

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-091

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of Energy Service and Stranded Cost Charges for 2008

Order Approving Settlement Agreement

ORDER NO. 25,060

December 31, 2009

Appearances: Gerald M. Eaton, Esq., on behalf of Public Service Company of New Hampshire; the Office of Consumer Advocate by Meredith A. Hatfield, Esq., on behalf of residential ratepayers; and Suzanne Amidon, Esq., on behalf of Commission Staff.

I. PROCEDURAL BACKGROUND

On May 1, 2009, Public Service Company of New Hampshire (PSNH or Company) filed testimony and schedules in support of a proposed reconciliation of revenues and costs associated with its stranded cost recovery charge (SCRC) and its energy service (ES) charge for calendar year 2008. The SCRC is the mechanism by which PSNH recovers certain restructuring-related stranded costs as allowed under the Agreement to Settle PSNH Restructuring (Restructuring Agreement) approved by the Commission in 2000. *See, PSNH Proposed Restructuring Settlement*, Order No. 23,443 (April 19, 2000) 85 NH PUC 154, Order No. 23,549 (September 8, 2000) 85 NH PUC 536, and Order No. 23,563 (September 29, 2000) 85 NH PUC 645. PSNH recovers its costs of providing power from its generating units and supplemental power purchases through its ES charge.

In *Public Service Company of New Hampshire*, Order No. 24,125 (February 14, 2003) 88 NH PUC 65, the Commission approved a settlement agreement that implemented PSNH's initial SCRC reconciliation, which covered the period from May 1, 2001 (the date on which the PSNH

service territory was opened to retail competition among energy suppliers under the Restructuring Agreement) through December 31, 2001. The Commission directed PSNH to submit, on or before May 1 of each year, its proposed reconciliation of the previous calendar year's SCRC and transition energy and default energy service revenues and costs.

Subsequent to Commission approval of the Restructuring Agreement, PSNH continued to recover costs related to the generation and delivery of electricity, but delivery costs were further segmented for ratemaking purposes. Thus, PSNH's customers now pay a distribution charge, a transmission charge and a SCRC. Additionally, customers purchasing their energy supply from PSNH have paid either a transition service or default service energy charge. As of May 1, 2006, transition service is no longer available to customers and all energy service supplied by PSNH is default service, referred to by PSNH and other electric utilities simply as "energy service."¹

Previously, the difference between revenues and costs associated with providing transition energy service and default energy service had been calculated and included as an adjustment to PSNH's Part 3 stranded costs. Pursuant to the Restructuring Agreement, Part 3 stranded costs were those stranded costs for which PSNH undertook some risk of non-recovery. As of June 30, 2006, PSNH had recovered all of its Part 3 stranded costs and the Commission approved a reduction to the Company's SCRC to reflect that development. *See, Public Service Co. of New Hampshire*, Order No 24,641 (June 30, 2006) 91 NH PUC 295. In a prior order, the

¹ The Electric Utility Restructuring Act defines transition service as "electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive energy supplier and to others, as deemed appropriate by the commission." RSA 374-F:2, V. The timetable that resulted in the termination of transition service as a customer option is set forth in RSA 374-F:3, V(b) (referring to "at least one but not more than 5 years after competition has been certified to exist in at least 70 percent of the state," an event that took place on May 1, 2001). Default service is "electricity supply that is available to retail customers who are otherwise without an electricity supplier." RSA 374-F:2, I-a. The Commission authorized electric utilities to refer to their default service simply as "energy service" in Order No. 24,614 (April 13, 2006). *See, Granite State Electric Company et al.*, 91 NH PUC 173 (2006).

Commission had determined that once Part 3 stranded costs had been fully recovered, the difference between revenues collected and prudently incurred costs associated with transition service and energy service would be reconciled in the energy service rate. *See, Public Service Co. of New Hampshire*, Order No. 24,579 (January 20, 2006) 91 NH PUC 17. The costs at issue in the ES reconciliation are those of owning, operating and maintaining PSNH's generating assets, certain costs related to purchases from independent power producers (IPPs), and the cost of purchases and receipts for sales of energy made in the wholesale market.

