

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 10-257**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**2011 Default Energy Service Rate**

**Order Approving 2011 Energy Service Rate**

**ORDER NO. 25,187**

**December 29, 2010**

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

**I. PROCEDURAL HISTORY**

On September 22, 2010, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service (ES) rate to take effect for service rendered on and after January 1, 2011. Pursuant to RSA 369-B:3, IV(b)(1)(A), customers taking ES from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing the power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 8.68 cents per kilowatt hour (kWh) for the 2011 ES rate, but stated that a final proposed rate would be filed prior to the hearing to reflect the most recent estimates of fuel and energy costs. With the filing, PSNH included the supporting testimony and related exhibits of Robert A. Baumann, Director of Revenue Regulation and Load Resources for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the Northeast Utilities operating subsidiaries, including PSNH.

The Commission issued an order of notice on October 1, 2010 scheduling a prehearing conference for October 21, 2010. On October 5, 2010, the Office of Consumer Advocate (OCA) notified the Commission of its participation in this docket on behalf of residential ratepayers consistent with RSA 363:28. The Staff filed a proposed procedural schedule on October 21, 2010, which the Commission approved by secretarial letter dated October 22, 2010.

On November 4, 2010, PSNH filed motions for protective orders for information provided in response to certain data requests including: fuel supply data for PSNH generating stations; details concerning supplemental power purchase contracts for the year 2011; information supporting the acquisition and sale of renewable energy certificates (RECs); and the dates and duration of planned maintenance outages at major generating stations during 2011.

On December 16, 2010, PSNH filed an updated ES rate calculation of 8.67 cents per kWh. The hearing took place on December 21, 2010.

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

### **A. Public Service Company of New Hampshire**

In prefiled testimony, PSNH witness Robert A. Baumann stated that the Company's current ES rate of 8.78 cents per kWh was established by the Commission in Order No. 25,121 (June 28, 2010). Based on preliminary calculations, Mr. Baumann said that, for the period January 1, 2011 through December 31, 2011, PSNH's prudent and reasonable cost of providing energy service was expected to be 8.68 cents per kWh. Mr. Baumann testified that the major cost categories comprising the ES costs are the revenue requirements for owned generation assets and the costs of purchased power obligations, the fuel costs associated with PSNH's generation assets, the costs from supplemental energy and capacity purchases, certain

Independent System Operator-New England (ISO-NE) ancillary service charges and the cost of compliance with the New Hampshire Renewable Portfolio Standard (RPS) and the Regional Greenhouse Gas Initiative (RGGI). The generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property and payroll taxes, and a return on the net fossil/hydro investment.

Mr. Baumann testified that the level of migration (i.e., the percentage of customer load receiving energy supply service from competitive suppliers) assumed in the Company's filing reflected the August 31, 2010 actual migration level of 30.7%. In proposing an ES rate for 2011, PSNH said it did not presume that customers will migrate more or less than the actual level. PSNH noted that the Commission had opened a separate docket (Docket No. DE 10-160) to address the effects that migration is having on the ES rate for those customers, predominantly residential and small commercial customers, who remain on PSNH's ES.

PSNH included IPP generation as a source of power to meet PSNH's load requirements, and stated that IPP power costs are based on projected market costs for energy and capacity. PSNH said that the over-market portion of purchases from the IPPs recovered through Part 2 of the stranded cost recovery charge (SCRC). As market prices change, the value of IPP purchases recovered through the ES rate changes. At the same time, however, there is a corresponding change to the SCRC rate for the above-market value of IPP purchases. To properly match the recovery of IPP costs, PSNH said it also separately filed for a change in the SCRC rate for effect on January 1, 2011.

PSNH made its updated filing of ES rate calculations on December 16, 2010 using the most recent market forecasts. In that filing, PSNH requested approval of an ES rate of 8.67 cents per kWh, a reduction of 0.01 cents per kWh from the energy service rate in the September 22, 2010 filing, and a reduction of 0.11 cents from the current rate of 8.78 cents per kWh.

In its updated filing and at hearing, PSNH provided explanations of certain changes to its cost projections. According to PSNH, market prices decreased slightly since the time of its initial filing. In addition, PSNH said it sold about 120,000 tons of coal which resulted in a \$5 million credit to energy service rates. PSNH explained that it had purchased the coal under contract and decided to sell the coal as that particular coal was attracting high prices in the metallurgical market.

PSNH identified certain cost increases as follows. According to PSNH, whereas in 2010 it credited energy service costs with \$15 million in insurance proceeds related to a 2008 outage at Merrimack Station, those credits will not appear in 2011. PSNH also stated that 2010 energy service rate included a small over-recovery from the prior year, while the updated proposed 2011 energy service rate includes a \$6 million under-recovery. In addition, PSNH said that pension costs and the ES share of uncollectible amounts also increased. Consistent with a settlement agreement in its most recent distribution rate case, Docket No. DE 09-035, PSNH, for the first time, included a portion of the Commission's annual assessment in its forecast of energy service costs. PSNH stated that the 2011 ES rates also include approximately \$4 million in additional costs associated with planned outages at its generation units. PSNH also revised the revenue associated with the sale of RECs from the wood-fired Unit 5 at Schiller Station generating plant. PSNH said that in its 2010 rates it used an estimate of \$31.00 per Class I REC, but for 2011 it

used an estimate of \$19.00 per Class I REC based on available market data. Finally, PSNH's updated rate filing included an updated load forecast as well as the November 2010 load migration level of 31.8%. Taking into account all of the changes, the final ES rate calculation yielded a slight reduction from the current ES rate of 8.78 cents per kWh to 8.67 cents per kWh.

PSNH concluded by stating that it had calculated the ES rate according to the methods previously approved by the Commission and requested that the Commission approve an ES rate of 8.67 cents per kWh for services rendered on and after January 1, 2011.

#### **B. Office of Consumer Advocate**

The OCA took no position on the filing. The OCA expressed the hope that energy service customers would benefit from PSNH's recovery of all insurance proceeds related to the 2008 forced outage at Merrimack Station. Finally, the OCA said that it did not object to PSNH's motions for confidential treatment.

#### **C. Staff**

Staff said that, based on its investigation of the filing, the Company calculated the estimated ES rate for 2011 in the same manner as in prior ES filings. The Staff said that customer migration continues to impact PSNH's ES customers but that customer migration is the subject of Docket No. DE 10-160. Staff said that any action of the Commission in Docket No. DE 10-160 will affect the implementation of the ES rate going forward and did not need to be addressed in the instant proceeding. The Staff recommended that the Commission approve PSNH's estimated energy service rate of 8.67 cents per kWh for service rendered on and after January 1, 2011. The Staff concluded by stating that it did not oppose the Company's motions for confidential treatment.

### **III. COMMISSION ANALYSIS**

#### **A. MOTIONS FOR PROTECTIVE TREATMENT**

On November 4, 2010, PSNH filed three motions for protective treatment for responses the Company provided to certain data requests as follows: Staff 1-6(a) and Staff 1-11 which provided information regarding PSNH's fuel supply costs and information related to supplemental power purchases; Staff 1-12 which provided information related to the Company's acquisition and sale of RECs; and Staff 1-9 which disclosed PSNH's 2011 major maintenance outage schedule.

PSNH said that the confidential portions of the response to Staff 1-6 contain 2011 fuel prices and the quantity of fuel under contract for PSNH's generating stations for calendar year 2011. PSNH said the responses to Staff 1-11 contain supplemental power supply information including the contracting party, date of execution, duration, quantity and price of power secured through bilateral purchases that have been entered into for the upcoming energy service rate period. Similarly, Data Request Staff 1-12 requested information regarding PSNH's estimated costs of compliance with the New Hampshire RPS law, including a break-down of costs by class of RECs, details concerning any contracts PSNH had entered into to acquire RECs from other facilities, and information regarding PSNH's sale of RECs from its owned renewable energy resources.

According to PSNH, the information provided in response to Staff 1-6(a), Staff 1-11 and Staff 1-12 is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. According to the Company, contracts with parties selling supplemental power and contracts for the sale of RECs are kept confidential to protect both

parties. PSNH said that release of this information would put PSNH at a disadvantage with respect to negotiations in the future with suppliers of supplemental power and RECs. PSNH said that suppliers may not want to negotiate future supply contracts or RECs if they assume that the information in the final contract will be made public. According to PSNH, fewer suppliers means a less competitive market in which PSNH will procure RECs, supplemental power supplies and its coal supply. PSNH said that a similar motion was granted in its previous ES rate proceeding, Docket No. DE 09-180, *Public Service Company of New Hampshire*, Order No. 25,061 (December 31, 2009).

Data Request Staff 1-9 requested the Company's schedule for planned maintenance outages at its generating plants for calendar year 2011. According to PSNH, the dates and durations of scheduled plant outages are confidential commercial information potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH said that release of the information to the public, including competitive market participants, places PSNH at a distinct disadvantage when it plans to purchase energy to supply its customers during times when major generating stations are undergoing planned maintenance. The Company said that customers are harmed if the competitive market knows the distinct periods when PSNH must supplement its normal energy needs to replace the production from major generation stations. PSNH stated that this disadvantage will persist as long as PSNH is supplying energy service and as long as PSNH owns generation. PSNH noted that the Commission granted a similar motion in the previous ES rate setting proceeding, Docket No. DE 09-180, Order No. 25,061 (December 31, 2009).

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We have had occasion to rule

on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unital Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by PSNH should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *Id.*

In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08 (b).



First, we review whether the information for which PSNH claims protective treatment is, indeed, confidential. We have reviewed *in camera* the responses to the data requests for which PSNH requests confidential treatment to assist in our deliberation of PSNH's motions for confidential treatment. In each motion, PSNH asserts that the information for which it seeks protection is potentially eligible for protection from public disclosure pursuant to RSA 91-A:5, IV. PSNH states that all such information is maintained as confidential by the Company and is not otherwise disclosed. With respect to the supplemental power supply contracts, the fuel supply contracts and the REC contracts, PSNH asserts that both parties to the contract expect the details of the contract to be held confidential and not disclosed to the public. Finally, PSNH states that it does not disclose the schedule of planned outages for its generation units. Based on these attestations, we find that the information for which PSNH requests confidential treatment is confidential within the meaning of RSA 91-A:5, IV.

Next we assess the public's interest in the disclosure of the information. Some of the information for which PSNH seeks protection pertains to the costs incurred by the Company in connection with the purchase of fuel, supplemental power supply, and RECs contained in the responses to data requests Staff 1-6(a), 1-11, and 1-12, respectively. PSNH uses these costs in the calculation of an estimated energy service retail rate and the public disclosure of these costs would allow for a detailed understanding of the various cost components in ES rates. As a result, we find that the public has an interest in the disclosure of this information.

The Company states in its motions, that the disclosure of this information would allow competitors to see the costs of PSNH supplemental power purchases, fuel purchases and REC purchases. The disclosure of this information could negatively impact the ability of PSNH to

secure fuel, supplemental power supply and RECs at competitive prices. Based upon these facts, we find that the interest in public disclosure of such financial, commercially sensitive information is outweighed by the benefit derived from maintaining the confidentiality of such information, given that confidentiality helps produce lower rates than what they might otherwise be. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing the public interest in disclosure against privacy interest). We therefore grant the motions for confidential treatment for the Company's responses to the data requests identified as Staff 1-6(a), Staff 1-11 and Staff 1-12. In granting this motion, we also afford protective treatment to the average price for wood fuel which PSNH witnesses discussed at hearing.

We note that the protection provided to the responses to Staff 1-11 regarding supplemental power purchases is limited by the reporting requirements of the Federal Energy Regulatory Commission (FERC). Pursuant to 18 CFR §35.10b, wholesale suppliers are required to file Electric Quarterly Reports (EQR) with FERC. In the EQR, suppliers must summarize contractual terms and conditions in their agreements for sales of wholesale electricity and transmission that is an unbundled part of a power sale. The reporting requirement applies to any unexpired agreement existing as of the reporting period. EQR data are public information and are not protected from disclosure. Therefore, the protective order we grant herein is in effect only until such time as the information provided in response to Staff 1-11 is disclosed by the wholesale suppliers in the EQR reports. This limitation is consistent with prior rulings on the confidentiality of the terms of supplemental power sales. *See, e.g. Order No. DE 25,167* (November 9, 2010) at 16.

In the case of the information regarding planned outages, Staff 1-9, PSNH stated that disclosure of this response would inform suppliers when PSNH would be looking to supplement its owned generation supply. If this information were made public, PSNH would be at a competitive disadvantage in securing supplemental power for the times when it needed supplemental power and would be impeded from providing service to its customers at reasonable rates. We find that disclosure of this information does not serve to inform the public concerning the rates reviewed in this proceeding and that disclosure could harm customers who may pay higher costs for replacement power if the outage schedule were disclosed. Therefore, we do not find that the public has an interest in disclosure of this information and grant the motion for confidential treatment to the response to data request Staff Set 1-9.

Consistent with N.H. Code of Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider this protective order.

#### **B. PSNH 2011 ENERGY SERVICE RATE**

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price of PSNH's ES shall be its "actual, prudent, and reasonable costs of providing such power, as approved by the commission." The genesis of the two-part procedures for calculating default service rates, now referred to as ES rates, and the reconciliation of those rates, lies in RSA 374-F and the Settlement Agreement in Docket No. DE 99-099, which implemented electric utility restructuring for PSNH, and Docket No. DE 02-166, Order No. 24,117 (January 30, 2003), which further refined the mechanism for setting transition service rates, now ES rates. Because PSNH is entitled to

recover its *actual* costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting ES rates. The first step, which is determined in this docket, is based upon an estimate of future costs for the following calendar year. The second step, which occurs after the power has been produced or purchased and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.<sup>1</sup>

We find that PSNH reasonably estimated the proposed 2011 ES, taking into account purchases for supplemental power, estimates of the costs related to the operation of its generation units, and associated fuel supply contracts. These calculations, as updated in the Company's December 16, 2010 filing, support a 2011 energy service rate of 8.67 cents per kWh, which is a reduction from the current ES rate of 8.78 cents per kWh. We note that the impact of the rate change will be a reduction of roughly 1.25% in the energy component of PSNH's rates.

Consistent with past practice, we will review the reasonableness of PSNH's operating expenses and the prudence of its capital expenditures in connection with the Company's separate filing reconciling actual ES costs and revenues.

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<sup>1</sup> The energy service proceeding is somewhat analogous to a temporary rate proceeding or a cost of gas proceeding. In a temporary rate proceeding the rate is set employing a standard that is less stringent than the standard for permanent rates because of the reconciliation mechanism. In a cost of gas proceeding the rate is set based upon forecasts and estimates and is subject to reconciliation in the next cost of gas proceeding. In both temporary rates and cost of gas proceedings the reconciliation process allows the Commission to apply a more stringent standard and look closely at the reasonableness of costs and the prudence of decisions.

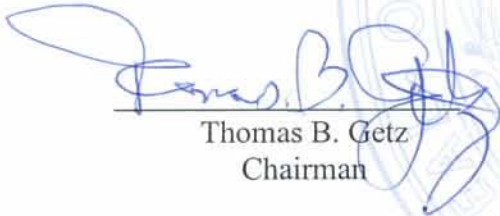
**Based upon the foregoing, it is hereby**

**ORDERED**, Public Service Company of New Hampshire's petition, as modified by its December 16, 2010 update, to establish an energy service rate of 8.67 cents per kWh effective for service rendered on and after January 1, 2011 is hereby APPROVED; and it is


**FURTHER ORDERED**, that Public Service Company of New Hampshire's motions for protective treatment are hereby GRANTED subject to the conditions discussed herein; and it is

**FURTHER ORDERED**, that Public Service Company of New Hampshire shall file tariffs pursuant to New Hampshire Code of Admin. Rules Puc 1603 conforming to this Order no later than 30 days hereof.


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



Thomas B. Getz  
Chairman



Clifton C. Below  
Commissioner



Amy L. Ignatius  
Commissioner

Attested by:



Debra A. Howland  
Executive Director