

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-121

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of 2009 Energy Service and Stranded Cost Recovery Charges

Order Defining Scope of the Proceeding

ORDER NO. 25,132

July 20, 2010

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Arthur B. Cunningham, Esq. on behalf of New Hampshire Sierra Club; N. Jonathan Peress, Esq. on behalf of Conservation Law Foundation; Orr & Reno P.A. by Douglas L. Patch, Esq. on behalf of TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc.; the Office of Consumer Advocate by Meredith A. Hatfield, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL BACKGROUND

On April 30, 2010, Public Service Company of New Hampshire (PSNH) filed a proposed reconciliation of its 2009 energy service and stranded cost recovery charges. The Commission issued an Order of Notice on June 1, 2010, scheduling a prehearing conference on June 28, 2010.

The Office of Consumer Advocate (OCA) filed a letter on May 5, 2010, stating its intent to participate in this docket. On June 23, 2010, the following parties filed petitions to intervene: New Hampshire Sierra Club (NHSC); Conservation Law Foundation (CLF); and TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (TransCanada).

The prehearing conference was held on June 28, 2010. At the prehearing conference, the petitions to intervene were granted. We clarify here the nature of the interventions pursuant to RSA 541-A:32, I, which provides for mandatory intervention when a party has demonstrated that

“rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” and RSA 541-A:32, II, which provides for discretionary intervention when “such intervention would be in the interests of justice and would not impair the prompt and orderly conduct of the proceeding.” TransCanada is granted intervention under subsection I because it has demonstrated that as a competitor of PSNH it has a substantial economic interest that may be affected by this proceeding. NHSC and CLF have not demonstrated interests that rise to the level of mandatory intervention under subsection I. Both entities, however, are granted intervention as a matter of discretion under subsection II because they have raised certain issues that are relevant to this proceeding that will not necessarily be addressed by other parties and, in the Commission’s discretion, will serve the purposes of justice if pursued. As further discussed below, however, we clarify the scope of this proceeding and the proper areas of inquiry, which should ensure that their intervention will not impair the prompt and orderly conduct of the proceeding.

On June 30, 2010, Staff filed a report of the technical session that followed the prehearing conference and submitted a proposed procedural schedule for the docket, as follows:

Data Requests to PSNH	July 16, 2010
Responses from PSNH	July 30, 2010
2 nd Round of Data Requests to PSNH	August 13, 2010
Responses to 2 nd Round of Requests	August 27, 2010
Technical Session	September 9, 2010 at 9:00 a.m.
Staff and Intervenor Testimony	October 21, 2010
Data Requests on Oct. 21 st Testimony	November 5, 2010
Staff/Intervenor Responses	November 19, 2010
Technical Session	November 23, 2010 at 9:00 a.m.
Rebuttal Testimony	November 30, 2010
Hearing on the Merits	December 7, 2010

II. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

PSNH's filing proposes to reconcile the estimated revenues and expenses with actual revenue and expenses associated with providing energy service to its customers for calendar year 2009. As is customary in the filing, PSNH anticipated that the proceeding would include a review of its supplemental power purchases and the operation of its generation fleet to determine whether PSNH's power acquisition and generation management was prudent and reasonable.

B. New Hampshire Sierra Club

NHSC's petition to intervene stated that it is a non-profit organization dedicated to securing a pollution-free and healthy environment. NHSC said that PSNH had replaced a turbine at Merrimack Station in April-May 2008 without the public permitting process required by the Clean Air Act. The petition referenced two ongoing appeals initiated by NHSC at the Air Resources Council (ARC) challenging certain permits provided to PSNH in connection with operation of Merrimack Station. NHSC states that, because of the lack of an environmental permitting process for the turbine replacement, and PSNH's claims of confidentiality for certain information before the ARC, NHSC has "scoured any related regulatory docket for facts that relate to the project, including dockets before the New Hampshire Public Utilities Commission. NHSC petition at 3.

NHSC referenced Docket No. DE 09-091, PSNH's reconciliation filing for 2008, where the Commission approved a settlement agreement which allowed PSNH to recover \$13 million of replacement power costs for outages that took place when the newly-installed turbine malfunctioned. According to NHSC, the current filing does not contain information regarding

the investigation and recovery of outage costs caused by the turbine failure, and there is no outage report related to any work done at Merrimack 2 in 2009 in connection with the replaced turbine. NHSC claimed that the replacement of the turbine and other work done in 2008 and 2009 “have substantial Clean Air Act and Multiple Pollution Reduction Programs implications” and maintains that the costs PSNH proposes to pass on to ratepayers through this docket and Docket No. DE 09-091 should not include costs for projects not in compliance with environmental laws. *Id.* at 3-4. NHSC said the Commission should defer economic decisions that have environmental consequences, including this docket, until PSNH’s compliance with environmental laws is fully reviewed.

C. Conservation Law Foundation

CLF stated that it is a private, non-profit organization dedicated to the protection and responsible use of New England’s natural resources. CLF represents the interests of its members in ensuring that environmental impacts resulting from electric utility operation in New Hampshire and the region are minimized. To that extent, CLF said it seeks to participate in the process to review the decisions made by PSNH in selecting the resources it used to supply energy service to its customers and the prudence thereof as those decisions dictate the costs of PSNH’s energy service and the resulting environmental impacts. CLF pointed out that the power available in the market in 2009 was lower in costs and lower in adverse environmental emissions than PSNH’s owned generation, which calls into question the prudence of PSNH producing power versus purchasing it on the market.

D. TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc.

TransCanada stated its interest in the docket was to investigate whether PSNH's costs to purchase power were actual, prudent and reasonable, whether the Company's costs to produce power through its owned generation were actual, prudent and reasonable, and whether reconciliation is appropriate. TransCanada, a competitive electricity supplier, said that its competitive position relative to PSNH could be harmed if PSNH is allowed to pass imprudent market purchases or other costs onto energy service customers, and potentially onto all customers as part of a non-bypassable charge. In addition, TransCanada asserted that its rights and interests as a competitive supplier and as a participant in the market for electricity in New England may be affected by the Commission's decision with regard to PSNH's power procurement options and some of the other issues raised in this proceeding.

E. Office of Consumer Advocate

The OCA stated that it supported TransCanada's motion to intervene and took no position on the petitions of NHSC or CLF.

F. Commission Staff

The Staff did not take a position on the petitions to intervene.

III. COMMISSION ANALYSIS

The subject of this docket is the annual filing by PSNH to reconcile the revenues and expenses associated with its stranded cost recovery and the power generation and supplemental power purchases for 2009. The reconciliation is necessary because PSNH is authorized to recover its "actual, prudent, and reasonable costs" of providing service as approved by the Commission. RSA 369-B:3, IV(b)(1)(A). Each December, the Commission establishes energy

service and stranded cost recovery rates for PSNH customers based on a review of the Company's estimates of what costs will be in the next twelve months. The reconciliation filings allow the Company to compare its estimated revenues and expenses with those actually incurred for the prior calendar year, and either credit an over-recovery back to customers or include an under-recovery amount in rates. When these reconciliation filings are made, a prudence review is conducted to determine whether the Company should recover from ratepayers the costs claimed for a prior year.

A prudence review is part of the annual review of PSNH's reconciliation filing and, consequently, is within the scope of the instant docket. In connection with PSNH's generation fleet, the Commission reviews the planned outages and associated power purchases to determine if PSNH acted in a prudent and reasonable manner. Similarly, with unplanned outages, the Commission investigates the cause of the outages and the associated replacement power purchases to assess whether PSNH could have taken reasonable steps to avoid the outages and to understand whether PSNH made purchases for replacement power that provided reasonable value to its customers. In so doing, the Commission also determines the extent to which costs claimed by PSNH should be recovered from customers. Therefore, 2009 plant performance, plant outages, replacement power purchases, and other purchases of power and capacity and stranded cost recovery are included in the scope of this docket.

The environmental issues associated with PSNH's generation fleet raised by parties at the prehearing conference are beyond the scope of this docket. The N.H. Department of Environmental Services is responsible for enforcing environmental laws, including laws regulating air emissions. Furthermore, to the extent that PSNH has obligations pursuant to RSA

378:38, among other things, to develop a least cost integrated resource plan (LCIRP) that includes an assessment of the plan's integration and impact on state compliance with the Clean Air Act amendments of 1990 and an assessment of the plan's environmental impact, such environmental issues are not part of the instant proceeding and are more suitably addressed in proceedings of the N. H. Department of Environmental Services or in connection with PSNH's next LCIRP, which is due to be filed in September 2010. *See* RSA 378:38, VII and IX. and Order No. 25,061 (December 31, 2009) at 31. Issues regarding PSNH's planning process or forecasts of power needs, costs or related factors will be considered in the LCIRP docket or in a future energy service rate setting docket, as appropriate, and are beyond the scope of the instant proceeding, which is a retrospective analysis of revenues and expenses associated with PSNH's stranded cost recovery and the power generation and supplemental power purchases for 2009. With respect to NHSC's interest in developing information connected with its appeal of various actions at the ARC regarding the replaced turbine at Merrimack Station, the Commission determined in Docket No. DE 08-145 that the replacement of the turbine was not a modification that required a prospective determination of the public interest. *See* Order No. 25,008 (September 1, 2009) at 13. Therefore, we find that the scope of this docket does not include any further investigation of the circumstances or effects of the turbine replacement outside of the scope of this proceeding as described herein. Pursuant to the Settlement Agreement approved in Docket No. DE 09-091, however, this docket will include a review of the steps PSNH took in 2009 to recover the costs of the turbine-related outages from third parties, including insurance companies and vendors. *See* Order No. 25,060 (December 31, 2009) at 12-13.

We understand that the proposed procedural schedule contemplates that discovery will be issued on July 16, 2010. To the extent that discovery exceeds the scope of the proceeding as defined in this Order and PSNH files an objection, we will promptly act on such objections.

Based upon the foregoing, it is hereby

ORDERED, the scope of the proceeding shall be as specified in the body of this Order; and it is

FURTHER ORDERED, that the procedural schedule proposed by the Staff on June 30, 2010 is hereby APPROVED.

By order of the Public Utilities Commission of New Hampshire this twentieth day of July, 2010.

Thomas B. Getz
Thomas B. Getz (KNS)
Chairman

Clifton C. Below
Clifton C. Below (KNS)
Commissioner

Amy L. Ignatius
Amy L. Ignatius
Commissioner

Attested by:

Debra A. Howland
Debra A. Howland
Executive Director