

DE 05-164

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Energy Service Rate Adjustment Proceeding

Order Following Hearing

ORDER NO. 24,644

June 30, 2006

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; James T. Rodier, Esq. for Freedom Partners LLC d/b/a Freedom Energy; McLane, Graf, Raulerson & Middleton, P.A. by Sarah M. Knowlton, Esq. for Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.; Brown, Olson & Gould, P.C. by David J. Shulock, Esq. for Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company L.P., and Hemphill Power and Light Company; Office of Consumer Advocate by F. Anne Ross, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On May 26, 2006, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Utilities Commission (Commission) a request to adjust its Energy Service (formerly known as Default Service) rate effective on July 1, 2006. The filing sought a decrease from the current 9.13 cents per kilowatt-hour to 8.50 cents per kilowatt-hour, although the request was subsequently modified at hearing.

The Commission opened this docket at PSNH's request in September 2005, for the purpose of conducting a hearing that led to Order No. 24,579 (January 20, 2006), fixing the current Energy Service rate. Consistent with established practice in preceding years' Energy Service proceedings, the Commission approved an agreement of the Parties and Staff whereby PSNH would file a "mid-term update" of Energy Service costs and revenues on or before July 1, 2006. Order No. 24,579, slip op. at 13. The Commission reserved to any party the right to request a revised Energy Service rate, effective on August 1, 2006, if the purpose of such request

was to produce an estimated reconciliation balance of zero on December 31, 2006. In its request for such a revision, PSNH made clear that it was departing from this rubric by requesting an effective date of July 1, on the ground that this would coincide with adjustments to other rate components (the Stranded Cost Recovery Charge and Delivery Service rates) as requested in other pending proceedings.

The Commission entered Order No. 24,631 (June 8, 2006), scheduling a hearing for June 21, 2006. Also established were a deadline for additional intervention petitions (June 19, 2006) and dates for a technical session (June 15, 2006) as well the submission of pre-filed testimony responsive to PSNH's (June 19, 2006). The technical session took place as scheduled. No responsive testimony was filed. The Commission received a timely and jointly filed intervention petition from four independent power producers that are also PSNH customers, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company L.P., and Hemphill Power and Light Company.

The hearing took place as scheduled. The Commission granted the intervention petition of the four independent power producers, finding them to have standing as required by RSA 541-A:32, I. Robert A. Baumann, director of revenue regulation and load resources for PSNH affiliate Northeast Utilities Service Company (NUSCO), Stephen R. Hall, manager of rates and regulatory services for PSNH, and Richard C. Labreque principal engineer with the regulated wholesale power contracts department of NUSCO, testified on behalf of PSNH. There were no other witnesses.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

At hearing, PSNH indicated that it had modified its proposal somewhat, based on discussions with the Office of Consumer Advocate (OCA) and Commission Staff. According to Exhibit 8 introduced at hearing, PSNH estimated that, if left unchanged, the Energy Service charge would generate an excess of revenues over costs in the amount of slightly less than \$47 million. According to PSNH, approximately \$10 million of that overrecovery is an estimated figure, covering a projected excess of revenues over costs over the remainder of the current Energy Service rate period. PSNH initially proposed to amortize the \$46 million over the 18-month period beginning on July 1, which would have the effect of crediting only a portion of the sum to customers for the remainder of the current rate period, which ends on December 31, 2006. At hearing, PSNH indicated that it had agreed to flow the full \$46 million credit through the recovery mechanism over the period from July 1 through December 31. According to the PSNH witnesses, this would have the effect of reducing the Energy Service charge from the current 9.13 cents per kilowatt-hour to 7.91 cents, whereas the initial PSNH proposal would have only reduced the rate to 8.54 cents.

On cross examination, the PSNH witnesses expressed concerns about flowing the overrecovery through to customers via a customer-specific bill credit to each ratepayer that had contributed to the overrecovery. According to PSNH, this would create logistical problems with the Company's billing system, with respect to both identifying what amount should be credited to each customer and, in the instance where a customer had discontinued or changed service, locating the customer and tendering payment. Mr. Hall agreed that it would be logistically more feasible to flow the credit through to customers via PSNH's separate Stranded Cost Recovery

Charge, so as to avoid the situation in which some customers who had contributed to the overrecovery would not get the credit because they were no longer purchasing their energy from PSNH. But he noted that, precisely because the SCRC is paid by all customers, such an approach would amount to a windfall for customers who obtain energy from competitive suppliers. PSNH estimated that, as of the hearing, some 50 to 100 commercial and industrial customers of PSNH's distribution service, representing approximately 100 - 115 megawatts of load, and about 10% of all energy distributed by PSNH, were purchasing energy from suppliers other than PSNH.

B. Freedom Partners LLC d/b/a Freedom Energy

Freedom Energy, a competitive energy supplier doing business in the PSNH service territory, expressed concerns with the PSNH proposal. While agreeing that there is merit to flowing the overrecovery through the Energy Service rate over the next six months, as opposed to a longer period, Freedom noted that such a significant rate change would be a surprise to some commercial and industrial customers that had migrated to the competitive market in recent months with the expectation that the Energy Service rate of PSNH would not make such a significant step downward.

C. Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively, Constellation) said its interest is in assuring that a competitive market does, in fact, exist for retail energy supply in New Hampshire. According to Constellation, in achieving that end it is important for PSNH not to give its Energy Service customers distorted price signals. Thus, Constellation took the position that a six-month period is preferable to an 18-month one when it comes to crediting customers with the Energy Service overrecovery. But, according to

Constellation, an additional approach for the Commission to adopt would be requiring PSNH to reconcile costs and revenues quarterly and revise the Energy Service rate on that basis.

D. Office of Consumer Advocate

OCA indicated its support of the revised PSNH proposal to credit the overrecovery in the ensuing six months. However, OCA asked the Commission to consider the imposition of an anti-gaming mechanism, i.e., a measure or measures to discourage customers now using competitive suppliers (and thus who have not contributed to the overrecovery as much as customers that have taken Energy Service from PSNH throughout the past 5 months) to return to PSNH's energy service to take advantage of the refund. OCA also stated that it would like to meet with PSNH to discuss what disclosures the Company makes to customers, particularly via its bills, about the possibility of Energy Service rates being adjusted more than annually. The PSNH witnesses suggested at hearing that the Company advised customers in February that the Energy Service rate had been established for the coming year, without disclosing the possibility of a midyear adjustment.

E. Staff

Staff indicated its support of PSNH's revised proposal.

III. COMMISSION ANALYSIS

RSA 378:7 authorizes the Commission to fix public utility rates that are just, reasonable and lawful. RSA 369-B:3, IV(b)(1)(A) obligates the Commission to price PSNH's default service (which the Company has been authorized to refer to as Energy Service) according to the "actual, prudent and reasonable costs" of providing such power.

The Electric Industry Restructuring Act provides additional guidance. RSA 374-F:3, V(c) requires an electric utility's Energy Service (i.e., default service) to be designed to assure

universal access and system integrity. We have explicit authority to approve “alternative means of providing transition or default service which are designed to minimize customer risk; not unduly harm the development of competitive markets; and mitigate against price volatility without creating new deferred costs” as the competitive market develops. RSA 374-F:3, V(e).

Applying these standards leads us to a slightly different result than the one advocated by PSNH, OCA and Staff. There does not appear to be any dispute as to the general appropriateness of relying on the figures in Exhibit 8, both as to the appropriate extent of the overrecovery from Energy Service revenue through June and the estimate of overrecoveries from July through January. We are nevertheless aware that the actual results will vary from the projections for the remainder of the rate year. Such variations are the very reason a significant overrecovery has accumulated in the first half of the rate year. Moreover, the projections do not appear to take into account the possible effect of customers who are now purchasing energy from competitive suppliers returning to Energy Service in response to the rate reduction.

In light of the applicable legal standards and using our best judgment we conclude that the Energy Service rate should be adjusted in a manner that credits the actual overrecovery, through June, to Energy Service customers over the next six months but defers for the time being any adjustment for forecast energy costs. As reflected at line 25 of Exhibit 8, the actual overrecovery figure is \$36,334,000. Applying this sum to PSNH’s forecasted retail megawatt-hour sales figure for the period of July 1 through December 31, 2006 yields a per-kilowatt decrease in the Energy Service rate of 0.95 cents. Therefore, we approve a reduction in the Energy Service rate from 9.13 cents per kilowatt-hour to 8.18 cents per kilowatt-hour for application by PSNH on and after July 1.

Our concerns about wholesale price volatility, and the unknown effects of retail customer migration, lead us to consider Constellation's previous suggestion regarding the possibility of a further rate adjustment after only 3 months. We explicitly left this possibility open in our initial order in this docket. *See* Order No. 24,579, slip op. at 17. Therefore, we instruct PSNH to file an update, in the same format it used to submit its midterm update as described in Order No. 24,579, *see id.* at 13, on or before September 1, 2006. In conjunction with that filing, we will entertain a request from any party to revise the Energy Service rate.

Finally, given the size of the overrecovery to date, the lack of any restrictions on migration to or from Energy Service and the likelihood that some customers will have more ability than others to change suppliers, we are concerned about the potential for what some characterize as "gaming" – i.e., the strategic migration to and from PSNH's Energy Service so as to take advantage of price fluctuations in a manner that imposes unfair recovery burdens on customers that may be unable to migrate due to such factors as the lack of competitive suppliers serving their market segment. We note that other jurisdictions have addressed this issue in similar circumstances. Thus we instruct PSNH to include an anti-gaming proposal in its proposal for the Energy Service rate that will be effective on January 1, 2007.

Based upon the foregoing, it is hereby

ORDERED, that Public Service Company of New Hampshire's request for a decrease in its Energy Service rate is granted in part, such that the rate will be 8.18 cents per kilowatt-hour for bills rendered on or after July 1, 2006; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire submit a compliance tariff within three days of this order.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June,
2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary