 2006. In the event FERC agrees to defer implementation of LICAP, the minimal over-recovery associated with this issue will be applied as a credit going forward.

E. Previously Unprojected Under-collections

Finally, we take up Staff's proposal to require PSNH to exclude from projected costs for the remainder of the Transition and Default Service period any under-collections incurred during the first half of the rate year that were not projected by PSNH when we set the Transition and Default Service rate last January. We approved a similar Staff proposal a year ago and we do so again, for the same reasons we stated at that time. *See* Order No. 24,358 (August 2, 2004), slip op. at 8-10 (noting that such a policy is an appropriate balancing of two potentially competing policy imperatives: establishing rates based on actual cost and minimizing deferrals). As noted at hearing, a difference between this year and last is that, in 2005, certain planned maintenance outages led to a projection that significant costs incurred during the first half of the rate year would be recovered in the second half. This accounts for why Staff modified its proposal to focus only on those under-collections that PSNH had not previously projected, *i.e.*, \$4.3 million. As noted by Mr. Mullen, this has the effect of delaying by less than a month the full recovery of PSNH's Part 3 stranded costs, while reducing PSNH's proposed Transition and Default Service rate from 7.34 cents per kilowatt-hour to 7.24 cents.

F. Motion for Confidential Treatment

Finally, we take up PSNH's request under Rule Puc 204.06 for confidential treatment of certain materials furnished in discovery. At issue are PSNH's contracts with coal suppliers, PSNH's contracts with firms providing coal transportation and a letter from a coal supplier containing similar pricing information.

The New Hampshire Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "*and* whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). "An expansive construction of these terms must be avoided," lest the exemption "swallow the rule." *Id.* at 552-53 (citations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citations omitted).

Our applicable rule is designed to facilitate the employment of this balancing test. We require a motion for confidentiality to contain (1) the specific documents or portions thereof for which confidential treatment is sought, (2) reference to statutory or common law authority favoring confidentiality, (3) "[f]acts describing the benefits of non-disclosure to the public, including evidence of harm that would result from disclosure to be weighed against the benefits of disclosure to the public," and certain evidence. Puc 204.06(b). The evidence must go to the issue of whether the information "would likely create a competitive disadvantage for the petitioner." *Id.* at (c).

In support of its motion, PSNH contends that, because coal has become the predominant fuel for its generation portfolio, the public disclosure of the terms under which it purchases and obtains delivery of coal would cause public harm by hampering PSNH's bargaining position when it negotiates such agreements in the future. No party has disputed this assertion.

We agree with PSNH. The terms of these agreements are obviously relevant in determining whether PSNH has reasonably projected its cost of providing Transition and Default Service. They will also be relevant in the upcoming determination of whether PSNH has managed its generation portfolio in a prudent manner. However, the public's interest in having access to this information to monitor the Commission's oversight of PSNH is outweighed by the effects of public disclosure of such competitively sensitive information. Accordingly, we grant the motion for confidential treatment.

Based upon the foregoing, it is hereby

ORDERED, that the Transition Service and Default Service rates for Public Service Company of New Hampshire shall be fixed at 7.24 cents per kilowatt-hour, effective with bills rendered on or after August 1, 2005; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall submit a compliance tariff within three business days of the entry of this Order; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall electronically file monthly reports with the Commission and the OCA regarding its monthly fossil fuel costs and inventory levels; and it is

FURTHER ORDERED, that the July 14, 2005 motion of Public Service Company of New Hampshire for confidential treatment of certain documents is hereby GRANTED; and it is

FURTHER ORDERED, that the determination as to confidential treatment of documents is subject to the ongoing authority of the Commission, on its own motion or on the motion of Staff or any member of the public to reconsider such determination in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this first day of August, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary