

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 09-180**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Petition for Mid-Year Adjustment to the Energy Service Rate**

**Order Granting Petition**

**ORDER NO. 25,121**

**June 28, 2010**

**APPEARANCES:** Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Orr and Reno P. A. by Douglas L Patch, Esq. on behalf of TransCanada Power Marketing Ltd.; Office of Consumer Advocate by Rorie E. P. Hollenberg, Esq. on behalf of residential ratepayers; and Suzanne Amidon, Esq. on behalf of Commission Staff.

**I. PROCEDURAL BACKGROUND**

On May 4, 2010, Public Service Company of New Hampshire (PSNH) filed a petition with supporting testimony and schedules requesting an interim change to its energy service rate effective with service rendered on and after July 1, 2010. PSNH's current energy service rate is \$0.0896 per kilowatt-hour (kWh) as approved by the Commission in Order No. 25,061 (December 31, 2009). Pursuant to N.H. RSA 369-B:3, IV(b)(1)(A), the price for PSNH's energy service must reflect PSNH's actual, prudent and reasonable costs of providing the power. In prior energy service proceedings, the Commission has approved a twelve-month rate and has allowed any party to request a mid-term adjustment to the rate to avoid large over- and under-recoveries. In its filing, PSNH estimated that the new rate would be \$0.0857 per kWh, but noted that, as in past mid-year filings, it would update the projected costs and rate calculations prior to hearing. PSNH said that it requested the July 1, 2010 effective date to coincide with the

proposed effective date for permanent distribution rate changes requested in Docket No. DE 09-035, PSNH's distribution rate proceeding.

The Office of Consumer Advocate previously filed a letter on October 1, 2009 stating that it would be participating in the instant docket on behalf of residential ratepayers pursuant to RSA 363:28. Petitions to intervene were also filed by Freedom Logistics, LLC, Halifax-American Energy Company, LLC, TransCanada Power Marketing Ltd. and New England Power Generators, Inc.<sup>1</sup> The Commission issued an order of notice on May 28, 2010.

In addition to the mid-year adjustment to energy service rates, the filing addressed the effects of customer migration on energy service rates, a subject that was originally discussed in an earlier phase of the instant docket (see Order No. 25,061 (December 31, 2009)). PSNH said that in that prior phase, it was demonstrated that as customers migrated to third party supply during a time when the marginal cost to serve is lower than the average cost to serve, the energy service rate is increased for those customers who continue to take default energy service from PSNH. The affected customers are residential and small commercial customers who have less access to competitive supply than large commercial customers. To address this issue, the Commission, in Order No. 25,061, directed PSNH to develop a meaningful range of forecasts of customer migration commencing with its next energy service filing. In the instant filing, PSNH used a migration percentage of 29.7%, which, according to PSNH, was the actual migration level on its system as of March 31, 2010. In addition, for purposes of discussion, PSNH calculated the energy service rate using alternative migration scenarios of 33.7% and 25.6%, which resulted in energy service rates of \$0.0878 per kWh and \$0.0839 per kWh, respectively.

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<sup>1</sup> For the procedural history and disposition of motions in the prior proceeding in this docket, see Order No. 25,061 (December 31, 2009).

In its prefiled testimony, PSNH opined that the phenomenon of increasing cost impacts of customer migration to residential and small commercial customers is unfair to those customers remaining on PSNH's default energy service and suggested that to address this problem a portion of energy service costs should be removed from energy service rates and recovered through a non-bypassable rate from all customers, including those who had migrated to competitive supply. In the May 28 Order of Notice in this proceeding, the Commission stated its intent to address the customer migration issue in a separate docket. On June 11, 2010, the Commission opened Docket No. DE 10-160 to commence a separate investigation of customer migration and PSNH's practices for procuring power not supplied by its owned generation facilities.

PSNH filed two motions for a protective order in connection with responses it filed to Staff data requests. The first motion, filed on May 27, 2010, requested confidential treatment for responses to Staff Data Request Set No. 03, Q-Staff-010 regarding a special arrangement PSNH made with one of its coal suppliers. On June 11, 2010, PSNH filed a motion to protect as confidential answers to a data request propounded at a technical session, Technical Session TS-01 Q Tech-001, which asked for actual and forecasted output from the Lempster Wind facility (Lempster) with whom PSNH had contracted to purchase power and renewable energy certificates (RECs).

On June 11, 2010, PSNH submitted updated attachments to its prefiled testimony along with a technical statement summarizing the changes from the initial filing, including the actual final revenues and expenses for May 2010 and a re-estimated forecast of kilowatt-hour sales and power costs from June through December 31, 2010. In its revised filing, PSNH requested a decrease to the energy service rate from \$0.0896 per kWh to \$0.0878 per kWh, an increase of \$0.0021 over the rate proposed in the Company's May 4, 2010 filing, effective with service

rendered on and after July 1, 2010. PSNH said the change in the energy service rate from the May 4 filing resulted primarily from a forecasted decrease in revenue due to additional customer migration, offset in part with higher forward market electricity prices as of June 4, 2010. A hearing was held as scheduled on June 23, 2010.

## **II. POSITIONS OF THE PARTIES**

### **A. PSNH**

PSNH's testimony at hearing addressed the June 11, 2010 revisions to its initial filing. PSNH said that the proposed decrease in the energy service rate from the current rate of \$0.0896 per kWh to \$0.0878 per kWh generally reflected the forecasted decline in revenue due primarily to additional customer migration and offset in part with higher forward market electricity prices as of June 4, 2010. According to the Company, in preparing its filing it inadvertently omitted approximately \$50,000 in telecommunications fees related to Independent System Operator-New England (ISO-NE) activities; however, PSNH said it would wait until the reconciliation of the 2010 revenues and expenses to recover the omitted sum, and would not seek recovery in the energy service rates proposed for July 1, 2010.

PSNH explained that the decline in the energy service rate was due to several factors. First, energy used by the Company at its non-generation facilities, the cost of which was formerly recovered through energy service rates, will now be recovered from distribution rates pursuant to a settlement agreement filed in its most recent distribution rate proceeding, Docket No. DE 09-035, and subject to Commission approval of that agreement. Second, PSNH updated the amount of anticipated insurance proceeds related to a plant outage at its Merrimack Station generating plant, resulting in an additional credit of \$3.4 million. Third, the Company decreased its fossil/hydro operation and maintenance costs by \$2.7 million to reflect actual results through

May 2010. Finally, the forecasted period June through December 2010 reflected a decrease of \$8.3 million to overall energy service costs due to many factors including lower forecasted coal and wood costs, and additional reductions including a credit related to the non-delivery and resale of previously scheduled contract coal (\$2.3 million), lower capacity costs and lower costs for compliance with the electric Renewable Portfolio Standard (RPS).

PSNH said these reductions in expenses were offset in part by cost increases proposed in the settlement agreement filed in Docket No. DE 09-035. Pursuant to that settlement agreement, PSNH agreed to allocate a portion of the annual utility assessment to the energy service expenses. In addition, the settlement agreement moved certain uncollectible expenses for recovery from the Company's distribution rate to the energy service rate. According to PSNH, the shift in uncollectible expense was retroactive to August 1, 2009 to coincide with the effective date of temporary distribution rates and resulted in an under-recovery of \$1.5 million for the recoupment period and a prospective expense of \$1.5 million for the period July through December 2010.

With its June 11 filing, PSNH updated the range of customer migration based on the May 31, 2010 actual migration level of 31.9%. Similar to its May 4, 2010 filing, PSNH also calculated the energy service rate using alternative migration scenarios. PSNH said that, for the forecast period, it used a rate of 0.92% per month in additional migration for each month to derive a high range for customer migration for the period July through December 2010. PSNH said the 0.92% migration rate was based on the actual month-to-month migration observed by the Company. Similarly, PSNH used a negative 0.92% rate per month to determine the low range of migration, to develop ranges for the July through December 2010 period. These calculations resulted in a range with a high customer migration rate of 35.6% and a low customer

migration rate of 28.3%, with the associated rate calculations being \$0.0890 per kWh and \$0.0868, respectively. Having provided this information, PSNH said it had not made any assumptions that customer migration would increase or decrease for the remainder of calendar year 2010.

In response to questions from the OCA, PSNH described its activity related to filing insurance claims and obtaining related payments associated with the operation of a new turbine installed at Merrimack Station during 2008. PSNH said that it took into consideration the lag time it experienced between filing a claim and the receipt of insurance payouts in applying the insurance payments to energy service revenues. The Company said its filing included \$15.2 million in outstanding claims, but recognized that it had reduced the anticipated insurance proceeds by 20% to reflect potential issues with timing and/or recovery of those amounts. PSNH said it expected to know more about the status of insurance proceeds by the end of the year.

The OCA also inquired about the Company's practice of applying revenues associated with use of the Hydro-Quebec transmission facilities to energy service rates – which are only paid by customers who do not take competitive electric service – when the costs associated with supporting those facilities are included in the transmission cost adjustment mechanism (TCAM) rate that is paid by all customers, even those on competitive supply. The Company said that the Hydro-Quebec revenues were allocated to Part 3 Stranded Costs and when the Part 3 Stranded Costs ended in 2006, any remaining components were reconciled in the energy service rate pursuant to the Restructuring Settlement Agreement. *Public Service Co. of New Hampshire*, Order No. 23,549, 85 NH PUC 536 (2000)

**B. TransCanada Power Marketing Ltd.**

TransCanada Power Marketing Ltd. expressed no position on PSNH's petition as it was simply monitoring the docket.

**C. Office of Consumer Advocate**

The OCA stated that it did not oppose the petition. However, in closing the OCA expressed its support for aligning the revenues and costs associated with the Hydro-Quebec facilities in a single rate component.

**D. Commission Staff**

Staff said it had reviewed the filing and supported PSNH's calculation of the energy service rate of \$0.0878 per kWh effective with service rendered on and after July 1, 2010.

**III. COMMISSION ANALYSIS****A. Motions for Confidential Treatment**

The New Hampshire Supreme Court enunciated the standard for determining whether disclosure of public records is required under RSA 91-A:5, IV in *Lamy v. Public Utilities Commission*, 152 N.H. 106, 109 (2005). Referring to *N.H. Civil Liberties Union v. City of Manchester*, 149 N.H. 437 (2003), the *Lamy* Court described a three-step analysis for evaluating whether information is subject to disclosure. First, the court evaluates whether a privacy interest is at stake that would be invaded by the disclosure. Next, it assesses the public's interest in disclosure, that is, whether disclosure of the information informs the public about the conduct and activities of their government. In the final step, the Court balances the interest in disclosure and the interests in non-disclosure. The Commission uses the same three-step analysis in determining whether information it receives is subject to disclosure under the Right-to-Know

law. *See, e.g., Unitil Corporation and Northern Utilities Natural Gas*, Order No. 25,014 (September 22, 2009).

Staff Data Request Set No. 03, Q-Staff-010 asked for an explanation and supporting documentation for the “credit book-out from a supplier for a non-delivery of prior scheduled coal delivery” which result in a credit of \$2.3 million to energy service expense. According to the company, the supplier and PSNH entered into a side agreement with pricing terms that would govern in the event a scheduled coal delivery did not occur. PSNH asserted that these contractual terms are not otherwise made public and constitute confidential commercial and financial information exempt from disclosure pursuant to RSA 91-A:5, IV. PSNH stated that the supplier would not be willing to enter into similar arrangements in the future if the terms of the agreement were disclosed.

Applying the first step of the analysis, we agree that the response to this question is confidential commercial information not otherwise subject to disclosure and thus there is a privacy interest at stake. In applying the second step of the analysis, we do not find that the disclosure of the information would inform the public on the operations of the Commission. Disclosure would merely inform the public regarding the terms of the supplier contract that provides the Company a monetary credit for the non-delivery of previously scheduled coal provision. As PSNH points out, suppliers would not be willing to negotiate for such credits with PSNH if the terms of the contract were made public, and thus PSNH’s customers would not be able benefit from the offset to rates afforded by such credits in the future. In applying the final step of the analysis, we find that the harm of disclosure outweighs the benefits of disclosure and grant PSNH’s motion for protective order for the supplier side agreement on the non-delivery provision.



The second motion for protective order asks for confidential treatment of the actual and forecasted output from Lempster that Staff requested at a technical session. PSNH asserted that the response to Technical Session TS-01 Q-Tech-001 contains confidential commercial information that is exempt from disclosure pursuant to RSA 91-A:5, IV. In its motion, PSNH said that the Company and Lempster entered into an agreement for the sale of power and RECs from Lempster. PSNH noted that the Commission granted confidential treatment to the terms of its agreement with Lempster in Docket No. DE 08-077. In addition, the Company stated that the Independent System Operator-New England also treats electrical output and capacity factor as confidential information. According to the Company, public disclosure of this information would reveal information about Lempster that is not otherwise publicly available and would put PSNH at a disadvantage with respect to negotiating the best price for its customers with suppliers of supplemental power and RECs.

PSNH has provided sufficient facts for us to find that the information requested by Technical Session TS-01 Q-Tech-001 is confidential financial information that may be exempt from disclosure pursuant to RSA 91-A:5, IV. Applying the second part of the analysis, we find that the public disclosure of this information will not shed light on the operation of the Commission but would reveal information that is confidential to Lempster. Finally, in balancing the benefits and harm of disclosure, we find that the disclosure of the information would impede PSNH's ability to negotiate competitive rates in contracts with supplemental power suppliers, such as Lempster, for energy and RECs. The inability of PSNH to negotiate competitive prices in such situations will increase energy rates for its customers. Based on this analysis, we will grant the motion for protective order for the response to Technical Session TS-01 Q Tech-001.

Our grant of confidential treatment of both data responses is subject to reconsideration in the future should circumstances change.

### **B. Energy Service Rate**

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price for PSNH's energy service rate must allow for recovery of the actual, prudent, and reasonable costs of providing the power, as approved by the Commission. Based on our review of the petition and evidence in the record, we find that the calculations and related documentation support PSNH's request for a mid-term adjustment to its energy service rates. We find PSNH's calculations to be reasonable and we approve the energy service rate of \$0.878 cents per kWh effective with service rendered on and after July 1, 2010. We therefore grant the updated petition.

Regarding the revenues associated with use of the Hydro-Quebec facilities, we directed the Company to align the costs and revenues associated with those facilities in Docket No. DE 10-158, PSNH's petition to modify its transmission cost adjustment mechanism (TCAM) rate, Order No. 25,122 (June 28, 2010).

This is one of four orders we are issuing for PSNH rates for services rendered on and after July 1, 2010: in the instant docket, an interim adjustment to PSNH's energy service charge; in DE 10-158, an adjustment to PSNH's TCAM rate noted above; in Docket No. DE 09-179, an adjustment to PSNH's stranded cost recovery charge; and in DE 09-035, an adjustment to PSNH's distribution rates. Overall, the average impact of these rate changes effective July 1, 2010 is an approximate increase of 4.84% for a PSNH customer not purchasing energy from a competitive supplier.

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

**ORDERED**, that the petition of Public Service Company of New Hampshire to adjust its energy service rate to \$0.0878 per kWh effective with service rendered on and after July 1, 2010 is hereby GRANTED: and it is

**FURTHER ORDERED**, that PSNH's motions for confidential treatment are hereby GRANTED; and it is

**FURTHER ORDERED**, that Public Service Company of New Hampshire shall file tariff pages pursuant to Puc Part 1603 that conform with this Order within 30 days hereof.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 2010.

Thomas B. Getz  
Thomas B. Getz (KNS)  
Chairman

Amy Ignatius  
Amy L. Ignatius  
Commissioner

Attested by:

Debra A. Howland  
Debra A. Howland  
Executive Director