STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 07-096

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Request for Approval of 2008 Energy Service Rate

Order Following Hearing

O R D E R N O. 24,814

December 28, 2007

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Steven V. Camerino, Esq. of McLane, Graf and Raulerson & Middleton, P.A., on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.; Meredith A. Hatfield, Esq. of the Office of Consumer Advocate, on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On September 7, 2007, Public Service Company of New Hampshire (PSNH) filed testimony and related attachments and exhibits to support an energy service (ES) rate for bills rendered on and after January 1, 2008. Pursuant to RSA 369-B:3, IV,(b)(1)(A), customers taking energy service from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing the power, as approved by the Commission. PSNH provided an estimate of 8.56 cents per kilowatt hour (kWh) for the ES rate for effect January 1, 2008, but indicated that a final proposed rate would be filed just prior to the hearing to reflect the most recent estimates of fuel and energy costs. PSNH also included with its filing testimony regarding the status of three improvement activities related to its energy forecast that were agreed to as part of a settlement agreement in the docket regarding PSNH's stranded cost recovery charge (SCRC) and ES reconciliation filing for calendar year 2005 as approved in *Public Service Company of New Hampshire,* Order No. 24,711 (December 15, 2006).

On September 14, 2007, Staff filed a proposal agreed to by PSNH, the Office of Consumer Advocate (OCA) and Staff pursuant to Commission direction in Order No. 24,714 (December 15, 2006) and Order No. 24,768 (June 29, 2007). These orders directed the Parties and Staff to submit a proposal for requiring competitive energy suppliers to provide certain load information to the Commission to assist in the Commission's understanding of the health of the competitive market and to aid PSNH in planning its power purchases. The proposal included the recommendation that competitive energy suppliers be required to file quarterly with the Commission's Electric Division information regarding PSNH customer load to be served by the suppliers for the coming six-, twelve- and 24-month periods. That information would then be aggregated and supplied to PSNH on a confidential basis to ensure that no information would identify any particular supplier with any future market sales. The filing noted that Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation) had submitted a letter to the Commission in Docket No. DE 06-125, on July 24, 2007, expressing concerns about the proposed reporting requirements.

Also on September 14, 2007, the OCA entered an appearance on behalf of residential ratepayers pursuant to RSA 363:28. The Commission issued an Order of Notice on September 25, 2007 scheduling a prehearing conference for October 9, 2007. Constellation filed a petition to intervene on October 4, 2007, which was granted by the Commission at the prehearing conference.

On October 12, 2007, Staff, on behalf of itself and the Parties, filed a proposed procedural schedule, which was approved by secretarial letter dated October 22, 2007. Pursuant to the procedural schedule, a technical session was held on November 1, 2007, Staff and

Constellation filed testimony on November 9, 2007 and a settlement conference was held on November 16, 2007.

On November 21, 2007, PSNH filed updated calculations of its proposed 2008 ES rate reflecting the most recent market data on fuel and energy costs and agreements reached with Staff and the OCA during the course of settlement discussions. On November 27, 2007, PSNH filed three motions for confidential treatment of the following information: (1) the schedule of its planned generating unit outages for the twelve-month ES period, including a description of the work to be performed as well as the estimated costs and duration of each outage, (2) copies of coal supply and transportation contracts in effect for 2008 and future years, (3) a list of contracts for known purchases of supplemental power supply, including the dates they were executed, the duration of the contracts and the quantity purchased and the purchase price, and (4) the amount of renewable energy certificates (RECs) currently under contract for sale in 2008 and the related contract prices associated with the wood-fired generation of Schiller Unit No. 5 (also referred to as the Northern Wood Power Project (NWPP)).

The Retail Energy Supply Association filed comments regarding the proposal for reporting requirements from competitive energy suppliers on November 28, 2007. The hearing was held as scheduled on November 28, 2007. On December 7, 2007, TransCanada Power Marketing Ltd. filed a letter commenting on the recommended reporting requirements for competitive energy suppliers.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

In his September 7, 2007 prefiled testimony, PSNH witness Robert A. Baumann noted that, as of February 2004, the ES rate for all retail customers has been based on the forecast of

PSNH's "actual, prudent and reasonable costs" consistent with RSA 369-B:3,IV(b)(1)(A). The current ES rate, established by Order No. 24,768 (June 29, 2007) in PSNH's mid-term energy service filing in Docket No. DE 06-125, is 7.83 cents per kilowatt-hour (kWh). According to Mr. Baumann, the rate of 7.83 cents per kWh resulted, in part, from the application of a refund of $29 million to the ES rate for the period July 1, 2007 through December 31, 2007 to reflect an actual and forecasted over-recovery of ES costs. Based on its preliminary calculations, PSNH estimated the 2008 ES rate would be 8.56 cents per kWh.

Mr. Baumann noted that the costs to be recovered in the ES rate are the revenue requirements for owned generation assets and the costs of purchased power obligations. In addition, ES costs include the fuel costs associated with PSNH's generation assets as well as costs and revenues from market purchases and sales of electricity as well as expenses paid to the regional grid operator, ISO New England. PSNH noted that the generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property taxes and payroll taxes, and a return on PSNH's net investment in its generation assets. Also, effective July 1, 2007, PSNH's ES rate has included the ES portion of uncollectible expense as a result of a settlement agreement in PSNH's delivery service rate case in Docket No. DE 06-028, Order No. 24,750 (May 25, 2007).

In its original filing, PSNH proposed to add four additional items to the ES rate calculations as follows: (1) amounts paid by PSNH to buyout the McLane Dam hydroelectric project in Milford, New Hampshire in 1997,[1] Clean Air Act deferred revenue associated with emissions reduction equipment previously installed at PSNH's generating plants, and SO_2

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[1] *See* Docket No. DE 97-006, *Public Service Company of New Hampshire*, 82 NH PUC 61 (Order No. 22,497) February 10, 1997.

allowance auction proceeds reserved for Conservation and Load Management (C&LM), collectively referred to as the "net obligations;" (2) $149,000 of costs incurred in connection with PSNH's involvement in the development of mercury mitigation legislation, (3) an increase from 9.62 percent to 9.99 percent for the return on equity applicable to PSNH's generation rate base, and (4) approximately $8 million of alternative compliance payments (ACPs) associated with the recently-enacted Renewable Portfolio Standard law, RSA 362-F.

Mr. Baumann stated that the "net obligations" were items that have been reflected in the generation rate base and in the return on generation rate base in prior ES calculations. He quantified the individual components as follows:

McLane Dam buyout costs	$37,500
Clean Air Act deferred revenue	($10,085,529)
SO_2 allowances reserved for C&LM	($2,129,897)
Total "net obligations"	($12,177,926)

Mr. Baumann testified that the Clean Air Act deferred revenue relates to a difference in the amount of depreciation expense for the Clean Air Act capital improvements previously collected through PSNH's former Fuel and Purchased Power Adjustment Clause and the depreciation recorded on PSNH's books. Further, the SO_2 auction allowance proceeds consisted of certain proceeds that were in a C&LM funding account at the time of PSNH's implementation of electric industry restructuring in May 2001 along with the proceeds of subsequent SO_2 allowance auctions.

Regarding the mercury mitigation legislation costs, Mr. Baumann explained that in prior years PSNH had incurred certain consulting costs associated with the passage of New Hampshire mercury reduction legislation. In PSNH's view, its efforts, along with those of its consultant, reduced PSNH's future compliance costs, thereby reducing future costs to be paid by its ES customers. PSNH said that in its recent delivery service rate proceeding, DE 06-028, Commission Staff had recommended removal of those same costs from the calculation of its distribution rates. In addition, assuming the Commission considered the costs to be lobbying expenses, PSNH indicated it would request a waiver of the Commission's administrative rule prohibiting the recovery of such costs.

Mr. Baumann testified that PSNH's request to increase the return on equity applicable to its generation rate base to 9.99 percent was consistent with the method used by the Commission to estimate the currently applicable 9.62 percent generation return on equity approved in *Public Service Company of New Hampshire* 90 NH PUC 542 (2005). In that proceeding, the Commission added a 32 basis-point generation risk premium to a then-determined 9.3 percent return on equity for PSNH's distribution business. In this filing, PSNH added the same generation risk premium of 32 basis points to the 9.67 percent return on equity for PSNH's distribution segment contained in the Commission-approved settlement agreement in PSNH's distribution service rate proceeding. *See* Order No. 24,750 (May 25, 2007).

RSA 362-F requires suppliers of electricity to purchase renewable energy certificates (RECs) beginning in 2008 for specified percentages of their load. In the alternative, the electricity suppliers must make alternative compliance payments (ACPs) at specified levels to the extent RECs are not available for purchase at prices below the applicable ACP. For 2008, PSNH stated that it is required to acquire Class III RECs (covering existing biomass and methane resources) representing 3.5 percent of its load and Class IV RECs (covering existing hydroelectric resources) representing 0.5% of its load. In its original filing, PSNH stated that Class III RECs would be in very short supply in 2008 and, in any event, biomass producers that would qualify as Class III facilities in New Hampshire would also qualify in Connecticut where the current REC prices are much higher. Therefore, PSNH estimated the 2008 cost of compliance with the Class III RPS requirements at an ACP price of $28 per REC to be approximately $8 million. PSNH did not include an estimate for Class IV RPS compliance, citing what it considered to be an adequate supply of the RECs for 2008, an expected low REC price, and the possibility that some of its own hydroelectric plants would qualify for Class IV RECs.

PSNH witness Richard C. Labrecque testified about the status of three recommendations made by Staff's consultant, the Liberty Consulting Group (Liberty), regarding supplemental power and capacity planning that were part of an agreement reached in Docket DE 06-068, PSNH's 2005 reconciliation of its energy service and stranded cost recovery charges. The first recommendation was that PSNH model monthly forced outages for its base load units rather than use an annual rate based upon historical data. According to Mr. Labrecque, PSNH reviewed 2002 through 2006 historical data and concluded that there was no observable outage pattern that would suggest an opportunity for providing more accurate unit outage estimates than the current method of using an average annual outage rate. The second recommendation addressed by Mr. Labrecque concerned the inclusion of short, planned reliability outages in PSNH's power planning modeling process. Mr. Labrecque stated that PSNH identified three such planned outages and included those outages in its development of its 2008 ES expense forecast. Finally, Mr. Labrecque addressed the recommendation that PSNH consider developing alternative energy and capacity purchase plans based on 90/10 load forecasts using 10-year, 20-year and 30-year historical weather data in addition to the 30-year average weather 50/50 load forecast currently used by PSNH. According to Mr. Labrecque, PSNH performed a sales forecast scenario using

10-year average weather data and compared it to the results of the 30-year average weather data scenario incorporated in preparing its 2008 ES rate calculations. PSNH noted no significant impacts on its supplemental purchase planning and stated that it would continue to use the 30-year data for rate forecasting and supplemental power planning. PSNH did, however, state that it would continue to compare 30-year weather trends to those of a shorter time period and, if a significant variation was noted in the future, would assess whether it should modify its supplemental power purchase targets to address the weather-related exposure.

In its updated filing of November 21, 2007, PSNH requested that the Commission approve an ES rate of 8.82 cents per kWh for effect January 1, 2008. PSNH said that the increase in the ES rate over that proposed in the original filing was attributable in part to the fact that the over-recovery that had kept the July through December 2007 rate down was no longer a factor in calculating ES rates. However, the company explained that the principal reasons for the increase, in order of significance, were: (1) an increase in overall market prices for energy reflected in PSNH's purchased power obligations, (2) coal cost increases, and (3) the removal of the $12.2 million "net obligations" credit from the calculation of the ES rate.

PSNH also included a technical statement with its updated filing summarizing the new calculations as well as proposed revised treatment of the "net obligations," the mercury mitigation legislative expense, the return on equity and changes to its estimate for REC obligations. Many of the changes were the result of discussions among PSNH, the OCA and Staff. PSNH removed the $12.2 million of "net obligations" credit from the calculation of the ES rate and instead applied $11.7 million of the credit to the calculation of the 2008 stranded cost recovery charge approved in Order No. 24,807 (December 17, 2007) with the remaining

$540,000 added to the Home Energy Assistance program of the current CORE energy efficiency programs pending in Docket No. DE 07-106.

Also, PSNH agreed to exclude the $147,000 in mercury mitigation legislative expense from the calculation of the 2008 ES rate and stated that it would not seek recovery of the costs in the future. In addition, reflecting a compromise agreed to by PSNH, the OCA and Staff, PSNH modified its proposed return on equity for generating assets to 9.81 percent, rather than the 9.99 percent rate contained in its original filing.

With respect to its earlier estimate of $8 million for 2008 Class III RPS compliance costs, PSNH testified that, between its initial filing and its updated filing, the company had entered into power purchase agreements (PPAs) with Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. (collectively, Pinetree) for the purchase of energy, capacity and RECs.[2] PSNH testified that the company was able to purchase the RECs through the Pinetree PPAs for less than $28 per REC, the Class III ACP payment level for 2008, and reflected those savings in its updated ES calculations. PSNH noted that its revised calculations reflected an additional $24.1 million in net purchased power costs due primarily to the Pinetree PPAs and higher forward market prices. That increase, however, was partially offset by a $17.6 million decrease in purchases of energy and capacity from independent power producers as purchases from the Pinetree plants moved from one section of its analysis to another.

At hearing, PSNH presented testimony regarding the joint proposal of PSNH, the OCA and Staff that recommends certain reporting requirements from competitive energy suppliers. When asked whether receipt of the competitive energy supplier load information would help in preparing an estimate of its ES rate for the coming year, PSNH responded that, to the extent that the data was credible and delivered in a timely manner, the company may be able to eliminate

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[2] These agreements are under review in Docket No. DE 07-125.

some uncertainties in the load forecast for purchased power. PSNH said it currently prepares estimates of the costs of power by analyzing the base load experience, factoring in the information available regarding customers who have migrated to competitive supply over time, and removing the baseline migration from its sales forecast. PSNH said it does not have a firm fixed contract to take into account any variance between the baseline migration and the actual migration, which may be less. Instead, PSNH has a call option with HyrdoQuebec to address that variable piece of customer migration. PSNH explained that it does not pay a risk premium for the call, pays market price for the supplemental energy, and makes no profit from selling supplemental power to its customers.

PSNH said that the proposal to require competitive energy suppliers to report load information had been recommended, in part, to minimize the over- and under-recoveries of energy service costs which, when applied to customer rates, sometimes resulted in rates that did not reflect the then-current market price for energy. According to the company, over- and under-recoveries have declined over time. PSNH agreed, in response to a question from the OCA, that it would be appropriate to proceed with rulemaking to develop competitive energy supplier reporting requirements.

At hearing, PSNH was asked about Constellation's pre-filed testimony in which Constellation proposed that PSNH be required to issue a Request for Proposal (RFP) for all of its forecasted purchased power needs. PSNH testified in opposition to the proposal because, in its view, any competitive energy supplier, including Constellation, would have to hedge against the volatility of the market costs of power, and would build in a profit margin to its electric rates, thereby increasing customer rates in excess of what PSNH was able to charge using its owned generation and market purchases. PSNH observed that, through the stranded cost recovery charge/energy service reconciliation docket, the Commission conducted a review of the bilateral contracts PSNH used to purchase power in the most recent prior year, and that the Commission will disallow energy costs if it deems that the purchase is imprudent. PSNH added that the Commission had considered a similar proposal from Constellation in 2003and rejected it,[3] and said no statutory or other changes had occurred in the interim to support a different conclusion. PSNH urged the Commission to reject Constellation's proposal and recommended against opening a new proceeding to consider it.

As to recommendations by Staff's consultant, Michael D. Cannata of the Liberty Consulting Group, on load forecasting, PSNH said at hearing that the company would file a report responding to Mr. Cannata's recommendations regarding including forced outages and the use of 10-year versus 30-year weather forecasts in its power purchase planning. PSNH said the report would address Mr. Cannata's questions as well as provide more details concerning PSNH's planning process.

Pursuant to RSA 91-A:5,IV and N.H. Code Admin. Rules Puc 203.08, PSNH filed a motion for protective treatment for a response to a data request from Staff (Set 1, No. 11) which contains the dates and duration of planned maintenance outages at PSNH's major generating stations during 2008. PSNH averred that release of this information to participants in the competitive market puts PSNH at a disadvantage when it plans to purchase energy to supply its customers during times when major generation stations are undergoing planned maintenance. The disadvantage, PSNH argued, would directly harm PSNH's customers, because disclosure would undermine PSNH's ability to negotiate replacement purchased power at the lowest possible cost. PSNH noted that in considering requests for confidential treatment, the Commission uses a balancing test to weigh the importance of keeping the record public with the

[3] *See Public Service Company of New Hampshire*, 88 NH PUC 638 (2003).

harm associated with public disclosure. The company maintained that the harm to the competitive market and to its customers outweighs the benefit of disclosure and requested that the Commission issue a protective order for the schedule of planned maintenance outages as provided in response to Staff's request.

PSNH's second motion for protective order related to the 2008 coal contracts and rail transportation contracts and the months, prices and quantities of power secured through bilateral contracts. PSNH said, in applying the balancing test, the Commission should find that the limited benefit of disclosing information related to the subject contracts is outweighed by the harm done by disclosing the pricing terms and other confidential information of the owners of the facilities parties to those contracts. PSNH further observed that the release of the information would put PSNH at a disadvantage with respect to negotiations in the future with coal suppliers and suppliers of supplemental power. According to the company, public disclosure of the contract information would limit contractors' interest in future supply contracts, and would mean that PSNH would be seeking supply in a less competitive market.

Finally, PSNH requested protective treatment for information regarding contracts for the sale of RECs from Schiller Unit 5. The company stated that the revenue derived from the sale of RECs helps to defray the cost of the conversion of Schiller from a unit using coal as its primary fuel to one reliant chiefly on wood. PSNH said that RECs are traded in an open market, and that both buyers and sellers want the sales price to remain confidential. PSNH also asked that the total number of RECs still available for sale, also requested by Staff, remain confidential. According to the company, should the information be disclosed to the public, PSNH would be put at a competitive disadvantage for future sales of 2008 RECs, as disclosure of the sales could hinder PSNH's ability to negotiate future contracts for sales of RECs at the highest possible price. PSNH said that the Commission, in weighing the benefits of public disclosure of the REC sales information versus the competitive harm to PSNH, should find in PSNH's favor and grant its motion for protective treatment.

PSNH concluded by requesting that the Commission approve its petition as revised by its November 21, 2007 filing.

B. Constellation New Energy

Constellation prefiled the testimony of Daniel W. Allegretti, Vice President of Energy Policy for Constellation Resources. Mr. Allegretti presented a proposal which he said would provide the Commission with the means to help ensure that PSNH provides power to its customers at least cost and also minimize the need to reconcile power costs from year-to-year. As explained by Mr. Allegretti, the proposal would require PSNH to issue an RFP for the power it needs in excess of that provided by PSNH-owned generation. In testimony, Mr. Allegretti said that the Commission did not have the ability to conduct a meaningful review of the costs incurred by PSNH in the wholesale market. If the Commission directed PSNH to use an RFP process to purchase its market requirements, Constellation said that the process would be more transparent for Commission review and less costly for consumers. Mr. Allegretti opined that competitive suppliers could provide better management of risk and reduced uncertainty in power purchases as compared with PSNH. Mr. Allegretti also said that, if Constellation's proposal were to be adopted, all risk in market price volatility would be borne by the winning supplier and that no costs would shift to customers in the event that the market price exceeded the contract price.

In the event of a failed bid, Mr. Allegretti said that the load could be re-bid. In response to questions about whether PSNH would be in a better position than a competitive supplier to respond to outages, Mr. Allegretti said that the risk of outages in a situation where power is provided by a competitive supplier is not particularly different than that of the generation owner. When asked about the cost reconciliation process, Mr. Allegretti said that Constellation would expect to conduct reconciliations as PSNH does now, but anticipates that the reconciliations would be less than currently experienced because the price of power purchased from a competitive energy supplier would be closer to the market price for power.

Mr. Allegretti stated that Constellation was not seeking Commission approval of its proposal in this docket, but urged the Commission to open a new docket to investigate the proposal's merits. According to Constellation, competitive suppliers would need little advance notice, at the latest by the end of November 2008, to prepare to bid on PSNH's 2009 power requirements. Mr. Allegretti noted that, while some dates when the market is particularly volatile should be avoided in scheduling a solicitation, competitive suppliers are qualified to make market decisions to avoid market volatility and the accompanying erosion of profit margin. He said competitive suppliers provide incentives to portfolio managers to minimize costs and improve profit margin.

At the hearing, Mr. Allegretti explained Constellation's concern about the proposed reporting requirements recommended by PSNH, Staff and the OCA. He said that the proposal, as he first understood it, was to provide competitive energy suppliers' load information to PSNH only. Mr. Allegretti said that Constellation competes with PSNH and wholesalers and, therefore, would not want a competitor to have Constellation's load information. In addition, Mr. Allegretti claimed that disclosure of load information may conflict with the contracts between Constellation and a particular supplier. He said that if the information were made public in aggregated form, Constellation would still have concerns regarding whether the contracts would permit them to disclose the information. Mr. Allegretti also said that aggregating the data may not serve to mask the identity of the competitive power suppliers and their customers. Mr. Allegretti stated that Constellation would not be opposed to the Commission opening a rulemaking to create reporting requirements applicable to competitive energy suppliers, but would not support the reporting requirements recommended by PSNH, the OCA and Staff. Constellation did not object to the agreement among PSNH, the OCA and Staff to modify certain aspects of PSNH's ES rate calculations as reflected in the technical statements PSNH filed with its November 21, 2007 update.

C. Office of Consumer Advocate

The OCA expressed support for PSNH's transfer of the initial $540,000 balance of SO_2 allowance auction proceeds, those that had accumulated prior to electric utility restructuring, to the Home Energy Assistance program. The OCA also recommended that the Commission open a rulemaking proceeding to establish reporting requirements applicable to all competitive energy suppliers. Finally, the OCA supported Constellation's request that the Commission open a new docket to investigate the merits of Constellation's proposal for the procurement of PSNH's market power needs.

D. Commission Staff

Staff filed the testimony of utility analyst Steven E. Mullen and Mr. Cannata of the Liberty Consulting Group. The testimony discussed (1) recommended treatment of the "net obligations," (2) treatment of the mercury mitigation costs, and (3) three recommendations pertaining to power supply issues that were agreed to by PSNH in a settlement agreement approved in Order No. 24,711 (December 15, 2006).

Mr. Mullen testified that the "net obligations," as described by PSNH witness Baumann, consisted of the following items: (1) $37,500 of McLane Dam buyout costs, (2) a $10,085,529 credit related to certain Clean Air Act equipment installed on PSNH's generating units in the 1990s, and (3) a $2,129,897 credit for accumulated SO_2 allowance sales proceeds.

Staff testified that PSNH, at the time of the Restructuring Settlement Agreement approved in Docket No. DE 99-099, intended to wrap all of the "net obligation" amounts into the determination of net sale proceeds when, as originally contemplated, PSNH sold its fossil and hydro generating units. Staff explained that the intervening passage of legislation has caused PSNH to retain ownership of those generating units, and that PSNH continued to consider the "net obligations" as generation-related. Staff noted that PSNH proposed to include the credit resulting from the "net obligations" as a reduction to its 2008 ES rate. Mr. Mullen disagreed with PSNH's proposed treatment of the "net obligations" because (1) none of the items were related to projected 2008 ES costs, and (2) all of the items originated and/or accumulated in prior years. Mr. Mullen recommended that PSNH remove the "net obligations" from its 2008 ES rate calculations and instead include them in the determination of the 2008 SCRC rate. According to Staff, under PSNH's proposed treatment, a customer receiving energy service from a competitive supplier would not receive the benefit of the net credit that the "net obligations" would provide to the 2008 ES rate. Conversely, using Staff's proposed treatment or including the "net obligations" in the 2008 SCRC rate calculations would ensure that as wide a customer base as possible would receive the benefit of the rate credit. Finally, Mr. Mullen offered an alternative treatment for the initial $540,000 of the SO_2 allowance amount. As those funds were initially targeted to C&LM programs, Mr. Mullen proposed that the Commission consider including the $540,000 in the CORE energy efficiency program docket, DE 07-106.

Mr. Mullen also testified in opposition to PSNH's initial proposal to include $147,000 related to mercury mitigation legislation in the calculation of 2008 ES rates. Specifically, Staff stated that PSNH had originally requested that these costs be included in PSNH's recent delivery rate proceeding, Docket No. DE 06-028, decided in Order No. 24,750 (May 25, 2007). In that case, Staff recommended that the costs be removed because they were not related to distribution service and could be considered lobbying expenses. In the current proceeding, Mr. Mullen stated his opinion that the costs clearly fell into the realm of lobbying costs and, as such, were prohibited from recovery pursuant to N.H. Code Admin. Rules Puc 310.02.

Mr. Cannata testified regarding the status of three recommendations regarding power supply issues that were agreed to by PSNH in DE 06-068 (See Order No. 24,711) and addressed in the current proceeding in the testimony of PSNH witness Richard Labrecque. Regarding the modeling of forced outages, Mr. Cannata stated that he agreed with PSNH's logic regarding the purchase of power specifically to cover a unit outage in advance. However, he analyzed five years of monthly availability factors for PSNH's Merrimack Station and Schiller Station generating units and noted that variations in the monthly availabilities could materially impact PSNH's monthly market energy purchases. Therefore, Mr. Cannata recommended that the Commission direct PSNH to address certain questions regarding the impact of variations in a unit's availability on PSNH's energy purchase decisions.

Addressing Mr. Labrecque's testimony on the issue of modeling short, planned reliability outages of its base load units within its monthly forecasts, Mr. Cannata noted that PSNH had identified three upcoming planned reliability outages that could be expected to occur within the monthly maintenance schedules and had factored those into its ES expense forecast. Mr.

Cannata stated that he agreed with PSNH's analysis and, as long as PSNH committed to model similar outages in the future, he considered this issue to be resolved.

Finally, regarding weather-based load forecasting, Mr. Cannata stated that with the recent implementation of the forward capacity market rules, the issue of using a 90/10 weather-based load forecast rather than a 50/50 weather-based load forecast for capacity purchases is now moot. Using PSNH data, Mr. Cannata analyzed the difference in monthly energy requirements using a 10-year weather-based load forecast as compared to a 30-year forecast. Noting some potentially material variations, Mr. Cannata recommended that the Commission direct PSNH to address certain questions regarding the impact of variations in a monthly energy load requirements using 30-year versus 10-year weather-based load forecasts. Liberty also recommended that PSNH monitor the difference between the 30-year and 10-year load forecasts and file annual reports with the Commission.

Staff concluded by recommending that the Commission approve PSNH's petition as amended by the November 21, 2007 filing. Staff agreed that the Commission should initiate a rulemaking if it intended to institute reporting requirements for competitive energy suppliers. Finally, Staff took no position on Constellation's proposal that PSNH be required to issue an RFP to obtain power requirements not supplied by its owned generation.

III. COMMISSION ANALYSIS

PSNH revised its original estimate of the proposed 2008 ES rate of 8.56 cents per kWh to 8.82 cents per kWh with its November 21, 2007 updated filing. We note that the increase is due, in part, to removing the credit resulting from the "net obligations" from the ES rate calculations and instead (1) including the majority of the net credit in the calculation of PSNH's 2008 SCRC rate, which was approved in Order No. 24,807 (December 17, 2007) in Docket No. DE 07-097, and (2) including the remaining $540,000 in the Home Energy Assistance portion of the CORE energy efficiency programs pending in Docket No. DE 07-107. We approve those changes as well as the other modifications regarding the treatment of the mercury mitigation costs, the use of a return on equity of 9.81 percent for the generation assets, and the other changes reflected in PSNH's November 21, 2007 revised and updated filing. Based on our review of the record, we find PSNH's calculations to be reasonable and we approve the ES rate of 8.82 cents per kWh for bills rendered on and after January 1, 2008 as just and reasonable.

We concur with the general consensus stated at hearing that the Commission's imposition of reporting requirements for competitive energy suppliers is a requirement of general applicability which should be conducted as a rulemaking pursuant to RSA 541-A. Therefore, we will defer the issue to a future rulemaking proceeding.

Finally, we note that there is a divergence of opinion regarding the merits of requiring PSNH to issue an RFP for power requirements not supplied from its own resources. Because competitive power suppliers in the state, as well as other parties, may have an interest in this proposal, we believe it would be inappropriate to rule on the issue based on the limited record created in this proceeding. In fact, Constellation characterized its testimony as an overview of a proposal for future consideration. With this in mind, we will wait for Constellation to file a fully detailed proposal on the implementation of a process whereby PSNH would solicit supply for its power requirements not supplied from its own resources.

With respect to PSNH's motions for confidential treatment, we note that RSA 91-A, the 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. One exception, as noted by PSNH, is confidential, commercial, or financial information. RSA 91-A:5, IV. In considering whether to accord information confidential treatment, the Commission must apply a balancing test to determine whether confidential treatment should be granted, weighing the asserted privacy interest against the public's interest in disclosure. *See e.g., Union Leader Corporation v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997).

We note that no parties have objected to the motions for protective order and confidential treatment and that the information for which protective treatment is sought is similar to information for which the Commission has granted protective treatment in the past. In balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of PSNH and its customers in (1) preventing public disclosure of the schedule, including the duration, of planned maintenance outages, (2) preventing the public disclosure of coal supply and transportation contracts and individual prices for bilateral power purchases and (3) maintaining the privacy of contracts and contract prices for the sale of RECs associated with the generation of Schiller Unit 5, outweigh the public's interest in obtaining access to the information. We therefore grant the requests for confidential treatment. Consistent with past 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 Public Service Company of New Hampshire's requested energy service rate of 8.82 cents per kWh effective with bills rendered on and after January 1, 2008 is hereby approved; and it is

FURTHER ORDERED, that PSNH's Motions for Confidential Treatment are hereby GRANTED; and it is

FURTHER ORDERED, that Constellation's proposal to require PSNH to issue an RFP to solicit needed power not supplied by PSNH's owned generation is hereby DENIED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file tariff changes that conform with this Order within 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of December, 2007.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Clifton C. Below Commissioner

Attested by:

ChristiAne G. Mason
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Docket #: 07-096 Printed: December 27, 2007

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

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