

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 06-028

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Delivery Service Rates

Order Approving Settlement Agreement

ORDER NO. 24,750

May 25, 2007

APPEARANCES: Robert A. Bersak, Esq. and Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Meredith A. Hatfield, Esq. of the Office of Consumer Advocate on behalf of residential ratepayers; Amy Ignatius, Esq. for the New Hampshire Office of Energy and Planning; and Suzanne G. Amidon, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

On April 12, 2006, Public Service Company of New Hampshire (PSNH) filed a petition requesting a series of rate adjustments, for effect July 1, 2006, as follows: (1) a reduction to the stranded cost recovery charge (SCRC), (2) a reduction to the energy service charge, (3) a permanent increase to the retail transmission and distribution rates, and (4) in connection with the request for permanent delivery rate base increases, a temporary increase to delivery rates. The Commission considered the first two requests in other proceedings (Docket Nos. DE 06-078 and DE 05-164, respectively). This docket concerns the transmission and distribution rates; in this order, we approve a settlement agreement establishing new charges.

The Commission issued an order of notice on April 27, 2006, scheduling a prehearing conference for May 10, 2006. The Office of Consumer Advocate (OCA) entered an appearance on May 2, 2006. There were timely intervention requests from four jointly appearing wood-

burning independent power producers (Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company, L.P., and Hemphill Power and Light Company; collectively, the Wood IPPs), Unitil Energy Systems, Inc. (UES), Granite State Electric Company d/b/a National Grid (National Grid) and the New Hampshire Office of Energy and Planning (OEP).

The prehearing conference took place as scheduled on May 10, 2006. At the prehearing conference, the Commission granted all pending petitions to intervene. With respect to National Grid and UES, the Commission granted intervention, as requested by the companies, limited to the receipt of documents exchanged between PSNH and Staff and participation in technical sessions.

On May 17, 2006, the Commission issued a secretarial letter approving a procedural schedule agreed upon by the parties and Staff. On May 30, 2006, PSNH filed a proposed revised delivery service tariff accompanied by supporting testimony of President Gary A. Long, Vice President John M. MacDonald, Rates and Regulatory Services Manager Stephen R. Hall, as well as two witnesses employed by PSNH affiliate Northeast Utilities Service Company: Director of Corporate Financial Policy George J. Eckenroth and Director of Revenue Regulation and Load Resources Robert A. Baumann.

A hearing on temporary rates was held on June 22, 2006, at which the Commission heard testimony in support of a settlement agreement resolving this phase of the proceeding. The settlement agreement provided for temporary increases of \$8 million to transmission revenues and \$16.5 million to distribution revenues, effective with bills rendered on and after July 1, 2006. On June 30, 2006, the Commission approved the temporary rates settlement agreement in Order No 24,645. On the same date, the Commission issued Order No. 24,643 suspending the tariff revisions proposed by PSNH and scheduling a prehearing conference on the permanent delivery

rate case filing for July 19, 2006. Pursuant to the procedural schedule approved by the Commission on July 26, 2007, the parties conducted discovery.

The Business and Industry Association (BIA) filed a motion for late intervention on August 25, 2006, which the Commission granted on September 19, 2006.

On November 17, 2006, PSNH filed updated pro forma adjustments and revisions to the company's initial revenue request. Staff and the OCA filed testimony on December 8, 2006.¹ Pursuant to the procedural schedule, settlement discussions took place on January 30 and 31, and February 21 and 22, 2007, which resulted in a settlement agreement signed by PSNH, the OCA and Staff. PSNH filed the Settlement on February 26, 2007. On March 9, 2007, PSNH submitted a list identifying the exhibits to be introduced at hearing. The hearing on the Settlement was held on March 13, 2007, as scheduled.

II. INITIAL POSITIONS OF THE SETTLING PARTIES AND STAFF

A. PSNH's May 2006 Petition

In its petition,² PSNH requested a permanent increase in delivery (distribution and retail transmission) revenues of \$49.8 million (\$11 million associated with transmission charges and \$38.8 million associated with distribution charges) to take effect on July 1, 2006. PSNH said that its existing permanent delivery rates were inadequate to provide cost recovery and a reasonable return to investors on its installed plant providing service to customers.

¹ Staff testimony was filed as follows: Steven E. Mullen filed testimony regarding revenue requirements and operating expenses, Pradip K. Chattopadhyay filed testimony regarding cost of capital, George R. McCluskey filed testimony regarding the proposed transmission cost adjustment mechanism (TCAM) and Rate B rate design, and Michael D. Cannata, Jr. of the Liberty Consulting Group filed testimony regarding reliability programs and vegetation management issues. For the OCA, Kenneth E. Traum filed testimony regarding revenue requirements and operating expenses; consultant Stephen G. Hill filed testimony regarding cost of capital.

² The petition also included PSNH's positions with respect to its request for temporary rates. For a discussion of temporary rates, *see* Order No. 24,645.

According to the Company, it needed to make significant investments in its distribution system, primarily to accommodate load and peak demand growth and to replace aging and obsolete equipment. PSNH indicated that it did not anticipate an increase in energy sales sufficient to support the necessary capital investment. Therefore, it requested an additional adjustment to rate base to reflect base additions through December 31, 2006.

For the twelve-month period ending December 31, 2005, PSNH said its delivery business segment earned a return on equity (ROE) of 6.59 percent which, it stated, was significantly below any measure of a fair and reasonable return. Consequently, PSNH requested a 10.5 percent ROE based on a capital structure of 51.87 percent long-term debt and 48.13 percent common equity.

PSNH proposed implementing a reliability enhancement program (REP) to provide an additional \$5 million in distribution revenue requirements. According to PSNH, the program would improve reliability through enhanced capital and O&M (operations and maintenance) expenditures. PSNH based its REP, in part, on recommendations made by Stone and Webster Management Consultants, a firm engaged by PSNH to perform an independent review of PSNH's distribution system pursuant to the Commission's decision resolving the previous delivery service rate case filed by the Company.³

According to PSNH, since the last delivery rate case pension expenses had increased to an annual level of \$11 million per year, and medical expense associated with both current and retired employees had increased over 40 percent. In addition, PSNH requested approval to increase the annual contribution to the major storm cost reserve (MSCR) fund from \$1 million to

³ See *Public Service Co. of New Hampshire* 89 NH PUC 523, 526-527 (2004).

\$3 million to recognize actual storm costs which had caused the reserve to have a negative balance of \$2.5 million.

To provide electric service to its customers, PSNH acquires wholesale transmission service from parent company Northeast Utilities (local network service) and from regional transmission organization ISO-New England (regional network service). PSNH stated that, during the test year, transmission expense was the single most significant area of cost increase. The increase in transmission expense reflected increased transmission rates, both for regional and local service, approved by the Federal Energy Regulatory Commission (FERC). According to PSNH, the FERC sets these rates to recover transmission-related revenue requirements and adjusts them each year.⁴ Unlike revenue requirements calculations in New Hampshire, the FERC determines wholesale transmission revenue requirements based upon year-end investment in transmission plant for the prior year and includes forecasts of transmission costs (regional and local) and construction work in progress (CWIP) for local network service.

Currently, PSNH recovers these costs through a separate line item on customer bills. According to the Company, these costs have continued to increase, creating additional risk of non-recovery for PSNH in the test year and the 2006 rate year. Consequently, PSNH proposed to adjust this line item periodically to maintain an equal balance between actual retail transmission expenses incurred by PSNH and the payments made by PSNH retail customers for these costs. Specifically, similar to the energy service rate mechanism, PSNH proposed to set its retail transmission rates based on forward looking cost and revenue estimates that would be reconciled to actual values annually, each January 1. PSNH refers to this proposed adjustment clause as TCAM, for transmission cost adjustment mechanism.

PSNH also proposed six tariff changes in addition to the TCAM as follows:

⁴ The rates are adjusted twice yearly for local network service and once yearly for regional network service.

- Closing the sawmill retention delivery service Rate SR to new applicants.
- Increasing certain service charge fees and field collection fees.
- Increasing the surcharge for new, single-phase overhead line extensions along a public way.
- Updating the interruption credits section of the voluntary interruption program, Rate VIP, and offering the program during winter months.
- Eliminating all references to transition service Rate T and all references to transition energy service or transition service.
- Updating the fixed price estimate under Rate EOL (efficient outdoor lighting).

B. PSNH's November 17, 2006 Updated Filing

On November 17, 2006, PSNH filed updated pro forma adjustments⁵ and revised its request for a revenue increase. PSNH asked for an additional \$5 million for the REP, making its total request \$10 million per year for reliability improvements. In addition, the Company requested an increase to rate base to account for additional electric plant in service during 2006. As a result of various adjustments in the revised pro formas, PSNH's requested increase to delivery service revenue requirements rose from \$49.8 million per year to approximately \$60.2 million per year. It proposed to recover the \$60.2 million by increasing distribution rates, transmission rates and various service charges by \$44.3 million, \$13.5 million and \$2.4 million, respectively.

C. Office of Consumer Advocate

In his prefiled written testimony, OCA witness Kenneth Traum stated that PSNH had improperly matched rate base, revenues and expenses. As a result, he recommended a revenue increase of only \$17.321 million, with an equal percentage increase to all customer classes. Mr.

⁵ In general terms, a "pro forma adjustment" is a change to a utility's revenue requirements that includes known and quantifiable recurring expenses that were not part of the expenses incurred during the test year used to develop the initial revenue requirement. In this case, the test year was the year ended December 31, 2005. The pro forma adjustments include changes to revenues and expenses occurring in the 12 months of 2006.

Traum opposed the requested transmission cost adjustment mechanism, provided for a \$1.72 million annual funding level for the major storm cost reserve, and did not support any specific increase for system reliability except for tree trimming.

OCA consultant Stephen Hill testified in support of an ROE of 9.00 percent, which, with a recommended capital structure consisting of 46 percent common equity and 54 percent total debt, resulted in a recommended overall cost of capital of 7.20 percent.

D. Commission Staff

Staff witness Steven Mullen supported a recommended revenue requirement of \$285.469 million, an increase of \$39.928 million as compared to the Company's proformed test year operating revenues. In calculating the revenue requirement, Mr. Mullen removed post-test year plant additions and related adjustments from the calculations of rate base and revenue requirements. Based on the recommendations of Michael Cannata, Staff's consultant on reliability issues, Mr. Mullen included an incremental \$7.5 million to his recommended annual revenue requirements. Finally, he proposed a \$1.7 million annual funding level for the major storm reserve fund, with an additional proposal that PSNH bring the fund into a positive balance by including the negative reserve balance, plus \$1 million, to the temporary rate reconciliation that would take place in this proceeding.

Additional Staff testimony was offered by Pradip Chattopadhyay, who recommended an ROE of 9.12 percent. Using a capital structure that consisted of 47.66 percent common equity, 51.17 percent long-term debt and 1.18 percent short-term debt, Mr. Chattopadhyay recommended an overall cost of capital of 7.29 percent.

Staff witness George McCluskey supported PSNH's request to establish a TCAM to reconcile its transmission costs and revenues. In addition, Mr. McCluskey proposed changes to

PSNH's existing rate design for the transmission and distribution components of its backup delivery service Rate B. According to Mr. McCluskey, his proposed changes would allocate costs to customers on the basis of their use of backup service and would enhance fairness and efficiency.

Finally, Mr. Cannata made certain recommendations regarding PSNH's distribution system practices and procedures. He also recommended an annual funding level of \$7.5 million for the REP for a period of five years, with recommendations for revisions to PSNH's proposed REP. Regarding vegetation management, Mr. Cannata supported annual funding of \$11 million, an increase from PSNH's requested \$8.6 million. Mr. Cannata also made certain recommendations concerning the MSCR that were incorporated into the testimony of Mr. Mullen.

III. SETTLEMENT AGREEMENT

At the March 13, 2007 hearing, the settlement was presented by a joint panel of witnesses representing PSNH, the OCA and the Staff. A summary of the substantive provisions of the settlement follows.

A. Delivery Service Rate Changes

The Settlement provides for three changes to PSNH's delivery service rates. The first is an increase that would be effective on July 1, 2007, reflecting a \$37.681 million increase to PSNH's delivery service revenue requirement. That increase comprises an increase to the distribution and transmission components of PSNH's delivery service revenues of approximately \$26 million and an estimated \$11 million, respectively. The July 1, 2007 rate increase would also include a one-year recoupment (described below) of the difference between revenues received using the temporary rates effective July 1, 2006, and the permanent rates to be

implemented effective July 1, 2007. The second recommended change to the delivery service rates is a step increase to be effective January 1, 2008, designed to recover additional distribution capital additions placed in service between July 1, 2007, and December 31, 2007. The final recommended change to delivery service rates is a decrease to remove the recoupment amount. That change would take place on July 1, 2008. Additional terms related to the delivery service rate changes are described below:

1. Uncollectible Expense

Beginning July 1, 2007, the portion of uncollectible expense related to energy service would be removed from delivery service revenue requirements and included in the determination of energy service rates. Based on calculating the proportion of energy service revenue to total revenue in the test year, the amount to be shifted to energy service revenue requirements is \$2,030,000, or 52 percent of the total uncollectible expense. In addition, in order to reduce the potential for uncollectible expense associated with large customer accounts, PSNH agreed to review its deposit and credit policy for large customers and provide a report of its review to Staff and the OCA, by November 1, 2007, for their review and comment.

2. Stipulated Cost of Capital

For all periods covered by the settlement, the distribution revenue requirement would be calculated using an overall cost of capital of 7.55 percent, determined using a return on common equity of 9.67 percent and PSNH's test year capital structure including short term debt as shown in the table below:

	Proformed Total Amount in \$ (000s)	Weight	Cost of Capital	Actual Weighted Cost
Total Common Equity	454,649	47.66%	9.67%	4.61%
Long Term Debt	488,157	51.17%	5.63%	2.88%
Short Term Debt	11,220	1.18%	5.25%	0.06%
Total Capitalization	954,026	100.00%		7.55%

3. Maintenance Tree Trimming Expense

The distribution revenue requirement was reduced by \$506,000 in the settlement to recognize a portion of maintenance tree trimming expense incurred by PSNH that it will attempt to recover from Verizon. The OCA and Staff agreed to support PSNH in its attempts to seek recovery from Verizon.

4. Major Storm Cost Reserve (MSCR)

The settlement provides that, effective July 1, 2007, PSNH would be allowed to increase its annual accrual to its MSCR from \$1 million to \$1.7 million. In addition, in recognition of a negative balance in the current MSCR account, the settlement provides that PSNH would amortize and recover from customers over a period of three years, beginning July 1, 2007, the negative balance including a return at the stipulated cost of capital as well as an additional \$1 million, with the objective of having a \$1 million balance in the MSCR at the end of the three year period. For settlement purposes, the amount to be amortized and recovered over the three year period is estimated at \$9.2 million. The MSCR would be reconciled using actual costs including a return at the stipulated cost of capital. Additionally, the signatories to the settlement agreed to review the status of the MSCR no later than January 1, 2009 to determine whether any changes to the \$1.7 million annual accrual amount or the reserve recovery level are necessary.

5. Rate Base

The agreed upon distribution revenue requirement for effect on July 1, 2007 is based on PSNH's December 31, 2006 distribution rate base plus an additional \$25 million to recognize a portion of the distribution capital additions PSNH will place in service between January 1, 2007 and June 30, 2007. If two-thirds of PSNH's actual total distribution capital additions during that period amounts to less than \$25 million, the adjustment to rate base would include the two-thirds amount rather than the \$25 million. In such a case, the distribution rate levels for effect July 1, 2007 would be adjusted accordingly.

6. Reliability Enhancement Program (REP)

The settlement calls for adoption of the REP that was proposed and later modified by PSNH along with the additional measures and practices recommended in the testimony of Staff's consultant, Mr. Cannata. The REP would remain in effect for the five-year period specified in Mr. Cannata's testimony, funded at an annual level of \$10 million beginning July 1, 2007, with such funding level included in the July 1, 2007 distribution revenue requirement increase. On or about April 1 of each subsequent year, PSNH would file a report with the Commission that includes (1) detail regarding PSNH's actual REP activities and costs for the previous calendar year, (2) PSNH's planned REP activities and costs for the current calendar year, (3) an explanation of the process it used to determine the REP activities undertaken in the subject year, and (4) an identification of which REP activities recommended by Mr. Cannata were performed in the subject year. The report would also include the revenue requirements associated with the actual and planned capital additions and expenses since the inception of the REP.

7. January 1, 2008 Distribution Rate Change

As described earlier, the settlement includes a recommendation that PSNH be allowed to implement a step increase to its distribution rates effective January 1, 2008. That increase would consist of the incremental revenue requirements associated with an additional \$20 million of distribution capital additions placed in service between July 1, 2007 and December 31, 2007. To the extent two-thirds of the actual total distribution capital additions made during that six-month period is less than \$20 million, the two-thirds amount would be used as the adjustment to rate base, with the resulting revenue requirements and rate levels adjusted accordingly.

Related to the issue of delivery service rate changes, the settlement provides that the delivery service rate adjustments be implemented on a bills-rendered basis, consistent with the implementation of temporary rates.

B. Recoupment

The Commission previously authorized PSNH to implement temporary rates effective July 1, 2006. The Settlement allows for a twelve-month recovery period for the difference between revenues received by PSNH pursuant to those temporary rates and the permanent rate level established per the settlement during the period July 1, 2006 through June 30, 2007. The twelve-month recoupment period would begin July 1, 2007 and end June 30, 2008, with a return at the stipulated cost of capital. The recoupment amount for the period July 1, 2006 through June 30, 2007 would be \$3.035 million, with certain adjustments made during that period to arrive at the total recoupment amount. Specifically, the portion of the recoupment amount attributable to the period July 1, 2006 through December 31, 2006 is based on the distribution revenue requirement set forth in the testimony of Staff witness Mullen with the following adjustments: (1) uncollectible expense would be included at the test year amount of \$3.904

million, (2) the overall cost of capital would be 7.55 percent, (3) the annual MSCR accrual would be \$1 million, and (4) the REP revenue requirements would be removed. The recoupment amount for the final six months of the recoupment period, January 1, 2007 through June 30, 2007, takes into account those same adjustments along with one additional adjustment to adjust the rate base for that period to reflect the five-quarter average rate base as of December 31, 2006. Also, the overall recoupment has been reduced to reflect the \$514,000 gain on the sale of the Laconia area work center, resulting in the gain accruing to the benefit of PSNH's customers.

C. Transmission Cost Adjustment Mechanism (TCAM)

As contemplated by the settlement, the TCAM would be a fully reconciling mechanism whereby PSNH would recover all of its costs for transmission-related services. The signatories to the settlement agreed to the adoption of the TCAM beginning July 1, 2006. PSNH agreed to make a filing, no later than June 1, 2007, to set the TCAM rate level for effect on July 1, 2007. As part of that filing, PSNH agreed to reconcile the actual and estimated transmission revenues and expenses – determined on an accrual accounting basis – for the period July 1, 2006 through June 30, 2007. For the purpose of establishing transmission rates going forward, the filing would also include a forecast of transmission expenses for the period July 1, 2007 through December 31, 2007. After 2007, the TCAM would be adjusted annually for effect on January 1.

D. Rate Design

The settlement includes the recommendation that the allocation of revenue responsibility to class and rate design as set forth in PSNH's permanent rates filing be approved, with certain modifications. The modifications relate to PSNH's backup delivery service (Rate B). The settlement sets the initial transmission demand charge for Rate B at \$0.30 per kilowatt (kW) or kilovolt-ampere (kVA), whichever is applicable, of backup contract demand in each month with

potential adjustment for (1) reconciliation of transmission charges for the period July 1, 2006 through June 30, 2007, and (2) projected transmission costs to be incurred in the period July 1, 2007 through December 31, 2007. The Rate B distribution demand charge would be \$3.00 per kW or kVA of backup contract demand in each month, prior to any adjustment for recoupment.

The signatories agreed that changes to Rate B transmission charges would be made by splitting the initial Rate B transmission charge into two components: a “base component” of \$0.13 per kW or kVA per month and an “incremental component” of \$0.17 per kW or kVA per month, with separate procedures for adjusting each of the components. Changes to the incremental component would be adjusted on a pro forma basis in the same manner that transmission prices for all other classes are changed. If the transmission pricing for Rate B results in undue shifting of costs to other classes of customers or among Rate B customers, the settling parties and Staff agreed to consult on remedies to propose to the Commission.

Regarding recoupment, the signatories agreed that it will be recovered from each class on a proportionally equal basis. Similarly, the same method will be used to decrease rates and charges at the end of the recoupment period.

E. Other Tariff Changes

The Settling Parties and Staff recommended that the following tariff changes proposed by PSNH be implemented:

- Sawmill retention delivery service Rate, Rate SR, closed to new applicants;
- Establishment of a new field collection fee and revisions to certain existing service charges;
- An increase in single-phase line extension monthly surcharges from 8 cents per foot per month to 14 cents per foot per month;
- An increase in the three-phase line extension credit from \$300 to \$325;

- The cost of line extensions built on private property be based on up-front estimated costs with no adjustments to reflect actual costs when construction is complete;⁶
- The voluntary interruption program, Rate VIP, revised to (1) clarify that customers participating in the program will receive interruption credits for hourly interruption periods in which they are receiving energy service from PSNH, (2) provide PSNH the option to offer Rate VIP during the winter months, and (3) provide PSNH the flexibility to offer the ISO-New England demand response programs in lieu of or in addition to Rate VIP;
- PSNH to be allowed to provide fixed price estimates at the customer's option under Rate EOL and Rate SSP; and
- Other housekeeping revisions to the tariff as summarized in the testimony of Mr. Hall for PSNH.

IV. POSITIONS OF NON-SETTLING PARTIES

A. Office of Energy and Planning

At hearing, the Office of Energy and Planning stated that, while it is not a signatory, it did not oppose the settlement. OEP added that the settlement appeared to resolve the delivery rate case in the best interest of both PSNH and ratepayers.

B. BIA and Wood IPPs

Neither the BIA nor the Wood IPPs participated in the settlement negotiations. At hearing, Staff stated that both the BIA and the Wood IPPs had authorized Staff to represent that neither party objected to the settlement.

V. PENDING MOTIONS FOR CONFIDENTIAL TREATMENT

Between May 19, 2006 and March 9, 2007, PSNH filed seven motions for confidential treatment of certain discovery responses as follows:

1. May 19, 2006

⁶ On an annual basis, PSNH agreed to review the aggregate costs of private property line extensions, compare the total actual costs to the total estimated costs billed to customers and provide the results of its review to the Staff and the OCA.

PSNH sought confidential treatment of customer-specific usage information regarding the University of New Hampshire (UNH) and Groveton Paper Board. PSNH stated that the requested information is financially or commercially sensitive to UNH and Groveton, and public disclosure of the information would likely constitute an invasion of privacy within the meaning of RSA 91-A:5, IV. PSNH contended that the limited benefits of disclosing customer-specific usage data were outweighed by the invasion of customer privacy if such information were publicly disclosed.

2. May 30, 2006

PSNH sought confidential treatment pursuant to RSA 91-A:5, IV on invasion-of-privacy grounds for information related to compensation of corporate officers, information which a utility is required by N.H Code Admin. Rules Puc 1604.01(a)(14) to submit in connection with a rate case. PSNH stated that compensation to certain trustees and top officers of its parent corporation, Northeast Utilities, is publicly disclosed in documents filed with the Securities and Exchange Commission (SEC) and the FERC, and that copies of these filings are routinely provided to the Commission. However, PSNH noted that the details of compensation paid to other officers of PSNH are not publicly disclosed or otherwise disseminated or reported to other regulatory agencies.

Similarly, PSNH sought confidential treatment of the list of all voting stock owned or controlled, directly or indirectly, by PSNH officers and directors. PSNH noted that this information is also part of standard rate-case filing requirements pursuant to Puc 1604.01(a)(15). PSNH stated that it reports stock ownership of the trustees and certain top officers of NU to the SEC and routinely files the same information with the Commission. PSNH avers that the details of stock ownership by other officers of PSNH is not publicly disclosed or otherwise

disseminated. PSNH contends that the public disclosure of NU common stock ownership by officers of NU which is not reported to other regulatory agencies would constitute an invasion of employee privacy for those employees and is therefore is exempt from disclosure pursuant to RSA 91-A:5, IV. PSNH noted that, in its last general rate case, the Commission found that confidential treatment was justified for individual compensation for officers whose salaries were not publicly reported.

3. March 8, 2007

PSNH requested confidential treatment of the response to Staff data request TS-03, Q-TS-007, which asked for a copy of financial statements presented to NU's board of trustees. PSNH asserts that these statements represent financial information maintained as confidential by the company and, therefore, are exempt from disclosure pursuant to RSA 91-A:5, IV.

PSNH stated that the financial statements provided in response to this request include NU's consolidated income statement, balance sheet and the statement of cash flows for the 2006 Budget and the 2006-2010 forecast presented to the NU trustees. PSNH averred that the trustees need access to this information presented in an unconstrained manner in order to decide upon the best corporate direction to follow in the future. PSNH states that the management who prepare these financial statements must feel free to disclose any details of where the corporation is going, both the good news and the bad. PSNH contended that, if management or the trustees knew that these internal financial projections would be shared with the public, there would be a chilling effect upon comprehensive full disclosure by management, and less information would be available to the trustees for critical corporate decision-making. PSNH stated that the harm of disclosure clearly outweighs the need for public disclosure and that the Commission should grant the motion for protective treatment.

4. March 8, 2007 Motion re: Blackstart Units

PSNH requested confidential treatment of the company's responses to Staff data request NSTF-05, Q-STAFF-087, which requested the identification of generators in New England that are designated as Blackstart units. PSNH requests protective treatment pursuant to both paragraphs IV (concerning confidential, commercial or financial information) and VI (concerning records related to emergency functions) of RSA 91-A:5 . PSNH explained that Blackstart units are generators that have their own source of power and, therefore, can start themselves and produce power to start other generators at the same site and generators at other generating stations that lack Blackstart capabilities. PSNH stated that Blackstart units can bring the New England generating and transmission system back from a catastrophic shutdown of the entire grid. Consequently, PSNH asserted that the location and identification of Blackstart units is very sensitive. PSNH averred that the disclosure of the identification of Blackstart units would make it possible for persons who wanted to cause harm to the region to attack the bulk power supply system.

In support of its motion, PSNH stated that the regional transmission organization, ISO-New England, treats generator information needed for the operation of the bulk power supply system confidentially, hence the information requested by Staff data request NSTF-05, Q-STAFF-087 is confidential commercial or financial information exempt from disclosure pursuant to RSA 91-A:5, IV. In addition, PSNH pointed out that RSA 91-A:5, VI contains a separate exemption for "records pertaining to matters relating to the preparation for and the carrying out of emergency functions. . . that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life." PSNH

asserted that the identity and location of Blackstart generation units should be kept confidential under this exemption as well.

According to PSNH, using a balancing test to weigh the importance of keeping the record of this proceeding public with the harm from disclosing PSNH's Blackstart generators, the harm clearly outweighs the need for public disclosure. Therefore, PSNH requested that the Commission grant its request for confidential treatment of the responses to Staff data requests NSTF-05 and Q-STAFF-087.

5. March 8, 2007 Motion re Customer-Specific Usage Information.

PSNH requested confidential treatment of the responses to OCA data request NOCA-01, Q-OCA-014, Staff data requests NSTF-04, Q-STAFF-027 and-029, and Staff data requests NSTF-05, Q-STAFF-065, -080, and -088 because the responses and the attachments contain historical consumption, and demand or revenue totals for several individual PSNH customers. PSNH based its request on RSA 91-A:5, IV which exempts from disclosure confidential commercial and financial information.

PSNH contended that the limited benefits of disclosing customer specific information is outweighed by the harm done to the customers by disclosing their customer specific information. Further, PSNH states that the responses do not form the basis of the settlement filed in this proceeding, and will not be part of the evidentiary record.

6. March 8, 2007, Motion re Contract with Wiggins Airways

PSNH requests the Commission grant confidential treatment for responses to Audit Staff data request AUDIT-13, Q-AUDIT-004, which sought a copy of PSNH's contract with Wiggins Airways. According to PSNH, since the acquisition of PSNH by Northeast Utilities, the two companies have contracted for air services between Manchester-Boston Regional Airport

(Manchester) and Brainard Airport in Hartford, Connecticut. PSNH stated that the contract with Wiggins Airways was a product of a solicitation of bids and that the bids were kept confidential. PSNH argues that disclosure of the contract may put Wiggins at a competitive advantage during the next solicitation of bids and PSNH would then have less opportunity to obtain the lowest price for this service, or to choose from a number of potential bidders. PSNH contended that the contract represents confidential commercial or financial information and therefore is exempt from disclosure pursuant to RSA 91-A:5, IV.

PSNH asserted that the harm from disclosure of the confidential terms of the contract outweighs the importance of public disclosure, and that while Staff needed the information to conduct the audit, PSNH was confident that the response to AUDIT-13, Q-AUDIT-004 will not be introduced into evidence in this proceeding.

VI. COMMISSION ANALYSIS

A. Settlement Agreement

N.H. Code Admin. Rules Puc 203.20(b) provides that the Commission shall approve disposition of any contested case by settlement “if it determines that the result is just and reasonable and serves the public interest.” *See also* RSA 541-A:31, V(a) (authorizing resolution of contested cases “by stipulation, agreed settlement, consent order or default”). In general, the Commission encourages parties to attempt to settle issues through negotiation and compromise “as it is an opportunity for creative problem-solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation.” *Concord Electric Co.*, 87 NH PUC 694,708 (2002). However, even where all parties enter into a settlement agreement, the Commission cannot endorse the terms of the settlement “without independently determining that the result comports with applicable standards.” *Id.*

We have examined the proposed settlement and, based on the record in this proceeding, find that implementation of the settlement will be in the public interest and will result in rates that are just and reasonable. PSNH originally requested a total permanent rate increase of \$49.801 million that it amended on November 17, 2006 to include several pro-forma adjustments resulting in a revised revenue requirement of \$60.244 million. The signatories to the settlement recommended a permanent increase in PSNH's revenue requirement, for effect on July 1, 2007, of \$37.681 million, with approximately \$26 million allocated to distribution costs and \$11 million allocated to transmission costs. The July 1, 2007 delivery increase of \$37.681 million includes recoupment of revenues due to the difference between PSNH's authorized temporary rates that became effective on July 1, 2006 and the level of permanent rates we approve today for effect July 1, 2007, as provided for in RSA 378:29. The permanent revenue requirement increase of \$37.681 million does not include the effect of TCAM. It also does not include the additional adjustments to the delivery revenue requirement that will occur on January 1, 2008, to reflect \$20 million of additional distribution rate base additions PSNH will make as part of its capital investment between July 1, 2007 and December 31, 2007. The adjustments to revenue requirement include a final rate change on July 1, 2008, expected to be a rate decrease of slightly over \$9 million, to reflect primarily the end of the one-year recovery of revenue resulting from the difference between permanent rates and temporary rates. The various rate changes, considered collectively, form a reasonable resolution of concerns associated with PSNH's investment in plant during the test year and potential earnings erosion due to investment in non-revenue producing capital additions made outside the test year that are needed to meet an increasing peak load.

The deteriorating load factor of PSNH, a characteristic seen throughout New Hampshire and New England, will require solutions beyond the scope of this proceeding. Nonetheless, PSNH should be taking all reasonable steps to improve its load factor in a cost-effective manner. Further, the step adjustments proposed in the settlement are consistent with what we have approved in the past. See *Unitil Energy Systems, Inc.* Order No. 24,677 (October 6, 2006) slip op. at 20 and cases therein cited. The step adjustments will allow PSNH to include in distribution rates base non-revenue producing plant that is used and useful, consistent with RSA 378:28. We will require PSNH to file a report with the Commission detailing the magnitude of these costs as these step adjustment requests are made so we can determine that the plant being added to rate base is prudent, used and useful as required by RSA 378:28.

The signatories to the settlement stipulated to a 9.67 percent return on equity to use in the overall cost-of-capital. The ROE is consistent with our most recent delivery rate case, a case similar enough in scope and time to this stipulated ROE to assure us that the 9.67 percent continues to represent an appropriate return for investors facing the risks associated with a franchised distribution utility such as PSNH. See *Unitil Energy Systems, Inc.* Order No. 24,677 (October 6, 2006) and dockets therein cited. We point out that approval of the settlement includes our approval of the transmission cost adjustment mechanism (TCAM), an adjustment clause that allows PSNH to recover the increasing costs of transmission in a timely manner and a mechanism that significantly reduces PSNH's financial risk. We find that the overall cost-of-capital, as shown in Attachment 2 to the Settlement, is appropriate.

A key component to the settlement is the importance and level of funding for reliability. The signatories recommend \$10 million in annual revenue requirements to fund the reliability enhancement program. We accept the initiatives contained in the reliability enhancement

program, including the additional measures and recommendations of Staff's consultant, Mr. Cannata, and will approve them as proposed. The proposed revenue requirement to improve reliability represents a significant increase in funding. We will closely monitor the reports that PSNH will provide detailing its expenditures and programs to ensure that customers will experience improved reliability.

In the decision resolving PSNH's most recent delivery service rate case, *Public Service Company of New Hampshire* 89 NH Puc 523 (2004), the Commission declined PSNH's request to authorize the use of a transmission cost adjustment mechanism for purposes of reconciling transmission expenses and revenues. At that time, transmission investment had not escalated to the levels seen over the past few years. Those costs, driven primarily by large transmission investment in southwest Connecticut, are approved by the Federal Energy Regulatory Commission and reflected in the tariff of ISO-New England. The increasing level of transmission costs has clearly added financial pressure to PSNH. In fact, during the test year, transmission expenses were PSNH's single largest area of cost increase. Adoption of the proposed transmission cost adjustment mechanism, which allows PSNH to reconcile its actual transmission costs with the transmission revenue contained in the settlement, will reduce the risk of increasing transmission expenses to the Company. We will accept the recommendation of the settling parties and Staff to allow PSNH to institute a TCAM, subject to PSNH continuing to comply with its responsibilities to support cost-effective transmission solutions when participating in New England Power Pool committees before ISO-New England and at FERC.

We also have reviewed the rate design and tariff changes set forth in the settlement and find them just and reasonable. The changes to Rate B appear to reflect more accurately the actual costs incurred by that customer class. We agree that undue cost shifting could occur as

Rate B is structured although we note that, under the settlement, Rate B customers will pay significantly lower distribution and transmission costs than they would have paid under the existing tariff or as proposed by PSNH.

The settlement increases line extension surcharges from \$0.08 per foot per month to \$0.14 cents per foot per month, a result that is reasonable considering the existing rate has not changed in many years. We also approve of the changes to the voluntary interruptible rate (Rate VIP). The program changes will provide more value to PSNH and its customers. We support the provision to add a section to Rate VIP that may include ISO-New England's demand response programs.

Finally, the Staff and settling parties propose to investigate several matters and report their findings by November 1, 2007. These requirements include investigations of: non-capital intensive methods to address the increasing usage in peak-price hours; whether customers are charged the actual costs the company incurs in initiating or expanding service; whether it is appropriate to charge customers an estimate or actual costs for installation or expansion of facilities; and whether the company needs to take additional steps to avoid commercial customers from leaving service with large, unpaid accounts. We direct Staff to commence these investigations and to schedule technical sessions, as needed, to conduct an appropriate review of outstanding issues by the November deadline.

In conclusion, we accept the recommendations of the settling parties and Staff as resolution of the issues in this docket.

B. Confidentiality

The Right-to-Know law provides citizens with the right to inspect all public records in the possession of the Commission. RSA 91-A:4, I. The statute contains an exemption, invoked

here, for “confidential, commercial or financial information.” RSA 91-A:5, IV. In most cases, a balancing test weighing the interests for and against confidential treatment is used to determine whether confidential treatment should be granted. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997).

We separately address the motion claiming confidential treatment of the identification of New England “blackstart” generation units. RSA 91-A:5, IV, provides that

[r]ecords pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life

are also exempt from disclosure. PSNH invokes this statutory provision for the protective treatment of the identification of blackstart units.

In our view, it is not clear that when the Legislature adopted the “emergency functions” exemption it intended to include within that exemption information developed by a private party as opposed to that developed by local or state safety officials. We need not resolve the issue, however, because any reasonable application of the requisite balancing test under the “confidential, commercial or financial information” exemption would lead to a determination that the information about blackstart units is exempt from disclosure. PSNH makes a compelling argument that these generation facilities perform functions which support essential power supply in New England. The potential for grave harm to the New England power system that could result from the release of this information greatly outweighs the public interest in this information and we, therefore, grant PSNH’s request for confidential treatment of the identification of the blackstart units.

We note that no parties have objected to any of the motions for protective treatment and that the information for which confidential, protective treatment is sought is similar to information for which the Commission has granted protective treatment in the past. Accordingly, we will grant the remaining motions. Consistent with past practice, the protective treatment provisions of this Order will be subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party, or any other member of the public to reconsider in light of RSA 91-A, should circumstances so warrant.

Based upon the foregoing, it is hereby

ORDERED, that the terms of the Settlement Agreement among Public Service Company of New Hampshire, the Office of Consumer Advocate and Commission Staff are hereby APPROVED; and it is

FURTHER ORDERED, that the Motions for Protective Order are hereby APPROVED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall make tariff filings conforming with this Order within 30 days hereof pursuant to N.H Code Admin. Rules Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire twenty-fifth day of May,
2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary