

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 07-108

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2007 Least Cost Integrated Resource Plan

Order Denying Motions for Rehearing

ORDER NO. 24,966

May 1, 2009

I. PROCEDURAL HISTORY

On September 28, 2007, Public Service Company of New Hampshire (PSNH) filed its 2007 Least Cost Integrated Resource Plan (LCIRP) pursuant to RSA 378:38. Halifax American Energy Company, LLC (Halifax), Freedom Logistics, LLC (Freedom), TransCanada Hydro Northeast, Inc. and TransCanada Power Marketing, Ltd. (TransCanada), Bridgewater Power Company (Bridgewater), and Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc. (Constellation) each petitioned to intervene. The Office of Consumer Advocate (OCA) filed a notice of its intent to participate on behalf of residential ratepayers pursuant to RSA 363:28. The Commission granted all petitions to intervene.

On March 28, 2008, PSNH supplemented its LCIRP. Staff filed the direct testimony of George R. McCluskey on June 6, 2008. On August 15, 2008, PSNH filed the rebuttal testimony of Terrance J. Large, Gilbert E. Gelineau and Stephen R. Hall.

On October 7, 2008, Staff and some of the parties filed a partial settlement agreement. The OCA did not sign the partial settlement agreement. On October 10, 2008, TransCanada,

Freedom and Halifax filed letters regarding additional issues to be presented at hearing. Hearing was held on October 14, 2008.

On February 27, 2009, the Commission issued Order No. 24,945 (“Order”) accepting the LCIRP and approving the partial settlement agreement. The Order also required PSNH to file its next LCIRP on or before February 28, 2010. On March 4, 2009, Freedom and Halifax filed a motion for reconsideration and rehearing and, on March 27, 2009, the OCA filed a motion for rehearing. PSNH filed a response to the Freedom and Halifax motion on March 9, 2009 and a response to the OCA motion on April 1, 2009.

A. MOTIONS FOR REHEARING

1. Freedom and Halifax

TransCanada, Freedom and Halifax argued at the close of hearing that the Commission should require PSNH to do a continued unit operation study as well as analysis of divestiture of its generation facilities in its next LCIRP. In their motion for rehearing Freedom and Halifax observed that the Order did not require PSNH to file its next LCIRP until February 28, 2010. In their motion Freedom and Halifax referenced two bills introduced in the New Hampshire legislature, HB 495 and SB 152, dealing with the PSNH’s installation of environmental control equipment at Merrimack Station, and asserted that the Commission’s requirement of a February 28, 2010 filing date for PSNH’s next LCIRP is “an unsustainable exercise of its discretion and contrary to the public interest.” The Freedom and Halifax motion also quoted a portion of a Northeast Utilities Form 10K filed February 27, 2009, concerning the appeal of the Commission’s decision in Docket DE 08-103.¹ Freedom and Halifax drew attention to Northeast’s estimate of PSNH’s costs to terminate contracts on the scrubber installation as “a substantial portion of the approximately \$250 million of contractual commitments expected to be

¹ See, Commission Order Nos. 24,898 and 24,914 in Docket No. DE 08-103

entered into by March 31, 2009.” Freedom and Halifax argued that time is of the essence and requested that the Commission reconsider its Order, bring forward the date of PSNH’s next LCIRP to June 1, 2009, require PSNH to file a continued unit operation study (“CUO”) for Merrimack Station, and conduct an adjudicative proceeding to evaluate the CUO study.

2. OCA

The OCA motion for rehearing argued that the Order is “not sufficiently clear and objective” when it requires PSNH to perform “an economic analysis of retirement for any unit in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance.” Further, the OCA claimed that the timing of the CUO study is contrary to the weight of the evidence in this case. In support of this statement the OCA referenced discussions in Staff witness McCluskey’s prefiled direct testimony and in his responses to cross-examination at hearing. OCA noted that Mr. McCluskey recommended use of a CUO by a utility prior to incurring significant costs on existing generation facilities. Based upon this testimony, OCA asserts that the Commission should have required PSNH to complete a CUO on Merrimack Station as soon as practicable in 2009.

In addition, the OCA cites a section of the IRP Order summarizing the terms of the Settlement which states, with respect to a Merrimack Continued Unit Operation Study, that “the settling parties agree ... to withhold further comment on the Merrimack continuing unit operation issue.” The OCA states that there is no support for the “finding of fact” that the parties agreed to withhold further comment and it requests that the “finding” be stricken.

B. RESPONSES TO MOTIONS FOR REHEARING

1. PSNH Response to Freedom and Halifax

PSNH argued that RSA 125-O requires installation of the scrubber at Merrimack Station and that in Order Nos. 24,898 and 24,914 in Docket No. DE 08-103 the Commission recognized that legislative directive and rejected arguments that the Commission should determine whether the scrubber project is in the public interest. PSNH claimed that Freedom and Halifax are asking the Commission to ignore its two prior orders and require an immediate CUO study of the Merrimack Station.

PSNH further noted that this docket involves a review of PSNH's 2007 LCIRP to determine whether the plan complies with the requirements of RSA 378:38. According to PSNH, requiring a CUO study two years after the plan was filed is beyond the scope of the current proceeding.

Finally, PSNH pointed out that in the partial settlement the settling parties agreed that the 2007 plan was adequate for purposes of RSA 378:38 and that issues of disagreement did not need to be resolved at this time. Also, the settling parties agreed that PSNH would file its next plan within one year of the Commission's approval of the current plan. The Commission approved the partial settlement and ordered PSNH to file a LCIRP on or before February 28, 2010. PSNH asserted that as settling parties Freedom and Halifax should be bound by their settlement of these issues.

2. PSNH Response to OCA

PSNH points out that the Order accepted PSNH's 2007 LCIRP and approved the partial settlement, which the OCA did not oppose. PSNH claims that OCA's motion is similar to the motion filed by Freedom and Halifax and PSNH incorporates by reference its arguments made in

response to the Freedom Halifax motion. Finally, PSNH requests that it be given a full year from the time the Order is final to file its next LCIRP.

II. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. The petitioner for such relief must explain why new evidence could not have been presented in the underlying proceeding. *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977). Good reason may also be shown by identifying specific matters that were either "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, 88 NH PUC 355, 356 (2003).

A careful review of the rehearing motions leads us to conclude that the arguments raised in each motion have been previously raised and addressed in the Order, or are mere reformulations of previous arguments. Accordingly, we address the arguments raised only insofar as they are pertinent to demonstrate that matters were not overlooked or mistakenly conceived in Order No. 24,945.

RSA 378:39 requires us to evaluate an electric utility's proposed integrated least cost resource plan in order to "evaluate the adequacy of [the] utility's planning process." As a result, the primary objective of an integrated least cost resource plan for PSNH is to develop and implement an integrated resource plan that satisfies customer energy service needs at the lowest overall cost consistent with maintaining supply reliability. *See, Public Service Co. of New Hampshire*, 73 NH PUC 117, 126 (1988).

Freedom and Halifax questioned witnesses concerning the terms of the partial settlement and the fact that the settling parties did not require PSNH's 2007 LCIRP to include analysis of divestiture or retirement of generation assets. Although Northeast Utilities' Form 10-K filed with the Securities and Exchange Commission on February 27, 2009 was not available at hearing, further information concerning the costs of abandoning the scrubber installation at Merrimack Station is not relevant to this docket. We already determined, in Order Nos. 24,898 and 24,914, that the legislature found installation of the scrubber technology to be in the public interest and required PSNH to pursue that installation. The information contained in the Form 10-K is not relevant to PSNH's 2007 LCIRP. Further, nothing presented by Freedom or Halifax provides any basis for finding that PSNH's planning process, summarized in the 2007 LCIRP, was not adequate.

OCA's argument that we should have relied upon Staff witness McCluskey's testimony to find a CUO for Merrimack Station a necessary component of the 2007 LCIRP likewise ignores our decisions in Order Nos. 24,898 and 24,914. For planning purposes, it was reasonable for PSNH in this docket to have assumed that it would install the scrubber technology as required by RSA 125-O:11-18. The partial settlement in this docket did not address a CUO for Merrimack and the settling parties nonetheless recommended approval of the 2007 LCIRP as adequate.

As to the timing of a Merrimack CUO, the OCA concludes from the discussion on p.16 of Order No. 24,945 that such a study would not be performed until 2012. That conclusion is a misreading of the order and conflates the requirement for economic analyses in future LCIRPs of "retirement for any unit in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance" (which begins with the

next LCIRP in 2010) and the requirement for an analysis of *divestiture*, or sale of power plants, which is not required in the next LCIRP. In addition, the header to this section of our analysis, “Merrimack Continued Unit Operation Study,”² which stems from our error in summarizing the settlement agreement as discussed below, does not specifically limit or expand our general requirement concerning the conduct of CUO analyses as part of future LCIRPs. A CUO evaluating retirement as an option would be required for any power plant, including Merrimack, if at the time of preparation of the LCIRP (and in general as part of their ongoing planning process) PSNH was anticipating “the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance.”

The OCA is correct, however, that we erroneously recited the positions of the parties when we described the terms of the partial settlement.³ A review of the record shows no basis for the statement that the parties agreed to withhold further comment about a Merrimack CUO. At the same time, it is not accurate to characterize a recitation of the positions of the parties as a finding of fact. More important, there is no logical relationship between our substantive decision in this docket about the adequacy of the 2007 LCIRP and whether the parties agreed or did not agree to withhold further comment about a Merrimack CUO. Furthermore, our statement that the parties agreed to withhold further comment about the CUO was not the predicate for, and had no effect on, our decision in this proceeding. As a result, there is no basis for rehearing on this point.

Finally, we find that PSNH’s request that the next LCIRP be due one calendar year from the date of this order is reasonable and consistent with the settlement provision that “PSNH

² Order at 16 section 7.

³ Order at 10 section 4.

agrees to file its next LCIRP one calendar year following final approval of this plan.” Settlement at 4.

Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing by Freedom and Halifax is DENIED; and it is

FURTHER ORDERED, that the motion for rehearing by OCA is DENIED; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire file its next least cost integrated resource plan on or before May 3, 2010, consistent with the determinations made in Order No. 24,945.

By order of the Public Utilities Commission of New Hampshire this first day of May, 2009.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director