

**DE 06-125**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Proposed 2007 Default Energy Service and Default Energy Service Rate**

**Order Approving Energy Service Rate**

**ORDER NO. 24,714**

**December 15, 2006**

Appearances: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Steven V. Camerino, Esq. on behalf of Constellation NewEnergy, Inc.; Meredith A. Hatfield, Esq., on behalf of the Office of Consumer Advocate; and Suzanne G. Amidon on behalf of Commission Staff.

**I. PROCEDURAL HISTORY**

On September 8, 2006, Public Service Company of New Hampshire (PSNH) filed with the New Hampshire Public Service Commission (Commission) a proposal to increase Default Energy Service (ES) rates for bills rendered on or after January 1, 2007. Pursuant to RSA 369-3,IV(b)(1)(A), customers who take ES from PSNH will be billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing the power. At the time of the filing, PSNH estimated that the ES rate, for effect on January 1, 2007, would increase from 8.18 cents per kilowatt hour (kWh) to 8.94 cents per kWh, an increase of 9.29 percent. On a total bill basis, this represents an average increase of 5.7 percent.

In support of its request, PSNH filed the testimony and related attachments of Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the operation subsidiaries of Northeast Utilities (NU), including PSNH. PSNH also filed the testimony of Stephen R. Hall,

which responded to a previous Commission order directing PSNH to file an anti-gaming proposal with the company's proposal for 2007 ES rates.<sup>1</sup>

On September 22, 2006, the Commission issued an Order of Notice. Also on September 22, the Office of Consumer Advocate (OCA) notified the Commission of its participation in the docket on behalf of residential ratepayers pursuant to RSA 363:28. On October 2, 2006, Constellation NewEnergy, Inc. (Constellation), a registered competitive energy supplier, filed a Petition to Intervene, which was granted on October 12. On October 11, 2006, Freedom Partners LLC d/b/a Freedom Energy, also a registered competitive energy supplier, filed a Petition to Intervene which was granted on October 26, 2006.

A prehearing conference was held on October 5, 2006. PSNH filed an affidavit of publication of the Order of Notice on the same day. On October 12, 2006, the Commission issued a secretarial letter scheduling a hearing for November 21, 2006. The OCA filed testimony on November 7, 2006, recommending an "anti-gaming" mechanism for implementation in this docket.

On November 17, 2006, PSNH filed revised exhibits to the testimony of Mr. Baumann, based on the most recent information available, along with a supporting technical statement of Richard C. Labrecque and Mr. Baumann, and requested approval of an ES rate of 8.59 cents per kWh for the period beginning January 1, 2007. The hearing was held as scheduled on November 21, 2006. Also on November 21, PSNH filed a Motion for Protective Order for the company's response to Staff Data Request NSTF-01 Q-STAFF-005, which provided the schedule of the planned maintenance outages for all of PSNH's generating units for the ES period of January 1, 2007 through December 31, 2007.

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<sup>1</sup> See Order No. 24,644 (June 20, 2006) in Docket No. DE 05-164.

## II. POSITIONS OF THE PARTIES

### A. Public Service Company of New Hampshire

PSNH testified that the proposed ES rate for all PSNH retail customers beginning in February 2004, was based on a forecast of PSNH's "actual, prudent and reasonable costs" pursuant to RSA 369-:3,IV(b)(1)(A). PSNH recited that Commission Order No. 24,579 (January 26, 2006) approved an ES rate of 9.13 cents per kWh for effect for bills rendered on and after February 1, 2006, and allowed PSNH to set the ES rate on a calendar year basis instead of on a February 1 to January 31 basis. PSNH noted that the Commission adjusted the ES rate mid-term on June 30, 2006 (Order No. 24,644) by reducing PSNH's ES rates from 9.13 cents per kWh to 8.18 cents per kWh for the period of July 1, 2006 through December 31, 2006. PSNH stated that rates approved by the Commission in this docket would be in effect for bills rendered during calendar year 2007, subject to any party requesting an interim adjustment for effect on July 1, 2007, to avoid potential ES cost deferrals, consistent with the Commission's preference as stated in Order No. 24,252 (December 19, 2003).<sup>2</sup>

PSNH testified that ES costs include: generation asset revenue requirements, entitlements and purchased power obligations; fuel costs associated with PSNH's generation; costs and revenues from market purchases and sales of electricity; and, expenses and revenues related to PSNH participation in the wholesale market and required by the Independent System Operator-New England (ISO-NE). PSNH testified that the generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property taxes, and a return on the net fossil/hydro

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<sup>2</sup> See *Re Public Service Company of New Hampshire* 88 NH PUC 638, 649.

investment. PSNH noted that the over-market portion of purchases from the Independent Power Providers is recovered through the Stranded Costs Recovery Charge which is addressed in a separate docket. *See* Docket No. DE 06-134.<sup>3</sup>

PSNH explained that the proposed rate of 8.59 cents per kWh is an increase of 0.41 cents per kWh over the current ES rate and impacts PSNH's overall rates by three percent. PSNH noted that the final proposed rate is 0.35 cents per kWh less than the rate of 8.94 cents per kWh proposed in its original filing. PSNH attributed the reduction to an over-collection in the prior period and changed market conditions. PSNH explained that the company projects an over-collection of ES revenues of about \$10.9 million for the period of July through December 2006, which is being credited back to consumers through the proposed rates. In addition, the rates to take effect January 1, 2007 reflect an overall reduction of revenue requirements of approximately \$18 million due to a \$22 million reduction of net purchase expense and a \$5 million net increase in IPP energy purchases resulting from the corrected end-date for two IPP rate orders<sup>4</sup>. PSNH requested that the Commission approve the rate of 8.59 cents per kWh for bills rendered on or after January 1, 2007.

PSNH testified that, with its filing, it proposed an "anti-gaming" proposal pursuant Commission Order No. 24,644 (June 20, 2006). PSNH noted that the Commission had defined "gaming" as

"...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

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<sup>3</sup> *See* Docket No. DE 06-134.

<sup>4</sup> *See* Commission Order No. 24,679 (October 16, 2006) in which the Commission determined that the Pinetree-Tamworth rate order will terminate on March 31, 2008 and the Bridgewater rate order will terminate on August 5, 2007.

on customers that may be unable to migrate due to such factors as lack of competitive suppliers serving their market segment.” Order No. 24,644, slip op. at 7.

PSNH stated that it considered “gaming” to occur when there is an arrangement between a customer and a supplier where the supplier effectively relies on PSNH as a hedge for its energy costs when the marginal cost of energy is at its highest. PSNH proposed that, should the Commission determine an anti-gaming proposal is necessary, the Commission adopt the following mechanism: any customer who is taking power from a competitive supplier who then returns to ES from PSNH would be precluded from taking service from the same competitive supplier for a period of six months from the date that the customer resumes taking ES from PSNH.

PSNH opined that an anti-gaming mechanism is not necessary at this time because, of the 135 customers who ceased taking ES from PSNH for the period from February 2006 through September 2006, only four customers returned to PSNH, and then went back to their prior supplier within six months. PSNH expressed concern that the anti-gaming proposal offered by OCA could suppress migration to the competitive market and cautioned the Commission against imposing any “anti-gaming” mechanism that would discourage customers from seeking competitive supply.

At hearing, PSNH stated that it issued data requests to Freedom Energy and Constellation, registered competitive energy suppliers, regarding the amount of load from PSNH customers that each company planned to serve in 2007. PSNH indicated that the information was necessary to provide PSNH with the best possible data to calculate an ES rate. PSNH offered that Freedom Energy responded to the data requests but that Constellation had not,

objecting to the data requests on the basis of a decision that the Commission made in the DE 04-048, (City of Nashua Petition for the Fair Evaluation of Pennichuck Water Works, Inc.) that an intervener that does not supply testimony is not subject to discovery.<sup>5</sup> PSNH indicated that Staff had mediated the discovery dispute, and as a result, PSNH, Constellation and Staff were developing recommendations that would require competitive suppliers to provide the Commission with an estimate of what they would supply in PSNH's service territory for 2008. PSNH asserted that this information would assist PSNH in determining needed supply, and would assist, as well, in developing rates.

PSNH filed a Motion for Protective Order for information contained in response to Staff Data Request NSTF-01 Q-STAFF-005, which requested, by generating unit, the schedule of planned maintenance outages during the twelve month ES period. PSNH requested protective treatment of the information because release of the information to participants in the competitive market puts PSNH at a disadvantage when it purchases energy to supply its customers during the times when major generating stations are undergoing planned maintenance. PSNH noted that while the ISO-NE has PSNH's schedule of planned maintenance outages, the information is not shared with the public or with other market participants.

PSNH asserted that the Commission must use a balancing test in order to weigh the importance of keeping the record public with the harm from disclosure of the confidential plans for scheduled maintenance activities. PSNH claimed that the harm from public disclosure of the scheduled maintenance outages outweighs the need for public disclosure or providing the information to the competitive energy suppliers who have full intervener status in this docket: Constellation and Freedom Energy. In conclusion, PSNH requested that the Commission issue

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<sup>5</sup> See Order No. 24,489 (July 8, 2005) Docket No. DW 04-048.

an order preventing the disclosure of the response to Staff Data Request NSTF-01 Q-STAFF-005 and to restrict any disclosure of the response to interveners other than Staff or the OCA and to order such further relief as may be just an equitable.

**B. Constellation New Energy, Inc.**

Constellation did not present testimony but did cross-examine PSNH and OCA regarding the gaming issue. Constellation observed that OCA recommended the following mechanism to prevent “gaming”: any customer who left PSNH for a competitive supplier, and then returned to PSNH, would have to take ES from PSNH for no less than 12 months. Constellation pointed out that the OCA had not produced any evidence that gaming has occurred, and opined that OCA was concerned about migration, not gaming. In addition, Constellation noted that no cost-shifting had occurred, and that PSNH had experienced a significant over-recovery to credit back to customers in rates.

Constellation urged the Commission not to take any action which would discourage migration of customers to competitive supplier in response to market conditions. Constellation concluded by stating opposition to the Commission adoption of an anti-gaming mechanism at this time, but stated its preference for PSNH’s alternative proposal if the Commission determined an “anti-gaming” mechanism was necessary.

**C. Office of Consumer Advocate**

The OCA stated that its testimony and its anti-gaming proposal focused on how to protect small customers from cost shifting. The OCA indicated that it raised the issue in the June 2006 ES rate hearing and that the Commission had responded by ordering PSNH to include an anti-gaming proposal in the instant docket. The OCA offered that other jurisdictions employed

mechanisms to avoid gaming and recommended that the Commission be proactive in instituting anti-gaming measures. The OCA acknowledged that its proposal may preclude some customers from entering the competitive market, but asserted the OCA proposal would protect all other customers from cost shifting.

The OCA recognized the tension among the principles of restructuring in RSA 374-F, for example, discouraging the long-term use of Default Service while also implementing restructuring in a manner that does not benefit one customer class to the detriment of another, but stated that it is concerned that, absent an anti-gaming mechanism, costs avoided by large customers going to competitive supply would be shifted to small customers. In addition, the OCA maintained that as long as competitive options are not available to small customers, the potential for cost shifting exists. The OCA testified that the Commission should act before more migration, which PSNH anticipates in its testimony, occurs. In response to questioning, the OCA stated it was not aware of any gaming at this time.

The OCA further testified that gaming occurs whether it is initiated by the supplier, as contemplated by PSNH in its recommendation, or by the customer, as contemplated by the OCA. Regardless of the source of gaming, the OCA recommended that the Commission adopt the OCA's proposal to require that any customer who opts to leave PSNH ES for competitive supply, and then returns to PSNH ES, be required to stay with PSNH ES for 12 months.

#### **D. Commission Staff**

Staff indicated that it had reviewed the rate mechanisms and calculations that PSNH conducted in support of the January 1, 2007 ES rate and offered its support for the rate calculation included in PSNH's November 17, 2006 filing.



Staff pointed out that no evidence of gaming was offered to the Commission. Staff expressed concern that enacting an anti-gaming mechanism at this point may have the unintended consequence of hindering competition and discourage the natural migration of customers to the competitive market when the market offers lower prices.

Staff noted that PSNH, Constellation and Staff agreed to develop a proposal whereby competitive suppliers reported certain customer information to the Commission. Staff further recommended that PSNH report monthly migration data to the Commission on a quarterly basis, and that the Commission make similar requirements of Unitil Energy Systems, Inc. (Unitil) and Granite State Electric Company d/b/a National Grid (Grid). Staff opined that this data would provide a basis for the Commission to examine the issue of gaming. Staff indicated that, absent evidence of gaming, Staff is reluctant to support any anti-gaming provision in this docket and suggested that the Commission needs more information from the utilities and competitive energy suppliers in order to make a well-informed decision on the gaming issue.

### III. COMMISSION ANALYSIS

#### A. Motion for Protective Treatment

First, we address PSNH's Motion for Protective Treatment. The material which PSNH seeks to protect is the response to Staff Data Request NSTF-01 Q-STAFF-005, which provides information on the schedule of planned maintenance outages for 2007 for each of PSNH generation resources. PSNH asserts that this information should be protected from public disclosure because release of the information to participants in the competitive market puts PSNH at a disadvantage when it plans to purchase energy to supply its customers during the times when major generating stations are undergoing planned maintenance. In addition, PSNH states that while the information is disclosed to the ISO-NE, the ISO-NE does not distribute it to the public or to other market participants. We note that no party objected to the Motion for Protective Treatment.

The New Hampshire Right-to-Know law provides each citizen the right to inspect public records in the possession of the Commission. RSA 91-A:4, I. Section IV, however, exempts from disclosure certain "confidential, commercial, or financial information." Inasmuch as disclosure in this instance could negatively affect customers by increasing the price paid for purchased power, we do not find the public's interest to review a schedule of planned maintenance outages sufficient to outweigh the need for PSNH to maintain confidentiality of such information. *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997). We will, therefore, grant protective treatment to PSNH's response to Staff Data Request NSTF-01 Q-STAFF-005. Consistent with past practice, the protective treatment provisions of this Order are subject to the on-going authority of the Commission, on its own

motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order in light of RSA 91-A, should circumstances warrant.

### **B. Proposed ES Rate**

PSNH's revised its original estimate of the proposed 2007 ES rate of 8.94 cents downward to 8.59 cents per kWh with its November 17, 2006 updated filing. We note that no party expressed opposition to PSNH's calculation of its proposed ES rate of 8.59 cents per kWh. Based on our review of the record, we find PSNH's calculations to be reasonable and we approve the ES rate of 8.59 cents per kWh for the upcoming period.

### **C. Anti-Gaming Mechanism**

As required, PSNH offered an anti-gaming mechanism in its ES rate filing, although we acknowledge that PSNH does not support such a mechanism. We note that no significant evidence of gaming, either according to our definition in Order No. 24,644, the definition used by PSNH, or in the context of cost-shifting as maintained by the OCA, was presented at hearing. Instead, the OCA urged us to avoid the potential shifting of costs to small customers by larger customers who might migrate back and forth between PSNH ES and the competitive market. Constellation and PSNH, however, urged us not to confuse customer migration with gaming and to refrain from adopting a provision that might discourage customer movement to the competitive market. We agree that both goals—avoiding cost shifting to customers with no choice and encouraging development of the competitive market—are important. However, in the absence of evidence that the current arrangement is being abused or is inherently flawed, we will not adopt an anti-gaming mechanism, but we will continue to monitor the market. We also note that the outcome of the Commission's investigation into time-based metering and rates pursuant

to the Federal Energy Policy Act of 2005 in DE 06-061, could effect or mitigate the potential for gaming and any anti-gaming mechanism that might be considered in the future.

To improve our ability to monitor the market, we agree with Staff that we need more information about customer migration to and from PSNH, including the number of customers and amount of load by customer class. Therefore, we will order PSNH to provide, on a quarterly basis, monthly data regarding the migration of its customers to the competitive market. We understand that PSNH is willing to provide this information retroactive to the first quarter of 2006 and we direct them to provide such information. We will take up Staff's suggestion that we obtain similar information from Unitil and Grid in their respective Energy Service proceedings.

In addition, we agree that information from competitive energy suppliers would also be helpful to the Commission to understand the health of the competitive market, and that such information would be useful for planning purposes to PSNH. We direct PSNH, Constellation and Staff to provide us a proposal, by April 1, 2007, on how this information may be shared. The OCA may participate in these discussions at its discretion.

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

**ORDERED**, that PSNH's requested Energy Service rate of 8.59 cents per kilowatt hour is approved, effective with bills rendered on and after January 1, 2007; and it is

**FURTHER ORDERED**, that PSNH shall provide the Commission with quarterly information regarding the migration of customers to the competitive market as further specified herein; and it is

**FURTHER ORDERED**, that PSNH shall file tariff changes that conform with this Order within 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of  
December, 2006.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary