

DE 99-099

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Restructuring Settlement

Order Addressing Motion for Clarification

O R D E R N O. 23,617

January 10, 2001

APPEARANCES: Robert A. Bersak, Esq., Gerald M. Eaton, Esq. and Sulloway & Hollis by Martin L. Gross, Esq. for Public Service Co. of New Hampshire; Foley, Hoag & Eliot, L.L.P. by James K. Brown, Esq., Stephen J. Judge, Esq. and Wynn E. Arnold, Esq. of the New Hampshire Attorney General's Office for the Governor of New Hampshire, the Governor's Office of Energy and Community Services and the New Hampshire Attorney General; Mark W. Dean, Esq. of Dean, Rice & Kane, for New Hampshire Electric Cooperative; Seth Shortlidge, Esq. and Lisa Shapiro of Gallagher, Callahan & Gartrell, for Wausau Papers; Rep. Jeb Bradley, member of the Legislature, pro se; Rep. Gary Gilmore, member of the Legislature, pro se; Connie Rakowsky, Esq. of Orr & Reno P.A. for the Granite State Hydro Association and individual hydro-electric facilities; David W. Marshall, Esq. for the Conservation Law Foundation; John Ryan, Esq. for the Community Action Program; Alan Linder, Esq. of New Hampshire Legal Assistance, for the Save Our Homes Organization; James Rubens for THINK - New Hampshire; Pentti Aalto for PJA Energy Systems Designs; Peter H. Grills, Esq. and Elizabeth I. Goodpaster, Esq. of O'Neill, Grills & O'Neill, for the City of Manchester; Susan Chamberlin, Esq. of Donahue, Tucker & Ciandella, for the City of Concord; Carlos A. Gavilondo, Esq. for Granite State Electric/New England Power Company; Robert A. Olson, Esq. of Brown, Olson, and Wilson representing six wood-fired power plants; Steven V. Camerino, Esq. of McLane, Graf, Raulerson & Middleton, for Great Bay Power Corp. and the City of Claremont; Timothy W. Fortier for the Business & Industry Association of N.H.; James A. Monahan and Andrew Weissman, Esq. of Morrison & Foerster, L.L.P. for Cabletron Systems, Inc.; Joshua L. Gordon, Esq. and Robert A. Backus, Esq. For the Campaign for Ratepayers' Rights; Robert Upton II, Esq. of Upton, Sanders & Smith for the Towns of Bow, New Hampton, Gorham, Hillsboro and Franklin; Robert P. Cheney, Jr., Esq. of Sheehan Phinney Bass & Green P.A., representing JacPac Foods, Ltd.; Mary Metcalf for

Seacoast Anti-Pollution League; James T. Rodier, Esq. for Consumers Utility Service Cooperative and Freedom Partners, LLC; Michael W. Holmes, Esq. and Kenneth Traum of the Office of Consumer Advocate representing Residential Ratepayers; John E. McCaffrey, Esq. of Morrison & Hecker, LLP for PUC Staff Advocates; Lynmarie Cusack, Esq. of the NH Public Utilities Commission for PUC Settlement Staff, and Larry Eckhaus, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND

On September 25, 2000, Freedom Partners, L.L.C. ("Freedom") filed a Motion for Clarification of Order No. 23,550, requesting that the New Hampshire Public Utilities Commission ("Commission") clarify its condition, pursuant to RSA 369-B:3, IV regarding financing approval of rate reduction bonds, that PSNH temporarily reduce its current effective total rates (base rates plus FPPAC rates) by 5 percent across the board until the earlier of Competition Day or April 1, 2001. See Order No. 23,550 at 73. Freedom notes that PSNH has advised certain customers taking service under rates ED, BR and LR that the rate decrease would not be applied to those rates. Freedom references N.H. Code of Admin. Pro. Puc 1601.03 which provides that the term "rate" or "rates" means:

any charge or price, and all related service provisions for services regulated and tariffed by the commission, including, but not limited to, availability, terms of payment, and minimum service period.

Freedom requests that the Commission clarify "whether or not" the 5 percent rate reduction is applicable to rates ED, BR and LR.

On September 27, 2000, Public Service Company of New Hampshire ("PSNH") filed its Response to Motion for Clarification of Freedom Partners, L.L.C., urging the Commission to reject Freedom's Motion, and explains the methodology it used for application of the 5 percent rate reductions to the ED, BR and LR rates. First, PSNH notes that the Conformed Settlement Agreement approved by Commission Order No. 23,549 states:

If Competition Day has not occurred by October 1, 2000, then effective October 1, 2000 PSNH shall temporarily reduce its current effective total rates (base rates plus FPPAC rates) by 5 percent across the board in the same manner as was used to implement the temporary rate reduction ordered in Docket No. 97-059 until either Competition Day or April 1, 2001, whichever occurs earlier. See Agreement to Settle PSNH Restructuring, August 2, 1999, Revised and Conformed in compliance with Order No. 23,549, page 3, lines 66-70.

On September 21, 2000, PSNH made a tariff filing implementing this provision of the Conformed Settlement Agreement and claims it did so in the same manner as was used to implement the temporary rate reduction ordered in Docket No. DR 97-059, and it is therefore in compliance with the

Commission's Order. See Tariff No. 39, filed in Docket No. DE 00-202.

PSNH also claims that since Freedom is not a retail customer of PSNH, will not be using rates ED, BR or LR and will not suffer any direct or indirect injury, nor be directly affected as a result of the methodology for implementing the 5 percent decrease, it lacks standing to raise the issue cited in its motion. See, *Appeal of Richards*, 134 N.H. 148 (1991).

PSNH provided a summary of the methodology it employed in applying the 5 percent rate reduction: The reduction was applied to the customer demand and energy charges in Residential Rate D, General Service Rate G, Primary General Service Rate GV, Large General Service Rate LG, Outdoor Lighting Service Rate ML and Outdoor Lighting Energy and Maintenance Service Rate ML-EM. PSNH claims the same methodology was used in Docket No. DR 97-059, and that the reduction was not applied to apparatus rental, line extensions, bad check charges, service fees, or to rates paid to Qualifying Facilities - all of which it claims would fall within the definition of "rates" under N.H. Rules of Admin. Proc. Puc 1601.03. The reduction was also not applied to special contract rates. The reduction was not applied to Sawmill Generation Deferral Rate SGD as that rate is a

discount off of the demand charge in the regular tariff, and to the extent that the otherwise applicable demand charge is reduced, the SGD customer will benefit from the rate reduction. The SGD customer also pays the otherwise applicable customer and energy charges, to which the 5 percent reduction applies.

PSNH submits that, as in Docket No. 97-059, rates ED, BR and LR were not reduced as they were required to be fixed rates in lieu of percentage discounts from standard tariff rates. See 1996 N.H. Laws 186:1, IV and Order No. 22,405 in Docket No. 96-216, issued November 6, 1996, 81 NHPUC 867. PSNH submits that the energy charges for rate ED were only to be adjusted for changes to the FPPAC rate and nuclear decommissioning charge. According to PSNH, rates BR and LR provide only reduced demand charges; the otherwise applicable energy and customer charges continue to apply to those rates. Thus, customers taking service under those rates will receive the 5 percent discount to their energy and customer charges. PSNH goes on to point out that all customers taking service under rate LR and most under rate BR pay no demand charge, so that, effectively, they will receive the full benefit of the 5 percent reduction. Finally, PSNH states that customers taking service under rates ED and BR are protected by a "Maximum

Monthly Charge" under which they are never to pay more than the otherwise applicable tariff rates. Tariff No. 38, Original Pages 79 and 85. PSNH argues that this provision would be meaningless if these rates were subject to change in the same manner as standard tariff rates.

On September 29, 2000 Freedom filed its Reply to PSNH's Response to Freedom's Motion for Clarification. Freedom argues that the Finance Order (Order No. 23,550) in precise compliance with RSA 369-B:3, IV(b)(3)(G) conditioned its approval of PSNH's rate reduction bond financing upon a temporary 5 percent across the board rate reduction. Freedom again cites to the definition of "rate" or "rates" contained in N.H. Admin. Pro. Rule Puc 1601.03, and apparently argues that this definition is impliedly incorporated into RSA 369-B:3, IV(b)(3)(G) and should have been incorporated into the Commission's Order No. 23,550, and therefore the rate reduction should be applied in a manner that would include its application to rates ED, BR and LR. In support of this interpretation, Freedom notes that RSA 369-B:3, IV(b)(10) provides an explicit exemption for special contracts, mandating that the Commission not order changes in the total rates of customers taking service under those contracts for their duration, and there are no similar exceptions for rates

ED, BR and LR. Thus, Freedom concludes that the statutory language requires an across the board reduction except for such customers, such as those with special contracts, who are specifically exempted.

Freedom also argues that PSNH's contention that Freedom lacks standing with respect to this issue is a result of a misreading of *Appeal of Richards*. Freedom asserts that as a full party intervenor, it has the right to address any and all issues in this proceeding.

II. DISCUSSION

A. Standing: While PSNH's arguments regarding Freedom's lack of standing may have merit, and we note that Freedom has not demonstrated how its interests may be affected by the methodology proposed, we will nonetheless address the concerns raised as we find it in the public interest to clarify this matter. We take this opportunity, however, to put parties on notice that status as a full party intervenor does not automatically confer a "right" to address "any and all issues" in a proceeding before the Commission, and that it is well within the authority of the Commission and commensurate with the efficient and reasonable management of our pending dockets for the Commission to limit a party's participation to those issues which have been demonstrated to

directly affect its rights and interests.

B. Application of the 5 Percent Decrease:

RSA 369-B:3, IV(b) provides, in part, that in any finance order regarding rate reduction bonds issued by the Commission pursuant to this subparagraph, the Commission must find that the finance order is consistent with a number of conditions, including the attainment of customer savings of not less than \$450,000,000. The calculation of the \$450,000,000 savings is to exclude any savings realized from the rate reduction financing and merger savings, and include the \$367,000,000 write-off proposed in the original Settlement Agreement and \$6,200,000 resulting from the settlement with the New Hampshire Electric Cooperative. This overall savings amount shall be deemed satisfied if, in turn, a number of conditions are met, including an agreement by PSNH that:

if competition day has not occurred by October 1, 2000, then effective October 1, 2000 PSNH shall temporarily reduce its current effective total rates (base rates plus FPPAC rates) by 5 percent across the board until either competition day or April 1, 2001, whichever occurs earlier.

The language of this statutory condition is consistent with language regarding the temporary rate reduction contained in the Settlement Agreement, with the exception that the Settlement Agreement provides a more

precise description of how the reduction is to be implemented:

If competition day has not occurred by October 1, 2000, then effective October 1, 2000 PSNH shall temporarily reduce its current effective total rates (base rates plus FPPAC rates) by 5 percent across the board in the same manner as was used to implement the temporary rate reduction ordered in Docket No. DR 97-059 until either competition day or April 1, 2001, whichever occurs earlier. Agreement to Settle PSNH Restructuring, August 2, 1999, Revised and Conformed in compliance with Order No. 23,549, page 3, lines 66-70. (Emphasis supplied.)

The Commission's April 19 Order (Order No. 23,443) which approved the Settlement Agreement subject to several conditions, and which was issued prior to 2000 N.H. Laws 249 concerning rate reduction financing, did not require any modification of the Settlement Agreement language on this issue. The question raised by Freedom's motion is whether the omission from RSA 369-B:3, IV(b)(3)(G) of the Settlement Agreement's description of how the reduction is to be implemented was intended by the Legislature to modify the Settlement Agreement and the April 19 Order, and thereby provide direction to the Commission to add a condition to the approval of any PSNH financing request that the 5 percent rate reduction is to be applied in a manner different from that used to implement the rate reduction in DR 97-059: it is to be applied to "all rates," even those to which the temporary rate

reduction in DR 97-059 was not applied.

Freedom argues that the Commission's rules contain a precise definition of "rate" and that this definition was, at least implicitly, incorporated into RSA 369-B:3, IV(b)(3)(G) and therefore should have been incorporated into the Commission's Order No. 23,550, with the result that the rate reduction should have been applied in a manner that would include its application to rates ED, BR and LR. In circumstances where the requirements of a particular statute are in question and must be interpreted, we believe it is inappropriate to attempt to read into the statute an intent that was not clearly expressed, such as the incorporation of a particular definition or term, and the Commission will not do so here.

It is appropriate, however, for the Commission to "examine the plain language of the statute to determine legislative intent." *Petition of Walker*, 138 N.H. 471, 474, 641 A. 2d 1021, 1024 (1994). In this instance it is not sufficient to consider only the language of RSA 369-B:3, IV(b)(3)(G). As PSNH points out, the requirements of 1996 N.H. Laws 186 regarding economic development and load retention rates are also implicated. "When interpreting two statutes which deal with a similar subject matter, we will

construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute." *State v. Farrow*, 140 N.H. 473, 475, 667 A.2d 1029, 1031 (1995).

The plain meaning of the term "total rates" in RSA 369-B:3, IV(b)(3)(G) would appear to indicate that all rates, including ED, BR and LR, should be reduced by 5 percent. However, the specific requirement in 1996 N.H. Laws 186:1, IV that economic development rates and retention rates "should be specific rates, not percentage discounts from future variations in tariffed rates" directs that the ED, BR and LR rates were to be a fixed schedule of rates for their full term that future discounts were not to apply to. Reading these two laws together, we conclude that the Legislature did not intend to require that the 5 percent discount apply to rates ED, BR and LR, and that PSNH has applied the discount in the appropriate manner in this instance. The Commission also notes that the practical effect of PSNH's methodology does provide the vast majority of customers taking service under rates BR and LR the full benefit of the decrease, as explained above, and that customers taking service under rates ED and BR will never pay more than the otherwise applicable rates.

Based upon the foregoing, it is hereby

ORDERED, that Freedom's Motion for Clarification is denied.

By order of the Public Utilities Commission of New Hampshire this tenth day of January, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary