DE 11-184 PSNH, Wood IPPs and Staff Advocates'
Joint Petition for Approval of Power Purchase Agreements and Settlement Agreement

Office of the Consumer Advocate's Closing Statement

December 5, 2011

This case requires the Commission to consider whether the proposed Purchased Power Agreement (PPAs) between Public Service Company of New Hampshire (PSNH) and the Wood IPPs (Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, and Indeck-Alexandria, LLC) are reasonable, in the public interest, and meet the requirements of applicable law. Based on the evidence, as proposed with over market pricing, the PPAs are not lawful. Therefore, the Commission must reject them as proposed.

The Joint Petitioners propose PPAs which must comply with RSA 374:57:

> Each electric utility which enters into an agreement with a term of more than one year for the purchase of generating capacity, transmission capacity or energy shall furnish a copy of the agreement to the commission no later than the time at which the agreement is filed with the Federal Energy Regulatory Commission pursuant to the Federal Power Act or, if no such filing is required, at the time such agreement is executed. The commission may disallow, in whole or part, any amounts paid by such utility under any such agreement if it finds that the utility's decision to enter into the transaction was unreasonable and not in the public interest.

Under the proposed structure, the PPAs provide only for the purchase of the energy produced by the Wood IPPs by PSNH. The PPAs do not include the purchase of the renewable attributes (RECs) associated with that energy, or capacity. The PPAs, in effect, extend PSNH's long-term contracts with the Wood IPPs for energy supply, for which PSNH customers have already paid sums exceeding $1 billion.

In determining whether the PPAs are reasonable and in the public interest, the Commission must consider the price to be paid by PSNH customers within the context of RSA 369-B:3,

IV(b)(1)(A). This statute requires, among other things, that PSNH produce or purchase energy for its default service customers and provide it to them at the Company's "actual, prudent and reasonable" costs. The Joint Petitioners admit that PPAs will be over market, and they estimated that they could be $25 million over market in just a 21 month period. Particularly when viewed from the perspective of a PSNH customer, millions in over market costs for electric service is neither reasonable nor prudent. Therefore, these energy prices violate RSA 369-B.

In addition, the Joint Petitioners propose that PSNH recover these unreasonable over market costs through a unique ratemaking treatment. Specifically, they propose that PSNH shift the over market portion of the PPA costs from the default energy service rate to the distribution rate. This cost shift would result in energy rates for PSNH default service customers that do not accurately reflect actual costs, and also would impose costs associated with energy on customers who choose a competitive supplier. This treatment is neither lawful nor fair.

To address the possibility that the actual costs of the PPAs to PSNH customers could exceed the Joint Petitioners' current estimate of their total over market cost of $25.2 million, the Joint Petitioners' ratemaking treatment also includes deferral of PSNH's recovery of over market PPA costs if they are more than $8.5 million per year. They also propose that PSNH customers will be required to pay carrying costs for the period of any deferral.

Proposals to shift other costs out of PSNH's distribution rate in order to "make room" in its default energy service rate for the PPAs' over market costs do not cure these legal defects, and contravene PSNH's commitment, in its last distribution rate case, to collect these same costs through distribution rates. This commitment exists until PSNH's rate plan, approved in DE 09-035, expires in 2015.

In making its determinations on the reasonableness of the PPAs, and whether the PPAs are consistent with the public interest, the Commission must be an arbiter, balancing the interests of PSNH's ratepayers and its shareholders. See, e.g., RSA 363:17-a. The interests of unregulated merchant generation owners, such as the Wood IPPs, are not a factor in the Commission's balancing. In this case PSNH has admitted that its customers will be harmed by the over market prices that the PPAs require. PSNH has also testified that its shareholders will not benefit, or face any risks from, the proposed PPAs; so long as the Commission approves the ratemaking treatment proposed, PSNH's shareholders are agnostic. Consequently, the balance tips to the detriment of PSNH customers. Because ratepayers do not benefit from these PPAs, and will instead be harmed by the PPAs over market prices, the Commission cannot find that on balance they are reasonable or in the public interest.

There are no provisions of RSA 374:57 that require the Commission to otherwise consider the interests of the Wood IPPs or putative benefits of the PPAs to the general public. Had the Joint Petitioners structured the PPAs to include RECs, the Commission could have considered the PPAs under RSA 362-F:9. This statute authorizes the Commission to approve certain multi-year purchase agreements proposed by electric distribution companies that provide for the purchase of power as well as renewable energy certificates (RECs) from "renewable energy sources." This statute expressly enumerates a number of different factors that the Commission should consider in making a public interest determination, including the "Economic development and environmental benefits for New Hampshire." The Legislature's plain language, in RSA 374:57, however, does not provide for this broader consideration.

The Joint Petitioners assert that without the PPAs the Wood IPPs may go out of business. They point to difficult economic conditions in the North Country and suggest that the PPAs are a

response to public policy goals. However, particularly in the area of electric restructuring and the regulation of PSNH, the Legislature has carefully crafted a number of different policies. For example, the "restructuring policy principles" of RSA 374-F:3, include requirements that rates be unbundled, competitive, and market-driven. To the extent that the Legislature deems a particular goal to be in the interest of the public good, it so states, and creates explicit mechanisms for carrying out that policy, such as the subsidies paid by ratepayers through the Renewable Portfolio Standard (RPS) law. In order to approve an over market contract for electricity, the Commission must have specific and express authorization from the Legislature.

If it is true that over market PPAs are necessary to prevent the Wood IPPs from closing, the Joint Petitioners can pursue relief from the Legislature. If the subsidies provided by ratepayers to renewable generators under the RPS law are not enough to enable the Wood IPPs to operate, and the State wishes to require that ratepayers subsidize them further, then the RPS law could be amended. The relief requested by the Joint Petitioners is contrary to existing law. Therefore, if it is to be required, it should be mandated by the Legislature and not by the Commission.

In addition, the OCA respectfully requests that in making its public interest determination the Commission give no weight to any factual statements or information in the record that are not sponsored by any witness in the case. Specifically, the OCA objects to any Commission reliance upon factual assertions contained within data responses which were not sponsored by a party's witness. These factual assertions were not provided under oath or subjected to cross examination. Therefore, there is no basis upon which the Commission may assess their accuracy or reliability.

If the Commission does approve these over market PPAs, we urge the Commission to do so only with the following conditions:

1. Energy costs may not be shifted from default energy service to distribution costs, as that would be contrary to the law and in violation of the settlement and Order in PSNH's last distribution rate case (DE 09-035);
2. Any over market costs that the Commission requires ratepayers to pay under these PPAs must be collected through a separate charge on customers' bills, in order to increase transparency and allow ratepayers to understand the choice that was made on their behalf;
3. Any recovery of costs should reflect the actual costs each year, without any deferrals that will increase costs to customers;
4. Any recovery of over market costs should be for as short a period as possible; and
5. The Commission should make clear that any approval of over market purchases by a utility on behalf of its customers is not precedential.

Respectfully submitted,

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