On May 15, 2009, the Office of Consumer Advocate (OCA) filed a letter with the Commission stating that it would be participating in the proceeding on behalf of residential ratepayers pursuant to RSA 363:28. The Commission issued an order of notice on July 6, 2009. Clean Power Development, LLC (CPD) filed a petition to intervene on July 17, 2009. PSNH filed an objection to CPD's petition on July 21, 2009 to which CPD responded on July 22, 2009. The Commission issued a secretarial letter on August 5, 2009 denying CPD's motion to intervene.

A prehearing conference was held on July 23, 2009 immediately followed by a technical session. Staff filed its report on the technical session on July 23, 2009 and included in its report a proposed procedural schedule for the proceeding, which the Commission approved by a secretarial letter dated August 5, 2009.

On July 20, 2009, PSNH filed motions for protective treatment of PSNH's responses to three Staff data requests: Staff Set 1, Q-STAFF-009 relative to Newington Station costs, Staff Set 1, Q-STAFF-022, relative to certain combustion turbine costs and Staff Set 1, Q-STAFF-030 regarding PSNH's five-year capital and operation and maintenance budgets.

The OCA filed the testimony of Kenneth Traum on October 19, 2009. On October 20, 2009, Staff filed the testimony of its consultant, Michael D. Cannata, Jr., with related attachments.

On November 11, 2009, the OCA notified the Commission that the Parties and Staff had reached agreement on the terms of a settlement and requested a waiver from the requirements of Puc 203.20 (e) which requires settlement agreements to be filed with the Commission at least five days prior to the hearing. The Commission granted the waiver by a secretarial letter dated November 18, 2009 and the OCA filed the settlement agreement on November 20, 2009. The hearing was held on November 23, 2009. The Commission received public comment of Arthur Cunningham of the New Hampshire Sierra Club at hearing.

II. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (an affiliate of PSNH), provided an overview of the reconciliations between the revenues and expenses as reported in PSNH's ES and SCRC filings for the twelve-month period from January 1, 2008 through December 31, 2008. According to Mr. Baumann, during that period ES revenues exceeded related costs by \$20.7 million, which he attributed to: 1) a \$12.7 million coal inventory adjustment, 2) \$6 million in insurance proceeds associated with the Merrimack Unit 2 high power/intermediate power (HP/IP) turbine damage, and 3) \$2 million of lower than projected fuel costs. For the SCRC, Mr. Baumann testified that costs exceeded the related revenues by \$6.4 million. Mr. Baumann attributed the SCRC under-recovery to higher over-market Independent Power Producer (IPP) costs than previously estimated and the \$3.5 million

Hemphill Power & Light settlement approved by the Commission in Docket No. DE 07-122. *See, Public Service Co. of New Hampshire*, Order No. 24,919 (December 5, 2008).

Mr. Baumann said that the ES costs include the fuel costs associated with PSNH's generation as well as costs and revenues from energy and capacity purchases and sales, New Hampshire Renewable Portfolio Standard costs (RSA 362-F), Regional Greenhouse Gas Initiative costs (RSA 125-O:19-28), and IPP power valued at market prices, as well as the non-fuel costs of generation including non-fuel operation and maintenance, depreciation, property taxes, payroll taxes, uncollectible costs attributable to ES sales, and a return on the net generation investment.

Mr. Baumann testified the SCRC recovers costs categorized as "stranded" by RSA 374-F and 369-B. Mr. Baumann explained that while PSNH's stranded costs initially consisted of three types of costs (Parts 1, 2 and 3), only Parts 1 and 2 remain. Part 1 costs are those that have been securitized through the issuance of rate reduction bonds (RRBs) and consist of the over-market portion of Seabrook regulatory assets, a portion of PSNH's share of Millstone 3, and certain financing costs that were incurred in the procurement of the RRB financing. According to testimony, PSNH expects Part 1 recovery to end in May 2013 when PSNH expects that the RRBs will be paid off.

Part 2 stranded costs include "ongoing" costs consisting of the over-market value of energy purchased from IPPs, the up-front payments made for IPP buy-downs and buyouts previously approved by the Commission, PSNH's share of the present value of the savings associated with such buy-down and buy-out transactions, a negative return on the credit for deferred taxes related to the Part 1 securitized costs, and a return on the unpaid contract obligations to certain regional Yankee Atomic nuclear plants, net of deferred taxes. Mr.

Baumann testified that the timing of Part 2 cost recovery is dependent on the type of costs, but that Part 2 costs have decreased and will continue to decrease as the rate orders and contracts for the various IPPs expire.

PSNH witness Richard C. Labrecque, Manager of PSNH's Supplemental Energy Sources department, described how PSNH's generation resources and supplemental purchases were used to meet the energy and capacity requirements of PSNH over the period January 1, 2008 through December 31, 2008. Mr. Labrecque explained that, as a load-holding entity, PSNH is responsible for having sufficient energy to meet the hourly needs of its customers and is also required to have sufficient capacity available to satisfy its share of the Independent System Operator-New England (ISO-NE) capacity requirement. Mr. Labrecque testified that, on average, PSNH met 56% of on-peak period energy requirements and 71% of off-peak period energy requirements with its owned generation resources listed on attachment RCL-1 to his testimony. Mr. Labrecque testified that PSNH's remaining energy needs were met through a combination of bilateral fixed-price monthly contracts, fixed price unit-contingent contracts with the Bethlehem and Tamworth generating plants, fixed price short-term (e.g. daily or weekly) arrangements, or spot market purchases through the ISO-NE. PSNH said that the combined expense for all supplemental energy purchases was \$267 million.

Regarding PSNH's capacity requirements for the period January 1 through December 31, 2008, Mr. Labrecque testified that approximately 59% of PSNH's capacity needs were met with generation resources, including PSNH-owned assets, non-utility IPPs, the Vermont Yankee power plant and capacity credits associated with the Hydro-Quebec interconnection capacity credits. Mr. Labrecque said that the remaining 41% was procured through ISO-NE at a total cost of \$37.8 million, an average cost of \$3.46 per kilowatt month.

PSNH testified that it participated in auctions for financial transmission rights (FTRs) as a method of hedging the congestion price differential between the major fossil stations (Merrimack, Schiller and Newington) and the New Hampshire load zone. Mr. Labrecque explained that an FTR is a financial instrument available to ISO-NE participants seeking to manage congestion costs or those wishing to speculate on the difference in congestion between two locations. According to Mr. Labrecque, PSNH procured 4,776 gigawatt (GW) hours of FTRs, through an auction, at a net cost of \$827,127 and that this acquisition eliminated \$236,974 of congestion charges for the Company. The net impact was a \$590,153 increase in ES expense.

William H. Smagula, Director of Generation for PSNH, provided testimony regarding the performance of PSNH's generating units during 2008 including information on all outages that took place at PSNH's fossil-fired, hydroelectric and biomass units, and those at FPL Energy's Wyman Station Unit No. 4 in Maine, of which PSNH is a small minority owner. He said that PSNH's generating units provided total generation in 2008 equal to 4,362,673 megawatt-hours, and that the fleet's availability was 98% during the 30 highest peak days when customers' exposure to high market prices was the greatest. In addition, Mr. Smagula testified that Merrimack Station's Unit 1 and Unit 2 each completed major turbine overhauls – work performed every five to six years – safely, accident free and ahead of schedule. According to Mr. Smagula, Schiller Station experienced the highest annual generation in its 50-year history, Schiller Unit 5, PSNH's new biomass unit, increased its generation 6% over its prior year operation, and PSNH's hydroelectric facilities generated 25% more electricity than in 2007, with a weighted average equivalent availability of 97.7 percent. Mr. Smagula also stated that Newington Station had an 88.9% equivalent availability during 2008. Mr. Smagula included with his testimony a list of all unplanned outages that took place in 2008 along with outage

reports for outages in excess of two days at Newington Station and at the two units at Merrimack Station, and in excess of four days at the three units at Schiller Station and Wyman.

B. Office of Consumer Advocate

The testimony of Kenneth Traum, Assistant Consumer Advocate for the OCA, addressed the OCA's position on two issues. First, the OCA stated its opposition to PSNH's request to recover from its ES customers \$13.2 million in replacement power costs related to a turbine damage inspection outage at Merrimack Station Unit 2 in 2008. The OCA recounted that, in the spring of 2008, PSNH conducted a planned outage at Merrimack Station Unit 2 to perform work including the replacement of the HP/IP turbine. Using information supplied by PSNH (*see* Traum testimony, Attachment 2), Mr. Traum stated that during the outage foreign material entered the new turbine and caused damage when Unit 2 was restarted. Mr. Traum testified that Unit 2, although able to return to producing its prior level of output, was not able, after the outage, to generate the additional output that was significant in the financial justification of the project. According to Mr. Traum, PSNH conducted another outage from June 20, 2008 through July 14, 2008 to investigate the problem. Mr. Traum stated that, although PSNH and its consultants were able to determine that foreign material had caused damage to the new turbine blades, they were not able to determine how the foreign material entered the turbine. Mr. Traum stated that PSNH incurred \$20.7 million of total costs for the turbine replacement project in 2008 and, of those costs, \$13.2 million of replacement power costs were not covered by insurance. Traum Testimony at 3-5.

The OCA asserted that PSNH did not have a formal foreign matter exclusion practice at the time it replaced the HP/IP turbine and, in its view, PSNH did not prudently manage the turbine replacement project. Therefore, the OCA argued that customers should not have to pay

the \$13.2 million in replacement power costs that were not covered by PSNH's insurance policies. *Id.* at 5-8.

The second issue identified by the OCA related to PSNH's coal inventory. The OCA expressed concern about the coal inventory levels PSNH maintained at its Merrimack and Schiller Stations. While the OCA said that it understood that inventory levels need to be high enough for reliability purposes, the OCA asserted that the coal inventory should be maintained only at reasonable levels related to PSNH's need for coal because ES customers pay carrying costs and a rate of return on the dollar value on the coal inventory. *Id.* at 8-9. The OCA noted that PSNH's target inventory for Merrimack and Schiller is 184,500 tons but that actual inventory on January 1, 2009 was 416,190 tons and an average inventory for 2008 was approximately 275,000 tons. The OCA asserted that the actual and average levels were too high and recommended that the Commission require PSNH to maintain its coal inventory in a reasonable range near the target level of 184,500 tons unless it can demonstrate a need to significantly exceed that level. *Id.* at 9-10.

C. Commission Staff

Michael D. Cannata, Jr., P.E. served as Staff's consultant in the review of the market-based capacity and energy planning performed by PSNH during 2008 and of the outages that occurred at all of PSNH's generating units in 2008. In his testimony, Mr. Cannata stated that, in his opinion, PSNH made sound management decisions in a market environment in its energy and capacity purchases in 2008. Cannata Testimony at 5. He also concluded that the capacity factor projections for PSNH units used for 2008 market purchases were reasonable. *Id.* at 6. Mr. Cannata also testified that PSNH did model changes in unit maintenance scheduling reflecting short, planned reliability outages in 2008, as agreed to in a previous proceeding. Further, he

concluded that customer migration introduced volatility into planning future PSNH customer energy needs because of the difficulty in planning purchases for unknown customer decisions.

Id.

With regard to planned and forced unit outages, Mr. Cannata found that the base load units on the PSNH system ran well in 2008 and generally performed as well or better than forecasted. Mr. Cannata stated that this performance was noteworthy given that operation of the units has grown more complicated over time due to increased safety requirements, the reduction of operating level of a Merrimack Unit 2 for reliability purposes, the installation of supplemental electrostatic precipitators on both Merrimack units, and the use of low sulfur coal to comply with state and federal environmental regulations. *Id.* at 6-7.

According to Mr. Cannata, with the exception of eight outages, the outages he reviewed were reasonable. With respect to the eight outages, Mr. Cannata recommended that the Commission disallow the recovery of any associated replacement power costs. *Id.* at 7-15. The identified outages, along with Mr. Cannata's descriptions of the causes, were as follows:

- Newington Outage 1-C, which resulted from operator failure to follow established procedures;
- Newington Outage 1-D related to damage to the exciter caused by Newington Outage 1-C;
- Garvins Outage 4-D, caused by an operator's lack of due care;
- Jackman Outage 1-E, caused by a contractor performing transmission work in the substation;
- Jackman Outage 1-H, caused by failure to conduct a ground potential check;
- Jackman Outage 1-I, caused by a contractor performing transmission work in the substation;
- Schiller Outage CT 1-A, resulting from a decision to reduce air pressure at Schiller Station without consideration of the combustion turbine; and
- Schiller Outage CT 1-B, resulting from mistakenly taking the unit out of service off schedule.

Based on his review of the outages and the operation of PSNH's generating plants, Mr.

Cannata's made further recommendations as follows:

1. For certain outages where PSNH is pursuing insurance, warranty claims or performance issues against the manufacturer of malfunctioning or damaged equipment, Mr. Cannata recommended the following:
 - a. Regarding the outage at Merrimack Unit 2 involving the inspection of the HP/IP turbine damage, he recommended that the Commission allow PSNH to recover the replacement power costs, but recognized that the total review is incomplete at this time. Therefore, he recommended that the Commission provide and after-the-fact opportunity for review of PSNH's efforts to mitigate costs to customers related to the outage.
 - b. For the outages at Newington involving a damaged exciter, he recommended that the Commission disallow recovery of any replacement power costs and provide for an after-the-fact review of PSNH's efforts to mitigate costs to customers related to the outages.
 - c. Regarding the outages associated with warranty and performance issues at Schiller Unit 5, he recommended that the Commission allow recovery of replacement power costs. Further, Mr. Cannata recommended that PSNH file a report by February 1, 2010 of all such warranty and performance issues that describe the issue involved in PSNH's efforts for resolution with Alstom [the contractor who installed the wood-fired boiler] and the final resolution of its claims. Similar to the Merrimack and Newington outages above, Mr. Cannata recommended that the Commission provide an opportunity for an after-the-fact review of PSNH's efforts to mitigate costs to customers related to those outages.
2. PSNH should evaluate the need for heaters in the isophase bus ducts at Merrimack and Schiller stations.
3. PSNH should specifically address the National Electrical Safety Code (NESC) requirement for patrols of 34.5 kV lines in its 2009 Reliability Enhancement Program contained in PSNH's current rate case.
4. PSNH should address the issue of danger trees that are outside the rights of way by identifying such trees in NESC-required patrols and to note where PSNH does not have the right to remove the trees. Mr. Cannata recommended that PSNH also undertake this effort in connection with its 2009 REP.
5. PSNH should perform interconnection analyses for all combustion turbines and hydro units connected to the lower voltage PSNH system based on Mr. Cannata's observation that many outages involve apparent mis-coordination between PSNH lower voltage generating units and the distribution system. In connection with this recommendation, PSNH should establish an appropriate relay testing program for all combustion turbine and hydro units.

Mr. Cannata also made the following general recommendations not related to his specific review of the unit outages:

1. PSNH should evaluate procuring spare critical generator and turbine components or procuring industry arrangements with the goal of reducing risks to customers for catastrophic failures of such components.
2. PSNH should negotiate contracts with manufacturers of major system components that contain travel plans and hold the manufacturer liable for unnecessary transportation impacts on unit outages.
3. Although manufacturers may recommend a period of time between inspections of major components, such as ten years, PSNH should not simply adopt such recommendations without first doing its own independent analysis of the merits of the recommendations. *Id.* at 17-20.

Regarding PSNH's compliance with recommendations made in the 2007 ES/SCRC reconciliation docket, Mr. Cannata said PSNH had satisfactorily addressed the eight recommendations in the settlement agreement in that docket. *Id.* at 21. Finally, Mr. Cannata opined that the continued operation of Newington Station, which had a capacity factor of three percent in 2008, could be called into question from an economic standpoint. However, he suggested that a separate proceeding would be more appropriate for considering the complexities involved with valuing Newington Station going forward. *Id.* at 24

III. STIPULATION AND SETTLEMENT AGREEMENT

At hearing, PSNH summarized the terms of the settlement agreement that was signed by PSNH, the OCA and Staff. Hearing Transcript of November 23, 2009 (11/23/09 Tr.) at 12-15. PSNH testified that the settlement agreement provides that the replacement power costs for the turbine inspection outage at Merrimack Unit 2 be recovered by PSNH in this proceeding. PSNH testified that the OCA did not oppose this provision in order to reach settlement and resolve the issues in this docket. *Id.* at 12-13. The settlement agreement further provides that there will be

an opportunity to review PSNH's efforts to recover any cost or obtain any value from third parties related to this outage including the review of any results or reports of related investigations by PSNH or third parties, and the results of efforts to recover costs either from PSNH's insurance company or directly from vendors. As stated in the settlement agreement, the parties and Staff believe that this process can take place during the 2009 reconciliation docket in 2010, but in any event, as soon as PSNH provides information to facilitate the review. *Id.* at 13.

PSNH also agreed not to seek recovery of \$15,000 of replacement power costs associated with outages at Schiller combustion turbines identified by Mr. Cannata as CT-1-A and CT-1-B, and \$45,000 of replacement power costs associated with outage Jackman 1-E. Pursuant to the settlement agreement, PSNH will credit its energy service costs by \$60,000 upon Commission acceptance of the settlement agreement. With respect to any recovery of insurance or other value for the damage at Jackman, PSNH would retain the first \$45,000 of any damages with any remainder credited to customers. *Id.* at 13-14.

At hearing, PSNH testified that the coal inventory was about twice the level of the target inventory of 45 days and PSNH agreed to institute measures to gradually reduce the coal inventory to its target level. *Id.* at 14. Finally, PSNH agreed to implement all of Mr. Cannata's recommendations regarding plant operation based on his review of the outages, and to establish a protocol for the transmission and distribution workers as they perform activities at substations that are attached to or contiguous with the PSNH generating units. *Id.*

Finally, PSNH observed that RSA 378:41 requires that, within the context of the hearing, the reference of conformity of the filing with the least cost plan most recently filed and found adequate by the Commission should take place. PSNH said that the power supply arrangements and procurement during 2008 were found, after investigation by Staff's expert, to be reasonable

and that finding most directly relates to the most recent filed least cost plan approved by the Commission. PSNH stated that the plan was essentially a photo image of what the Company was doing at the time, and that PSNH had retained the right to be flexible in response to the market. *Id.* at 29-30.

At hearing, both the OCA and Staff expressed their support for the settlement agreement and recommended that the Commission approve it.

IV. COMMISSION ANALYSIS

A. Reconciliation of Energy Services and Stranded Cost Charges

Based upon the Restructuring Agreement with PSNH, which resulted *inter alia* in the Commission issuing a financing order that securitized certain of PSNH's recoverable stranded costs, PSNH is obliged to use its generation fleet for the provision of its energy service and may recover its "actual, prudent and reasonable costs" in connection with such use of these facilities. *See* RSA 369-B:3, IV(b)(1)(A) (noting that this obligation remains effective until PSNH divests its generation fleet); *see also* RSA 369-B:3-a ("subsequent to April 30, 2006, PSNH may divest its generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so, and provides for the cost recovery of such divestiture"). To the extent that PSNH must procure retail energy from other sources, we review those costs for their prudence as well. *See, Public Service Co. of New Hampshire*, Order No. 24,695, 91 NH PUC 527, 543 (November 8, 2006).

Pursuant to Puc 203.20, the Commission may approve a settlement agreement if it finds that the result is just and reasonable and in the public interest. N.H. Code of Admin. Rules Puc 203.20 (b). Regarding the terms of the settlement agreement before us, we find that the public interest is served by PSNH's, the OCA's and Staff's ability to resolve the issues that have arisen

and PSNH's willingness to accept recommendations to improve its process and procedures for operating its generation fleet. Accordingly, in light of the record, we approve the settlement agreement as a just and reasonable resolution of the issues before us and in the public interest. In addition, we approve PSNH's 2008 ES and SCRC reconciliations, resulting in a \$20.7 million over-recovery and \$6.4 million under-recovery, respectively, as modified by the settlement agreement. The results of annual reconciliations are brought forward and included in the determination of the succeeding year's ES and SCRC rates. Any adjustments to the annual reconciliations are reflected in the succeeding year's annual reconciliation of costs and revenues. The \$60,000 agreed-upon adjustment for outage-related replacement power costs will be reflected in PSNH's 2009 ES reconciliation, thereby impacting the over- and under-recoveries that are applied to the determination of the 2010 ES rate.

Finally, we find that the review by Staff's expert supports a finding that PSNH's market purchases of energy and capacity are reasonable and in conformity with the principles of PSNH's most recent least cost plan which was accepted by the Commission in Docket No. DE 07-108. *See, Public Service Co. of New Hampshire* Order No. 24,945 (February 27, 2009) (Order accepting 2007 least cost integrated resource plan) and Order No 24,966 (May 1, 2009) (Order Denying Motions for Rehearing).

B. Motions for Protective Treatment

We next consider PSNH's motions for protective treatment of its responses to three data requests. The first data request is for Newington Station costs (data request Staff Set 1, Q-STAFF-009), the second requests information regarding combustion turbine costs (data request Staff Set 1, Q-STAFF-022), and the third is for PSNH's five-year capital and operation and

maintenance (O&M) budgets (data request Staff Set 1, Q-STAFF-030). No parties filed an objection to PSNH's motions for protective treatment.

The Right to Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial and financial information regarding utilities and their affiliates. *See, Unitol Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009). Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information regarding expenses for operation and maintenance of PSNH's generation plants should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's administrative rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority

favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighted against the benefits of disclosure to the public. Puc 203.08 (b).

Staff Set 1, Q-STAFF-009 requests the 2008 costs and revenues associated with Newington Station. PSNH said that this information is not publicly available elsewhere, including from ISO New England, which must adhere to the confidentiality provisions of the ISO New England Information Policy. We conclude that the response to the data request is commercial information for which there is a privacy interest. We next consider the public's interest in disclosure. We note that we have afforded protective treatment to operational information and revenue requirements of Newington Station in the past. *See*, Docket No. DE 08-066, *Public Service Co. of New Hampshire*, Order No. 24,931 (January 16, 2009) at 13. Disclosure would inform the public of the costs associated with operating the Newington Station that are included in energy service rates. In its motion for protective order, however, PSNH stated that Newington occupies a pivotal position in PSNH's resource mix. According to the Company, PSNH balances the market price of Newington's fuels (#6 residual fuel oil or natural gas) and other operating costs with the market price of purchased power when planning ahead or deciding on a day-to-day basis whether to operate Newington Station. PSNH stated that it would be at a competitive disadvantage if these details were disclosed because the information would enable other market participants to offer power at prices that are higher than they might otherwise offer, so long as the price remained below the operating costs to dispatch Newington, to the disadvantage of PSNH's customers. We find that the harm of disclosure of this confidential information outweighs the benefits of public disclosure and grant protective treatment to the responses to data request Staff Set 1, Q-STAFF-009.

