

**THE STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Docket No. DE 11-250

Investigation of Merrimack Station Scrubber Project and Cost Recovery

**MOTION TO AMEND TEMPORARY RATE**

Pursuant to RSA 378:27, RSA 125-O:18, and Rule Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”) respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to summarily amend the temporary rate set in Order No. 25,346 (April 10, 2012) in Docket No. DE 11-250, Investigation of Merrimack Station Scrubber Project and Cost Recovery. The reason for the requested amendment is to permit the full cost of the scrubber project, and a portion of the deferred recovery amount, to be recovered in PSNH’s default energy service rates pending the Commission’s final determinations on the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement (the “Settlement Agreement”) filed on June 10, 2015 in Docket No. DE 14-238, “Determination Regarding PSNH’s Generation Assets.”

PSNH is authorized to represent that Senator Jeb Bradley, Senator Dan Feltes, the Office of Consumer Advocate, Anne Ross and Tom Frantz (Mr. Frantz was the central Staff witness in this proceeding, and now he and Attorney Ross are collectively designated Staff of the New Hampshire Public Utilities Commission who are parties to the 2015 PSNH Settlement Agreement that is the subject of Docket DE 14-238), TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc., and the Conservation Law Foundation all concur in the relief

sought in this motion. In addition, advisory Staff in this docket (DE 11-250) does not object to this Motion.

In support of this motion, PSNH states as follows:

1. In 2006, the General Court enacted 2006 N.H. Laws Chapter 105, “An Act Relative to the Reduction of Mercury Emissions” (codified at RSA 125-O:11, *et seq.*) “to achieve significant reductions in mercury emissions at the coal-burning electric power plants in the state as soon as possible.” RSA 125-O:11, I and required that PSNH install wet flue-gas desulpherization, or “scrubber” technology at its Merrimack Station. The scrubber entered operation in September, 2011, ahead of the July 1, 2013 deadline set by the Legislature in RSA 125-O:11, I.

2. On November 18, 2011, PSNH filed a motion requesting that the Commission establish temporary rates for recovery of the costs of installing the scrubber, pending its review of the prudence and reasonableness of the costs of the scrubber project in Docket No. DE 11-250. Consistent with RSA 125-O:18, the requested temporary rate would be included in PSNH’s default energy service (“ES”) rate. On April 10, 2012, the Commission issued Order No. 25,346 where it concluded, among other things, that the temporary rate would be set at 0.98 cents per kilowatt hour (kWh) consistent with the recommendation of the Commission Staff, and that it would be in effect for service rendered on and after April 16, 2012. *See* Order No. 25,346 at 25-26. As of this filing, the 0.98 cents per kWh “adder” to PSNH’s ES rate has remained in effect for over three and a half years.

3. On September 16, 2014, the Commission issued an order of notice commencing Docket No. DE 14-238. In that order of notice, the Commission stated that:

On August 1, 2014, Governor Hassan signed into law HB 1602, “an act relative to the divestiture of PSNH assets and relative to the siting of wind turbines.” The new law amended RSA 369-B:3-a to require the Commission to “commence and expedite a proceeding to determine whether all or some of

PSNH's generation assets should be divested." Under the new law the Commission "may order PSNH to divest all or some of 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."

In this proceeding, the Commission will be guided by the purposes of HB 1602 which include: maximizing economic value for PSNH's retail customers; minimizing risk to those customers; reducing stranded costs; settling issues surrounding stranded costs; and if appropriate, providing for the continued operation or possible repowering of PSNH's generation assets.

Order of Notice in Docket No. DE 14-238 at 1. Accordingly, the Legislature had determined that the Commission should review, on an expedited basis, whether it was in the economic interest of PSNH's retail customers for PSNH to divest its generating assets, and gave the Commission the authority to order such divestiture to occur if it made such a finding.

4. Over a seven day period in October and November 2014, the Commission conducted hearings relating to the prudence and reasonableness of the costs of the scrubber project in Docket No. DE 11-250. On December 26, 2014, and prior to the Commission issuing an order in the docket, PSNH requested that the Commission stay the docket to permit PSNH to avail itself of "an opportunity to seek a collaborative resolution to the myriad issues that are under consideration" by the Commission. PSNH Motion to Stay Proceedings in Docket No. DE 11-250 at ¶3. The Commission granted the request to stay the proceedings by Order No. 25,755 (January 15, 2015).

5. As a result of the stay, PSNH, and others, negotiated, finalized, and signed the Settlement Agreement which was filed with the Commission on June 10, 2015 and is presently under review by the Commission. The Settlement Agreement addresses and resolves numerous issues relating to the continued ownership and operation of PSNH's generating facilities and provides a plan for PSNH to divest itself of those facilities. Relevant to the instant motion, the Settlement Agreement provides:

Effective January 1, 2016, the Temporary Rate for recovery of costs of the Scrubber shall be changed to reflect recovery of all costs of the Scrubber incurred by PSNH, along with its allowed return on those costs. Upon approval of this Agreement by the Commission, that rate shall be placed into PSNH's Default Energy Service rate for recovery as a permanent rate pursuant to RSA 378:28 and :29 until closing on the RRBs. PSNH's Scrubber costs include the capital and operations and maintenance expense costs of owning and operating the Scrubber, the previously-deferred costs resulting from the temporary Scrubber rate, and final contractual costs upon payment, among others. The previously-deferred costs resulting from the temporary rate level shall be included in rates based upon an amortization period of seven years.

Settlement Agreement Section III.2.D. at lines 314-323. The proposed effective date of January 1, 2016 for the new temporary rate level was premised upon a proposed schedule that anticipated the Commission would issue a final decision on the merits of the Settlement Agreement before the end of December, 2015.

6. The stay granted by the Commission also provided the Legislature with an opportunity to establish the public policy directive concerning the Settlement Agreement. During its 2015 session, the Legislature enacted 2015 N.H. Laws Ch. 221, "AN ACT relative to electric rate reduction financing," that expressly references the Settlement Agreement. That legislation added a new section, RSA 369-B:1, XVI, that reads, "It is in the public interest for the commission to issue a finance order that is subject to the requirements of this chapter and that securitizes any stranded costs resulting from the divestiture of all or some of PSNH's generation assets, if the commission approves the 2015 settlement proposal or otherwise orders divestiture of all or some of PSNH's generation assets." Reference to the 2015 Settlement Agreement was also included in an amended RSA 369-B:3-a, II: "As part of an expedited proceeding, the commission shall review the 2015 settlement proposal and determine whether its terms and conditions are in the public interest."

7. On October 28, 2015, by Order No. 25,831, the Commission lifted the stay, finding that the reasons for the stay were no longer operative.

8. On September 28, 2015, PSNH filed its proposed ES rate for effect on January 1, 2016. The Commission docketed that filing as Docket No. DE 15-415. Based upon the above-referenced provisions of the Settlement Agreement, PSNH noted that in its ES rate proposal it did not use the 0.98 cents per kWh “adder” that had been in effect, but had used an “all in” adder “reflecting the full cost recovery of the scrubber in rates as of January 1, 2016, along with start of the recovery of the deferred balance of scrubber-related costs, as contemplated by the settlement agreement presently under Commission review in Docket No. DE 14-238.” Petition in Docket No. DE 15-415 at ¶2. PSNH further noted that this “all in” adder was subject to adjustment based upon the Commission’s decisions relating to the merits of the Settlement Agreement.

9. Due to various delays in Docket No. DE 14-238, it is now clear that the Commission will not be able to issue a final decision on the merits of the Settlement Agreement prior to the end of 2015. In that the Settlement Agreement specifically provides for an amendment to PSNH’s temporary rate level on January 1, 2016 to reflect the full costs of the scrubber in addition to a portion of the deferred recovery, and that the certain of the economic benefits of the Settlement Agreement rely upon this adjustment to the temporary rate level, PSNH hereby requests that the Commission permit PSNH to amend its temporary rate from the 0.98 cents per kWh presently allowed to allow for the full recovery of costs as described in the Settlement Agreement.

10. If this requested change in temporary rates is not approved, the economics forming the foundation for the Settlement Agreement would be adversely impacted. In particular, and as described below and in the attached affidavit of Christopher J. Goulding, delaying or denying a

change to the temporary rate level will add to the total amount of the deferred costs relating to the scrubber, which will ultimately increase the level of stranded costs to be recovered. Such adverse impact is inconsistent with the statutory requirement in the 2015 law that the 2015 settlement proposal be expeditiously reviewed to determine whether its terms and conditions are in the public interest. Approval of the requested change in temporary rates would retain the *status quo*, and no advantage nor harm would accrue to any party due to the fully reconciling nature of temporary rates.

11. Pursuant to RSA 378:27:

In any proceeding involving the rates of a public utility brought either upon motion of the commission or upon complaint, the commission may, after reasonable notice and hearing, if it be of the opinion that the public interest so requires, immediately fix, determine, and prescribe for the duration of said proceeding reasonable temporary rates; provided, however, that such temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports.

The 0.98 cents per kWh “adder” for the scrubber costs that has been in effect since April 2012 has been inadequate to assure a recovery that yields a reasonable return on the cost of the scrubber. When the current temporary rate was set, Commission Staff witness Steven Mullen assumed that the rate would be in effect for only “a one-year temporary rate period.” February 24, 2012 Testimony of Steven Mullen at p.12, line 11. As was further noted by Mr. Mullen at that time, “A higher temporary rate level will result in a larger initial impact to customers but less deferred costs and, therefore, potentially lower total costs associated with the scrubber project. Conversely, a lower temporary rate level will result in a smaller initial impact to customers but increased deferred costs and, therefore, potentially higher total costs associated with the scrubber project.” *Id.* at p. 10, line 5. As a result of the temporary rate being set where

it was, and because that rate has remained in effect for so long, the deferred costs of the scrubber as of the end of December 2015 are estimated to have grown to approximately \$123.3 million. As shown in Mr. Goulding's affidavit and exhibits, prolonging the adjustment to the temporary rate level to July, 2016, when PSNH's ES rate would next be adjusted, will grow the deferral by another \$10 million, to approximately \$133.2 million. The concerns expressed by Mr. Mullen have come to pass and such a sizable deferral is a strong indication that the existing temporary rate is insufficient and must be adjusted. Given the economic circumstances surrounding the Settlement Agreement and the scrubber, it is reasonable and appropriate for the Commission to adjust the temporary rate level for the scrubber adder to permit full cost recovery.

12. The New Hampshire Supreme Court has stated that "a reasonable temporary rate of return shall be determined expeditiously *if not summarily* with reference to the utility reports filed with the commission" *Public Service Co. of N.H. v. State*, 102 N.H. 66, 70 (1959) (emphasis added). It has further stated that the temporary rate standard is "'less stringent' than the standard for permanent rates, in that temporary rates shall be determined expeditiously, 'without such investigation as might be deemed necessary to a determination of permanent rates.'" *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 660 (1991) (quoting *New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518 (1949)). In *Re Union Telephone Company*, 67 N.H. P.U.C. 161, 162 (1982), the Commission adjusted a temporary rate level upon the company's motion, without an additional hearing, on the basis that, "There is such a discrepancy between the temporary rates and permanent rates filed that unreasonable expense will be incurred in assessing recoupment amounts and refunding overcollections." Such justification – a substantial discrepancy between the temporary rate and what the permanent rate may be, and the resulting incurrence of an unreasonable expense – surely exists in this instance and justifies summarily

amending the temporary rate. In a similar manner, in 2001 the Commission implemented temporary rates for a cost of gas (“COG”) adjustment clause, but permitted the company to “adjust the temporary COG rates upward or downward monthly” based upon its calculations of projected over- or under-collections. *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England*, Order No. 23,828 (October 31, 2001) at 9-10. This ability to adjust temporary rates to mitigate potential over- or under-recoveries demonstrates that temporary rates need not remain at a static level for the duration of the proceeding, and may be adjusted to avoid undesired rate impacts upon the implementation of permanent rates.

13. Under the authority set forth above, PSNH requests that the Commission summarily amend the temporary rate as set forth herein without additional hearing. Should the Commission be hesitant to summarily amend the temporary rate without a hearing, PSNH notes that in Docket No. DE 11-250 the Commission has already held extensive hearings relating to the costs of building and operating the scrubber. Nothing about those costs has materially changed since the time of those hearings in late 2014. Hence, the Commission has already held hearings that have provided it with sufficient information upon which to base any temporary rate adjustment.

14. Accordingly, and as noted in Mr. Goulding’s affidavit, to permit full recovery of the on-going costs of the scrubber, and to begin the recovery of the deferred costs, PSNH requests that the temporary rate be amended from 0.98 cents per kWh to 1.72 cents per kWh for service rendered on and after January 1, 2016. As with any temporary rate, and pursuant to RSA 378:29, upon a final determination by the Commission, the temporary rate will ultimately be reconciled with any permanent rate as determined by the Commission. *See* Order No. 25,346 (April 10, 2012) in Docket No. DE 11-250 at 26 (“For clarity, we reiterate that upon the determination of the permanent rates attributable to the Scrubber addition, any under- or over-recovery will be

reconciled back to the establishment of temporary rates.”) Therefore, both customers and the Company are protected from any harm as a result of this adjustment, and may ultimately benefit because the adjustment will avoid further expansion of the deferral.

**WHEREFORE, PSNH requests that the Commission:**

- A. Summarily amend the temporary scrubber rate as described herein to take effect January 1, 2016, concurrent with implementation of the 2016 ES rate; and,
- B. Grant such further relief as may be just and equitable.

Respectfully submitted this 2<sup>nd</sup> day of November, 2015.

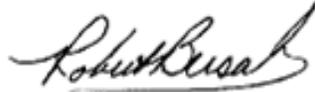
**PUBLIC SERVICE CO. OF NEW HAMPSHIRE  
D/B/A EVERSOURCE ENERGY**

By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2015, I served an electronic copy of this filing with each person identified on the Commission's service list for the Docket pursuant to Rule Puc 203.02(a).



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