

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

Granite State Hydropower Association's
Opening Scoping Memorandum

Granite State Hydropower Association, Inc. ("GSHA") appreciates the opportunity to comment regarding the scope of the above-referenced docket via a "scoping memorandum" as discussed at the October 2, 2014 Prehearing Conference and November 6, 2014 Technical Session in the above-reference docket.

The Public Utilities Commission ("PUC" or the "Commission") and the parties have identified several issues that could be the subject of scoping memoranda. For the purposes of this memorandum, GSHA addresses only the calculation of avoided costs, as described in the 1999 restructuring settlement agreement with PSNH in docket DE 99-099. *Order of Notice* (Sept. 16, 2014). The Settlement Agreement indicates that:

PSNH's responsibilities and avoided cost rates on and after Competition Day for short term purchases of IPP power pursuant to the federal Public Utility Regulatory Policies Act and the New Hampshire Limited Electrical Energy Producers Act *shall be equal to the market price for sales into the ISO-New England power exchange, adjusted for line losses, wheeling costs, and administrative costs.* This Agreement is not intended to impair existing rate orders or contracts.

Agreement to Settle PSNH Restructuring, Revised and Conformed in Compliance with Order No. 23,549, Section V.G at p. 36 (Aug. 2, 1999 and Sept. 8, 2000) ["Settlement Agreement"] [attached in part hereto as "Exhibit A"] (emphasis added).

The calculation of avoided costs is important because small generators – like members of the GSHA – often sell their power to utilities at the utility's avoided costs under the Public Utility Regulatory Policies Act ("PURPA"). PURPA serves to provide small generators with non-discriminatory access to the market; "Qualified Facilities" ("QFs"), such as GSHA's members, often do not have the resources to bid production hourly and bear all the administrative burdens associated with ISO-NE market rules. Avoided costs are paid to QFs when, for example, PSNH has an agreement with a facility to pay "avoided costs" or when PSNH has an obligation to do so, pursuant to the Public

Utility Regulatory Policies Act of 1978 (“PURPA”), as amended by the Energy Policy Act of 2005 (“EPAAct ’05”). 18 C.F.R. § 292.304(a); *see also* 18 C.F.R. § 292.303(a) *Order Denying Rehearing*, 134 FERC ¶ 61,041 (Jan. 20, 2011) (regarding PSNH’s obligation to meet PURPA obligations for QFs).

GSHA questions whether, under the conditions of the current ISO-NE marketplace, the 1999 Settlement Agreement definition of Avoided Costs meets the PURPA standard. To date, PSNH has interpreted the settlement agreement to mean that “market prices” are real-time market prices. However, recent market conditions, including the winter reliability program, have resulted in ISO-NE real-time market prices that are regularly subject to artificially-induced generation oversupply, which results in artificially depressed prices. Starting this month, ISO-NE will establish negative pricing in the real-time market, which will further depress real time prices. Meanwhile, distribution utilities may not rely on real-time prices to meet their customers’ needs. Real-time prices therefore may not be truly reflective of a utility’s avoided costs of the power being generated by New Hampshire’s qualifying facilities, and also may not meet the purposes and requirements of PURPA. *See* 26 U.S.C. § 2611 (establishing the purposes of PURPA).

GSHA asks that the Commission consider the question of whether avoided costs are being properly and lawfully calculated. The answer to this question may be relevant to the valuation analysis that the Commission or the parties may undertake in the instant docket, to the extent that it could impact the value of PSNH’s smaller generation facilities. GSHA takes no position regarding whether the applicability, lawfulness, and meaning of the Avoided Costs definition in the Settlement Agreement should be addressed in the context of this proceeding, *see, e.g., Order of Notice* (Sept. 16, 2014), or whether it would be more appropriately addressed in a separate docket.

This scoping memorandum raises questions regarding the legality and applicability of the avoided costs clause of the settlement agreement. As the Commission notes in the Order of Notice in this docket, there may be additional reasons, as a result of law or fact, that Section V.G of the Settlement Agreement is no longer legally binding, but GSHA does not reach those questions here.

At this time, GSHA takes no position regarding the other issues raised in the context of the Order of Notice, the Prehearing Conference, or the Technical Session in this docket.¹ GSHA reserves the right to address issues raised by other parties in its responsive memorandum, due on January 7, 2014.

¹ While at this time GSHA takes no position with respect to how the Commission might define the “economic interest” of ratepayers, GSHA does believe that any such analysis should contemplate sale or auction of assets in an unbundled fashion such that individual facilities may be purchased separately.

Respectfully submitted,

GRANITE STATE HYDROPOWERASSOCIATION

By its attorneys,
ORR & RENO, P.A.

Dated: December 5, 2014

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Certificate of Service

I hereby certify that a copy of the foregoing Petition has on this 5th day of _____
December, 2014 been either sent by electronic or first class mail, postage prepaid, to
persons listed on the Service List.

Rachel Aslin Goldwasser (ssg)
Rachel Aslin Goldwasser

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