

DE 10-261 - PSNH LCIRP Staff Closing Statement

RSA 374:4 grants this Commission the power to “keep informed as to all public utilities in the state, their capitalization, franchises and the manner in which the lines and property controlled or operated by them are managed and operated, not only with respect to the safety, adequacy and accommodation offered by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements.” RSA 374:4. In this proceeding, the Commission is called upon to examine and assess the adequacy of the Least Cost Integrated Resource Plan (LCIRP) filed by Public Service of New Hampshire (PSNH), as required by the provisions of RSA 378:37 and 378:38. This Commission also has the power to assess PSNH’s compliance with the terms of Order No. 24,945 (February 27, 2009) and Order No. 25,061 (December 31, 2009), which set the parameters for PSNH’s current LCIRP, and required PSNH to perform a study of the costs of continuing the ownership and operation of its Newington Station plant. Order No. 25,061 at 31.

Staff is of the opinion that, with respect to the non-Newington Station study portion of the current LCIRP filing, PSNH has provided sufficient information to Staff and the Commission to enable an informed analysis of the LCIRP’s compliance with the provisions of RSA 378:37 and 378:38. However, Staff can not support a conclusion that PSNH and its consultant provided sufficient information regarding the Newington Station Continued Unit Operation (CUO) study to enable Staff and its consultant to properly assess the quality of the study and the substantive conclusions presented therein.

1. Non-Newington Station LCIRP

Staff has reviewed the non-Newington Station portion of the LCIRP filing made by PSNH. With one exception, Staff finds that portion to be generally acceptable, and compliant

with the terms of RSA 378:37 and 378:38. As discussed by Staff witness George McCluskey in pre-filed testimony and at hearing, Staff does have concerns arising from the Demand-Side Resources assessment required by Order No. 24,945, and presented by PSNH in its current LCIRP filing. *See* Order No. 24,945 at 7-9. Specifically, that assessment, along with information provided by the Company in response to discovery, indicates to Staff that PSNH is planning to increase by about 300 percent its spending on non-electric energy efficiency programs for residential customers over the next five years. (Non-electric programs are programs that are designed to reduce customers' consumption of fuels other than electricity (for instance, fuel oil)). *See, e.g.*, Hearing Transcript 4/5/12, Afternoon, p. 58-65.

Staff's primary concern with this plan is that it will produce little or no cost savings for the general body of PSNH residential electric customers who will be required to foot the bill for the increased spending. Because there are no significant electric-related cost savings to offset the increased program costs, the programs are uneconomic from an electric customer standpoint based on the standard application of the Total Resource Cost (TRC) test. The TRC test has been used by the Commission for many years as the sole determinant of whether proposed demand-side resources are cost-effective relative to alternative supply-side resources, and therefore worthy of inclusion in a least cost plan. Historically, if proposed demand-side resource programs failed this test, they were generally excluded from further consideration by utilities. Clearly, the approval of a plan to add demand-side resources to a resource portfolio that produce no electric savings benefits for electric customers as a class would be a major deviation from the Commission's established practice.

Ever since integrated least cost planning was first instituted in New Hampshire almost two decades ago, the Commission and its Staff have worked diligently to ensure that demand-

side resources received fair and equal treatment in the resource planning process, compared to supply-side resources. Staff is concerned that approval of a plan to significantly increase the budgets for non-electric demand-side resource programs would amount to an abandonment of established demand-side management operating principles and criteria that ensured fair treatment for all resources, on an economic basis, in the planning process. Staff therefore encourages the Commission to reject PSNH's plan, and to mandate a more effective and economic demand-side resources plan focused on electric power savings for PSNH customers.

2. Newington Station CUO Study

Staff will not reiterate in full detail the technical arguments made by Staff witnesses George McCluskey and Edward Arnold, developed in response to the Newington CUO study prepared by PSNH's consultant, Levitan & Associates, Inc. (Levitan). Subject to the clarifications and corrections presented at hearing, Staff stands by its conclusions presented in its pre-filed testimony, including the report submitted by Staff's consultant, Edward Arnold of Jacobs Consultancy (Jacobs). The substance of those conclusions may be summarized as follows: the modeling and data errors unearthed during Staff's review of the Newington Station CUO study have necessitated revisions by PSNH and Levitan to the projected benefits of Newington Station of such a magnitude that the reviewer can have little confidence that the final estimates are free of additional material errors.

Staff notes that in past engagements Mr. Arnold has prepared economic analyses of major capital-investment projects by key players in the energy industry, including Monte Carlo analyses such as that featured in the Newington Station CUO study. Hearing Transcript, 5/19/12 Afternoon, at p. 28-29. Mr. McCluskey of Staff also has broad experience in economic analysis and utility regulation, including discounted cash flow analyses of merchant power plants. The

primary conclusion presented by Staff relating to the Newington Station CUO study is that Staff and its consultant Jacobs lacked adequate information to provide the Commission with a definitive opinion regarding the economics of continued operation. As such, Staff can not endorse the use of the Newington CUO study as a guide for the Commission's decision-making relating to this capital asset of PSNH.

This lack of adequate information did not arise through lack of effort by Staff and its consultant Jacobs. PSNH and its consultant Levitan failed to make sufficient information available to Staff and Jacobs, including direct access to the model. The discovery responses, and written and oral presentations, provided by PSNH and Levitan regarding the study did not provide Staff and its consultant with the information needed to conduct a complete review of the study's methodology and conclusions. Hearing Exhibit Staff-1, "Staff Exhibit 9," at p. 2; Hearing Transcript, 5/19/12 Afternoon, at p. 24-33; Hearing Transcript, 5/10/12, p. 33-38.

PSNH and Levitan rely, in a conclusory fashion, on the lack of a non-disclosure agreement between Staff/Jacobs and PSNH/Levitan to explain their failure to provide this necessary information, including direct access to the model, regarding the Newington Station CUO study to Staff and its consultant. This is a facile argument in light of the record facts. PSNH and Levitan surprised Staff with a request for a non-disclosure agreement mid-day on May 31, 2011, less than three days before the pre-arranged onsite visit between Staff/Jacobs and PSNH/Levitan at the offices of Levitan in Boston (June 3, 2011). Hearing Exhibit Staff-4, p. 1-4. The original non-disclosure agreement proposed by PSNH and Levitan was impermissible, as it would bind Staff in violation of RSA Chapter 91-A and RSA 363:30, VII, which charges Staff and its consultants with providing information to the Commission without undue restriction;

Staff promptly informed PSNH and Levitan of this concern. Hearing Exhibit Staff-4 at p. 4; Hearing Transcript, 5/19/12 Afternoon, at p. 33-45.

Despite the tight time frames involved, and the serious legal problems with the original version of the non-disclosure agreement presented by PSNH/Levitan, Staff and Jacobs worked in good faith to develop a non-disclosure agreement that would acceptably bind Jacobs and be acceptable to PSNH and Levitan prior to the Staff/Jacobs visit to Levitan headquarters. *See* Hearing Exhibit Staff-4. PSNH and Levitan were advised by Staff on June 6, 2011, in unambiguous terms, of the need for such an agreement, and access to the needed input data and modeling access. Staff made clear to PSNH and Levitan on June 6, 2011 that failure by PSNH and Levitan to accommodate such an agreement, and concomitant access to input data and the Levitan model, would likely jeopardize Staff's ability to provide a definitive conclusion regarding the value of the Newington Station CUO study. Hearing Exhibit Staff-10. Jacobs' request that it be allowed to retain a copy of its own work product for legal reasons for a period of time following issuance of its report on the Newington Station CUO study was commercially and legally reasonable, in light of Jacobs' past practice, and posed no threat to the proprietary confidential information of Levitan or PSNH. The apparent abandonment of nondisclosure agreement negotiations by PSNH and Levitan (*see* Hearing Exhibit Staff-8), in light of Staff's communication of June 6, 2011, was an error in judgment for which the burden can not be shifted to Staff under New Hampshire law.

Under RSA 374:4, the Commission has a clear duty and power to keep informed regarding how the capital assets of PSNH are managed and operated, and as to how PSNH is complying with all provisions of law and orders of the Commission. The Newington Station CUO study was commissioned by PSNH in compliance with Commission Orders No. 24,945

and No. 25,061, and within the framework of the LCIRP statutes. It thereby follows that the Commission, in its enforcement of its own Orders and related statutes, has the right to all information relating to the preparation and conclusions of the Newington Station CUO study, proprietary or otherwise, and that PSNH and its agents have a reciprocal duty to supply the Commission with such information pursuant to RSA 374:4.

Moreover, under RSA 374:5-a, the Commission has the power to “utilize and employ a consultant firm to provide it with technical assistance in evaluating cost factors relating to the effective use of substantial investments of utilities regulated by the commission.” RSA 374:5-a. Also, pursuant to RSA 363:30, VII, in adjudicative proceedings, “any consultants and other contractors retained by the commission for the purpose of assisting the commission and its employees in providing advice or information, or for the purpose of supplementing the work of the commission and its employees,” are included within the definitional ambit of Commission Staff.

In this adjudicative proceeding, the Commission, through its Staff, had retained Jacobs to evaluate the cost factors relating to the substantial ongoing capital investment represented by Newington Station, a facility owned by a utility regulated by the Commission, PSNH. Jacobs, in providing advice and technical information to Staff and the Commission through its contribution to Staff’s testimony and informal consultations, was engaged in activities that brought Mr. Arnold and Jacobs within the ambit of Commission Staff under New Hampshire law. Staff, in turn, is responsible for serving as a conduit of information and advice to the Commission to enable it to properly discharge its duties under RSA 374:4. Staff firmly believes that PSNH thereby bore the burden of ensuring that it, and its agents, properly discharged their duties to

keep the Commission, Staff, and Jacobs informed as to the details of the Newington Station CUO study pursuant to RSA 374:4.

In light of these statutory duties, PSNH's, and Levitan's, refusal to supply needed access to input data and models used to conduct the Newington Station CUO study is unacceptable. PSNH's and Levitan's assertions related to allegedly equivalent substitute input data, and the role of "backcasting" in providing insights into the workings of the Levitan model used in the study, are extraneous to the principle elaborated in New Hampshire law that the Commission, its Staff, and its consultants, are entitled to be informed through the direct submission of information by the utility. (In any instance, Mr. Arnold of Jacobs testified that the alleged substitute data pointed to by PSNH and Levitan could pose serious consistency problems). Hearing Transcript, 5/19/12 Afternoon, at p. 46-57.

PSNH should not have been surprised by Staff's (and Jacobs') inquiries regarding the Newington Station CUO study, as this study was filed within the context of a Commission adjudicative proceeding and subject to the Commission's power to be kept informed under RSA 374:4. Any attempts by PSNH and its consultant to withhold information from the Commission, its employees, or its consultants should be viewed as failures to meet the utility's duties to the Commission, independent of Staff's positions taken in a given proceeding.

Going forward, Staff strongly recommends that, in all Commission proceedings, petitioners be required to supply all input data and provide complete access, as defined by Staff, to proprietary models used in economic, financial, or engineering analyses of public utilities' capital assets, existing or proposed, to Staff and its consultants. The Commission, as part of its plenary authority under RSA 363:30, 374:4 and RSA 374:5-a, should incorporate this requirement as part of the decisional Order for this proceeding. If existing safeguards against the

disclosure of confidential or commercially sensitive information under New Hampshire law by the Commission, Staff, and Commission consultants would not be sufficient for a potential consultant of a utility, a utility would ideally be required to decline retention of such a consultant (and would also ideally be required to alert potential consultants of the Commission's informational requirements in advance of retention). Such a bright-line clarification of the existing statutory requirements of RSA 374:4 and other Commission statutes for the provision of information to Commission Staff and its consultants would check any tendency to use outside consultants as a shield against Commission inquiries into utility operations and planning methodologies.

In terms of the Commission's clear interest in the operating economics of Newington Station, as evidenced by Orders No. 24,945 and No. 25,061, Staff would recommend that the Commission set aside, for decisional purposes, the Levitan Newington Station CUO study submitted by PSNH in this proceeding, as Staff can not recommend the granting of any probative weight to the results of this study for the reasons discussed at length in pre-filed testimony and at hearing. As stated at hearing, Staff could support the commissioning of a new, independent, Staff-directed study of the economics of Newington Station's continued operation, with an RFP to be issued in the fall of 2012 and formal submission of the study to the Commission in 2013. Any such contract would be made subject to the requirements outlined above relating to access to data and models by the Commission, Staff, and their consultants.