

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 14-238

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generation Assets

SIERRA CLUB'S REPLY BRIEF ON SCOPNG

The Sierra Club submits the following reply brief responding to the briefs filed by the other parties in the above-captioned proceeding concerning the proper scope of this Docket. The Sierra Club firmly believes that the proper resolution of this Docket will involve a broad assessment of the economic interests of ratepayers that includes potential environmental compliance costs and risks, will use a long time horizon for assessing risks and costs, and will heavily employ the factual analysis already performed by the Commission Staff in Docket No. IR 13-020; moreover, there is support for and consensus among multiple other parties in this Docket concerning these aspects of proper scoping.

ARGUMENT

In the briefing of the various parties in this proceeding, there appears to be a multiparty if not universal consensus on several issues: the timeline for consideration should be lengthy, the assessment of economic impacts evaluated in this proceeding should be broad, and that the 1999 Settlement Agreement, while important, should not unduly constrain the development of the proper resolution to these proceedings today. At the same time, PSNH has made proposals that are inconsistent with the requirements that this proceeding explore divestiture, repowering, and retirement as solutions to the problems posed by PSNH's generation assets to the economic

interests of its customers. The Sierra Club submits this reply brief to help identify those areas of general consensus and to respond to issues raised by PSNH in which consensus is lacking.

A. Areas of General Consensus

The briefing submitted by the parties in this proceeding thus far identifies numerous areas in which there appears to be a general consensus, particularly as regards the proper time horizon the docket should regard, the scope of the term “economic interests,” and the role of the 1999 Settlement Agreement. Additionally, the Sierra Club notes that multiple parties support a robust and central use of the June 2014 “Preliminary Status Report Addressing the Economic Interest of PSNH’s Retail Customers as it Relates to the Potential Divestiture of PSNH’s Generating Plants” (the “La Capra Report”) and its accompanying Liberty Report.

The Sierra Club agrees with both the Commission Staff and CLF that this proceeding must involve a long-term look at the risks, benefits, costs, and consequences of divesting, retiring, or otherwise addressing the problems posed by PSNH’s generation assets. *See, e.g.*, CLF Br. at 4-5 (“determinations in this docket should take into account the longest reasonable time frame for assessing PSNH customers’ economic interest, at least matching the typical commercial timeframes for depreciation and book life, financing, cash flow analysis, and energy market forecasts of fifteen to twenty years”); Commission Staff Br. at 3 (advocating a comparison of energy prices over the course of a decade).¹ A long-term analysis is necessary to ensure that the economic interests of electricity customers is protected, and that permanent changes to the New Hampshire electricity marketplace are not made based on short-term

¹ The Sierra Club does, however, disagree with the Commission Staff’s statement that this docket should be conducted “with a view towards maintaining PSNH’s enterprise-level viability.” Commission Staff Br. at 4. The relevant statute directs this Commission to be concerned with the economic interests of ratepayers; whether or not PSNH remains viable as an “enterprise-level” entity is an extra-statutory concern that may well be in tension with ratepayer economic interest.

phenomena. As discussed in the Sierra Club’s opening brief, such robust planning is consistent with the planning practices employed by a large number of utilities in many parts of the country. *See, e.g.,* Sierra Club Br. at 6-7.

The Sierra Club also agrees with what the clear majority of other parties have recommended: that the category of issues contained in the term “economic interests” should not be unduly limited. *See* Commission Staff Br. at 4 (noting that legacy environmental cleanup issues are important considerations); PSNH Br. at 9-11 (discussing a wide range of potential economic interests); CLF Br. at 3-4 (while economic interest is narrower than public interest, the proper analysis would still involve regarding “the expected market value of PSNH generation assets,” “evaluating the short and long-term financial risks to customers of PSNH retention of generation assets,” and “comparing historical and projected over-market energy rates paid by PSNH customers with the anticipated stranded cost charges on customer bills and energy service rates” while also considering impacts to “wholesale energy and capacity markets” of PSNH assets operating as merchant facilities and “both the short-term and long-term implications of divestiture”); NEPGA Br. at 7-8 (economic interests include such additional issues as the development of flexible, creative energy products for consumers, including “dynamic pricing products that encourage conservation, energy efficiency and renewable energy solutions,” as well as “O&M costs, future capital expenses, environmental compliance, a rate of return, and other costs recovered in regulated rates”).²

² Although Sierra Club agrees with the Office of the Consumer Advocate that energy service rates will be an important component of an analysis of the economic interests of customers, it is far too narrow to consider it to be the *only* component of such an analysis. At a threshold level, customers pay bills, not rates, and so, if nothing else, impacts on such things as energy efficiency programs and the dynamic pricing products discussed by NEPGA are crucial for an economic interests. *See* Sierra Club Br. at 2; NEPGA Br. at 7-8. This is in addition to the numerous other components of economic interest laid out by other parties in this proceeding.

Additionally, the Sierra Club agrees with the majority of parties that have indicated that the 1999 Settlement Agreement should not be considered rigidly conclusive to the detriment of the issues considered in this proceeding. *See* Granite State Hydropower Association Br. at 1-2 (interpretations of avoided costs calculations in the 1999 Settlement Agreement may result in undercalculation); CLF Br. at 6 (noting that the Agreement “does not bind the Commission like a contract,” and observing that the Agreement was originally based on an understanding “that PSNH would immediately proceed to divest its generating assets, rather than retain them for more than a decade and continue to realize the financial benefits of regulated returns on equity”); Commission Staff Br. at 1-2 (advocating inclusion of all PSNH generation assets in this present proceeding, notwithstanding the 1999 Settlement Agreement’s different treatment of certain combustion turbines); NEPGA Br. at 5 (“NEPGA and RESA are unaware of anything in this Agreement that prevents the Commission from conducting the divestiture inquiry required”). Indeed, even PSNH agrees that that the 1999 Settlement Agreement does not necessarily control all considerations in this proceeding:

PSNH acknowledges that the passage of time and intervening events may have made fulfillment of some of the requirements difficult or impossible, and does not, therefore, contend that the [Agreement] is, in all respects, inviolate . . . PSNH understands that there may, for various reasons, need to be alterations to the strict terms of the [Agreement] . . .

PSNH Br. at 24.

Finally, the Sierra Club also agrees with proposals made by both CLF and NEPGA for the use of the La Capra and Liberty Reports. The La Capra and Liberty Reports represent a thorough and extremely recent assessment of many of the key factual issues at stake in this

proceeding, and it would be inconsistent with the legislative directive that the Commission expedite this docket to shelve such material and wait for new reports to be generated. *See* CLF Br. at 7 (the La Capra study and its accompanying Liberty Report “reflect highly consistent, relevant, and recent expert analysis of the very issues at the center of this docket” and relying on them further “aids the Commission in fulfilling its legislative mandate to expedite this docket by avoiding the expense and time of redoing all the associated analytical work”). Thus it would be prudent for this docket to proceed as CLF recommends, and for the Commission to make “the underlying data and analysis from the Liberty and La Capra Reports available to all parties” with opportunities for “Staff and PSNH [to] provide updates to La Capra or other prefiled testimony by a date certain” and for “other parties [to] then propound data requests followed by designation of their own witnesses.” CLF Br. at 6; *see also* NEPGA Br. at 3 (“NEPGA and RESA submit that as an initial step in this docket the Commission should request responses to [the La Capra and Liberty] reports. If parties do not agree with information and/or conclusions contained in the reports, parties should indicate why and provide information to support their positions. If they agree with Staff’s and La Capra’s findings, they should so indicate and discuss why.”). Such a process of would allow for full development of the issues, while making the best use of existing and highly thorough and relevant analysis and ensuring that the docket proceed in a smooth, speedy fashion.

B. Areas Lacking General Consensus

In contrast to the numerous areas identified above of general consensus, multiple recommendations made by PSNH in its scoping brief lack support. Specifically, PSNH advances several wrongheaded arguments concerning economic interests and environmental costs, the

value of coal-fired generation, and raises certain costs and benefits in an asymmetric way that, if not corrected, would skew the Commission's analysis, to the detriment of ratepayers.

Concerning economics, while Sierra Club agrees with PSNH generally that the scope of issues embraced by the term "economic interests" is broad, PSNH's discussion of such issues is incomplete. PSNH wrongly suggests that impacts on the environment and public health "from PSNH's facilities" are mere "public interests" that should be left out of an investigation of ratepayer economic interests. PSNH Br. at 9. However, such impacts are not at all distinct from ratepayer interests, through several different mechanisms.³ For example, to the extent that environmental harms are addressed or mitigated through state or federal regulatory requirements, those requirements may entail significant changes in operation or installation of control projects at the subject facilities, with major impacts on the economics of generating electricity from them. Likewise, environmental harms may give rise to enforcement actions, which either directly (through imposition of penalties) or indirectly (through injunctive relief or requirements for control installation) can, again, have significant impacts on the economics of electrical generation. Additionally, legacy environmental cleanup costs, such as from groundwater and soil contamination from long-term coal pile storage, are significant costs that should be considered when assessing economic impacts.⁴ Accordingly, the Commission should not categorically dismiss environmental costs as "public interests" distinct from the economic

³ This is true even if one sets aside the fact that the damage to air and water quality caused by pollution from facilities such as PSNH's Merrimack and Schiller Station coal-fired power plants imposes direct economic harm on the ratepaying public, through impairments in health, missed days of work, and premature deaths. Such harm is readily quantifiable in terms of economic costs. *See, e.g.*, Clean Air Task Force, *Death and Disease from Power Plants*, at http://www.catf.us/fossil/problems/power_plants/.

⁴ This is of course in addition to economic impacts from reasonably foreseeable forthcoming environmental regulations. *See generally* Sierra Club Br. at 3.

interests of electricity customers; to do so would be to improperly warp the analysis in this docket to the detriment of ratepayers.

Similarly, while PSNH in its brief discusses a variety of impacts to local tax bases, employees, and contractors that may flow from divestiture and retirement of its coal-fired facilities, and suggests that such impacts may properly be considered as part of an analysis of economic interests, PSNH does so in an asymmetric way. *See* PSNH Br. at 9-11. PSNH's generation assets do not exist in a vacuum, and to the extent that PSNH itself is not paying taxes, hiring employees, or engaging with contractors at Merrimack, Schiller, and Newington Stations, its successor after divestment will. However, and more critically, even if some or all of these facilities were retired either as part of these proceedings or post-divestiture, energy services would still be provided in New Hampshire through some combination of expanded operation at existing generators, new generation, and energy efficiency. Thus, it would not be appropriate to count a loss of tax revenue from the closure of Merrimack Station, for example, without also counting the tax revenue that would flow from new generation that would replace Merrimack.

Indeed, it is entirely necessary that any accurate consideration of the economic interests at play in this proceeding consider not just costs that may flow from divestiture or retirement of PSNH's generation assets, but also the impacts on other energy services, and attendant benefits. Constructing renewable generation, such as wind and solar, in New Hampshire would very likely provide positive economic impacts far outweighing continued operation of the aging fossil units in PSNH's fleet: not only would less money move out of the state to import fuel, but the construction of the new generation would provide important local jobs, as well as tax revenue, and benefits from increased fuel diversity. Likewise, energy efficiency investments made to help obviate the need for new generation can lower overall energy costs while spurring local job

development for installation of new energy efficient insulation and equipment.⁵ Accordingly, if the Commission does consider such issues as tax bases, employee salaries, and contractor revenue to be within the proper ambit of an analysis of economic interests of ratepayers, such analysis must not simply regard the side of the ledger pertaining to PSNH alone, but must look to the larger energy market in New Hampshire as it would be impacted by divestiture or retirement of PSNH's generation assets.

This is particularly true in the context of PSNH's wrong-headed claim that its coal-fired assets are absolutely essential to the New Hampshire energy market. Bewilderingly, PSNH argues that until New Hampshire's generation "capacity issues" have been "resolved," the Commission may only allow divestiture with the condition that "no generation that uses fuels other than natural gas be retired." PSNH Br. at 25. However, there is nothing that indicates that indefinite operation of PSNH's coal-fired assets are necessary, and PSNH does not provide any information supporting its argument.⁶ Neither, for that matter, is it clear what PSNH means by "capacity issues" or when they would be "resolved" sufficiently in PSNH's mind.

⁵ See, e.g., Synapse Energy Economics, Inc., Economic Impacts and Potential Air Emission Reductions from Renewable Generation & Efficiency Programs in New England, available at <http://www.synapse-energy.com/sites/default/files/SynapseReport.2005-04.RAP-EPA.Economics-and-Emissions-from-Renewables-and-Efficiency-in-NE.04-23.pdf>.

⁶ PSNH attempts to justify its claim by raising the specter that, perhaps, a party purchasing PSNH's generation assets as part of divestiture may only do so because shutting them down would increase capacity payments to other assets that purchaser may hold. Besides being speculative in the extreme (PSNH points to no such players in the ISO-New England system who could or would be likely to act as PSNH fears), such behavior would be rather irrational. High capacity prices encourage entrants to the market; removing assets from the market to game capacity prices is a strategy to, over the medium- to long-term, lose money to new competitors. Even if PSNH was right, however, such a "benefit" to a potential purchaser would be priced into the purchase price for PSNH's assets, driving up their sale price and thereby diminishing the burden of potential stranded costs. Whatever the impact, however, it is *wholly* inappropriate to rule out divestiture that may result in retirement in the scoping phase of this proceeding, before the Commission has been presented with any data or analysis to help guide its decisionmaking.

Nor does capacity necessarily pose a long-term problem for New Hampshire. The Commission Staff's own La Capra report addressed this very issue, noting that price volatility due to capacity constraints was a "short-term effect[] [that] will be resolved over time," lasting only until "more natural gas capacity and generating capacity becomes available in the region," a conclusion the report makes "based upon market forecasts." La Capra Report at 10. Indeed, recent high capacity prices are doing exactly what they should: spurring entrants to the market. *See* Motion for Leave to Answer and Answer of ISO New England Inc., Federal Energy Regulatory Commission Docket No. ER14-1639 (May 1, 2014), *available at* http://www.iso-ne.com/regulatory/ferc/filings/2014/apr/er14-1409-000_4-29-30_ans_fca_8_results_protest.pdf, at 16 (noting that in the recent ISO New England forward capacity auction, the show of interest of new supply "exceeds 10,000 MW," which ISO New England notes is "high relative to recent auctions"). Thus, the current marketplace conditions of relatively high capacity prices should not be presumed to be a categorical bar against considering whether or not divestiture and retirement of PSNH's expensive generation assets best protects economic interests.

At the very least, if the Commission is concerned that retirement of some or all of PSNH's coal-fired assets may create reliability concerns, it could request that ISO-New England prepare a reliability analysis to assess what—if any—grid upgrades may be necessary to accommodate such retirement while ensuring that load demands are met. But PSNH's bald assertion that its coal-fired assets must be run indefinitely is without support, and is moreover an improper argument for limiting the scope of this proceeding. Ultimately, while Sierra Club agrees that additional energy diversity in New Hampshire would be a benefit to ratepayers and the state generally, such diversity should come in the form of new, clean energy technologies (such as wind, solar, and energy efficiency) that provide local economic growth and

environmental benefit, and not from retaining old, dirty and increasingly expensive sources of generation, like coal-fired assets.⁷

PSNH, after stating without support that only continued operation of its coal-fired facilities would be in the economic interests of customers, floats a “potential resolution” that would take both divestiture and retirement off the table. PSNH suggests that the Commission create a special charge to be applied to all ratepayers—not just PSNH’s energy services customers—that would consist of the difference between PSNH’s costs and the spot market for electricity. PSNH Br. at 25. Although PSNH provides few details on its proposal, this would appear to ensure that PSNH’s assets are never divested, and the entire population of New Hampshire electricity customers pays, in one form or another, for PSNH’s higher-cost electricity (and thereby insulating PSNH against market pressures, rather than exposing PSNH to them). While the Sierra Club agrees that this docket should be about more than a simple binary choice to divest or not to divest, it is unclear how PSNH’s proposal would resolve the underlying problems of PSNH’s generation assets being more expensive than competitive suppliers in the New Hampshire market; instead, it would simply raise costs for customers while delivering none of the benefits of divestiture at all.⁸

CONCLUSION

For the foregoing reasons, this Commission should ensure that this Docket will involve a broad assessment of the economic interests of ratepayers, including potential environmental

⁷ As Sierra Club discussed in its opening brief on scoping, coal-fired assets such as PSNH’s Merrimack and Schiller Station are subject to a wide variety of forthcoming environmental compliance costs that will render these already expensive facilities less competitive going forward. Conversely, cleaner energy technologies will be better positioned to deliver economic benefits to ratepayers over the mid- to long-term.

⁸ Further, perhaps because of the paucity of detail offered by PSNH concerning its proposal, it is unclear whether or not the structure PSNH suggests is authorized by the statute giving rise to this docket.

compliance costs and risks, will assess impacts to all individual classes of ratepayers, will avoid using a short time horizon and instead will assess risks and costs running out to 2040, and will rely heavily on the factual analysis already performed by the Commission Staff in Docket No. IR 13-020.

Respectfully Submitted,

_____/s/
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