

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 11-094

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Reconciliation of Energy Service and Stranded Costs for Calendar Year 2010

Order Approving Stipulation

ORDER NO. 25,321

January 26, 2012

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 G. Amidon, Esq., on behalf of Commission Staff.

I. PROCEDURAL BACKGROUND

On May 2, 2011, Public Service Company of New Hampshire (PSNH or Company) filed testimony with related 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 2010. 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 2000.¹ PSNH recovers its costs of providing power from its generating units and supplemental power purchases through its ES charge.

In *Public Service Co. 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

¹ 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.

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 service and default 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 an SCRC charge. Additionally, customers purchasing their energy supply from PSNH pay a default energy service charge, referred to by PSNH and other electric utilities as "energy service."²

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 Commission had determined that once Part 3 stranded costs had been fully recovered, the

² 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).

difference between revenues collected and prudently incurred costs associated with default energy service would be reconciled in the energy service rate. *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 revenues from sales of energy made in the wholesale market.

The Office of Consumer Advocate (OCA) filed a letter on May 3, 2011 stating that it would participate in this docket on behalf of residential ratepayers pursuant to RSA 363:28.

The Commission issued an Order of Notice on May 20, 2011 scheduling a prehearing conference on June 9, 2011. The Commission received no petitions to intervene. On June 10, 2011, Staff filed a letter with a proposed procedural schedule, which the Commission approved on June 14, 2011.

On July 12, 2011 PSNH filed a motion for protective order for responses to Staff Data Request 1-32 regarding fuel supply contracts. PSNH filed an additional motion for protective order on September 13, 2011 for PSNH's power purchase guidance and considerations policy. On October 14, 2011, Staff filed the testimony of its consultant, Michael D. Cannata, Jr. P.E., of Accion Group (Accion).

On November 22, 2011, PSNH filed a Stipulation and Settlement Agreement (Stipulation) between the Company and Staff. The filing indicated that the Stipulation resolved all issues between the PSNH and Staff with the exception of one issue to be presented to the

Commission at hearing.³ On November 28, 2011, PSNH filed the corrected testimony of Frederick White along with corrected copies of Attachments FBW-2, FBW-3, and FBW-5.

The hearing on the merits took place on November 29, 2011. At the hearing, the Commission reserved Exhibit 6 for a record request regarding the Company's proposal to address Accion's recommendation that PSNH acquire in-house capability to undertake transient stability analysis. *See* Accion Testimony, Exhibit 4 at 13.

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 (NUSCO) provided an overview of the reconciliation between the revenues and expenses as reported in PSNH's ES and SCRC filings for the twelve-month reporting period from January 1 through December 31, 2010.⁴ Mr. Baumann explained that ES costs include the fuel costs associated with PSNH's generating units as well as costs and revenues from energy and capacity purchases and sales, New Hampshire Renewable Portfolio Standard compliance costs (RSA Chap. 362-F), Regional Greenhouse Gas Initiative (RGGI) costs (RSA 125-O:19-28) and IPP power valued at market prices. In addition, ES costs include the non-fuel costs of generation including non-fuel operation and maintenance (O&M) costs, depreciation, property taxes and payroll taxes, uncollectible costs attributable to ES sales, and a return on net generation investment. Mr.

³ The disputed issue concerned Accion's recommendation that PSNH acquire in-house capability to undertake transient stability analysis.

⁴ NUSCO provides services to Northeast Utilities' affiliates, including PSNH.

Baumann said that all of these costs are associated with PSNH's ownership of generation. Exh. 1 at 5.

According to Mr. Baumann, during the period from January 1 through December 31 2010, ES costs exceeded revenues by \$10.4 million. Mr. Baumann stated that over \$3 million of the under-recovery related to the timing of the receipt of insurance payments for replacement power costs associated with a 2008 outage at Merrimack Station. He testified that those payments were originally expected to be received in December 2010 but as of the date of the filing were expected to be received sometime in 2011. The remaining under-recovery, according to Mr. Baumann, was primarily due to higher O&M overheads and return on rate base and changes in revenue levels as compared to those levels contained in the forecast used to support the ES rate that took effect on July 1, 2010 in Docket No. DE 09-180.⁵ *Id.* at 2.

Mr. Baumann testified that the SCRC recovers costs categorized as "stranded" by RSA Chap. 374-F and Chap. 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. PSNH expects Part 1 recovery to end in May 2013 when the RRBs are scheduled to be paid off. *Id.* at 6.

Mr. Baumann testified that 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-

⁵ See Order No. 25,121 (June 28, 2010).

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 said that while the timing of Part 2 cost recovery depends on the type of costs, Part 2 costs have decreased and will continue to decrease as the rate orders and contracts for various IPP contracts expire. In addition, Mr. Baumann stated that the credit for Part 1 related deferred taxes pertaining to RRBs will end in 2013 once all Part 1 costs are fully recovered. According to Mr. Baumann, the net balance for the SCRC as of December 31, 2010 was an over-recovery of \$2.4 million. He attributed the over-recovery to higher actual than forecasted sales and a \$0.8 million decrease in the Yankee contract obligation. *Id.* 2.

PSNH witness Frederick B. White, Supervisor of the Wholesale Power Contracts department at NUSCO, described how PSNH's generation resources and supplemental purchases were used to meet PSNH's energy and capacity requirements over the period January 1 through December 31, 2010. Mr. White explained that, as a load-serving entity, PSNH is responsible for having sufficient energy to meet the hourly needs of its customers and for having sufficient capacity available to satisfy its share of the Independent System Operator-New England (ISO-NE) capacity requirement. He said that PSNH meets its requirements through its owned generation, purchases mandated by the Public Utility Regulatory Policy Act (PURPA) under short term rates and long term rate orders, and through supplemental purchases of energy and capacity from the market.

Mr. White testified that, as of December 2010, PSNH's generation resource portfolio comprised the following resource groups: hydroelectric (58 megawatts (MW) from nine stations); nuclear (20 MW from the Vermont Yankee purchased power arrangement); coal and wood (589 MW from Merrimack and Schiller Stations); gas/oil (419 MW from Newington and Wyman 4); combustion turbines (83 MW from five units); and non-utility generation (42 MW from the numerous PURPA-mandated purchases and 10 MW from one IPP buyout replacement contract). According to Mr. White, PSNH also served a portion of its customers' energy requirements via three unit-contingent power purchase arrangements (Bethlehem, Tamworth and Lempster Wind). Attachment FBW-1 to Mr. White's testimony lists the generation resource portfolio. *Id.* at 50.

Mr. White stated that, on average, PSNH met 74% of on-peak period energy requirements and 82% of off-peak period energy requirements with its owned generation resources listed on Attachment FBW-1 to his testimony. Mr. White testified that PSNH's remaining energy needs were met through a combination of bilateral or spot market energy purchases through the ISO-NE. According to Mr. White, PSNH does not own sufficient generating capability to meet its customers' energy requirements in all hours and, as a result, must purchase a portion of its customers' energy needs. He said that purchase requirements change hourly and can range from zero to a significant portion, depending on the availability of PSNH's resources, the level of demand, the migration of customers to competitive energy service options and the relative economics of PSNH's generation versus purchase alternatives. In addition, according to Mr. White, PSNH's supplemental purchase requirement is significantly influenced by the economics of Newington Station. He stated that when Newington's fuel

expense is lower than the cost of purchasing power, the unit can be dispatched and PSNH's supplemental needs are significantly reduced. Further, forced and planned outages of PSNH's generating units also increase the need for supplemental purchases. Mr. White said that the combined expense for all supplemental energy purchases was \$108.4 million. *Id.* at 50-52.

Mr. White testified that PSNH also experienced hours where its supply resources exceeded its customers' energy needs. For those hours, PSNH sold excess energy into the ISO-NE spot market. He said that the combined revenue for all surplus energy sales was \$26.7 million. *Id.* at 52.

Regarding PSNH's capacity requirements for the period January 1 through December 31, 2010, Mr. White testified that approximately 86% of PSNH's capacity needs were met with generation resources, including PSNH-owned assets, non-utility IPPs, the Vermont Yankee purchase power agreement and the Hydro-Quebec interconnection capacity credits. Mr. White said that the remaining 14% was procured through ISO-NE at a total cost of \$12.6 million. According to Mr. White, PSNH's owned resources provided 13,681 MW-months of capacity to ISO-NE which created over \$53.4 million in revenue credited to the energy service rate. *Id.* at 53-54.

Mr. White testified that PSNH had participated in auctions for financial transmission rights (FTRs) as a method of hedging the congestion price differential between its major fossil stations (Merrimack, Schiller and Newington) and the New Hampshire load zone. Mr. White 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. White, in 2010 PSNH procured at auction 1,866 gigawatt-hours

(GWh) of FTRs at a net cost of \$31,000. The FTRs eliminated \$400,000 of congestion charges, resulting in a net decrease to ES expense of \$369,000. *Id.* at 55.

At hearing, Mr. White explained that while the update to his testimony filed on November 28, 2011 corrected minor errors in his original testimony, Mr. Baumann had used the correct numbers in the calculation of over- and under-recoveries and, therefore, the corrections did not impact the reconciliation presented by the Company in its initial filing. Hearing Transcript of November 29, 2011 (11/29/2011 Tr.) at 26-27.

William H. Smagula, Director of Generation for PSNH, provided testimony regarding the performance of PSNH's generating units during 2010 including information on all outages that took place at PSNH fossil-fired, hydroelectric and biomass units, and those at NextEra Energy Resources, LLC's (formerly FPL Energy) Wyman Station Unit No. 4 in Maine, of which PSNH is a minority owner. He said that PSNH's generating units provided total generation in 2010 equal to 3,982,584 MWh, and that the fleet's availability was 93.8% during the 30 highest peak days when customers' exposure to high market prices was the greatest. In addition, Mr. Smagula testified that Merrimack Station Unit 2 had an increase in summer claimed capacity from 320 MW to 338.375 MW which allowed it to increase its net output from 320 MW to 332 MW. According to Mr. Smagula, Merrimack Station Unit 1 and 2 each underwent scheduled outages which were completed accident free, ahead of schedule and with quality results. Exh. 1 at 63-64.

Mr. Smagula testified that Schiller Station Unit 5, the biomass unit, ran for 100 consecutive days before coming off for its scheduled annual outage, its second longest run in its history. While the three units at Schiller Station generated 761,924 MWh, Schiller Unit 5 contributed 316,906 MWh in renewable energy production. Mr. Smagula testified that PSNH's

hydroelectric facilities generated 338,700 MWh in 2010 and that Newington Station completed the year with 96.2% equivalent availability. PSNH's generation stations' overall aggregate equivalent availability for 2010 was 84.4%. *Id.* at 64. Mr. Smagula said that, in 2010, PSNH's generation division continued to focus on plant operations and long-term planning to provide benefits to customers through safe, reliable, compliant and cost-effective operations and management. *Id.* at 65.

Mr. Smagula provided a list of all unplanned outages that took place during the period January 1 through December 31, 2010. In addition, PSNH provided outage reports for all unscheduled outages in excess of two days at either Newington Station or at the two units at Merrimack Station, and in excess of four days at the three units at Schiller Station and Wyman. PSNH also provided the planned maintenance outage schedule for Staff's review as is customary in the annual reconciliation dockets. *Id.* at 65-66.

Finally, Mr. Smagula noted that in the 2009 reconciliation proceeding, Docket No. DE 10-121, PSNH entered into a Stipulation with the Staff whereby the Company agreed to provide certain updates in the instant filing, including certain recommendations continued from the 2008 reconciliation in Docket No. DE 09-091. He said that those updates, four in total, were included with the petition filed in this docket. *Id.* At 73.

At hearing, PSNH testified that the Stipulation in the current proceeding between PSNH and Staff resolved all issues identified by Staff's consultant, Accion, in its review of the Company's filing. According to the Company, it agreed in principle with the recommendation that PSNH acquire in-house capability to conduct necessary transient stability analysis but was

uncertain whether PSNH should acquire the capability in-house or use outside engineering for that work. 11/29/2011 Tr. At 19-20.

PSNH requested that the Commission approve the Settlement Agreement. On December 13, 2011, PSNH filed its response to the record request, identified in the record as Exhibit 6, which indicated that the Company would adopt Staff's recommendation that PSNH acquire the in-house capability to conduct transient stability analyses.

B. Office of Consumer Advocate

The OCA pointed out that the purpose of this docket is to look back at PSNH's performance in a prior year. The OCA further noted that PSNH's rebuttal testimony in Docket No. DE 10-261, PSNH's 2010 Least Cost Integrated Resource Plan proceeding, contained a statement that the capital investment level used for Newington Station is appropriate and further stated in that testimony that "the Commission Staff's consultant in Docket No. DE 11-094 reached the same conclusion."⁶ At hearing, Accion agreed that its review in the reconciliation docket should not be considered as pre-approval in any other docket. The OCA requested that the Commission make it clear in its order that Accion's opinions regarding PSNH's conduct in the instant proceedings not be considered in Docket No. DE 10-261 as approval for future plans by the Company. *Id.* at 69.

The OCA noted that in 2010, PSNH experienced a loss of \$3.3 million in sales of surplus power from its owned units and \$8.3 million in sales from power it purchased through bilateral and spot energy procurements. The OCA recommended that PSNH be disallowed from

⁶ See October 26, 2011 Joint Rebuttal Testimony of William H. Smagula and Elizabeth H. Tillotson in Docket No. DE 10-261 at bates stamp pp. 17-18.

recovering the total \$11.6 million from customers or that the loss be shared equally between ratepayers and shareholders. *Id.* at 70.

The OCA also recommended that the Commission issue a request for proposals (RFP) to secure consulting services required by Staff for the review of PSNH's annual reconciliation filing and that the RFP specifically require that a qualifying consultant would include engineering expertise as well as experience in operating and managing generation plants in a market environment. *Id.*

C. Commission Staff

Mr. Cannata testified that Accion was engaged to review the following aspects of the filing: (1) the market-based capacity and energy transactions performed by PSNH that augmented the Company's owned generation to supply energy service in 2010; (2) outages that occurred at all PSNH generating units in 2010; and (3) PSNH's efforts to meet recommendations and agreements in prior reconciliation dockets, specifically Docket No. DE 09-091, the ES/SCRC reconciliation proceeding for calendar year 2008, and Docket No. DE 10-121, the ES/SCRC reconciliation docket for calendar year 2009. In addition, Mr. Cannata presented Accion's views regarding unit availabilities and capacity factors, heat rates of PSNH's generating units for 2010 and the adequacy of future capital and O&M expenditures for reliable and efficient plant operation. Exh. 4 at 3.

Accion concluded that PSNH's filing is an accurate representation of the capacity and energy purchasing process that took place in 2010. Accion also concluded that PSNH made sound and prudent management decisions with regard to such purchases in a market environment consistent with the Company's most recently accepted least cost integrated resource plan. *Id.* at

4-5. According to Accion, PSNH made progress in making short-term sales of excess energy and capacity and developed additional procedures to govern all aspects of supplemental energy purchases and sales. Accion determined that the Company's actions were consistent with the stipulation approved in Docket No. DE 10-121 and significantly reduced customer costs, as demonstrated by the drop in the net cost of supplemental energy service from \$217 million in 2009 to \$81.8 million in 2010. Accion also found that the 2010 capacity factor projections for PSNH's units used for making 2010 market purchase decisions were reasonable. *Id.* at 5. Accion recommended that PSNH continue to focus on the short-term market in the near future as market prices are expected to remain low in the near-term.

Regarding PSNH's generating units, Accion found that the base load units on the PSNH system ran as well or better than forecasted; for capacity, PSNH's units performed at a lower level than anticipated. Accion noted that PSNH had forecast no economic reserve shutdowns⁷ to its base load units for 2010 when economic reserve shutdowns significantly reduced expected capacity factors in 2010. *Id.* at 6.

Accion reviewed outage information, conducted on-site interviews and submitted follow-up requests for information as needed. Accion concluded that PSNH conducted proper planning and management oversight regarding the planned and forced unit outages. *Id.* at 6-7. Accion found the outages to be reasonable and not unexpected for the particular units and their vintages, or that the outages were necessary for proper operation of the units with the exception of the following outages: Schiller Outage 4-C; Ayers Island Outages 1-C and 2-C; and Wyman 4 Outage 4-N. Accion recommended that PSNH be disallowed from recovering the replacement

⁷ An economic reserve shutdown is an operating event where a unit is available and ready to run, but is not dispatched to run because its operating costs are higher than other available units in the dispatch region.

power costs associated with these outages from customers, and be required to calculate those costs according to the same method it has consistently used in prior such instances. *Id.* at 8-10.

Based on its review of unit outages, Accion made recommendations to support PSNH's efforts in improving unit operations. The first recommendation related to the outage at Merrimack Station Unit 1 on November 8, 2011 (identified by Accion as Outage MK 1-G). The outage occurred when the unit was being returned to service after an economic reserve shutdown. Accion said that this unit has not historically experienced economic reserve shutdowns and recommended that PSNH review unit startup procedures for Merrimack, Newington and Schiller Stations to determine if changes need to be made to start-up procedures when coming on line after longer than normal down times. *Id.* at 10-11.

The next recommendation pertained to an outage that occurred at Schiller Station from February 26, 2010 through April 1, 2010 and is identified as Schiller Outage 4-A. When the unit returned to service following an annual maintenance outage, a leak developed in an air injection gasket. Accion recommended that when contractor or company personnel suspect that gasket installations are problematic, they should notify PSNH management and evaluate the need for rework during the time of the outage schedule. Accion recommended this change be implemented at all plants. *Id.* at 11-12.

The third recommendation resulted from a series of outages at the Canaan hydro unit identified as Outages 1-C, 1-D, 1-E, 1-F, 1-G, 1-K and 1-M. Accion said that these outages resulted from tree failure outside the trim zone. Accion noted that the 335 and 355X10 circuits were trimmed in 2008 and 2007, respectively, and the failure of the trees so soon after trimming suggests that either danger trees were not identified and removed or that deadwood above the

conductors was not removed. Accion recommended that PSNH conduct a vegetation inspection of the 335 and 355X10 main line 34.5kV circuits, that the results of that inspection be included with the 2011 reconciliation filing to be made in 2012, and that a final determination regarding PSNH's ability to recover replacement power costs associated with these outages be deferred for consideration in that proceeding. *Id.* at 12-13.

Accion made its fourth recommendation after reviewing outages experienced by PSNH's small hydro units and outages at the Garvins Falls and Hooksett hydro units. Accion surmised that many of these outages related to instability caused by long coordination times as protective equipment is layered onto the electric distribution system. Accion recommended that PSNH obtain the in-house ability to perform transient stability analysis to help resolve inadvertent generator overtrips caused by faults in the distribution system and to determine proper time delays of undervoltage relays to maintain properly cleared faults. *Id.* at 13.

Accion's final recommendation related to issues occurring during planned maintenance outages at the small hydro units. Accion said that there had been an increase in the number of routine maintenance outages where emergent issues dramatically extended what were planned as relatively short outages, with attendant increased costs to customers. Accion identified a need for PSNH to timely recognize the emergent repair needs and recommended that PSNH focus its non-destructive examinations on major hydro components and develop a comprehensive plan to address the results of such examinations. *Id.* at 13-14.

Accion also reviewed PSNH's efforts to comply with the recommendations that were incorporated into stipulations in Docket No. DE 09-091, PSNH's 2008 reconciliation docket and

Docket No. DE 10-121, PSNH's 2009 reconciliation docket. Accion commented on each open recommendation and recommended closing all open items except the following:

1. Mitigation of customer costs related to Merrimack Unit 2 outage. Accion said that PSNH has collected all but \$5,812,161 from its insurance carrier for replacement power costs associated with this outage (repair of the IP/HP turbine damaged by foreign material). PSNH said that its insurance carrier had investigated the root cause of the foreign material that damaged the newly-installed high power turbine, concluded that Babcock & Wilcox introduced the foreign material, and commenced legal action against Babcock & Wilcox to recoup its loss. PSNH stated that it had joined in the suit. PSNH said if recovery is made, PSNH would receive the \$1 million deductible it incurred and would credit that amount back to customers. Accion recommended that this issue be closed when PSNH makes a final accounting of the insurance proceeds and credits to the Commission. Accion also recommended that a new stipulated item be opened to track PSNH's efforts in recovering the \$1 million deductible. *Id.* at 15-16.
2. Schiller warranty items. Accion said that the remaining issues associated with the Schiller warranty items were the inadequate soft start capabilities of the forced draft and induced draft fans. Accion reviewed reports filed by PSNH on February 1, 2010 and May 1, 2011; in those reports PSNH said that both issues they successfully resolved with Alstom, the contractor, which resulted in a \$1.5 million payment to PSNH. Based on this development, Accion recommended that the Commission close the issue when PSNH files a complete accounting of the proceeds and credits with the Commission. *Id.* at 16.
3. Interconnection of PSNH's generation units to PSNH's distribution system. Accion reviewed the reports PSNH filed with the Commission on May 7, 2010 and May 1, 2011. According to Accion, PSNH's investigations identified issues related to protection coordination in areas near hydro units, the tightness of the overspeed relay settings and the timer settings of its undervoltage relays. Because transient stability of the hydro units appears to be involved in the inadvertent trips of those units, Accion recommended that PSNH develop resources in-house to investigate the transient stability issues. Accion said that the transient stability analysis tool will help PSNH analyze requirements in connecting small generators to its systems. Accion recommended that the Commission keep this item open until the transient stability analysis is completed. *Id.* at 17-18.
4. Establish percentage of supplemental energy purchased in two peak quarters. PSNH agreed to establish a percentage of its supplemental on-peak monthly energy needs

Regarding unit availability, capacity factors and heat rates for PSNH's generation units, Accion testified that PSNH's units generally performed as well or better than forecasted from an availability perspective, with very high availability on the highest priced energy days during 2010 when needed to insulate customers from high cost. Accion said that, based on capacity factor, PSNH's units performed at a lower level than expected. Accion stated that PSNH had forecast no economic reserve shutdowns to its base load units when preparing the 2010 ES rate filing and, in actuality, reserve shutdowns significantly reduced expected capacity factors in 2010. Accion said it expected that the trend would continue through 2011. *Id.* at 28. According to Accion, the full load heat rates of PSNH's units have remained relatively constant over the last six years, another indication that capital and maintenance expenditures are adequate. With unit reductions required by ISO-NE dispatch requirements, PSNH has maintained as low a heat rate as possible for its fossil units in the market environment in which it operates, except for Newington. Accion said the increase in the Newington heat rate is due solely to the significant increase in the number of starts and stops required by ISO-NE. *Id.* at 31.

Accion said it reviewed the five-year capital and O&M budgets for Merrimack, Newington and Schiller Stations and for the hydro units. *Id.* at 31. Accion said that PSNH capital and O&M expenditures remain relatively constant at present levels into the future when adjusted for major unit overhauls and other large planned capital expenditures. *Id.* at 32-33.

At hearing, Accion reiterated its view that PSNH should acquire the in-house capability to conduct transient stability analysis. Accion said PSNH had the expertise in its transmission operation, but that rules of the Federal Energy Regulatory Commission (FERC) require utilities to have separate transmission and distribution operations. In response to questioning, Accion

said that PSNH should move forward with its review of how such capability could be acquired and finalize compliance with Accion's recommendation. 11/29/2011 Tr. at 28-29.

Staff recommended that the Commission approve the Stipulation. With regard to PSNH's required post-hearing filing regarding transient stability analysis, Staff stated that it would provide any comments after review of that filing. *Id.* at 71.

III. STIPULATION AND SETTLEMENT AGREEMENT

The Stipulation and Settlement Agreement (Settlement) (Exh. 5) between PSNH and Staff resolved all issues between them with the exception of the issue regarding transient stability analysis. Following the hearing, PSNH filed Exhibit 6 in response to a record request, and indicated that the Company would adopt Staff's recommendation that the Company acquire the ability in-house to conduct transient stability analyses. The Settlement provided resolution of the disputed issues as follows.

Section A of the Settlement stated that PSNH and Staff agreed that PSNH made sound management decisions regarding its 2010 purchases of energy and capacity and that the capacity factor projections used for 2010 were reasonable.

In Section B of the Settlement PSNH agreed to continue to focus on the short-term market in the near future as market prices remain depressed due to low economic activity, growth, and fuel prices resulting in lower market energy prices.

Section C of the Settlement stated that Accion found the outages identified as Schiller Outage 4-C on, Ayers Island Outages 1-C and 2-C, and Wyman 4 Outage 4-N to be unreasonable and unexpected and recommended that PSNH not be allowed to recover the replacement power costs associated with these outages from customers. Section C included PSNH's calculation of

the replacement power costs associated with those outages which are depicted in the following table.

<u>Outage</u>	<u>Replacement Power Cost</u>
Schiller 4 Outage C	\$ 0 ⁸
Ayers Island Outage 1-D	110
Ayers Island Outage 2-C	450
Wyman Outage 4-N	0 ⁹

PSNH agreed not to seek recovery of the \$560 in replacement power costs. The Settlement Agreement stated that PSNH's agreement to forego recovery of such replacement power costs is not an admission of imprudence for any of the outages and is being done in an effort to reach settlement of these issues.

In Section D of the Settlement, PSNH agreed to implement the following recommendations of Accion:

1. Re: Outage MK 1-G. PSNH should review unit startup procedures for all its major units (Merrimack, Schiller, and Newington) to determine if changes need to be made to start-up procedures when coming on line after longer than normal downtimes.
2. Re: Schiller Outage 4-A. PSNH management should be notified of such problems to evaluate the need for rework at that time within the confines of the existing outage schedule rather than potentially impede the maintenance schedule at the conclusion of the outage. This recommendation should be implemented at all plants.
3. Re: Canaan, Outages 1-C, 1-3 D, 1-E, 1-F, 1-G, 1-K, and 1-M. A vegetation inspection of the 355 and 355X main line 4.5kV circuits be performed, and that the results be filed with the 2012 reconciliation filing; and that a final

⁸ PSNH computed the replacement power costs as a negative \$2,961 as Schiller 4's cost would have been over market during this period returning from a scheduled maintenance outage.

⁹ During the time period that the outage occurred, real-time spinning reserve prices were \$0.

determination of recoupment of replacement power costs associated with these outages be deferred to the ES/SCRC 2012 filing.

4. Re: Garvins Falls Outage M-A and Hooksett Outages 1-A, 1-B, 1-C. A vegetation inspection of the 335/332 main line 34.5kV circuits (including the tap to Hooksett Hydro) be performed, and that the results be filed with the ES/SCRC 2012 reconciliation filing; and that a final determination of recoupment of replacement power costs associated with these outages be deferred to the ES/SCRC 2012 filing.
5. Re: Outages at small hydro units. PSNH should obtain the in-house ability to perform transient stability analysis to aid in the resolution of inadvertent generator overtrips caused by faults on the distribution system, and to aid in the determination of proper time delays of undervoltage relays to maintain stability for properly cleared faults. (*See*, Exh. 6).
6. Re: Planning for emergent issues at small hydro stations. PSNH should focus its non-destructive examinations (NDE) on major hydro components (runners, draft tubes, etc.), and develop a comprehensive plan to address the results of the NDE examinations, and to specifically address items such as exciters, runners, step-up transformers, rotors, stators, and draft tubes.

PSNH also agreed to conduct the vegetation inspections discussed in items D.3 and D.4 above in 2011 and to include the results in the May 1, 2012 filing of the reconciliation of 2011 energy service and stranded cost recovery charge revenues and costs.

Finally, Section E of the Settlement stated the resolution of items remaining open from prior reconciliation dockets. Specifically, in Section E, PSNH agreed to certain Accion recommendations in prior reconciliation dockets (Docket No. DE 09-091 and DE 10-121)¹⁰ and those items remained open pending PSNH's completion of the agreed-upon activities. PSNH and Accion agreed to keep the following items open: (1) 2010-1 – Litigation over \$1,000,000 insurance deductible associated with Merrimack 2 Turbine problems; (2) 2009-5 - Interconnection of PSNH Generating Units to the PSNH Distribution System.

¹⁰ See Order No. 25, 060 (December 31, 2009) 94 NH PUC 750 in Docket No. DE 09-091; and Order No. 25,216 (April 29, 2010) in Docket No. DE 10-121.

PSNH and Accion agreed that PSNH had complied with the following recommendations.

1. 2009-1 - Mitigation of Customer Costs regarding certain 2008 generation unit outages (Docket No. DE 09-091);
2. 2009-2 – Schiller Warranty Items (Docket No. DE 09-091);
3. 2009-8 - Hold Manufacturers Responsible for Unreasonable Delays of Shipments of Major Components and Have Shipment Plans in Place (Docket No. DE 09-091);
4. 2010-1 – Siemens' Workmanship Issues (MK-2 Annual Maintenance Outage 2-H) (Docket No. DE 10-121);
5. 2010-2 – Policies and Practices Review of Overtime Expenditures versus Reserve Shutdown (Docket No. DE 10-121);
6. 2010-3 – Policies and Practices Regarding Early Start of Planned Outages (Docket No. DE 10-121);
7. 2010-4 – Coordination Studies in the Area of the Merrimack Combustion Turbines (Docket No. DE 10-121);
8. 2010-5 – Valve Position Irregularity (Docket No. DE 10-121);
9. 2010-6 – GenIS Outage Data base Refinements (Docket No. DE 10-121);
10. 2010-7 – Focus Purchases on the Shorter Term in Non-Peak Quarters (Docket No. DE 10-121);
11. 2010-8 – Establish Percentage of Supplemental Energy Purchased in Two Peak Quarters (Docket No. DE 10-121);
12. 2010-9 – Establish Formal Basis for Non-Hedge Short-Term Purchases and Sales (Docket No. DE 10-121);
13. 2010-10 – Quarterly Review of Supplemental Energy Needs (Docket No. DE 10-121);
14. 2010-11 – Formally Factor Economic Reserve Shutdowns into Supplemental Energy Purchase Process (Docket No. DE 10-121); and

15. 2010-12 – Establish Formal Criteria for the Sale of Supplemental Energy Purchases that Become Surplus (Docket No. DE 10-121).

IV. COMMISSION ANALYSIS

A. Settlement Agreement

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 obligated 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* RSA 369-B:3, IV(b)(1)(A).

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 in this case, we find that the public interest is served by the ability of PSNH and Staff to resolve the issues that arose in this proceeding and with PSNH's willingness to accept numerous additional recommendations to improve its processes and procedures for operating its generation fleet and managing its energy and capacity purchases and sales. We find the terms of the Settlement to be just and reasonable and in the public interest and will therefore approve it. By approving the Settlement, however,

we make no determination regarding the level of investment at any generating unit, as those issues may relate to other dockets before the Commission.

The OCA recommended that the Commission disallow PSNH's recovery of a total of \$11.6 million for losses it experienced in sales of surplus generated and purchased power. Specifically, the OCA said that the Commission should either deny PSNH recovery of the losses or split the recovery of the loss between ratepayers and customers. The record, however, shows that PSNH made progress in making short-term sales of excess energy and capacity and that the decisions it made regarding the sales OCA references were reasonable given the circumstances at the time they were made. For that reason, we will allow PSNH to recover these costs through rates. Finally, we reject the OCA's request that future RFPs for consultant services mandate that applicants have specific experience in plant operations under competitive market conditions. While both operational and market experience are valuable, we will not limit the eligible pool of applicants in advance by constraining the qualifications as OCA suggests.

B. PSNH Motions for Protective Treatment

On July 12, 2011, PSNH filed a motion for protective order for its response to Staff Data Request 1-32 regarding fuel supply contracts. PSNH filed an additional motion for protective order on September 13, 2011 for the response to Tech 1-2 which requested a copy of PSNH's power purchase guidance and considerations policy. PSNH claimed that the information provided in response to these data requests are confidential commercial information potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV.

In response to Staff 1-32, PSNH provided on a confidential basis copies of eight coal supply contracts, two natural gas supply contract documents and three distillate fuel oil contracts.

PSNH said that the contracts are confidential information. With respect to the responses to Staff 1-32 regarding fuel supply contracts, PSNH said that the details of such contracts are confidential information and that public release of the information would harm PSNH by damaging its ability to negotiate fuel supply contracts in the future. PSNH asserted that both parties to these contracts expected the details of the contract to be held confidential and not disclosed to the public and that if suppliers knew that this information would be made public they may not want to negotiate future fuel supply contracts with PSNH. The net result would be less competitive prices for PSNH and higher rates to PSNH customers. PSNH said that a similar motion was granted in Order No. 25,187 (December 29, 2010) in Docket No. DE 10-257, PSNH's proceeding to establish energy service rates for 2011.

Data Request Tech 1-2 requested information regarding PSNH's approach to supplemental energy purchases and sales. PSNH said that the responsive documents describe the guidance and considerations PSNH uses in making supplemental purchases and sales of energy and constitute confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. PSNH said that it had a privacy interest in the responsive materials because PSNH may from time to time be out in the market looking for bilateral purchases or short term purchases to meet its responsibilities to energy service customers or to make sales of excess energy. According to PSNH, in order to maintain the maximum bargaining power with market participants, PSNH's strategies should not be available publicly. If the information were made public, all potential suppliers of supplemental power to PSNH would know of the guidelines which PSNH uses in accumulating its supplemental power supplies for

PSNH, thus putting PSNH at a distinct disadvantage with respect to all other participants in the ISO-NE markets, and ultimately to the disadvantage of its energy service customers.

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 have had occasion to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unutil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) 94 NH PUC 484 at 486 and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009) 94 NH PUC 611 at 615-616.

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 identified by PSNH 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 the instant proceeding, we have reviewed *in camera* the responses to the data requests for which PSNH requests confidential treatment to assist in our deliberation of PSNH's motions

for confidential treatment and we find that the information for which PSNH requests protective treatment is confidential within the meaning of RSA 91-A:5, IV.

Next we assess the public's interest in the disclosure of the information. Some of the information for which PSNH seeks protection pertains to the costs incurred by the Company in connection with fuel supply contracts and its guidance and considerations for purchase of supplemental energy and sales of excess energy. In both instances, the costs incurred by PSNH are included in rates paid by customers so there is an interest in making this information publicly available. In the final step of the analysis, however, where the public interest in disclosure is weighed against the privacy interest, we find that the harm to the Company and its customers from disclosure of this information outweighs the benefits of public disclosure. We therefore grant the motions for confidential treatment for the Company's responses to the data requests identified as Staff 1-32 and Tech 1-2. Based on the foregoing analysis, and consistent with N.H. Code of Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider.

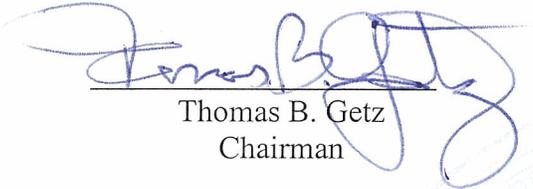
Based upon the foregoing, it is hereby

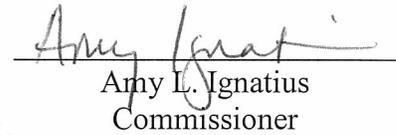
ORDERED, that the Stipulation and Settlement Agreement between Public Service Company of New Hampshire and Commission Staff for the reconciliation of energy service and stranded costs charge costs and revenues for calendar year 2010 is hereby APPROVED; and it is

FURTHER ORDERED, that the agreement of Public Service Company of New Hampshire to acquire in-house the ability to perform transient stability analysis pursuant to Exhibit 6 is hereby APPROVED; and it is

FURTHER ORDERED, that the Public Service Company of New Hampshire's Motions for Protective Treatment are hereby GRANTED.

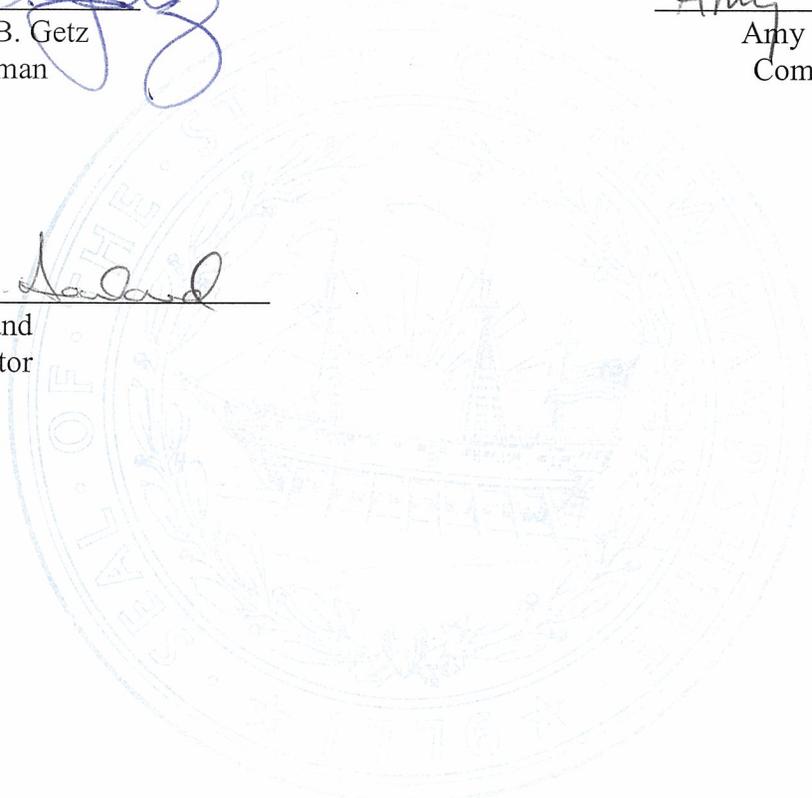
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of January, 2012.


Thomas B. Getz
Chairman


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director



SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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