Data request Staff Set 1, Q-STAFF-022 requested the annual fixed and variable costs of ownership of each of the five combustion turbines and the forward capacity market (FCM) value associated with each.² In its motion for protective treatment, PSNH said that the annual fixed and variable costs of the five combustion turbines, which are used as peaker plants and run for only a few hours a year, is competitive business information that is not disclosed outside of PSNH. Using the first step in the *Lambert* analysis, we find that the information requested by Staff Set 1, Q-STAFF 022 is commercial information in which there is a privacy interest. Disclosure would inform the public of the costs of the combustion turbines which are included in the energy service rate. PSNH asserted, however, that disclosure of these costs would enable market participants to bid their units just below the costs of running these plants, to the disadvantage of PSNH's ratepayers. *Id.* at 25-26. We find that the harm to the Company outweighs the interest of the public disclosure of this information and therefore we grant the amended motion for protective order. .

Finally, we consider PSNH's request to protect responses to data request Staff Set 1, Q-STAFF-030 which asks for the five- and ten-year capital and O&M budgets for Merrimack, Schiller and Newington stations, as well as the hydro units as a group. We find that this information, which is in PSNH's exclusive control and is not disclosed to third parties, is commercial information within the meaning of RSA 91-A:5, IV. It is uncertain what benefit the public would derive from disclosure, as this docket deals only with 2010 energy service rates and not rates in five or ten years. In its motion, PSNH states that the five-year capital and O&M budgets clearly demonstrate when PSNH will be doing major periodic inspection and

² In response to a question from the bench, PSNH withdrew its request to protect the FCM values associated with the five combustion turbines. Transcript at 27.

maintenance at its generating plants, which would provide critical information to market participants who seek to negotiate sales of supplemental power needed by PSNH. We have reviewed the response to data request Staff Set 1, Q-STAFF-030 and find that the harm to PSNH's ability to negotiate low costs for its customers, brought about by disclosure, is not outweighed by the public's right to access to this information and, therefore, we grant the request to protect the information from disclosure.

Consistent with our practice, the confidential treatment provisions of this Order will be subject to the on-going rights of the Commission, on its own motion or on the motion of Staff, any party, or any other member of the public, to reconsider in light of RSA 91-A should circumstances so warrant.

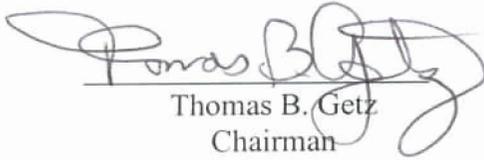
Based upon the foregoing, it is hereby

ORDERED, that the Stipulation and Settlement Agreement signed by Public Service Company of New Hampshire, the Office of Consumer Advocate and Commission Staff is hereby APPROVED; and it is

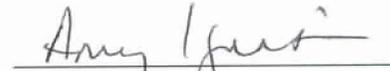
FURTHER ORDERED, that PSNH's reconciliation of its 2008 energy service and stranded cost recovery charge costs and revenues, as modified by the Stipulation and Settlement Agreement, is hereby APPROVED; and it is

FURTHER ORDERED, that PSNH's Motions for Protective Order are hereby GRANTED subject to the conditions set forth in this Order.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of
December, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Kimberly Nolin Smith
Assistant Secretary

