BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE INVESTIGATION INTO MARKET CONDITIONS AFFECTING PSNH AND ITS DEFAULT SERVICE CUSTOMERS AND THE IMPACT OF PSNH'S OWNERSHIP OF GENERATION ON THE COMPETITIVE ELECTRIC MARKET	:	DOCKET NO. IR 13-020

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA") [1] hereby submits its comments on the Report on Investigation into Market Conditions, Default Service Rate, Generation Ownership and Impacts on the Competitive Electricity Market[2] in connection with the above-referenced matter.

INTRODUCTION

RESA is a non-profit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions. RESA members are active participants in the retail competitive markets for electricity, including the New Hampshire retail electric market. Several RESA member

[1] RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2] *See* Public Service Company of New Hampshire Report on Investigation into Market Conditions, Default Service Rate, Generation Ownership and Impacts on the Competitive Electricity Market, Jointly Prepared by: Staff of the New Hampshire Public Utilities Commission and The Liberty Consulting Group, dated June 7, 2013 ("Report").

companies are licensed by the Public Utilities Commission ("Commission") to serve residential, commercial and industrial customers in New Hampshire and are presently providing electricity service to customers in the State, including customers in the Public Service Company of New Hampshire ("PSNH") service territory. As such, RESA and its members have a substantial interest in ensuring that actions taken in response to the Report do not have an adverse effect on RESA members, their customers or the continued success of retail electric competition in New Hampshire.

BACKGROUND

In June 1995, the New Hampshire General Court ("Legislature") required the Commission to establish a Retail Competition Pilot Program ("Pilot"). In response to this mandate, in February 1996, the Commission issued its Final Guidelines for the Pilot. Following the success of the Pilot, in May 1996, the Legislature directed the Commission to develop a statewide electric utility restructuring plan that would implement retail choice for all customers.[3]

In response, in February 1997, the Commission issued its "Restructuring New Hampshire's Electric Utility Industry: Final Plan." Pursuant to the restructuring legislation and the plan, vertically integrated electric utilities, including PSNH, were required to unbundle retail services into generation, transmission and distribution components.[4]

The Commission plan also required distribution utilities, including PSNH, to sever corporate ties between competitive (supply/generation) and non-competitive (distribution) components by divestiture and to sell off any rights to obtain power under existing purchase

[3] Report at 6.

[4] Report at 6-7.

contracts. Shortly after the Commission's plan for restructuring was issued, PSNH, and the other New Hampshire investor-owned electric utilities filed suit to block the plan. [5]

After several years, restructuring for PSNH resulted from settlement negotiations that still contemplated the full sale of PSNH's generation assets and the concurrent issuance of rate reduction bonds.[6] However, the Commission's and Legislature's original vision of a full divestiture of generation assets and supply business by the distribution utilities was scaled back. In April 2003, the Legislature enacted a statutory provision that provided that PSNH may not divest its fossil and hydro generating assets until April 30, 2006 and further provided that:

> . . .subsequent to April 30, 2006, PSNH may divest its generation assets if the [C]ommission 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. Prior to any divestiture of its generation assets, PSNH may modify or retire such generation assets if the [C]ommission finds that it is in the public interest of retail customers of PSNH to do so, and provides for the cost recovery of such modification or retirement.[7]

To date, PSNH has not divested or retired any of its major fossil-fueled or hydroelectric generating assets. [8]

Because PSNH has not yet fully divested its generating assets, over time, its costs to serve default service customers have risen above market costs. Consequently, more and more customers are migrating to the competitive market to obtain their electric supply. As a result, PSNH's generation costs are spread over a smaller and smaller customer base; thereby,

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[5] Report at 7.

[6] Order 23,443.

[7] RSA 369-B:3-a (emphasis added).

[8] Report at 7.

encouraging even further migration to the competitive market and further increases in PSNH's default service prices.[9]

As a result, in 2010, PSNH filed a petition requesting an adjustment to its energy service rates and proposed to remove a portion of fixed costs from those rates and recover that portion through a non-bypassable charge, which is paid by all customers, including customers who have migrated to competitive suppliers.[10] In response, the Commission stated that it would open a separate proceeding to consider the issue of how customer migration affects energy service rates for PSNH's remaining customers.[11]

Subsequently, the Commission commenced a separate proceeding to evaluate:

> whether PSNH's proposal for a non-bypassable mechanism to collect a portion of its energy service costs from all customers is permissible under New Hampshire law and is a reasonable way to address the cost impacts of customer migration on remaining ES [Energy Service] customers; other methods to address those cost impacts including but not limited to the targeted use of technology-based initiatives and/or targeted rate mechanisms; the interplay of PSNH's current supplemental power purchase practices with customer migration; [and] whether alternative procurement strategies should be implemented . . . .[12]

On July 26, 2011, the Commission issued an order denying PSNH's proposal for a non-bypassable charge to recover a portion of the fixed costs from all PSNH customers and requiring PSNH to file alternative proposed rates and tariffs for customers who return to PSNH default energy service from competitive supply.[13]

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[9] Report at 7-8.

[10] *See* Docket DE 09-180, Prepared Testimony of Robert A. Baumann, dated May 4, 2010.

[11] Docket DE 09-180, Order of Notice, dated May 28, 2010, at 2.

[12] Order 25,256 at 2.

[13] Order 25,256

On September 23, 2011, PSNH filed a Petition for Approval of an Alternative Default Energy Rate.[14] On January 26, 2012, the Commission issued an order denying the petition and directing PSNH to file a redesigned Rate ADE.[15] On April 27, 2012, PSNH filed a proposal for a redesigned Rate ADE.[16] Subsequently, PSNH, Commission Staff and the Office of Consumer Advocate ("OCA") entered into a partial settlement agreement with respect to the redesigned Rate ADE.[17] On April 8, 2013, the Commission issued an order, from which Commissioner Harrington dissented, approving the redesigned rate ADE on a pilot basis.[18]

In addition, while the Rate ADE proceeding was still pending, on January 18, 2013, the Commission opened this proceeding "to examine the circumstances of PSNH's default service rates and the degree to which those circumstances affect the ability of PSNH to provide safe and reliable service at just and reasonable rates to its default service customers."[19] On June 7, 2013, Commission Staff filed the Report. On that same day, the Commission issued a letter offering interested stakeholders an opportunity to submit comments on the Report and its recommendations.[20] RESA now hereby submits its comments on the Report.

COMMENTS

Divestiture and/or retirement of PSNH generation assets coupled with a full requirements service ("FRS") procurement structure would comport with the New Hampshire Restructuring

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[14] *See* Docket DE 11-216, Public Service Company of New Hampshire Petition for Approval of an Alternative Default Energy Service Rate ADE, dated September 23, 2011.

[15] Order 25,230.

[16] *See* Docket DE 11-216, Direct Testimony of Stephen R. Hall and Frederick B. White, dated April 27, 2012.

[17] *See* Docket DE 11-216, Partial Settlement Agreement on Alternative Default Energy Service Rate, dated October 12, 2012.

[18] Order 25,488.

[19] Order of Notice, dated January 18, 2013, at 5.

[20] Secretary Letter, dated June 7, 2013.

Statutes and serve the interests of PSNH ratepayers, competitive suppliers and their customers, and other stakeholders. Accordingly, RESA requests that the Commission: (a) adopt the Report; (b) take the steps necessary to require PSNH to divest or retire its generation assets; and (c) order PSNH to begin conducting FRS procurements to serve its default service customers.

I. PSNH SHOULD BE REQUIRED TO DIVEST OR RETIRE ITS GENERATION ASSETS

In 1996, the Legislature determined that New Hampshire "must aggressively pursue restructuring and increased customer choice in order to provide electric service at lower and more competitive rates."[21] Indeed, "[t]he most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets."[22] To that end, New Hampshire law envisions an end state in which "[t]he divestiture of electric generation by New Hampshire electric utilities will facilitate the competitive market in generation service."[23]

Nevertheless, more than fifteen years later, PSNH still owns generation that is used to provide default service to New Hampshire customers. As the Report notes, "[i]n the earlier years of restructuring PSNH's default service rate was below market, thereby providing a benefit to PSNH's default service customers. Over the last few years the situation has reversed and those customers who have continued to take default service from PSNH have been paying ***above-market rates***."[24]

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[21] 1996 N.H. Laws, 129:1, III.

[22] RSA 374-F:1, I.

[23] RSA 369-B:1, II.

[24] Report at 32 (emphasis added).

Further, in preparing the Report, Staff examined a variety of scenarios using a myriad of assumptions[25] and, based on that analysis, found, among other things, that "[a]ll scenarios result in a default service rate ***above the rates currently offered*** by competitive suppliers."[26] Migration will only continue to negatively impact PSNH Default Service Rates as the market for small customers continues to develop.[27] Thus, as the Report observes, "[t]aking no action threatens to leave a dwindling yet still substantial number of the state's resident and small business facing ***ever higher costs*** for service relative to market alternatives . . . ."[28] In short, whatever near term rate relief benefits may have been obtainable through the continued role of PSNH as an owner of generation and an active manager of supply are now gone. Thus, it is in the economic interest of retail customers that PSNH divest or retire its generation assets.

Moreover, PSNH's intermediate steps to address the impacts of migration on its default service rates only treat the "symptom of the transition to competitive markets,"[29] discourage or impede customer choice and do not resolve the fundamental need to advance restructuring.[30] As the Report observes "[w]hether it be PSNH customers, retail or wholesale competitors, or other stakeholder groups, continued uncertainty with respect to PSNH's generation ownership and its role in the competitive market makes planning future electricity purchase and other business

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[25] Report at 24-26.

[26] Report at 26 (emphasis added).

[27] Report at 23 ("The number of PSNH customers choosing competitive or self-supply options has been steadily increasing.").

[28] Report at 2 (emphasis added).

[29] *Cf.* Order 25,256 at 28; *see also* Order 25,488 at 30 (dissenting opinion) (Rate ADE "is a mere palliative that does not address the underlying issues, which is PSNH's failure to anticipate a changing energy market and adapt its business plan accordingly.").

[30] *See, e.g.,* Docket DE 10-160, Initial Brief of the Retail Energy Supply Association, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., dated February 25, 2011.

decisions difficult, if not impracticable."[31] Thus, the time has come to move from a "hybrid" market and "for New Hampshire to complete electric restructuring."[32] To this end, RESA recommends that the Commission adopt the Report and its recommendations and initiate a docket to implement the legal processes needed to accomplish divestiture and/or retirement of PSNH generation.

While RESA recognizes that the Commission has previously expressed uncertainty about its authority to order divestiture or retirement,[33] the Report provides the Commission with the analysis to support a finding that it is in the economic interest of retail customers that PSNH divest or retire its generation assets. Having resolved this threshold issue, the Commission can now move forward with ordering PSNH to divest or retire its assets.[34]

II. PSNH SHOULD BE REQUIRED TO ENGAGE IN FULL REQUIREMENTS SERVICE PROCUREMENTS

The Report's analysis "demonstrates that, under a wide range of assumptions, a post-divestiture combination of: (a) market-procured power plus (b) costs for amortizing uneconomic ('stranded') costs may very well produce total costs less than what default service customers now pay."[35] RESA agrees. Indeed, the optimal means of addressing the problem of allocating increased costs over a shrinking default service customer base is to move towards a market-based, default service procurement using a FRS Structure.

[31] Report at 5.

[32] Report at 54.

[33] Order 25,256 at 40.

[34] If the Commission were to decide that it does not have the authority to order divestiture, it could find continued ownership of generating assets to be imprudent and not allow PSNH to recover the costs of owning and operating the generating assets going forward.

[35] Report at 2.

As the Report observes, the "ability of customers to move in and out of PSNH's default service creates uncertainty in volume, costs, and associated risks for PSNH in planning energy procurement for its default energy service load."[36] FRS products relieve electric distribution companies, such as PSNH, from active load, weather and market volatility management responsibility and, in turn, relieve their customers from risk management exposure. FRS products also more effectively eliminate the uncertainty associated with fuel, availability, volumetric and spot price risks that are inherent in managing load supply.

At the direction of the Rhode Island Public Utilities Commission ("RI PUC"), National Grid performed an empirical study comparing default service approaches for mass market customers, including a comparison of the FRS structure to the Managed Portfolio model.[37] Because the NorthBridge Study is based on ***actual*** market data, rather than conjecture about the relative merits of various procurement approaches, it represents a sound empirical foundation on which to evaluate the benefits of different procurement approaches. The analysis also involves a comparison of default approaches against several metrics that pertain to various objectives with respect to default service and, therefore, allows for an assessment of the tradeoffs with respect to key objectives, such as rate stability and rate minimization. Based on these evaluations and looking at a wealth of actual data, the NorthBridge Study found that, in comparison to other approaches, a FRS Structure: results in lower risks allocated to customers, lower supply cost surprises and minimal deferral account balances; reduces the potential effects of additional costs and risks; and requires fewer utility company internal resources.

[36] Order 25,256 at 31.

[37] *See generally, Analysis of Standard Offer Service Approaches for Mass Market Customers*, prepared for National Grid re: RI PUC Order #19839, dated January 2010 ("NorthBridge Study").

Under the Managed Portfolio approach, the results of PSNH's power purchase decisions, good or bad, are passed onto its default service customers through its periodic default service rate adjustments. By contrast, FRS contracts shift price and quantity risk to the wholesale suppliers; thus, providing consumers with price insurance for the duration of the contract. Because they have bid a fixed price, these suppliers cannot seek to increase rates to default service customers when market conditions change and the effects of customer migration impact their total cost of supply. Conversely, the Managed Portfolio approach leaves PSNH with the risk that, as power prices fall and customers leave default service, PSNH (and, ultimately, default service customers) will be left holding power supply in excess of default service load requirements; thereby, as PSNH customers can attest, unnecessarily increasing the cost of supply to those customers that remain on default service.

Under the FRS procurement model, the FRS provider assumes one hundred percent (100%) of the risk should the all-in price be too high and/or customers decide to switch to a competitive retail provider. In this scenario, the consumers are protected against the cost of over- or under- hedging that results from changes to market prices over time. The FRS model also places the risk on the wholesale supplier in the event that the all-in price is too low. By contrast, under PSNH's current approach, when customers migrate to competitive retail suppliers, a small number of default service customers are left to pay the above-market costs associated with PSNH's generating, procurement and hedging activities.[38]

In addition, under the FRS model, a customer has an all-in fixed price rate against which it can compare offers from competitive retail providers. This sort of certainty is a valuable tool to a customer in making an informed and accurate determination of its energy options. With the

[38] *Cf.* Order 25,256 at 38.

Managed Portfolio model, however, such an option is not available because customers pay default service rates that are based on a forecast of expected costs. The difference between the forecasted costs and actual costs, once known, are then charged or credited to customers after the period for which those costs were incurred. Under a Managed Portfolio structure, the true-up of retail rates from one rate period to the next may be small or extremely large.[39] This reconciliation process means that PSNH's default service rates, at any point in time, are higher or lower than the actual cost for that period. As a consequence, although customers are told that they are purchasing energy at a fixed price; that is not really the case. If customers stay on default service, they are actually charged a rate that appears fixed but has a hidden variable component that is added to the true cost of providing service during the subsequent reconciliation period.

Reconciliations undermine the State's conservation and energy efficiency goals. Only when customers know the true cost of their power supply can they make appropriate decisions regarding demand response and energy efficiency modifications to better manage their electricity consumption and costs. Conversely, if customers do not know the true cost of their power supply, they are discouraged from adopting new solutions to meet their energy needs. Reconciliations are also harmful to the development of a competitive retail market because they distort the relationship between PSNH's actual cost of providing power during a particular period and the market price of power.

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[39] *See, e.g.,* Docket DE 10-160, Direct Testimony of Daniel W. Allegretti on Behalf of Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc. and Retail Energy Supply Association, dated September 15, 2010, at 8-9 (*citing* PSNH Response to Data Request Q-STAFF-002) (from 2006 through July 2010, PSNH's purchases were estimated to be above-market by $233,585,606 or around ***28 percent*** of total purchases ($839,128,484)).

The use of a FRS Structure has worked well for New Hampshire[40] for some time, and other utilities across the New England region (including PSNH's affiliated utilities in Connecticut and Massachusetts) have also successfully utilized the FRS Structure. The FRS Structure provides protections from PSNH's inflated supply costs, enhances the competitive policies set forth in the restructuring statutes, promotes customer choice of suppliers and products, ensures a fully competitive market and avoids cost shifting. RESA recognizes that the Commission previously found that an FRS model for PSNH was inconsistent with the requirement that PSNH supply default service from its generation assets until the completion of the sale of PSNH's ownership interests in its fossil and hydro generation assets located in New Hampshire.[41] However, if PSNH were to divest or retire its generation assets, this impediment would no longer exist. Accordingly, in addition to taking the steps necessary to require PSNH to divest or retire its generation assets, RESA also requests that the Commission order PSNH to begin conducting FRS procurements to serve its default service customers that are structured in the same manner as the State's other two major utilities.

CONCLUSION

RESA appreciates the opportunity to submit these comments and looks forward to discussing these issues in more detail during the course of this proceeding.

[40] Report at 24.

[41] *See* 25,256 at 33-34 (citing RSA 369-B:3, IV(b)(1)(A)).

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Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

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By: ______________________________

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments has this day been sent via electronic mail or first class mail to all persons on the service list.

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