

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 09-180**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**2010 Default Energy Service Rate**

**Order Approving 2010 Energy Service Rate**

**ORDER NO. 25,061**

**December 31, 2009**

**APPEARANCES:** Gerald M. Eaton, Esq., on behalf of Public Service Company of New Hampshire; Orr and Reno Professional Association by Douglas L Patch, Esq., on behalf of TransCanada Power Marketing Ltd.; James Rodier, Esq., on behalf of Freedom Logistics LLC and Halifax-American Energy Company LLC; Office of Consumer Advocate by Meredith A. Hatfield, Esq., on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

**I. PROCEDURAL HISTORY**

On September 24, 2009, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service (ES) rate for effect with service rendered on and after January 1, 2010. 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. 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 9.31 cents per kilowatt hour (kWh) for the 2010 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.

On October 1, 2009, 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 Commission issued an order of notice on October 5, 2009 scheduling a prehearing conference on October 19, 2009. On October 16, 2009, the Commission received petitions to intervene from TransCanada Power Marketing Ltd. (TransCanada), and jointly from Freedom Logistics LLC and Halifax-American Energy Company LLC (collectively Freedom-Halifax). The New England Power Generators Association, Inc. (NEPGA) filed a petition to intervene on October 19, 2009.<sup>1</sup> The Staff filed a proposed procedural schedule on October 20, 2009, and filed a letter on October 27, 2009 summarizing the status of the petitions to intervene. On November 4, 2009, the Commission issued a secretarial letter granting the petitions to intervene with the limitation that TransCanada, Freedom-Halifax and NEPGA be denied access to confidential information.

On November 12, 2009, Freedom-Halifax filed a letter taking the position that Freedom-Halifax was entitled access to confidential information despite the Commission's ruling. PSNH filed a letter in response on November 17, 2009. On December 1, 2009 Freedom-Halifax filed a letter stating that it did not need the confidential information and that the Commission did not need to rule on its November 12, 2009 letter.

On November 12, 2009, TransCanada filed a motion to compel a response to its data request for information regarding PSNH's power purchase policies. PSNH objected to TransCanada's motion in a filing on November 17, 2009. Freedom-Halifax filed a motion to compel on November 18, 2009 regarding its request for PSNH's five year forecast of load

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<sup>1</sup> The New England Power Generators Association, Inc. did not further participate in this docket.

demand and energy costs. PSNH filed an objection to Freedom-Halifax's motion on November 17, 2009.<sup>2</sup>

Due to the outstanding motions to compel, the Commission suspended the procedural schedule on November 23, 2009. On November 24, 2009, PSNH filed motions for protective treatment for the responses to Staff's data requests for: 1) supplemental power supply and coal supply contracts, 2) PSNH's summary of its acquisition of renewable energy certificates (RECs), and 3) its major maintenance schedule. On November 25, 2009, TransCanada filed a partial objection to the motion for confidential treatment challenging the confidential treatment of supplemental power supply and coal supply contracts.

On November 30, 2009, the Commission issued an Order denying Freedom-Halifax's motion and granting TransCanada's motion subject to PSNH's right to request confidential treatment of its response. In addition, the Commission modified the procedural schedule requiring Staff and Intervenor testimony by December 2, 2009, including a limited time for discovery and giving PSNH an opportunity to file rebuttal testimony on December 8. PSNH filed a motion for confidential treatment of its responses to TransCanada's data requests regarding its power purchase policies on December 1, 2009.<sup>3</sup>

On December 2, 2009, Staff filed the testimony of Steven E. Mullen, Assistant Director of the Commission's Electric Division and TransCanada filed the testimony of Michael E. Hachey, Vice President and Director of Eastern Commercial for TransCanada Power Marketing. PSNH filed its updated forecast of energy costs and additional months of actual costs on

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<sup>2</sup> Freedom-Halifax made an electronic filing of its motion before it filed a paper copy with the Commission, leading to the dates appearing to be out of sync.

<sup>3</sup> PSNH filed several motions for protective treatment which are discussed in the Commission Analysis section of this order.

December 7, 2009, and filed the rebuttal testimony of Robert A. Baumann and David A. Errichetti, Manager of Generation Resource Planning for NUSCO, on December 8, 2009.

Pursuant to New Hampshire Code of Admin. Rules Puc 203.27, TransCanada filed a motion to take administrative notice of the record in Docket No. DE 07-108, PSNH's 2007 Least Cost Integrated Resource Plan on December 7, 2009. No party objected to the motion. At hearing, TransCanada clarified that it was asking the Commission to take administrative notice of Exhibit 1 and Exhibit 2 in Docket No. DE 07-108, the initial filing made by PSNH on September 28, 2007 and the supplemental filing made on March 28, 2008, respectively.

The hearing was held as scheduled on December 10, 2009 and continued on December 11. On December 17, 2009, PSNH filed responses to record requests identified as Exhibits 5, 18, and 20 with accompanying motions for confidential treatment.

## **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 9.03 cents per kilowatt hour (kWh) was established by the Commission in Order No. 24,991 (July 17, 2009). Based on preliminary calculations, Mr. Baumann said that, for the period January 1, 2010 through December 31, 2010, PSNH's prudent and reasonable cost of providing energy service was expected to be 9.31 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 assumed in the Company's filing reflected the then-current actual level of approximately 23%, which is greater than the assumed migration level of 18% that was embedded in the current rates effective for services rendered on and after August 1, 2009. According to testimony, the increased migration levels have resulted in increasing the preliminary 2010 ES rate approximately 5% more than it would have been absent migration. Mr. Baumann said that this increase means that certain customers, principally residential customers, who are unable to elect third party electricity supply will bear additional fixed costs while those customers who have switched to competitive suppliers have been afforded the opportunity to choose lower rates.

PSNH testified that it is unknown whether customer migration will continue to exert upward pressure on ES rates in the future. Mr. Baumann noted that, during what he called the "current unprecedented market price decline," third party suppliers have been able to offer electric service to certain customers at prices lower than PSNH's ES rate. According to Mr. Baumann, if market prices increase in the future, customers who have migrated to competitive supply may return to receive service under PSNH's ES rate. In its original testimony PSNH did not offer a proposed solution to address the migration issue and suggested that the issue should be vetted by all interested parties through discussions at technical sessions. PSNH also offered its view that it did not believe that the restructuring law was intended to have one general group of customers shouldering additional costs as a result of another group securing lower rates.

According to PSNH, those additional costs may be an unintended consequence of electric energy restructuring. In his November 23, 2009 supplemental testimony, Mr. Baumann further addressed the issue of customer migration and its effect on ES rates. Baumann Supplemental Testimony at 1. Mr. Baumann stated that the 5% differential referred to in his prefiled testimony amounts to approximately \$28 million, but that value would change when PSNH updates its ES filing proposal on December 7, 2009. *Id.* at 2.

Mr. Baumann explained that PSNH has the obligation to have a reliable and cost effective energy supply at all times to meet its assigned load obligations for every hour of every day. To meet this obligation, PSNH said it maintains a portfolio of power sources to meet current and future load obligations. Those sources include PSNH's own generation and unit entitlements, independent power producer (IPP) generation from contracts and rate orders, contracted blocks of fixed purchase power sources, and anticipated market power purchases, mostly through the daily ISO-NE interchange process. *Id.* According to Mr. Baumann, over the past few years PSNH had planned and/or procured ahead of time a large portion of the load obligation with its own generation, purchase power and IPP supplies to minimize future market exposure risk from unsecured load obligations and to minimize over- and under-collections, which can lead to moderate to wide fluctuations in ES prices. *Id.* at 2-3.

Mr. Baumann stated that the Company's load obligation had declined significantly over the past 18 months, due in part to the migration of customers - mostly large customers - to third party suppliers, leaving the small customers - predominantly residential and small commercial customers - supporting the higher ES rate. As the load drops, the denominator in the ES rate calculation (sales in kWh) drops, thereby increasing the ES rate. Mr. Baumann explained that, as a partial offset, costs in the numerator of the ES calculation, drops due to the avoidance of

variable fuel costs, but not in the same proportion as the decline in the denominator. The result is that certain costs remain in both the pre- and post-migration ES calculation that do not go away as migration increases. Mr. Baumann identified the costs that do not go away with increased migration as costs from PSNH's owned generation and unit entitlements, the costs of IPP purchases, and fixed purchase power costs. *Id.* at 3.

PSNH offered two proposals, Method 1 and Method 2, to address migration and its effect on ES rates. Under Method 1, the Commission would approve some form of a non-bypassable charge for customers or groups that are shifting costs to other customer classes by the manner in which they participate in the energy market. Method 2 would remove the recovery of certain cost items from the ES rates, and recover those costs through more appropriate and non-bypassable charges such as the stranded cost recovery charge (SCRC), the transmission cost adjustment mechanism (TCAM) and distribution charges. *Id.* at 5.

According to PSNH, Method 1 would address the increase in ES rates created by migration by identifying the added costs being carried by residential and small commercial customers receiving service under PSNH's ES rate and recover all or part of the difference as stranded costs through a non-bypassable rate such as the SCRC. Mr. Baumann said that Method 1 is consistent with PSNH's belief that the restructuring law was not intended to have one general group of customers shoulder additional costs because another group obtained supply at a lower rate than PSNH customers, citing RSA 374-F:3, VI. *Id.* at 6. PSNH stated that implementing Method 1 would complicate the applicable calculations of the ES and SCRC rates but the additional work would be warranted. *Id.* at 7.

In describing Method 2, Mr. Baumann stated that PSNH believes there are several costs being recovered through ES rates that may be more appropriately recovered through SCRC,

TCAM or distribution rates. PSNH referred to three cost categories: 1) reliability costs such as VAR support (uplift costs) that relate to overall system reliability; 2) the above market-costs associated with the replacement agreement for Bio-Energy IPP purchased power agreement; and 3) company use energy costs not related to the generation segment of PSNH. *Id.* at 8. PSNH said that VAR support costs could be recovered through the TCAM, which is adjusted annually on July 1. As for the above-market costs associated with Bio-Energy, PSNH stated that those costs could be more appropriately recovered through the SCRC. Finally, with respect to company use, PSNH suggested that those costs could be recovered through its distribution rates.

PSNH proposed immediate implementation of Method 2 effective January 1, 2010 for the VAR support and over-market Bio-Energy costs. PSNH said that the company use adjustment could be implemented coincident with the anticipated change in PSNH's distribution rates on July 1, 2010 in PSNH's ongoing distribution rate case, DE 09-035. PSNH stated that Method 1 would require further discussion, but suggested that July 1, 2010 would be a reasonable target date for implementation. *Id.* at 9.

PSNH made its updated filing of ES rate calculations on December 7, 2009 using the most recent market forecasts, adjusting the rates for the actual results for the months of September and October 2009 and re-estimating the results for November and December 2009. Based on its updated 2010 ES rate calculations, which incorporated its proposed Method 2, PSNH requested approval of an ES rate of 8.96 cents per kWh. Absent the changes in cost recovery recommended in Method 2, PSNH stated that its proposed 2010 ES rate would be 9.21 cents per kWh.

On December 8, 2009, PSNH filed the rebuttal testimony of Mr. Baumann and Mr. Errichetti in response to the testimony of TransCanada's witness, Michael E. Hachey. According

to PSNH, Mr. Hachey stated that PSNH's power procurement for 2010 is inconsistent with PSNH's Least Cost Integrated Resource Plan (LCIRP) approved by the Commission in Docket No. DE 07-108. *See* Order No. 24,945 (February 27, 2009) (Order accepting LCIRP) and Order No. 24,966 (May 1, 2009) (Order denying rehearing). Rebuttal Testimony at 2.

PSNH testified that its supplemental power procurements for 2010 are consistent with Supplement 3 - Supplemental Power Procurement Strategy filed in Docket No. DE 07-108, PSNH's 2007 LCIRP filing, on March 28, 2008 (Supplement), which was appended to the end of Section V.B.6.2., page 91. According to PSNH, the Supplement states: "The following discussion provides an overview of the procurement strategy that PSNH implemented for its 2007 supplemental power requirement. This overview is indicative of PSNH's current procurement strategy; however, as discussed below, PSNH does not have a prescriptive hedging protocol. By retaining flexibility in its planning process, PSNH is able to respond to changes in planning criteria and create benefits for customers."

PSNH said the passage in that same Supplement that TransCanada insists is the inviolate procurement plan leads off by saying, "PSNH's current procurement plan is focused primarily on the subsequent annual period." PSNH asserted that the use of the word "current" refers to the earlier passage cited above and means that PSNH's procurement process is something that changes as PSNH evaluates market conditions, forecasted prices and forecasted procurement needs. PSNH said that it began building its supplemental power supply for 2010 in early 2008 based on the principle that market conditions, forecasted prices and procurement needs change. *Id.* at 3-4. PSNH said that the Mr. Hachey's recommendation to limit PSNH's cost recovery due to PSNH's alleged failure to strictly adhere to its LCIRP is illogical and unworkable. *Id.* at 3.

Regarding Mr. Hachey's recommendations that PSNH procure its supplemental power requirements through a competitive process, PSNH stated that it would have to propose that method of power procurement in an accepted LCIRP before it could be implemented, which could not be accomplished in time to serve its 2010 ES load. *Id.* In addition, PSNH pointed out the complexities of issuing a Request for Proposals (RFP) because it has a statutory obligation to use its generation assets to serve its ES load. PSNH opined that there would also be a risk premium associated with a supplier's bid to cover PSNH's power procurement needs, and that any supplier would add a profit margin to the price it offers for such power. As a result, PSNH stated that an RFP for supplemental power would not necessarily result in lower prices for its customers. *Id.* at 4.

With respect to Mr. Hachey's assertion that PSNH's energy purchases for 2010 are "expensive" and that the costs should be disallowed, PSNH said that it made the purchases at a time when it appeared that market prices would be higher in the future. PSNH said it could not have predicted that the market price for power would decline as it did. Finally, PSNH pointed out that cost recovery limitations are determined in a prudence review, which is not part of this docket. Instead, the purpose of this docket is to determine the ES rate for a prospective period. PSNH said that the determination of what is actual and prudent is done in an after-the-fact review conducted on an annual basis and any adjustments to PSNH's recovery of those costs is based on Commission findings that are included in the reconciliation of the actual and estimated costs. *Id.* at 6.

At hearing, TransCanada noted that PSNH does not forecast migration and questioned how the Company could reasonably decide what to purchase without such a forecast. Hearing Transcript of December 10, 2009 (12/10/2009 Tr.) at 83. PSNH responded by saying that it did

take its current migration into consideration when looking at procurement decisions. However, PSNH explained that it had not made the 2008 supplemental power purchase to address customer migration, but to acquire a portion of the power needed to fill the “gap” between its known existing power supplies and its forecasted needs for 2010. *Id.* The Company went on to say that it could not have foreseen the historic recession and retraction of the economy and the subsequent softening of energy prices. *Id.* at 85. PSNH said that, as it turned out, the 2008 purchases entirely filled the 2010 “gap” after the effects of customer migration and that no additional purchases were needed. *Id.* at 89. Originally, PSNH said that the 2008 purchases accounted for 5% of the gap and 2% of PSNH’s overall requirements. *Id.* at 95. PSNH later corrected an error in its calculations and testified that the 2008 purchases accounted for 15% of the gap, or 6% of PSNH’s overall power needs. *Id.* at 137.

PSNH concluded by recommending that the Commission reject TransCanada’s suggestion to limit PSNH’s cost recovery as being without merit, moreover, and made in the wrong docket. PSNH also recommended that the Commission reject TransCanada’s proposal that PSNH use an RFP process for procuring power for its supplemental energy requirements. Finally, PSNH recommended that the Commission accept PSNH’s proposed Method 2 to recover certain costs through other non-bypassable rate components. *Id.* at 7.

In response to Staff’s recommendation that PSNH prepare a continuing unit operation study, PSNH stated that while it did not oppose such a study, it stated that it would need more time to incorporate the study into its next Least Cost Plan which is due to be filed by May 3, 2010. PSNH suggested that, if the Commission requires PSNH to conduct the study for Newington Station, it postpone the required filing of PSNH’s next Least Cost Plan until at least September 2010.

## **B. TransCanada**

In his prefiled testimony, Mr. Hachey stated that based on his review of PSNH's responses to TransCanada's data requests, it appeared that none of the 2010 supplemental power purchases were made in accordance with the procurement process set forth in PSNH's 2007 LCIRP in Docket No. DE 07-108. According to Mr. Hachey, PSNH's supplemental purchases for 2010 were made in 2002, 2007 and 2008, contrary to page 87 of PSNH's LCIRP where it states that such supplemental purchases for a year would be made "during May through the filing date of the final forecast (normally in November)." Hachey Testimony at 4-5.

Mr. Hachey explained his understanding of what PSNH said in its 2007 LCIRP about customer migration. He said that the narrative in the LCIRP states that "migration activity is more apt to accelerate during a softening of the energy market." Mr. Hachey opined that the fuel price increases in mid-year 2008 posed risk of customer migration in the event that the market price softened and that PSNH failed to reasonably or prudently prepare for "this situation" - e.g., migration of a large number of customers. In failing to do so, Mr. Hachey concluded that PSNH did not act in accordance with its 2007 LCIRP.

Mr. Hachey testified that PSNH spent \$97 million on its 2010 "known purchases" at an average price of \$93 per megawatt hour (MWh) and, due to the high levels of customer migration, may be forced to resell some of this power as "surplus energy sales." Mr. Hachey opined that PSNH's failure to adequately address migration risk calls into question whether the practices PSNH uses to procure power are reasonable and prudent and whether they are consistent with PSNH's 2007 LCIRP. *Id.* at 6. In addition, Mr. Hachey said that, based on his review of available information, PSNH may have also ignored its internal procedures regarding its hedging strategy.

Mr. Hachey noted that RSA 378:41 states as follows: “[A]ny proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission.” *Id* at 7. He stated that PSNH’s actions with respect to customer migration and the purchase of supplemental power do not conform to PSNH’s 2007 LCIRP. *Id*.

Mr. Hachey suggested that the additional costs that are borne by PSNH customers who have not migrated may not be fixed costs, but may be costs related to PSNH’s purchase power decisions. *Id*. at 8. Mr. Hachey also suggested that the Commission should consider requiring PSNH to purchase power using the same methodology that other New Hampshire distribution companies follow, that is, by issuing open and competitive RFPs for power on a schedule approved by the Commission. *Id*. In addition, Mr. Hachey opined that PSNH should not be able to pass the costs of the 2008 purchases that exceed current market prices on to customers because: 1) customers have a statutory right to choose their electric supplier, 2) the socialization of “utility inefficiency” does not promote good operating practice, and 3) the costs in this instance result from the power supply decision of PSNH and not any fault of customers. *Id* at 9.

Mr. Hachey said that, based on the costs of the purchases that PSNH made that are intended to be used to serve ES customers in 2010, the purchases appeared to be made either at or near the peak price of energy in 2008. According to Mr. Hachey, this purchase suggests a lack of reasonableness and prudence on PSNH’s part. Furthermore, Mr. Hachey pointed out that purchases were not made in accordance with PSNH’s 2007 LCIRP because the purchases for 2010 were made in January, August and September of 2008 and not in 2009. Mr. Hachey asserted that, had PSNH adhered to its 2007 LCIRP and made the purchases in 2009, its

customers would have benefited from the lower market prices that were available in 2009. *Id.* at 9-10.

Mr. Hachey concluded by recommending that the Commission require PSNH to use an RFP process to procure power that it needs to supplement the power from its generation assets to meet default service demand, or buy the entirety of its customer needs from the market on a competitive basis and sell its generation output to the market. *Id.* at 11-12. He also recommended that the Commission limit PSNH's recovery of the purchases that were not conducted in conformity with PSNH's 2007 LCIRP or that were not prudent or reasonable. In addition, he recommended that the Commission not allow PSNH to assess any additional costs to migrated customers other than as proposed in Method 2.

### **C. Freedom-Halifax**

Freedom-Halifax questioned PSNH's witnesses on the issues of migration as well as how PSNH's supplemental purchases for 2010 compared to current market prices. Freedom-Halifax did not, however, present a formal position on PSNH's petition.

### **D. Office of Consumer Advocate**

After various inquiries regarding migration and changes contained in PSNH's updated ES rate calculations, the OCA took no position on PSNH's proposed ES rate for effect January 1, 2010. The OCA stated that it was appreciative of PSNH bringing forward the issue of the impacts of migration on residential and small business customers who are captive to PSNH's ES rate as well as PSNH's proposal under Method 2 to shift recovery of certain costs to the TCAM and SCRC rate components. In addition, the OCA supported Staff's recommendation for a continued unit operation study for Newington Station and the continued review of the large customer migration issue. The OCA also supported Staff's proposal that the migration issues

raised in the proceeding be further considered in either a continuation of the instant proceeding or in a separate proceeding. In consideration of what PSNH termed the “undue burden” assumed by largely residential and small business customers resulting from migration and PSNH’s management of its power portfolio, the OCA recommended that those issues be explored as soon as possible in 2010.

#### **E. Staff**

In his prefiled testimony, Mr. Mullen noted PSNH’s testimony that the migration being experienced increased the 9.31 cents per kWh preliminary ES rate approximately 5% higher than it would have been absent migration. Regarding Method 1, described by Mr. Baumann in his November 23<sup>rd</sup> supplemental testimony, Mr. Mullen observed that the restructuring statute states that stranded costs may only include:

"(a) Existing commitments or obligations incurred prior to the effective date of this chapter [RSA Chap. 374-F, eff. May 1, 1996];  
(b) Renegotiated commitments approved by the commission; and  
(c) New mandated commitments approved by the commission, including any specific expenditures authorized for stranded cost recovery pursuant to any commission-approved plan to implement electric utility restructuring in the territory previously serviced by Connecticut Valley Electric Company." RSA 374-F:2, IV. *Id* at 5-6.

According to Mr. Mullen, supply-related costs stemming from power purchases or from PSNH's generating facilities do not appear to qualify for recovery as stranded costs. In addition, Mr. Mullen questioned whether the collection of certain supply-related costs could be considered a form of exit fee, something that is not a "preferred recovery mechanism" pursuant to RSA 374-F:3, XII (d). *Id.* at 6.

With respect to PSNH's proposed Method 2, which would shift certain costs to other rate components, Mr. Mullen said that the proposal had merit because it more appropriately aligned costs with existing rate components. However, Mr. Mullen stated that Method 2 merely lessens

the burden of the additional costs being borne by non-migrating customers rather than addressing the underlying issue. Mr. Mullen expressed his general agreement with PSNH's proposal to shift recovery from ES rates of the following costs: \$1.4 million in VAR (reliability costs) to the TCAM; \$12.5 million of above market costs of the Bio-Energy replacement agreements to the SCRC; and \$1.4 million in company use not related to generation to the distribution rate base.

*Id.* Mr. Mullen stated that all of these costs are incurred in relation to all customers without respect to potential migration and, as such, should not be avoided by those customers who choose to take their ES from third party suppliers.

In support of this assertion, Mr. Mullen noted that reliability costs, such as the VAR costs, are calculated based on PSNH's network load and could appropriately be recovered through the TCAM. Regarding the Bio-Energy replacement contract obligations, Mr. Mullen said all of the costs of the power contract that replaced the above-market rate order with the former Bio-Energy facility are currently being recovered from customers taking ES from PSNH. However, he noted that the replacement contract with Bio-Energy would appear to be a "renegotiated commitment" that qualifies for stranded cost treatment and, therefore, it would be appropriate that the over-market portion of the costs associated with the contract be recovered through the SCRC. Finally, Mr. Mullen said that the power used to supply PSNH's office buildings and distribution facilities support service to all of PSNH's customers and, as such, are more appropriate for recovery through PSNH's distribution charge, excluding any power use at general office buildings properly allocable to ES-related business. Those ES-related power costs, according to Mr. Mullen, should remain in the ES rate. *Id.* at 7.

Mr. Mullen opined that a meaningful discussion of the migration/cost avoidance/cost shifting issue should include, among other things, the consideration of pricing differentials for

the customer classes, stay-out provisions, utilization of competitive solicitations and cost allocation issues among the various rate classes. In addition, parties involved in any such discussions must recognize that PSNH continues to be obligated by statute to use its generation assets for the benefit of all of its customers and be cognizant of other restrictions found in RSA 369-B and RSA 374-F. Mr. Mullen said that the complexity of the issue warranted a more extensive review in a proceeding, unlike the instant proceeding, that does not involve a rate change deadline. *Id.* at 8.

Mr. Mullen also offered comments regarding Newington Station, one of PSNH's generating facilities. Mr. Mullen noted that Newington Station has become increasingly uneconomic and, as a result, its capacity factor has steadily declined from 55.9% in 2003 to 3.3% in 2008. Mr. Mullen pointed out that, as the capacity of the plant decreased, the revenues associated with the plant have been exceeded by the plant-related expenses. Mr. Mullen stated that this was not a one-year phenomenon, but a trend that has steadily worsened. He noted that the economic situation of Newington Station was briefly addressed by Staff's consultant, Michael D. Cannata, Jr., in the proceeding to review PSNH's 2008 reconciliation of its actual 2008 ES and SCRC costs and revenues in Docket No. DE 09-091. In that proceeding, Mr. Cannata observed that "if the subject is ripe for review that a separate proceeding be initiated that considers the complexities of valuing Newington going forward." *Id.* at 8. Mr. Mullen opined that it is time to review the continued operation of Newington Station. *Id.*

According to Mr. Mullen, in response to questions regarding the operation of Newington Station, PSNH has taken the position that Newington Station provides a valuable hedge against high energy prices. Although the value of the hedge can not be easily quantified, Mr. Mullen stated that the price of the hedge can be viewed as the excess of plant-related expenses over

plant-related revenues. Mr. Mullen observed that a significant benefit of Newington Station is the amount of capacity revenue PSNH receives based on the unit's capacity value. He noted that PSNH has estimated that it will receive slightly more than \$20 million in capacity revenue related to Newington Station in 2010. Mr. Mullen said that, with the end of the forward capacity market transition payments in May 2010, lower future capacity prices resulting from the forward capacity auctions may result in a widening of the gap between plant-related expenses and revenues. *Id.* at 9.

In light of the economic considerations related to Newington Station and its operation, Mr. Mullen recommended that PSNH prepare a study regarding the benefits and costs of its continued ownership and/or operation of Newington Station and whether the plant will continue to provide benefits to PSNH customers. According to Mr. Mullen, such a study should include a forecast of plant-related revenues and expenses as well as analyses of other relevant factors such as local or regional reliability, fuel diversity, fuel and energy price forecasts, the value of the hedge provided by Newington Station, whether the hedge could be provided through alternative means and at what cost, and similar issues. As for the timing of the filing of such a study, Mr. Mullen stated that it could be filed as part of PSNH's next Least Cost Plan, as part of the current ES docket, or independently. In any event, Mr. Mullen recommended that the study be filed early enough to be reviewed and analyzed before PSNH files its next ES rate filing. *Id.* at 9-10.

In response to questions regarding PSNH's supplemental power purchases, Mr. Mullen testified that some of the contracts, such as agreements with the Lempster and Pinetree facilities and the Bio-Energy replacement contract, had already been approved by the Commission. Mr. Mullen said that PSNH's 2008 purchases would be something that the Commission would review when it looked at how PSNH met its total supply obligations for 2010. *Id.* at 10.

Regarding the price of the 2008 supplemental purchases, Mr. Mullen said it is easy to challenge those purchases in hindsight but that existing circumstances and market conditions must be taken into consideration. *Id.* at 10-11.

As for the most recently approved LCIRP, Mr. Mullen testified that, in his view, PSNH's LCIRP indicates how the Company typically conducts planning. To illustrate how the planning process works, PSNH, in the Supplement to the LCIRP, used the 2007 calendar year to demonstrate how the plan was implemented during that year. In addition, Mr. Mullen stated that the Supplement indicates a number of market factors PSNH continues to monitor, including migration, to maintain flexibility going forward. *Id.* at 11-12. Mr. Mullen explained that when the Commission issues a ruling on a Least Cost Plan, it determines whether a utility's planning process is adequate. Mr. Mullen stated that if a utility's planning process did not allow for flexibility to adjust to changing market conditions, then he would question whether that planning process was adequate. *Id.* at 12. Mr. Mullen stated that, in his opinion, there is nothing to indicate that PSNH had acted out of conformance with its LCIRP. *Id.* at 13.

In closing, Staff recommended that, based on its investigation of the filing, the Commission approve PSNH's calculated energy service rate of 8.96 cents per kWh for services rendered on and after January 1, 2010. Staff recommended that the Commission approve the adjustments in Method 2 to move some costs from the ES rate to the TCAM, SCRC and distribution charges. Staff agreed that the issue of customer migration needs to be addressed in early 2010 with sufficient notice to parties who may be interested in the issue. Staff also recommended that PSNH be required to study whether continued ownership and operation of Newington Station is economically sound. Finally, Staff stated its view that there is nothing in this filing that is inconsistent with the most recent LCIRP approved by the Commission.

### **III. COMMISSION ANALYSIS.**

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

We note that we have disposed of motions to compel discovery responses in Order No. 25,048 (November 30, 2009) denying Freedom-Halifax's motion to compel and granting TransCanada's motion to compel in part with respect to its data request Set 01-Q-TC-013 requesting certain information regarding PSNH's procedures for power purchases.<sup>4</sup>

PSNH filed a motion for protective treatment when it provided its response to data request Set 01-Q-TC-013 on December 1, 2009. In its motion, PSNH stated that the internal documents relied on by personnel who make power purchases for PSNH are confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. According to PSNH, the procedures include information unrelated to the procurement of power which PSNH would like to protect from disclosure, as well as strategic considerations utilized in the procurement of supplement power supplies for PSNH's ES. PSNH stated that there are specific dollar limits, volume limits and authorization limits associated with when certain purchases can be made. PSNH stated that if this information were made available to the public, all potential suppliers of supplemental power to PSNH would know of the day-to-day procedures employed by personnel who procure supplemental power supplies for PSNH. If disclosed, PSNH said it would be at a disadvantage with respect to all other participants in the ISO-New England markets and may not be able to optimize its purchases on behalf of ES customers.

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<sup>4</sup> For the record, we note that PSNH filed letters on November 23 stating that it had incorrectly labeled responses to the following data requests as confidential and had made the information available to all parties in the proceeding: Set 01-Q-OCA-011 (Bio Energy forecasted above-market costs) and Set 01-Q-STAFF-005 (price assumptions for fuel supplies).

On November 13, 2009, PSNH filed a motion requesting protective treatment for “2010 forecasted total revenue requirements associated with Newington Station.” Staff Set No. 2, Q-STAFF-001. In its motion, PSNH asserted that Newington occupies a pivotal position in PSNH’s resource mix. According to the Company, it must balance the market price of Newington’s fuel with the market price of purchased power when planning ahead or deciding on a day-to-day basis whether to operate Newington Station. PSNH asserted that the details on revenue requirements contained in the response are not publicly available elsewhere, including from ISO-NE, which must adhere to the confidentiality provisions of the ISO-NE information policy. Because PSNH is in competition with competitive suppliers and wholesale generators for the ability to acquire supplies of power, PSNH stated that it would be competitively disadvantaged if the details of the analyses were made public or provided to parties other than the Staff or the OCA. PSNH said it does not widely circulate the revenue requirements of any particular plant within the Company and that the information is not disclosed outside of PSNH. PSNH also noted that the Commission has previously afforded protective treatment to operational information and revenue requirements of Newington Station. *See* Docket No. DE 08-066, *Public Service Company of New Hampshire*, Order No. 24,931 (January 16, 2009) at 13. No objection was made to this motion for protective order.

On November 24, 2009, PSNH filed a motion for protective treatment of its response to Staff data request Set No. 1, Q-STAFF-013, requesting a list of contracts, dates they were executed, the duration of the contracts, the contracting party, the quantity purchased and the purchase price. In the same motion, PSNH requested protective treatment for its response to Staff data request Set No. 1, Q-STAFF-021, which requested a list of all coal contracts currently

in effect, including the contracting party, the source of the coal, sulfur content, price per ton, and additional regarding the source of the coal and the plant where it was to be delivered and used.

According to PSNH, the information is confidential commercial information potentially eligible for protection from public disclosure under RSA 91-A:5, IV. 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. The supply contracts and purchase power agreements have been kept confidential to protect both suppliers and purchasers. PSNH said that suppliers may not want to negotiate future supply contracts 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 supplemental power supplies and its coal supply. PSNH said that a similar motion was granted in its previous ES rate proceeding, Docket No. DE 08-113, *Public Service Company of New Hampshire*, Order No. 24,920 (December 12, 2008) at 6.

PSNH stated that it should be permitted to negotiate and enter into power supply and fuel supply contracts with the same level of confidentiality that other businesses have in conducting their own procurement activities. While PSNH said it was appropriate for Staff and the OCA to have access to such information, it has been customary to restrict competitive suppliers' access to this information. TransCanada filed a partial objection to the motion for protective order on November 25, 2009, stating that it believed that some or all of the information that Staff seeks through the data request should be made available to TransCanada and the public. According to TransCanada, at a minimum PSNH could leave out the name of the supplier and provide the other requested information to TransCanada. It could also aggregate the purchases in each month and provide one overall monthly value for the price, megawatt-hours, volume and term. In addition, PSNH could describe the financial assurances in the contracts, as the last sentence of

the data request asks. Providing this information, while leaving out the supplier's name, should alleviate PSNH's concerns, TransCanada said. TransCanada's partial objection was overruled at the December 10, 2009 hearing.

Also on November 24, 2009, PSNH filed a motion for protective treatment of responses to data request Staff Set No. 1, Q-STAFF-010, which requested the Company's schedule for planned maintenance outages at its generating plants for calendar year 2010. 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. PSNH stated that this disadvantage will persist as long as PSNH is supplying energy service and as long as PSNH owns generation. The Company said that the harm to customers results from the competitive market knowing the distinct periods when PSNH must supplement its normal energy needs to replace the production from major generation stations. PSNH noted that the Commission granted a similar motion in the previous ES rate setting proceeding, Docket No. DE 08-113, Order No. 24,920 (December 12, 2008) at 6. No party filed an objection to PSNH's motion to protect.

PSNH filed another motion for protective order on November 24, 2009 regarding its response to data request Set 1, Q-STAFF-014, which requested information regarding PSNH's estimated costs of compliance with the New Hampshire Renewable Portfolio Standard (RPS), including a break-down of costs by class of renewable energy certificates (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. In support of its motion, the Company said that release of the responses to data request Set No. 1, Request Q-STAFF-014 would put PSNH at a disadvantage with respect to future negotiations with suppliers of RECs. According to the Company, contracts with parties selling RECs are kept confidential to protect both parties. PSNH said that if the information were disclosed, fewer REC suppliers would want to negotiate contracts with PSNH if they assumed that the contract terms would be made public. Fewer suppliers would mean that PSNH would not be able to procure the increasing REC obligations in a competitive market. PSNH noted that a similar motion was granted in the previous ES rate setting proceeding in Docket No. DE 08-113, Order No. 24,920 (December 12, 2008) at 9. No party objected to this motion for protective order.

Finally, PSNH filed on December 17, 2009 a motion for protective order for the responses it provided to record requests made at hearing. Those record requests are: the calculation of the above-market costs of the three purchases for 2010 using the December 7, 2009 market prices used to calculate the above market costs of the Bio-Energy replacement contract (Exhibit 5); the summer 2008 internal memorandum describing PSNH's procurement strategy for the 2010 energy service year (Exhibit 18); and the last four quarterly accounting reports where mark-to-market of energy purchases was reported (Exhibit 20). In its filing, PSNH stated that Exhibit 5 and Exhibit 20 should be considered as part of PSNH's motion for protective order regarding supplemental power purchases and coal supply contracts filed on November 24, 2009 and Exhibit 18 should be considered as part of PSNH's motion for protective order regarding PSNH's power purchasing supplies provided in response to the Commission's order on TransCanada's motion to compel.

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 recently had occasion to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unitil 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 service 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 weighted against the benefits of disclosure to the public. Puc 203.08 (b).

First, we will review whether the information for which PSNH claims protective treatment is, indeed, confidential. The categories of such information are: PSNH's internal power purchase guidance, including the 2008 memorandum regarding power purchases for 2010; revenue requirements for Newington Station; power supply and coal supply contracts, including the over-market calculation for the 2008 strips of energy purchased for 2010 and mark-to-market information on PSNH power purchases; specific information regarding planned maintenance outages for PSNH generating units; and price information regarding PSNH's purchases and sales of RECs.

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 confidential by the Company and is not otherwise disclosed. Regarding the revenue requirements for Newington Station, PSNH states that the information is not available elsewhere, including from ISO-NE. In addition, with respect to the supplemental power supply contracts, the coal 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 coal, supplemental power supply and RECs contained in the responses to data requests Set 1, Q-STAFF-021, Set 1, Q-STAFF-013, Set 1, Q-STAFF-014,

respectively. PSNH also includes in this category of information the calculation of the over-market price of the strips of power it purchased in 2008 for 2010 default service load, and the mark-to-market analysis of its purchases filed as Exhibit 20. 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 two motions, the disclosure of this information would allow competitors to see the costs of PSNH supplemental power purchases, coal 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. *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 motion for confidential treatment.

Next, we evaluate the confidentiality of PSNH's internal power purchase guidelines (data request Set 01-Q-TC-013) and the 2008 internal memo (Exhibit 18) regarding purchases recommended for that year. The benefit to the public in disclosing this information is that, as customers, they would understand PSNH's supplemental power purchasing strategy and, specifically, the rationale for the purchases made in 2008 for the 2010 default service load. As a result, we find that the public has an interest in disclosure of this information.

We also conclude that disclosure would damage PSNH's ability to negotiate competitive prices for its supplemental power purchases and would impair the Company's ability to provide service to its customers at reasonable rates. As a result, 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. We therefore grant the motion for confidential treatment.

In the case of the information regarding planned outages (data request Staff Set No. 1 Request Q-Staff-010), disclosure of this information would inform suppliers when PSNH would be looking to supplement its owned generation supply. If this information were disclosed, 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. Disclosure of this information does not serve to inform the public concerning the rates reviewed in this proceeding and therefore we do not find that the public has an interest in disclosure of this information. We therefore grant the motion for confidential treatment.

Finally, with respect to the revenue requirements for Newington Station (data request Staff Set No. 2, Q-STAFF 01) these costs would assist customers in understanding the basis for the ES rates being considered in this docket. Thus, the public has an interest in the disclosure of this information. On the other hand, disclosure of these revenue requirements to PSNH's competitors would affect the ability of PSNH to operate Newington to the maximum economic benefit to its customers. When weighed against the public's interest in disclosure, we find that the revenue requirements for Newington Station should remain confidential.

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 2010 ENERGY SERVICE RATE**

Pursuant to RSA 369-B:3, IV (b)(1)(A), the price of PSNH's default service 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 energy service rates, and reconciling those rates, lies in RSA 374-F, 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, which later became default service rates. Each year in the energy service proceeding, PSNH provides an estimate of the energy service rate for the following calendar year and the Commission approves what it determines to be a reasonable estimate. 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. 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>5</sup>

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<sup>5</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.

We find that PSNH reasonably estimated the proposed 2010 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 by PSNH's December 7, 2009 filing, support a 2010 energy service rate of 8.96 cents per kWh. 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 ES costs and revenues.

TransCanada contends that PSNH made unreasonable decisions to purchase three strips of supplemental power for 2010 in 2008. PSNH countered that the 2008 purchases were made at market prices and were reasonable at the time, given then-existing indications that market prices could go higher than the price it paid. Furthermore, PSNH said that it had made the 2008 purchases as part of its strategy to provide rate stability, consistent with the Commission's previous recommendation that PSNH take appropriate measures to avoid excessive over- and under-recoveries in the reconciliation of ES rates. As noted above, rulings on the reasonableness and prudence of the underlying components of the ES rate will occur during the reconciliation of the actual energy service related expenses and revenues for 2010. In this order, our finding relates to the reasonableness of the estimate of PSNH's 2010 ES rate.

In approving the rate, we are also approving PSNH's proposed Method 2 as described in the testimony it filed on November 23, 2009. Consequently, PSNH may recover the over-market costs of the Bio-Energy replacement agreement through the SCRC because the nature of the costs meets the definition of stranded costs in RSA 374-F:2, IV. We also approve PSNH's recovery of the VAR reliability costs through the TCAM and instruct the Company to cease collection of those costs through the ES rate beginning January 1, 2010. When PSNH makes its

TCAM adjustment filing, the under-collections for the months beginning January 1, 2010 through the effective date of the new TCAM charge can be reconciled in the calculation of the TCAM rate. Finally, we agree that the value of company use of energy not related to generation should be removed from the ES rate and recovered through distribution rates, and advise the Company to take appropriate action to implement that change.

It is clear that approving Method 2 alone, however, does not fully address the effects of the migration of large customers to competitive suppliers on PSNH's small commercial and residential customers who have less of an opportunity to choose an electric supplier. We are not persuaded that PSNH has yet taken measures sufficient to address potential migration and, therefore, we will require the Company to develop a meaningful range of forecasts of customer migration as it prepares to recommend a mid-year adjustment to its ES rate effective July 1, 2010.

Having reviewed the revenues and expenses related to Newington Station, we agree with Staff that the Company should conduct a study of the costs of continuing the ownership and operation of the plant. Because PSNH stated that it will need additional time to conduct the study, and because the status of Newington Station will impact PSNH's least cost integrated resource plan currently scheduled for filing in May 2010, we direct PSNH to incorporate the study in the LCIRP to be filed no later than September 30, 2010.

Pursuant to RSA 378:41, "[a]ny proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the Commission." The most recent plan was approved by the Commission in Docket No. DE 07-108 by Order No.24,945 (February, 27, 2009). According to TransCanada, PSNH should not be

allowed to recover the costs of the 2008 supplemental power purchases because PSNH did not conduct the purchases in accordance with the 2007 LCIRP. We disagree.

PSNH asserts that the 2007 LCIRP presented an historical narrative of how PSNH conducted its demand and supply side planning in 2007. The supplemental filing of March 28, 2008, moreover, stated that the overview it presented “is indicative of PSNH’s current procurement strategy; however, as discussed below, PSNH does not have a prescriptive hedging protocol. By retaining flexibility in its planning process, PSNH is able to respond to changes in planning criteria and create benefits for customers.” (Emphasis added) Hearing Exhibit 9 at 1. The filing goes on to state: “To optimize the energy service power supply, PSNH continuously forecasts, monitors and makes adjustments for a number of critical factors, including operation and maintenance schedules at its generation facilities, fuel purchasing decisions, customer load forecasting, migration uncertainty, supplemental power purchasing decisions and management of the renewable portfolio supply obligation.” *Id.* at 2-3.

We understand this section to provide PSNH the flexibility necessary to make supplemental power purchases based on the dynamics and trends in the market and factors related to the operation of its generation units. The flexibility described in the March 28, 2008 supplement permits PSNH to participate in an informed manner for the benefit of its customers. Based on the record in this docket, we find that PSNH purchased supplemental power in a manner that is not inconsistent with its most recently approved LCIRP and that this filing is in conformity with that plan.

In this order we are not adopting TransCanada’s recommendation that PSNH be required to employ an RFP for power purchases. Nonetheless, we intend to explore the interplay of customer choice and migration issues with power procurement options for PSNH, including

current practices, competitive procurement through RFPs, purchasing through the spot market, or other market based options. We also intend to pursue the issues identified in Docket No. DE 06-061, in Order No. 24,819 (January 22, 2008) regarding time-of-use rates and advanced metering infrastructure (smart metering) and their possible impact on load and procurement options. We will develop these issues and a process to consider them in greater detail in a subsequent order in a separate docket.

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

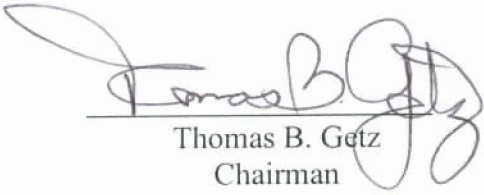
**ORDERED**, Public Service Company of New Hampshire's petition as modified by its December 7, 2009 update to establish an energy service rate of 8.96 cents per kWh effective January 1, 2010 is hereby APPROVED; and it is

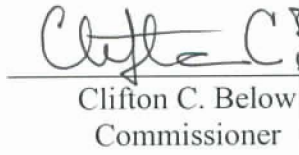
**FURTHER ORDERED**, that Public Service Company of New Hampshire's motions for protective treatment are hereby GRANTED subject to the conditions discussed herein; and it is

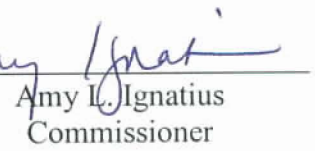
**FURTHER ORDERED**, that Public Service Company of New Hampshire shall file tariffs pursuant to New Hampshire Code of Admin. Rules Puc 1603 conforming to this Order no later than 30 days hereof; and it is

**FURTHER ORDERED**, that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010 and shall include a continuing unit operation study for Newington Station in that filing.

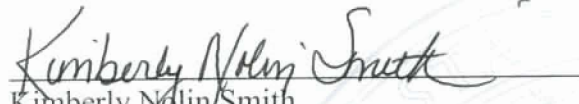
By order of the Public Utilities Commission of New Hampshire this thirty-first day of  
December, 2009.

  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
Commissioner

  
Amy L. Ignatius  
Commissioner

Attested by:

  
Kimberly Nolin Smith  
Assistant Secretary

