DE 02-068

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Power Supply Arrangement with Union Village Dam

Order Approving Settlement Agreement Terminating Rate Order

O R D E R N O. 24,025

August 9, 2002

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Michael W. Holmes, Esq. for Office of Consumer Advocate; Jack K. Ruderman, Esq. for Governor's Office of Energy and Community Services; Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On April 19, 2002, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a series of motions seeking approval of renegotiated power purchase arrangements with eleven small hydro-electric facilities from which PSNH currently purchases power pursuant to long term rate orders or power purchase contracts previously approved by the Commission,[1] including a motion to terminate the rate order involving Union Village Dam, a hydroelectric facility located on the Branch River in the Town of Wakefield. According to estimates provided by PSNH, the Union Village Dam facility generates 125 megawatt hours of power

[1] These motions were given separate docket numbers from DE 02-064 through DE 02-074 (collectively, the Hydro Dockets). As stated in the joint Order of Notice dated April 22, 2002, the proceedings were provisionally consolidated for purposes of hearing, although each petition would ultimately be considered separately.

on an annual basis.

By a series of letters from PSNH dated April 25, 2002, each municipality having a hydro-electric facility within its borders was notified of the relevant Hydro Docket, including the Town of Wakefield.

By another letter from PSNH dated April 25, 2002, James W. Gallagher, Jr., Chief Water Resources Engineer, Water Division, State Department of Environmental Services was also notified of the pendency of these proceedings.

Other aspects of the procedural history of this docket up to May 24, 2002 are set forth in *Public Service Company of New Hampshire*, Order No. 23,978 (Order Following Prehearing Conference, May 15, 2002) and accordingly are not repeated here.

By letter dated May 29, 2002, Alan Linder, Esq. requested that New Hampshire Legal Assistance be placed on the service list for the limited purpose of receiving copies of documents in the Hydro Dockets.

A secretarial letter dated July 3, 2002 clarified that the hydro-electric facilities named in the Commission’s Order of Notice, to the extent they wished to participate, would be treated as parties in their respective dockets.

On July 3, 2002, PSNH filed a series of Stipulation and Settlement documents in regard to the Hydro Dockets, including this docket.

GOECS filed a letter in support of the Hydro Docket settlements on July 5, 2002.

A hearing on the Hydro Docket settlements was held on July 9, 2002.

II. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

The pre-filed testimony of Stephen R. Hall, Rate and Regulatory Services Manager for PSNH, supports the motions made in the Hydro Dockets. The testimony in each of the dockets is substantially similar except that it is modified to reflect data specific to each docket. PSNH supplemented Mr. Hall's pre-filed testimony with testimony of Mr. Hall and Carl Vogel at the hearing.

PSNH's testimony may be summarized as follows:

PSNH reviewed the specifics of the power purchase rate orders or contracts currently in place with fifty eight hydro-electric independent power producers and two non-hydro projects. These projects annually produce 220,000 megawatt hours of power at an annual cost to PSNH of $25 million, an average cost of $.114 per kilowatt hour (kWh). PSNH then made buydown offers to

fifty five hydro projects; these offers also expressed PSNH's willingness to make buyout offers to the extent any of the projects were interested in a buyout. Offers were not made to two projects which have an unreliable performance history and have been out of service for an extended period of time; three other projects have contract prices that are close to or less than the offer rate of $.05 per kWh and so an offer would not have produced any meaningful reduction in stranded costs.

According to PSNH, the specific offers were calculated using the same methodology and assumed a September 1, 2002 closing date. The offers took into account the term of years remaining on the rate order or power contract, the average historical output of a project, and the price currently paid under the rate order or power contract for the project's output. An up-front payment was then calculated based on a revised purchase rate of $.05 per kWh. The amount of the payment was designed to yield a present value savings of 20% of the difference between what would be paid to the projects under their existing arrangements and the $.05 per kWh buydown rate.

PSNH states that three projects representing 3,800 megawatt hours accepted its buydown offer and eight projects representing 7,875 megawatt hours opted for a buyout. Under the buydown offers, the projects will continue to sell all of their

output to PSNH through the remaining term of the rate order or power contract; projects choosing a buyout have the option of continuing to sell output to PSNH at short term avoided cost rates as established consistent with the PSNH Restructuring Settlement Agreement, *see* Docket No. DE 99-099, or selling to other energy suppliers or utilities.

For those projects accepting a buydown or buyout offer, PSNH and the hydro producer entered into an agreement to modify or terminate the rate order or power contract. Such agreement also described necessary changes, if any, to interconnection terms, based on the individual circumstances. Each of these agreements was made subject to the Commission's approval of the proposed renegotiated arrangement.

PSNH states that the determination of annual energy generated was based on each project's historical average which was then apportioned to a monthly figure using a ratio based on the overall historical trend of hydro-electric generation. The ratio recognizes maximum output during spring runoff and in late fall, with minimum output occurring in the summer months.

According to PSNH, each buydown and buyout offer consisted of an up-front payment equal to 80% of the net present value, using a 10% discount rate, of the difference between the cost of power under the current pricing arrangement less the

cost of power at (i) $.05 per kWh for buydown offers and (ii) for buyout offers, the projected cost of replacement power over the remaining term of each project.[2] The savings for a buydown was calculated to be the difference between what PSNH would have paid to the project under the existing rate order or power contract and what it will pay under the restructured agreement for the same amount of power priced at $.05 per kWh along with the up-front payment. The savings for a buyout was calculated to be equal to the difference between what PSNH would have paid the project for the power under the existing rate order or power contract and what it anticipates it will now pay for the same amount of replacement power on the ISO market, along with the up-front payment.

Regarding the factors listed in RSA 362-A:8,II(b), PSNH states that the approval and consummation of the proposed renegotiated arrangements will have a positive impact on the State and local communities, and on electric rates. More particularly, PSNH states that the cost of energy purchases pursuant to Commission rate orders issued to the independent power producers is the largest single stranded cost which PSNH's customers currently bear; these above market costs are recovered

[2] The cost of replacement power was assumed to be $.04 per kWh through 2006 and then escalated at 4% annually through the remaining term of the rate order or power contract.

dollar-for-dollar in Part 2 of PSNH's stranded cost recovery charge. According to PSNH, approval of the proposed renegotiated arrangements will lower these costs in accordance with legislative policies. Furthermore, PSNH states that since most of the projects are expected to continue to operate, there is likely to be little loss of project-related jobs resulting from the proposed renegotiated arrangements.

PSNH also expects the impact on local property taxes to be minor. PSNH states that the majority of projects are subject to payment in lieu of taxation arrangements under which the projects pay towns a small percentage, ranging from 1% to 5%, of their revenues. Since the eleven projects are located in nine different towns with no town having more than two projects, PSNH believes that the individual impacts will be minimized.

Finally, PSNH states that none of the proposed transactions will have an adverse effect on the state's energy security; New Hampshire and the rest of New England have a capacity surplus and, in any event, the buyout arrangements represent a relatively small amount of capacity.

B. GOECS

GOECS expressed its support for the Hydro Docket settlements in its July 5, 2002 letter. The letter notes that GOECS's participation was limited to monitoring the important

issues raised in the Hydro Dockets, including those listed in RSA 362-A:8 and states that GOECS is

> "pleased that the parties were able to reach settlement agreements that result in ratepayer savings, and [is] hopeful that the small hydro electric plants continue to be a part of New Hampshire's diverse indigenous energy supply."

III. SUMMARY OF THE TERMS OF THE STIPULATION AND SETTLEMENT

The Stipulation and Settlement in this docket was executed by PSNH, OCA, Commission Staff and W.M. Lord Excelsior Company, operator of Union Village Dam. It is similar to the settlement agreements entered into in the other Hydro Dockets except that certain provisions are tailored specifically to reflect the particular facts and circumstances in this docket. Furthermore, it is consistent with the specific offer made to and accepted by W.M. Lord Excelsior Company.

The Stipulation and Settlement provides that if it is approved by the Commission, PSNH will make a lump sum payment to W.M. Lord Excelsior Company in exchange for the termination of its 20 year rate order.[3] W.M. Lord Excelsior Company will nevertheless be free to sell power to PSNH under the short-term energy and capacity rates set from time to time by the Commission. PSNH will agree, for a fee based on PSNH's associated costs, to act as a sponsor at ISO New England for

W.M. Lord Excelsior Company for the purposes of sales to other entities.

The lump sum payment was calculated based upon 80% of the net present value of the difference between the expected payments under the Rate Order for the remainder of its term and the value of the replacement power cost based upon a projection of future market rates.

In this case, the lump sum payment of $32,635 is payable on September 1, 2002, and the net present value of the savings from the renegotiated arrangement is calculated to be $8,159. PSNH will retain 20% of the calculated savings, $1,632, in accordance with RSA 362-A:4-d. PSNH will create a regulatory asset equal to the sum of the lump sum payment and 20% of the savings, $34,267. The regulatory asset will be amortized over the remaining term of the Rate Order and will be recovered as a Part 2 stranded cost. Carrying charges will accrue on the unamortized balance of the regulatory asset at the Stipulated Rate of Return, as described in the Agreement to Settle PSNH Restructuring in Docket No. DE 99-099. If the closing of the renegotiated agreement is completed after September 1, 2002 but before December 31, 2002, the amounts of the lump sum payment, savings and regulatory asset will be adjusted to reflect the

[3] *See* Order No. 17,777 in Docket No. DR 85-177, 70 NH PUC 672 (1985) (Rate

actual payment date. If PSNH does not make the lump sum payment before December 31, 2002, PSNH must re-file its motion if it wishes to pursue a renegotiated agreement.

In order to address OCA's concern over recent legislative efforts to provide financial incentives to small power producers to continue operations beyond the early termination of their rate orders or long term purchase power contracts,[4] W.M. Lord Excelsior Company, including its successors or assigns, agrees that

> "should it receive any additional payments either directly from PSNH or its customers, excluding direct retail sales to PSNH customers over the remaining life of the rate order (i.e., August 31, 2005) to continue or restart generating at the facility subject to the current buydown or buyout, then the lesser amount of the original or additional payment (plus interest calculated in accordance with Puc [1203.03(i)(3)]) shall be refunded through a payment to PSNH on behalf of its customers. Revenues received by W.M. Lord Excelsior Company on the wholesale or direct retail market, including any premiums for being a renewable resource, are separate from the above noted payments and thus exempted."

Paragraph 6 of the Settlement and Stipulation refers to and describes certain information provided by PSNH regarding the factors the Commission must consider pursuant to RSA 362-A:8. Among the points made by PSNH are the following:

Order).

[4] In explaining this provision at the hearing, PSNH stated that it is intended to preclude a hydro producer from retaining both the lump sum payment and a possible future government authorized subsidy. *See* Transcript of July 9, 2002 at 22-28.

Because the hydropower industry is not labor intensive, there would be minimal loss of jobs if the hydro producer terminated operations. Property tax payments, including payment in lieu of taxation arrangements, for all eleven projects totaled only $31,000. Because the exemption from local property taxes formerly in RSA 362-A:6 has been repealed, local communities can now levy *ad valorem* real estate taxes to replace the revenue dependent payments in lieu of taxation. In terms of environmental and health impacts, the renegotiated arrangements should not have any impacts as to facilities that continue to operate; even if a facility would discontinue hydropower production, no environmental or health impacts are expected unless possibly the dams are operated in a different manner than before. In that case, PSNH is not aware of any significant adverse environmental or health related impacts which are likely to result from the renegotiated arrangements if applicable environmental and health protection laws, regulations and licensing requirements, including Federal Energy Regulatory Commission licensing and exemption requirements, are complied with. Furthermore, any power generation lost by discontinuance of hydropower production is small and there is adequate capacity coming on line from gas-

fired generators to replace any lost generation without significant added environmental or health related impacts.

IV. COMMISSION ANALYSIS

This docket requires us to consider whether it is appropriate to terminate our Rate Order as to W.M. Lord Excelsior Company and replace it with the arrangements provided for in the Settlement and Stipulation.[5] We are authorized to do so by RSA 365:28, after notice and hearing. We conclude that such action is consistent with the public interest and we will therefore approve the Settlement and Stipulation.

As PSNH points out in its pre-filed testimony, the legislature has encouraged the renegotiation of purchased power arrangements with small power producers, including hydro-electric power producers, in order to mitigate stranded costs. *See e.g.*, RSA 374-F:3,XII(c)(2); RSA 362-A:4-c,I. At the same time, in any decision affecting qualifying small power producers and qualifying cogenerators, we must consider certain factors, including the economic impact on the state, community impact, enhanced energy security by utilizing mixed energy sources, potential environmental and health-related impacts, and impact on electric rates. RSA 362-A:8,II(b)(1)-(4).

[5] We note we were called on last year to undertake a similar task in connection with proposed renegotiated arrangements involving certain wood-fired cogeneration facilities. *See Public Service Company of New Hampshire*,

The ratepayer "share" of the calculated net present value of the savings in this particular docket, $6,527 is relatively modest, but the estimated ratepayer "share" of the savings from the renegotiated arrangements in all the Hydro Dockets, $1,030,310, is significant. While it is not possible to determine conclusively that PSNH has negotiated every possible savings that could have been realized from W.M. Lord Excelsior Company, we observe that Staff and the OCA, among others, support the calculation of savings reflected in the Stipulation and Settlement and no party has come forward to contend that the renegotiated arrangement is not sufficiently favorable to ratepayers.

Similarly, we find that the straightforward methodology for calculating and treating the (i) savings to be passed on to both ratepayers and PSNH and (ii) lump sum payments to be made to the hydro producers is fair, reasonable and consistent with applicable requirements.

We note that the information in the record regarding the statutory factors that we must consider is general in nature. Nevertheless, we have no reason to doubt its accuracy in the context of any one of the Hydro Dockets, and no party is contending otherwise.

Order Nos. 23,816 and 23,840 (2001).

The information in the record addresses all the factors we must consider. We have discussed the favorable impact on electric rates above. Since hydro-electric generation facilities are typically not labor intensive operations, the impact of the renegotiated arrangements on state and community job loss and job creation does not appear to be significant.

Although the renegotiated arrangements do not increase energy security by utilizing mixed energy sources, they do not appear to adversely affect energy security. For example, the energy output of the eleven renegotiated arrangements represents less than 0.12% of New Hampshire-based generation. Moreover, even for the projects accepting the offers, it is by no means clear that a significant number will cease to generate electricity.

It is conceivable that some of the renegotiated arrangements will result in environmental effects if the facilities are operated in a different manner than they are at present. However, based on information provided by PSNH in the Stipulation and Settlement, it does not appear that any such effects are likely to be significantly adverse if applicable environmental and health protection laws, regulations and licensing requirements are followed.

Accordingly, weighing and considering the information in the record before us, we are persuaded to approve the Stipulation and Settlement in this docket.

Based upon the foregoing, it is hereby

ORDERED, the Stipulation and Settlement entered in this docket is approved; and it is

FURTHER ORDERED, that in accordance with the Stipulation and Settlement, the Motion to Terminate Rate Order No. 17,777 is granted.

By order of the Public Utilities Commission of New Hampshire this ninth day of August, 2002.

Thomas B. Getz	Susan S. Geiger	Nancy Brockway
Chairman	Commissioner	Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director