

DE 01-038

**NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.**

**Transition and Default Service**

**Order Approving Default Service Filing**

**O R D E R    N O.    23,713**

**May 31, 2001**

**I. BACKGROUND AND PROCEDURAL HISTORY**

This proceeding concerns a filing made on February 22, 2001 by the New Hampshire Electric Cooperative (NHEC) seeking the approval of the New Hampshire Public Utilities Commission (Commission) of NHEC's proposal for the procurement of transition and default service beginning on June 1, 2001 and the retail rates reflecting such procurement.<sup>1</sup> NHEC proposes to procure a combination of load-following service and energy "strips", supplemented with short-term bilateral contracts or purchases on the ISO-NE wholesale spot market. See Order No. 23,651 (March 15, 2001) for a further

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<sup>1</sup> Under the Electric Utility Restructuring Act, RSA 374-F, transition and default service constitute the sources of electricity for customers who do not obtain energy from a competitive supplier in the retail marketplace. Specifically, transition service is "electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive supplier and to others, as deemed appropriate by the commission." RSA 374-F:2, V. Default service is "electricity supply that is available to retail customers who are otherwise without an electricity supplier and are ineligible for transition service." RSA 374-F:2, I-a.

description of the NHEC proposal. In this order, we approve NHEC's proposal as to default service and do not reach issues related to transition service because, as explained fully below, we no longer have jurisdiction over NHEC's transition service rates.

Following the issuance and publication of an Order of Notice, the Commission conducted a Pre-Hearing Conference on March 8, 2001. At the Pre-Hearing Conference, the Commission approved intervention petitions submitted by Competitive Energy Services - New Hampshire, AES New Energy, Inc., Freedom Energy Buyers Group, LLC, New Hampshire Consumers Utility Cooperative, United Energy Marketing, LLC and the Governor's Office of Energy and Community Services. The Office of Consumer Advocate entered an appearance on behalf of residential ratepayers. In Order No. 23,651 (March 15, 2001), we approved the parties' proposed procedural schedule, which called for a merits hearing to be conducted from April 30 through May 2, 2001.

On April 27, 2001, the Commission advised the parties by secretarial letter that the scheduled merits hearing would be canceled in light of the Legislature's passage of House Bill 489, a measure that extends the partial exemption enjoyed by the NHEC from regulation by the

Commission. The April 27 letter noted that the Governor was expected to sign the measure into law imminently and that it would be effective immediately upon its enactment. In fact, Governor Shaheen signed House Bill 489 into law on May 22, 2001. See 2001 Laws Ch. 29 (final enacted version).

In the meantime, the Commission invited the parties to make written filings by May 14, 2001 stating their positions as to what, if any, issues remain for resolution in this docket and whether an evidentiary hearing would be necessary for such resolution. The Commission received two such filings.

## **II. POSITIONS OF THE PARTIES**

NHEC's filing takes the position that House Bill 489 eliminates the Commission's jurisdiction over NHEC's transition service and any other energy service that NHEC may provide to its member/customers. According to NHEC, with the enactment of House Bill 489 it continues to have a statutory obligation to provide default service, the terms and pricing of which remain subject to Commission jurisdiction. Thus, in the view of NHEC, the only issues remaining for resolution in this docket are those concerning NHEC's proposal for default service as of June 1, 2001.

According to NHEC, an evidentiary hearing is not

necessary for resolution of those remaining issues because (1) its proposal for default service is identical to the one approved by the Commission in the previous two NHEC transition and default service dockets, (2) NHEC proposes to price default service identically to its transition service, (3) no NHEC member/customers currently receive default service, and (4) any perceived need to require NHEC to distinguish transition and default service in terms of price can be addressed in a future proceeding. NHEC avers that it has priced, and proposes to continue to price, transition and default service identically because such a practice minimizes administrative cost and complexity and "is likely to provide a measure of comfort to NHEC members considering switching to a competitive supplier." Statement of NHEC Concerning Narrowed Scope of Proceeding at 3.

Intervenor Freedom Energy Buyers Group, LLC (Freedom)<sup>2</sup> agrees that House Bill 489 deprives the Commission of jurisdiction over NHEC's transition service rates but, nevertheless, asks the Commission to conduct a full

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<sup>2</sup> Freedom initially appeared jointly with intervenors New Hampshire Consumers Utility Cooperative (NHCUC) and United Energy Marketing, LLC (United Energy). However, Freedom's May 14, 2001 filing was submitted on its own letterhead and makes no reference to NHCUC or United Energy. Therefore, we understand Freedom's May 14 letter to have been submitted solely on behalf of that entity.

evidentiary hearing. According to Freedom, NHEC is still subject to the Commission's plenary jurisdiction under the Electric Utility Restructuring Act, RSA 374-F. In Freedom's view, aspects of NHEC's proposal are inconsistent with a key policy principle set forth in the Restructuring Act, specifically the objective of "Full and Fair Competition," in connection with which the Legislature noted that "[c]hoice for retail customers cannot exist without a range of viable suppliers. The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market." RSA 374-F:3, VII.

Freedom also invokes the Restructuring Act provision explicitly authorizing the Commission

to order such charges and other service provisions and to take such other actions that are necessary to implement restructuring and that are substantially consistent with the principles established in this chapter. The Commission is authorized to require that distribution and electricity supply services be provided by separate affiliates.

RSA 374-F:4, VIII(a).

According to Freedom, NHEC is proposing to provide its member/customers with "competitively priced wholesale power" that is "inextricably integrated with and tied to its

delivery service." Freedom Energy Buyers Group letter of May 14, 2001 at 2. In Freedom's view, this runs directly afoul of the statutory prescription for full and fair competition and also violates RSA 374-F:1, I, which refers to "at least functional separation of centralized generation services from transmission and distribution services." Therefore, Freedom asserts, a full evidentiary hearing is necessary to determine what action the Commission should take to promote full and fair competition in the NHEC service territory.

No other party took up the Commission's invitation to comment on the future course of this docket.

### **III. COMMISSION ANALYSIS**

We begin by noting that we share NHEC's understanding of the effect of House Bill 489 on our authority over the cooperative in light of its having filed a Certificate of Deregulation with the Commission last year pursuant to RSA 301:57. The salient provision is RSA 362:2, II, which, as amended by House Bill 489, now states in relevant part that, for purposes of the Commission's enabling statutes,

rural electric cooperatives for which a certificate of deregulation is on file with the public utilities commission pursuant to RSA 301:57 shall not be considered public utilities; provided, however, that the provisions of . . . RSA 374-F . . . shall,

unless otherwise provided herein, be applicable to rural electric cooperatives, without regard to whether a certificate of regulation or deregulation is on file with the public utilities commission. The provisions of . . . RSA 374-F:3, V(b) and RSA 374-F:7 shall be applicable to rural electric cooperatives for which a certificate of deregulation is on file with the public utilities commission to the same extent as municipal utilities.

Accordingly, RSA 374-F applies to NHEC, but if municipalities are exempted from compliance with RSA 374-F:3, V(b) and 7, NHEC is as well. RSA 374-F:3, V(b) concerns the pricing and availability period for transition service. RSA 374-F:7 concerns the requirements for competitive energy suppliers doing business in New Hampshire, noting that they "shall be applied in a manner consistent with the restructuring principles of [RSA 374-F] to promote competition among electricity suppliers." Neither provision applies to municipalities because, pursuant to RSA 374-F:4,I, the general restructuring statute is to apply only to utilities providing retail electric service under the Commission's jurisdiction. Municipalities are not public utilities for purposes of the Commission's enabling statutes. See RSA 362:2, I (specifically exempting municipalities from definition of "public utility"). Restructuring for municipalities is addressed elsewhere. See RSA 38:34 (setting forth

requirements for unbundling of retail electricity rates and customer access to competitive retail suppliers in areas served by municipal electric utilities).

Thus, by operation of the amended version of RSA 362:2, II, the Commission no longer has jurisdiction over the terms of NHEC's transition service. All other provisions of RSA 374-F apply, however, including those governing default service.

In these circumstances, we cannot agree with Freedom that it is appropriate for us to use this docket to conduct a broad-based inquiry into whether NHEC's plans for transition and default service are consistent with the Restructuring Act's endorsement of retail competition as a policy objective or its determination that generation and distribution should be functionally separate at electric utilities in New Hampshire. In our view, the Legislature has unmistakably made a determination that a key distinction exists between electric cooperatives and investor-owned electric distribution utilities in New Hampshire. Whereas, as to the latter, the Restructuring Act vests us with an active role in assuring that the relevant public policy principles are addressed, the Legislature has concluded that cooperatives (in which the customers are also the owners of the utility) should



themselves play this role of restructuring public policy steward.

By contrast, it appears that the Legislature has retained our authority over NHEC's default service in recognition of the fact that industry restructuring has not altered the obligation to serve with which utilities have historically been vested. The existence of default service under the Restructuring Act, as a last-resort source of electricity for all customers, assures that no New Hampshire citizen who needs electricity will be unable to obtain it even as the retail marketplace is opened to competition. In that regard, NHEC's plans for default service are unlikely to have any significant impact given the lack of default customers, and we therefore agree with NHEC that no hearing is necessary to consider issues related to default service.

**Based upon the foregoing, it is hereby**

**ORDERED,** that the proposal of New Hampshire Electric Cooperative, Inc. for default service as of June 1, 2001 is APPROVED; and it is

**FURTHER ORDERED,** that New Hampshire Electric Cooperative, Inc. shall file a compliance default service tariff within five days of this Order.

By order of the Public Utilities Commission of New

Hampshire this thirty-first day of May, 2001.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Claire D. DiCicco  
Assistant Secretary