

DE 02-219

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Power Supply Arrangement with Hillsboro Mills

Order Nisi Approving Settlement Agreement Terminating Rate Order

O R D E R N O. 24,098

December 20, 2002

I. THE FILING

On December 5, 2002, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a motion and supporting documentation which sought approval of a renegotiated power purchase arrangement with Hillsboro Mills, a hydro-electric facility located on the Souhegan River in the Town of Wilton.¹ According to estimates provided by PSNH, the Hillsboro Mills facility generates 1,800 megawatt hours of power on an annual basis.

PSNH's motion requested that the Commission (i) take administrative notice of the record in Docket No.s DE 02-064 through DE 02-074;² (ii) approve the termination of the 20 year rate order involving Milford Elm Street Trust (Trust), the owner of the Hillsboro Mills facility,³ in exchange for a lump sum payment by PSNH to the Trust; and (iii) approve the treatment of

¹ PSNH also forwarded copy of the filing to the Town of Wilton.

² These dockets (Hydro Dockets) involved renegotiated arrangements with 11 independent power producers (IPPs). The Commission approved the renegotiated arrangements in Order No.s 24,021 through 24,031, dated August 9, 2002 and effective September 1, 2002.

³ See *Milford Elm Street Trust*, Order Nisi No. 18,124 in DR 86-38, 71 NH PUC

the savings from the renegotiated power supply arrangement in the manner proposed by PSNH.

Accompanying PSNH's motion were the testimony of Stephen R. Hall, Rate and Regulatory Services Manager for PSNH, and certain attachments, including a copy of his testimony in Docket No. 02-073,⁴ the savings calculation worksheet for Hillsboro Mills, an Agreement to Terminate Rate Order executed by PSNH and the Trust, a summary of the savings from buydowns and buyouts of hydroelectric projects, a spreadsheet calculating the amortization of the proposed regulatory asset in this docket, and a Stipulation and Settlement executed by PSNH and the Trust.

On December 6, 2002, in response to a Staff request, PSNH filed a revised amortization spreadsheet to replace the one included in the original filing, which had used an incorrect amortization period. PSNH stated that the error has no impact on the economics of the proposed transaction.

On December 20, 2002, PSNH filed a revised Stipulation and Settlement executed by PSNH, the Trust, OCA and Commission Staff to remedy some minor inconsistencies with the older China Mills Dam Settlement from which the Hillsboro Settlement was derived. The revised Stipulation and Settlement conforms precisely to the general, substantive terms of the settlement

128 (February 18, 1986) (Rate Order).

⁴ This docket involved a rate order buyout arrangement with the China Mills Dam facility, which we approved in Order No. 24,030.

agreement in the China Mills Dam Hydro Docket.

Other matters in PSNH's filing, together with matters of record in the Hydro Dockets, may be summarized as follows:

PSNH closed the renegotiated arrangements in the Hydro Dockets and made the specified payments on August 30, 2002. Although the owner of the Trust had been engaged in the previous negotiations, the owner was not able to pursue a renegotiated arrangement at that time. His estate would like to complete the transaction in 2002 rather than later, and the arrangement calls for payment of the lump sum amount on December 31, 2002.

The restructured arrangement with Hillsboro Mills is identical in format and methodology as the approved arrangement with China Mills Dam.

PSNH originally made buydown offers to fifty-five projects, and also indicated a willingness to make buyout offers. These buydown offers took into account the term of years remaining on the rate order, the average historical output of the project, and the price currently paid under the rate order 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.

This project, choosing a buyout, has 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.

The determination of annual energy generated was based on the 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.

The 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 the projected cost of replacement power over the remaining term of the project.⁵ The savings for the buyout was calculated to be equal to the difference between what PSNH would have paid the project for the power under the existing rate 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.

⁵ 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.

Regarding the factors listed in RSA 362-A:8,II(b), PSNH states that the approval and consummation of the proposed renegotiated arrangement 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 dollar-for-dollar in Part 2 of PSNH's stranded cost recovery charge. According to PSNH, approval of the proposed renegotiated arrangement will lower these costs in accordance with legislative policies. Furthermore, PSNH states that 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.

Finally, PSNH states that the proposed transaction will not 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 arrangement represents a relatively small amount of capacity.

II. SUMMARY OF REVISED STIPULATION AND SETTLEMENT

The revised Stipulation and Settlement in this docket is virtually identical to the settlement agreements entered into in the 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 the Trust.

The Stipulation and Settlement provides that if it is approved by the Commission, PSNH will make a lump sum payment to the Trust in exchange for the termination of the Rate Order. The Trust 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 Milford Elm Street Trust 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 \$407,926 is payable on December 31, 2002, and the net present value of the savings from the renegotiated arrangement is calculated to be \$101,982. PSNH will retain 20% of the calculated savings, \$20,396, 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, \$428,322. 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.

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,⁶ Milford Elm Street Trust, 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., December 31, 2007) to continue or restart generating at the facility subject to the current 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 Milford Elm Street Trust 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:

⁶ In explaining this provision at the hearing in Docket Nos. DE 02-064 through DE 02-074, 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. 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.

III. COMMISSION ANALYSIS

As a preliminary matter we note that we issued the Rate Order in 1986 as an order nisi. Under the 2001 amendment to RSA 365:28, a Commission hearing on a modification of an order is not required "when any prior order made by the commission was made under a provision of law that did not require a hearing and a

hearing was, in fact, not held." We are satisfied that the Rate Order falls within the terms of the amendment, and accordingly we have concluded we may act in this docket on a nisi basis.

Since the filing in this docket is so similar to those made in the Hydro Dockets, we think it is appropriate to take administrative notice of the record in the Hydro Dockets.

This docket requires us to consider whether it is appropriate to terminate the Rate Order as to Milford Elm Street Trust and replace it with the arrangements provided for in the Settlement and Stipulation,⁷ as further set forth below. For the reasons set forth in our Hydro Docket orders, 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,

⁷ 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*, Order Nos. 23,816 and 23,840 (2001).

potential environmental and health-related impacts, and impact on electric rates. RSA 362-A:8,II(b)(1)-(4).

The ratepayer "share" of the calculated net present value of the savings in this particular docket, \$81,585 is relatively modest in this case. While it is not possible to determine conclusively that PSNH has negotiated every possible savings that could have been realized from the Trust, we observe that Staff and the OCA support the calculation of savings reflected in the Stipulation and Settlement.

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 payment to the Trust 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 this docket.

The information 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 arrangement does not increase energy security by utilizing mixed energy sources, it does not appear to have any observable effect on energy security.

It is conceivable that the renegotiated arrangement might result in environmental effects if the facility is operated in a different manner than it is at present. However, based on information provided by PSNH in the record and 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.

Based upon the record before us, we are persuaded to approve the Settlement Agreement in this docket.

Based upon the foregoing, it is hereby

ORDERED NISI, that, subject to the effective date below, the revised Stipulation and Settlement entered in this docket is APPROVED and in accordance with the Stipulation and Settlement, PSNH's motion to terminate the Rate Order is GRANTED.

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be delivered by messenger to the Town of Wilton and to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 30, 2002 and to be documented by affidavit

filed with this office on or before January 6, 2003; and it is

FURTHER ORDERED, that all persons interested in responding to this petition be notified that they may submit their comments or file a written request for a hearing on this matter before the Commission no later than January 6, 2003; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 13, 2003; and it is

FURTHER ORDERED, that this Order Nisi shall be effective on January 15, 2003, unless PSNH fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to such later effective date; and it is

FURTHER ORDERED, that PSNH shall file a status report regarding the closing of the renegotiated arrangement on or before January 21, 2003.

By order of the Public Utilities Commission of New
Hampshire this twentieth day of December, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary