

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 07-125

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Petition for Approval of Power Purchase Agreements with
Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc.**

Order Following Hearing

ORDER NO. 24,839

April 4, 2008

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Office of Consumer Advocate by Meredith A. Hatfield, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. for Commission Staff.

I. PROCEDURAL HISTORY

On November 20, 2007, Public Service Company of New Hampshire (PSNH) filed a petition, supporting testimony and related documents for approval of two power purchase agreements, one with Pinetree Power, Inc., a 15 megawatt wood-fired power plant located in Bethlehem, and the other with Pinetree Power-Tamworth, Inc., a 20 megawatt wood-fired power plant located in Tamworth. The term of the agreement with the Bethlehem facility is from January 1, 2008 through December 31, 2010, while the agreement with the Tamworth facility runs from April 1, 2008 through December 31, 2010.

Both power purchase agreements involve the purchase of energy, capacity and New Hampshire renewable energy certificates (RECs).¹ PSNH noted that, as of January 1, 2008, it must obtain and retire certain RECs pursuant to the renewable portfolio standard, RSA Ch. 362-

¹ Pursuant to RSA 362-F:2, III, a renewable energy certificate “means the record that identifies and represents each megawatt-hour generated by a renewable generating source under RSA 362:F-6.”

F. PSNH seeks Commission approval of the agreements pursuant to RSA 362-F:9 which states in part:

Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies to enter into multiyear purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

Also on November 20, 2007, PSNH filed a motion for confidential treatment of the terms and conditions contained in the copies of the “transaction confirmations” filed for each power purchase agreement.

On December 18, 2007 the Commission issued an order of notice scheduling a prehearing conference for January 31, 2007. On December 26, 2007, the Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers pursuant to RSA 363:28.

The prehearing conference was held as scheduled. On February 4, 2008, Staff filed a letter requesting approval of a procedural schedule, and on February 7, 2008 the Commission, by secretarial letter, approved the schedule, including a hearing for March 5, 2008.

During the hearing, the Commission asked the parties and Staff to address the appropriate duration for shielding from public disclosure the confidential terms of the contracts. On March 7, 2008, PSNH filed a letter reporting that PSNH, the OCA and Commission Staff agreed to recommend that the period for confidential treatment be the same as the term of the contracts; i.e., through December 31, 2010.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

Under RSA 362-F, in 2008, PSNH must purchase Class III RECs, one REC representing one megawatt hour of qualifying renewable generation, in an amount equal to 3.5 percent of the total megawatt hours supplied to retail customers by PSNH. Class III RECs, pursuant to RSA 362-F:4, are associated with the production of electricity by facilities that began operation prior to January 1, 2006 and produce electricity using either eligible biomass technologies having a gross nameplate capacity of 25 megawatts or less or methane gas.

Pursuant to the two purchase power agreements with Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc., PSNH will purchase energy, capacity and Class III RECs at negotiated prices, for up to three years. PSNH testified that the power purchase agreements will terminate on December 31, 2008 if the Commission rejects them or fails to approve them by that date.

According to PSNH, the energy, capacity and RECs procured via these agreements will be used to satisfy PSNH's default energy service obligation and associated renewable portfolio standard requirements. PSNH stated that forecasted costs will be included in the default energy service rate and actual costs will be reconciled annually. PSNH testified that, except for certain plant-specific data, the pricing, terms and conditions are the same for both power purchase agreements.

Pursuant to the agreements, PSNH will purchase energy from the two wood-fired plants at prices that, according to PSNH, were competitive with forward market prices existing at the time the purchase power agreements were executed. PSNH explained that the actual pricing is structured so that the projects are paid more during peak months and on-peak hours, and less during shoulder months and off-peak hours. For purposes of the contracts, the peak months are

January, February, July and August, with the remaining months designated as shoulder months. In addition, PSNH explained that the agreements provide that on-peak prices be increased when the on-peak capacity factor is 95 percent or greater for any given month. The contracts also contain a fuel adjustment provision that is designed to cause buyer and seller to share the effects of any changes in the price of wood fuel from prevailing 2007 levels.

Regarding capacity payments, PSNH explained that, for each month of the agreement, each plant will be paid a fixed percentage of the value realized by PSNH through the ISO-New England settlement process for the plant's capacity. However, if the plant's capacity factor is less than 75 percent in that month, the capacity payment will be zero.

The agreements require PSNH to pay each plant a fixed percentage of the Class III alternative compliance payment for each megawatt-hour of energy that qualifies for a New Hampshire REC. *See* RSA 362-F:10, II and III (describing calculation of alternative compliance payments, which have the effect of serving as a REC price cap). As explained by PSNH, the plants can elect to sell RECs to third parties for compliance with other states' renewable portfolio standards and sell none to PSNH. However, if the plants do sell the RECs to third parties, PSNH would receive the difference between the RSA 362-F:10 alternative compliance payment and the price of the RECs paid by PSNH under the contract. To sell the RECs in the New Hampshire market, they must sell them to PSNH. Thus, in effect, PSNH always gets the benefit of its bargain – a discount from the otherwise applicable alternative compliance payment – regardless of whether it receives the RECs or they are sold outside New Hampshire. Conversely, the plants can take financial advantage of instances where the market price of RECs elsewhere in New England exceeds the alternative compliance payment applicable in New Hampshire.

PSNH estimated it will need approximately 294,079 Class III RECs in 2008, 387,119 Class III RECs in 2009, and 483,971 in 2010 for a total of 1,165,169 Class III RECs required over the term of the contracts. According to its calculations, the RECs from both agreements could yield approximately 750,000 Class III RECs over the course of the agreements. PSNH said it was possible it would receive no RECs during this period because the plants are likely to seek the greatest value for the RECs by selling them outside of the New Hampshire market. PSNH stated that both wood plants would have to install emissions reduction equipment to qualify as a Class III facility, and that the installation typically takes about six months to complete. At hearing, PSNH testified that both plants are currently being retrofitted and that it expected the Tamworth facility to have a compliance test in April 2008 and the Bethlehem facility to have a compliance test in May 2008.

PSNH argued that the two purchased power agreements meet the five criteria for approval set forth in RSA 362-F:9, II. In summary form, the criteria are (1) cost-effective consistency with the purposes of renewable portfolio standard legislation, (2) consistency with the restructuring policy principles in RSA 374-F:3, (3) creation of a reasonable resource mix for the electricity provider, (4) procurement that is administratively efficient and market-enhancing, and (5) promotion of economic development and environmental benefits for New Hampshire.

Regarding the first standard, PSNH maintained that the agreements represented an efficient and cost-effective manner of meeting the purpose of the law, which is to promote renewable energy production in New Hampshire. According to PSNH, the agreements not only allow the projects to continue to operate but encourage modifications that reduce air emissions of nitrogen oxides (NO_x) and particulates in order to assure that the plants will qualify for RECs.

In addition, PSNH pointed out that the pricing of energy in the agreement is less than the forward market prices that existed at the time the agreements were signed.

With respect to the requirement that the agreements be consistent with the restructuring principles of RSA 374-F, PSNH asserted that there was nothing in the agreements that conflicted with the principles articulated in the restructuring statute.

Addressing the third standard, PSNH stated that the agreements will provide PSNH with renewable energy and assist it in meeting its renewable portfolio standard requirements. PSNH noted that the integrated least cost resource plan that it filed on September 30, 2007 discusses the need to enter into intermediate-term contracts with renewable energy facilities that produce RECs.

Regarding the need for procurement of power to be administratively efficient and promote market-driven competitive solutions, PSNH testified that if the contracts are approved it will obtain 35 megawatts of renewable power representing approximately 65 percent of its class III RPS requirements over the terms of the contracts. PSNH stated that it intends for these contracts to serve as a model for future negotiations, thereby providing administrative efficiency. Further, PSNH said that since the contracts were negotiated with market participants, they are market-driven competitive solutions to PSNH's need for renewable energy.

As for the fifth standard, PSNH stated that the contracts will provide economic development benefits by allowing the facilities to continue to operate in their communities and invest in necessary capital additions to reduce air emissions. Further environmental benefits, PSNH testified, accrue from the fact that the facilities' renewable energy will reduce PSNH's reliance on fossil fuel-based market purchases.

PSNH accompanied its petition with a motion for confidential treatment of (1) certain terms and conditions which PSNH considers confidential, to avoid impairing PSNH's ability to negotiate additional agreements and (2) commercially sensitive production and financial information relating to the projects. According to PSNH, it would like to be able to use the structure of the agreements to purchase additional renewable power and RECs. If the structure and terms of these agreements became public, PSNH argued, PSNH would be at a competitive disadvantage in future negotiations with other renewable power suppliers as the terms of these transactions would become the floor of any future negotiations, with PSNH being unable to obtain power, capacity and RECs at terms more favorable than the current terms. In addition, PSNH said that certain terms contained in the agreements are plant-specific and considered commercially sensitive to the owners of the two generating facilities.

B. Office of Consumer Advocate

The OCA confirmed with the PSNH witnesses PSNH's position that, although PSNH may ultimately obtain no RECs under the agreements, the agreements are properly filed in accordance with RSA 362-F:9. The OCA expressed its support for approval of the two power purchase agreements.

C. Commission Staff

Staff inquired as to the respective dates each of the plants would have the necessary emissions reduction equipment installed and would be eligible to sell Class III RECs. After exploring some of the details of the contracts, Staff stated its support for approval of the two agreements and PSNH's request for confidential treatment. Staff also expressed the view that that PSNH's filing complied with the requirements of RSA 362-F:9 and the public interest findings therein required.

III. COMMISSION ANALYSIS

A. Merits

With its enactment in 2007, RSA 362:F created new obligations for providers of electricity to obtain and retire renewable energy certificates from various renewable energy sources in amounts representing certain percentages of the electricity suppliers' total megawatt-hours of electricity provided to its end-use customers. The contracts at issue in this proceeding are part of PSNH's efforts to meet the requirement in RSA 362-F:3 that it obtain and retire RECs from qualifying Class III sources (eligible biomass and methane generating facilities) in an amount equivalent to 3.5 percent of PSNH's total default service electric load for 2008. RSA 362:F-9 allows electric distribution companies to enter into multi-year purchase agreements for RECs, subject to Commission approval, as one method of obtaining the necessary certificates.

In determining whether such an agreement is consistent with the public interest, RSA 369-F:9, II sets forth certain factors the Commission must consider, as noted *supra*. We have considered those factors along with PSNH's testimony and conclude that approval of the purchased power agreements is consistent with the public interest. Although PSNH will at most meet 65 percent of its Class III REC requirements via these contracts and may actually acquire no Class III RECs due to their higher value in other New England states' markets, the agreements at the very least provide a backup market for the plants' RECs. Moreover, ratepayers are protected because such REC sales outside New Hampshire oblige the plants to pay PSNH the difference between the amount of the alternative compliance payment and the price of the RECs specified in the contract.

We find that the energy pricing terms, based on prices lower than forward prices at the time the contracts were executed, provide additional value to PSNH's customers along with

adding a measure of predictability to PSNH's overall energy service rate. Although the energy prices are at fixed rates for each year of the contracts, the three-year maximum term of the agreements provides a balance of known pricing for PSNH and its customers with predictable revenue streams for the plant owners over a reasonable period of time, thereby avoiding the need to make long range projections about the movements of the energy market. Likewise, the capacity pricing provisions provide for a capacity cost in each of the contract years at a rate that is below the rate that PSNH would otherwise pay in the ISO-New England forward capacity market.

In light of the above, along with PSNH's testimony and the exhibits provided at hearing, we approve the purchased power agreements and find that they are consistent with the factors required to make a public interest determination pursuant to RSA 369-F:9, II.

B. Motion for Confidential Treatment

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* NH RSA 91-A:4, I. The statute contains an exemption, invoked here, for "confidential, commercial, or financial information." RSA 91-A:5, IV. Our applicable rule, N.H. Code Admin. Rules Puc 203.08, is designed to facilitate the implementation of the statute as it has been interpreted by the courts. In most cases, a balancing test is used to determine whether confidential treatment should be granted. *See e.g., Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997).

Having reviewed the detailed terms and conditions of the power purchase agreements contained in the confidential record, we have determined that the release of such information to the public could put PSNH, as well as the plant owners, at a competitive disadvantage in

negotiating similar agreements with other parties in the future.² As to such information, in balancing the interests for and against public disclosure of the information for which confidential treatment is sought, we are persuaded on the basis of the record in this docket that the interests of PSNH, and ultimately its ratepayers, as well as the legitimate interests of third parties in non-disclosure outweigh the public's interest in obtaining access to the information. For the reasons above, we agree with the Parties and Staff, as expressed in PSNH's March 7, 2008 letter, that it is appropriate that the term of the protective order mirror the term of the contracts and, thus, expire on December 31, 2010.

We will therefore grant confidential treatment to the extent set forth above. Consistent with past practice, the confidential treatment provisions of this order are subject to the on-going 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 PSNH's power purchase agreements with Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. are approved; and it is

FURTHER ORDERED, that the motion for protective order is granted to the extent set forth above.

² By "confidential record" we mean not only the materials for which PSNH initially sought confidential treatment but also a reference, during the testimony at hearing of PSNH's witness, to the fuel price adjustment provision of the contract. Redacted from the public version of the transcript is the specific percentage PSNH must pay of the difference between the market price of fuel and the 2007 index price in the contract. The witness also testified that this fuel adjustment provision is subject to a cap, and that PSNH would receive a countervailing credit when fuel prices fall below the 2007 index price. These facts are not confidential.

By order of the Public Utilities Commission of New Hampshire this fourth day of April,
2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary