

DE 03-166

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Authority to Modify Schiller Station

Order on Motions for Reconsideration and Rehearing

ORDER NO. 24,327

May 14, 2004

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I. BACKGROUND AND PROCEDURAL HISTORY

On March 3, 2004, petitioner Public Service Company of New Hampshire (PSNH) and three intervenors filed with the New Hampshire Public Utilities Commission (Commission) a motion for reconsideration of Order No. 24,276 (February 6, 2004), which dealt with PSNH's petition for approval pursuant to RSA 369-B:3-a of a proposal to modify one of three coal- and oil-fired units at Schiller Station in Portsmouth to permit the use of wood fuel.

Order No. 24,276 rejected the petition as filed by PSNH, but set forth certain modifications to the proposal which, if adopted by PSNH, would allow the project to move forward pursuant to RSA 369-B:3-a. These modifications concerned how to allocate the risks and rewards associated with the project's incremental costs and incremental revenues. The reconsideration motion, submitted by PSNH on its own behalf and on behalf of the Office of Energy and Planning (OEP), the Office of Consumer Advocate (OCA) and the New Hampshire

Timberland Owners' Association (NHTOA) (collectively, the "Joint Movants"), proposes an alternative risk-and-reward allocation.

The extensive procedural history leading up to the entry of Order No. 24,276 is amply summarized in that Order and will not be repeated here. It suffices to note in this recitation of the background of the proceedings that the Commission granted numerous intervention petitions, including those of certain parties who did not support PSNH's proposal at hearing: the OCA, Portsmouth resident and PSNH customer Steven Hart and four jointly-appearing, New Hampshire-based wood-fired independent producers: Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company L.P. and Hemphill Power & Light Company (collectively, the "Existing Wood-Fired Plants"). An additional intervenor, the NHTOA, initially did not support the petition but, by the time of the initial hearings, had entered into a settlement agreement with PSNH that caused the NHTOA to withdraw its opposition to the project.

In joining the Motion for Reconsideration, the OCA likewise became a supporter of the project, at least in the form advocated by the motion. Mr. Hart withdrew his intervention on March 15, 2004. The Commission Staff, which supported the initial PSNH proposal, submitted a letter on March 4, 2004 indicating its support of the reconsideration motion. By virtue of an objection filed on March 8, 2004, the Existing Wood-Fired Plants are the only parties actively opposing the project as conditioned by the reconsideration motion. The Existing Wood Fired Plants also filed a motion for rehearing of Order No. 24,276 on March 5, 2004, to which PSNH objected on March 15, 2004.

By secretarial letter issued on March 12, 2004, the Commission ruled that it would hold the Existing Wood-Fired Plants' motion for rehearing in abeyance and conduct

additional evidentiary proceedings for the purpose of considering the motion for reconsideration filed by PSNH *et alia.*. The Commission indicated that the hearing would be limited to three issues: (1) the specifics of the alternative risk- and reward-sharing mechanism contained in the motion and details of how it would work, (2) the basis for the proposed upward revision in allowable capital costs associated with the project, and (3) how the movants propose to identify and quantify potential revenue or cost savings from any premium paid for the renewable energy source and any fuel cost savings when wood is not used by the new boiler.

On March 15, 2004, the Existing Wood-Fired Plants filed a letter with the Commission inquiring as to whether a stenographic record would be taken of a technical session scheduled for March 22, 2004. The following day, the Existing Wood-Fired Plants filed another letter, this one expressing an intention to file a motion to modify the procedural schedule to allow additional time prior to the hearing for discovery. On March 17, 2004, the Existing Wood-Fired Plants filed such a motion, denominated as a “Motion for Clarification and Motion to Modify Procedural Schedule and Motion for Expedited Review.”

The Commission’s General Counsel conducted a teleconference with the parties on March 19, 2004. According to her subsequently filed report, the parties and Staff agreed during the teleconference to request a postponement of the scheduled evidentiary hearing from March 25, 2004 to April 15, 2004. There was also agreement that PSNH would abide by the previously ordered March 19, 2004 date for submitting additional pre-filed testimony, that the previously scheduled March 22 technical session should be canceled and that an additional round of discovery on PSNH’s new testimony should take place prior to the April 15 hearing. The Commission approved these recommendations by secretarial letter issued on March 25, 2004.

On April 7, 2004, the Commission advised the parties by secretarial letter of its understanding that a discovery dispute was ongoing between the Existing Wood-Fired Plants and PSNH. Accordingly, in an effort to avoid further procedural delays, the Commission advised that any motion to compel discovery arising out of the dispute must be filed by April 8, 2004 and that, if such a motion were filed, the Commission would conduct a hearing on the motion on April 9, 2004. The Existing Wood-Fired Plants filed their motion to compel discovery on April 8 and the hearing on the motion took place the following day as contemplated.

Relying on the Commission's oral deliberations with respect to the discovery motion, PSNH filed a motion for confidential treatment on April 15, 2004, concerning certain contract documents furnished in discovery. The Commission entered Order No. 24,310 on April 16, 2004, which granted in part and denied in part the Existing Wood-Fired Plants' motion to compel discovery. The Order discussed the reasons for granting this relief in detail; this discussion is not reproduced here. Order No. 24,310 also rescheduled the merits hearing to April 20, 2004. The evidentiary hearing on the pending motion for reconsideration took place as rescheduled on April 20, 2004.

II. MOTION FOR RECONSIDERATION

A. Summary of the Motion

The Motion for Reconsideration averred that certain aspects of the Commission's cost recovery mechanism set forth in Order No. 24,276 with respect to the Schiller project are "complex and administratively burdensome" and "could result in future disagreements as to the methodology for the application of that mechanism." Motion for Reconsideration at 2. According to the movants, this could potentially expose PSNH or its customers to "unpredictable financial risks that are of serious concern." *Id.* Specifically, the movants stated they were

concerned with the use in the Commission's cost recovery mechanism of "extrapolations, forecasts, and comparisons in the risk/reward calculations." *Id.* at 3. According to the movants, this could provide disincentives to PSNH with respect to optimal operation of the Company's generation assets. The movants also said that the mechanism could create future uncertainties if the continued operation of certain other generation units – specifically, the two boilers at Schiller Station not slated for modification – were interrupted.

According to the movants, they used the cost recovery mechanism approved in Order No. 24,276 as a "starting point" and developed what the motion characterizes as a "simplified" alternative. This involves the establishment of liquidated "revenue targets" associated with the project for the years 2006 through 2020. The motion recites that these revenue targets are based on the incremental revenue requirement as set forth in Attachment SEM-11 to the testimony of Staff witness Steven Mullen (Exh. 14), minus \$2.6 million attributable to the value of incremental generation and emissions cost savings as set forth in that exhibit. The revenue targets range from \$9.523 million in 2006 to \$3.025 million in 2020.

The reconsideration motion further defines the project's "annual incremental total revenue" as "the sum of all incremental revenues, credits and cost avoidances achieved by PSNH, from all sources, that would be included in PSNH's annual adjustment to energy power supply costs" via its Transition and Default Service reconciliation or comparable successor mechanism, but specifically excluding certain revenues. These exclusions are (1) revenue from the sale of energy produced by the project, except for any premiums received by virtue of producing renewable energy, and (2) compliance cost savings from incremental reductions in NOx and SO2 air emissions.

The proposed cost recovery mechanism involves comparing the annual incremental total revenue to the liquidated revenue target for the corresponding year. Any difference between the two figures would be borne equally as between PSNH and its customers. In other words, the Company and its customers would share both the risks and the rewards arising out of the mechanism equally. The vehicle for implementing this sharing would be the annual adjustment to PSNH's energy power supply costs, currently done via the Transition and Default Service reconciliation. If the annual incremental total revenue were less than the revenue target, half the difference would be subtracted from PSNH's energy supply revenue requirements. Conversely, if the annual incremental total revenue were greater than the revenue target, half the difference would be added to the revenue requirements. The reconsideration motion also provides for the reasonable estimation of the applicable figures in the event that final quantification of revenues for a particular year are delayed beyond the end of that year. The motion also provides for pro-ration during the first calendar year of operation to account for the fact that it will not comprise a full year.

The reconsideration motion also involves a proposed revision to the project's allowable capital costs (i.e., capital costs incurred to place the new boiler into initial operation). Specifically, the proposal is to benchmark these costs at between \$72 and \$75 million, as opposed to the \$70 million cap approved in Order No. 24,276. If PSNH's actual, prudent initial capital costs are less than \$72 million, the Company would be able to include in its energy power supply revenue requirements 50 percent of the difference between its actual, prudent initial capital costs and \$72 million. If PSNH's actual prudent capital costs exceed \$75 million, the Company would be allowed to recover only 50 percent of the amount over \$75 million. Finally, if the actual, prudent capital costs fall between \$72 million and \$75 million, prudently incurred

amounts would be subject to full recovery. The movants further propose that if the Commission later determines that additional capital costs beyond those included in the record evidence of this proceeding are reasonably necessary for the convenience or welfare of the public, the benchmark numbers of \$72 and \$75 million would be correspondingly adjusted upward. The movants explicitly agreed that all capital costs would be subject to prudence review by the Commission. Finally, the reconsideration motion explicitly provides that PSNH would retain the right, in its sole discretion, to make a business decision not to proceed with the project.

B. Public Service Company of New Hampshire

PSNH witnesses Gary A. Long, Elizabeth Tillotson and Rhonda J. Bisson testified that the motion for reconsideration was the result of confidential settlement discussions. They stated that the proposal reflects a “delicate balancing” of the interests of the movants and is not intended as a “formulaic, mathematically precise mechanism.”

The pre-filed testimony of the PSNH witnesses contained two examples of how the proposed sharing mechanism would work. The first example involved a year in which the revenue target is \$7.99 million and the annual incremental total revenue is \$14.99 million. In these circumstances, the witnesses testified that the revenue surplus -- \$7 million -- would be shared between PSNH and its customers by having half of the surplus (i.e., \$3.5 million) credited to PSNH’s recoverable stranded costs for that period. In the second example, the revenue target is \$7.99 million and the incremental total revenue is \$6.0 million. In these circumstances, PSNH would be responsible for half the \$1.99 million revenue shortfall and the other half would be added to PSNH’s recoverable Transition Service costs.

The witnesses also discussed the operation of the benchmarking mechanism with respect to recoverable capital costs. They noted that, if the project’s initial capital costs fall

between \$72 million and \$75 million then the final actual capital cost would be included in the rate base used to calculate the project's revenue requirements. If the figure were below \$72 million, they noted that 50 percent of the difference between the project's actual initial capital costs and \$72 million would be included in the rate base. Finally, they testified that if initial capital costs exceeded \$75 million, only 50 percent of the difference over \$75 million would be included in rate base. For example, they noted that if the capital cost were \$78 million, PSNH would write off \$1.5 million, representing 50 percent of the difference between \$78 million and \$75 million. According to the witnesses, the purpose of this mechanism is to provide PSNH with a mechanism for controlling capital costs.

Under the Agreement to Settle PSNH Restructuring in docket DE 99-099 approved by the Commission in 2000, PSNH's recoverable stranded costs are divided into three parts, with the so-called Part 3 stranded costs comprising those stranded costs for which PSNH undertook some risk of non-recovery at the time of the Restructuring Agreement. PSNH expects Part 3 stranded costs to be fully recovered prior to the full recovery of the cost of the Schiller modification project. The PSNH witnesses testified that once recovery of Part 3 stranded costs end, the costs related to the Schiller project would then become recoverable as part of Part 2 stranded costs.

With respect to the possible upward revision in allowable capital costs, the PSNH witnesses said the basis for this provision in the Reconsideration Motion is the existence of delays in the originally proposed project schedule. According to PSNH, these delays will increase costs related to construction (as set forth in PSNH's contract with its boiler vendor), higher labor and material costs in connection with the wood yard and fuel handling equipment and additional costs related to zoning and construction requirements. The PSNH witnesses

testified that increased construction costs reflect higher steel market prices as well as additional costs arising out of shifting construction into the winter months.

PSNH noted that the most likely revenue stream associated with the project's production of renewable energy would be the sale of renewable energy certificates (RECs) to entities required to purchase them under Connecticut and Massachusetts law. PSNH noted that such REC revenue would be included in the calculation of the project's incremental total revenue. The PSNH witnesses also testified about the possibility that revenue opportunities would be created by new federal or state legislation similar to that in Connecticut and Massachusetts. Likewise, PSNH alluded to the possibility of other revenue sources related to the project's renewable attributes, e.g., the sale at retail by PSNH of a renewable energy product that would involve a premium for the renewable attributes. In that instance, according to PSNH, the value of the premium would be included in the incremental total revenue calculation for the project.

Finally, PSNH noted in its pre-filed testimony that in the unlikely event the Schiller project burned coal rather than wood, there would be a realization of incremental fuel cost savings. According to PSNH, the Company tracks these costs (related not only to actual fuel costs but also transportation and handling costs) on a megawatt-hour basis and would compare them to the historical variable cost of burning wood. They noted that the difference in variable costs would be included in the calculation of total incremental revenue.

C. Other Movants

The OCA, the NHTOA and the OEP did not present testimony at the hearing. However, each indicated its support of the reconsideration motion. The OCA indicated that it had made a significant compromise, given its initial position that PSNH should assume 100

percent of the financial risk associated with the project. According to the OCA, the financial incentives for PSNH that are built into the latest proposal make it more likely that the project will be successful and not impose additional costs on customers. The OCA further indicated that it supports the proposal in the reconsideration motion in part because it attenuates the possibility of the Legislature endorsing subsidies at ratepayer expense for other generators that use wood as a fuel.

According to the OEP, the proposal in the reconsideration motion keeps faith with the determination in Order No. 24,276 that some risk to customers is appropriate in light of the public benefits of the project such as cleaner air, productive use of the state's forest resources and indirect economic benefits. The OEP urged endorsement of the proposal on the grounds that it is consistent with this previous determination, holds PSNH to certain basic representations about the economic viability of the project and limits customer risk should the project not reap financial rewards.

D. Staff

The Commission Staff did not present testimony. However, in a letter filed on the day after the reconsideration motion, Staff indicated its support of the proposal contained in the motion. According to Staff, the proposal requires PSNH to incur a meaningful level of financial risk, would likely reduce rates because of the anticipated financial success of the project, provides PSNH with a meaningful incentive to make the project perform well in both construction and operation and continues to limit PSNH to recovery of only prudently incurred costs.

E. Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company L.P. and Hemphill Power & Light Company

The Existing Wood-Fired Plants did not present testimony. However, they urged the Commission to deny the reconsideration motion on the ground that it is not in the public interest of PSNH's retail customers. According to the Existing Wood-Fired Plants, if the reconsideration motion were granted, the Commission would be improvidently allowing PSNH to evade its earlier representations as to the project's capital costs and expose ratepayers to additional financial risks not contemplated by Order No. 24,276.

The Existing Wood-Fired Plants stressed that under the new proposal PSNH's recoverable capital costs are not limited. They pointed out that PSNH was unable to state what the project's actual incremental revenue requirement would be. They suggested that the revenue targets around which the new risk-sharing proposal is built are arbitrary and based on a \$69 million project that no longer exists (in light of the new and higher estimates of capital costs).

According to the Existing Wood-Fired Plants, PSNH has sought to obscure the level of risk to its customers if the reconsideration motion were adopted. The Existing Wood-Fired Plants argued that ratepayers are at risk for shortfalls in the \$2.6 million attributed in the mechanism to incremental generation revenue and emissions savings. They further stated that ratepayers are at risk for any shortfall between the incremental revenue requirement based on a \$69 million project and whatever the actual incremental revenue requirements might be. Finally, the Existing Wood-Fired Plants noted that PSNH would only begin sharing rewards with ratepayers under the new proposal when incremental total revenue exceeds the revenue target. According to the Existing Wood-Fired Plants, this means that PSNH can begin receiving "bonus payments" before the project has covered its incremental revenue requirements.

F. Commission Analysis

The motion for reconsideration does not state which statutory authority it relies upon in seeking the requested relief. The movants do not argue that Order No. 24,276 contains any errors of law or of fact, nor does it otherwise suggest that we must correct any deficiencies that would otherwise be subject to scrutiny by an appellate court. In these circumstances we treat the motion not as one asserted under RSA 541:3 (governing motions for rehearing, which are a prerequisite to appeal) but, rather, as a motion invoking RSA 365:28, which authorizes the Commission “at any time” after entering an order to “alter, amend, suspend, annul, set aside or otherwise modify” such order after notice and hearing. Our RSA 365:28 authority “is limited only in that the modification must satisfy the requirements of due process and be legally correct.” *Appeal of Office of Consumer Advocate*, 134 N.H. 631, 657-558 (1991).

We evaluate the proposal contained in the reconsideration motion under the same RSA 369-B:3-a standard we employed in Order No. 24,276. In other words, we may authorize PSNH to modify Schiller station on the proposed terms only if “it is in the public interest of retail customers of PSNH to do so.” RSA 369-B:3-a.

Certain determinations we made in Order No. 24,276 in applying RSA 369-B:3-a apply with equal force here. In Order No. 24,276, we noted that it is neither appropriate nor required to guarantee PSNH full cost recovery of its costs related to the project, whatever those costs turn out to be. Order No. 24,276, slip op. at 60. We also determined that “in order for this modification to be in the public interest of PSNH ratepayers under RSA 369-B:3-a there must be a sharing of the risk that revenues will be insufficient to cover project costs” and that a sharing of project risks also requires a sharing of project rewards. *Id.* at 63, 66. Finally, we noted that some allocation of project risks to customers is justified because of “additional benefits of the

project beyond the predicted rate relief.” *Id.* at 66. We found those additional benefits to be (1) the existence of a sustainable market for low-grade wood products, with positive effects both within and without the PSNH service territory, (2) lower air emissions from Schiller Station, (3) additional fuel diversity for PSNH customers reliant on Transition Service, and (4) improved reliability based on the likely availability factor for the unit as modified. *Id.* at 62.

The first issue we evaluate according to these standards is the upwardly revised estimate of capital costs and the introduction of a related sharing mechanism. In Order No. 24,276, we said we would “hold PSNH to its estimate of capital costs,” *id.* at 63, which we found to be reasonable, *id.* at 60.

The PSNH witnesses provided no specific estimate of actual capital costs – in fact, Mr. Long explicitly declined to do so – but, clearly, the Company now looks to a project cost in the range of \$72 million to \$75 million. We credit PSNH’s explanation that capital costs have been driven into that range essentially as a result of delays in obtaining the necessary approvals, which have, in turn, prevented PSNH from directing its boiler vendor to commence construction. (We note that the construction contract entitles the vendor to increase the price in these circumstances.) Additionally, it is likely that PSNH will incur additional costs related to complying with local land-use decisions related to plans for trucking wood fuel to the site. In these circumstances, it is reasonable for the sharing mechanism contained in the reconsideration motion to assume actual capital costs in the range of \$72 to \$75 million.

The sharing mechanism related to capital costs essentially exposes PSNH to non-recovery of half its prudently incurred capital costs beyond \$75 million. Conversely, and to provide an incentive for PSNH to keep capital costs as low as possible without sacrificing the quality of the project, the movants ask us to allow PSNH to add to the rate base associated with

the project half of the difference between \$72 million and the actual capital costs if they are below that amount.

The Existing Wood-Fired Plants questioned this mechanism on two bases: First, via their cross-examination of Mr. Long, they suggested it would be inappropriate to provide PSNH with an incentive to abide by its basic obligation to incur only costs that are prudent. Second, they expressed concerns about the provision that would allow an upward revision to the \$72 million and \$75 million benchmarks if approved by the Commission.

With regard to the latter point, the Existing Wood-Fired Plants apparently misunderstand the purpose of the incentive in question. It does not, as they suggest, encourage PSNH to comply with the prudence requirement under which it already operates for ratemaking purposes. Rather, it is plainly designed to add to the overall benefits PSNH would receive by exercising its option to move forward with the project, based on the Company's own reasonable assumption that it will act prudently. In other words, assuming project approval, the incentive is not for the Company's prudence but for moving forward with the project.

With regard to the potential for an upward adjustment to the benchmark capital cost range of \$72 to \$75 million, we find that this provision only adds minimally to the customer risk. This is because such a revision would occur only upon rigorous Commission scrutiny and determination that additional capital costs beyond those included in the record evidence of this proceeding are reasonably necessary for the convenience or welfare of the public.

Next we turn to the question of whether we should reconsider our previous allocation of the risk that incremental project revenues will be insufficient to cover project costs, particularly given the uncertainty about the RECs PSNH expects to be a key source of revenue. Our objective here remains as it was in Order No. 24,276 – that PSNH be held to its projections

of project revenues. We are satisfied that the sharing mechanism in the reconsideration motion does this. Although the mechanism places less risk on PSNH as compared to the mechanism described in Order No. 24,276, PSNH nonetheless will bear sufficient risk if its revenue and cost projections prove to be erroneous. As we have previously noted, the allocation of at least some risk is in the public interest of PSNH's retail customers given the additional public benefits of the project beyond the incremental revenue.

In arguing to the contrary, one of the issues the Existing Wood-Fired Plants raise is the mechanism's reliance on liquidated revenue targets (the expected incremental revenue requirements attached to Mr. Mullen's pre-filed testimony minus \$2.6 million) rather than on some revenue target based on the project's actual incremental costs as determined in each relevant year. We find the reliance on present estimates of target revenues to be reasonable for essentially the reason stated by Mr. Long in his testimony. Assuming the project moves forward, it will grow more and more difficult with each ensuing year to perform a reasoned calculation of the baseline revenue requirement so as to determine incremental costs. As Mr. Long noted, this is especially true in the foreseeable scenario that the non-modified units are no longer in operation in their present form while PSNH is still recovering on its capital costs associated with the Schiller project. In other words, either methodology must by definition rely on some kind of estimation. The methodology chosen by the movants has the virtue of fixing the revenue targets now, thereby reducing uncertainties.

The bulk of the evidence presented by the Existing Wood-Fired Plants consists of calculations performed by PSNH of the incremental revenue requirements under six scenarios involving changes to the assumed initial capital costs and/or the in-service date of the new boiler (Exhs. 33 through 38). These scenarios involve in-service dates of either January 1, 2006 or

January 1, 2007 and capital costs ranging from \$69 million to \$80 million. Exhibit 37 illustrates the least ratepayer-favorable of these scenarios. It involves an in-service date of January 1, 2007, capital costs of \$80 million, no offsetting revenues from any source and, otherwise, employment of the assumptions in Attachment 11 to Mr. Mullen's testimony (Exh. 14).

In preparing Exhibit 37, PSNH calculated incremental revenue requirements of \$14,109,000 for 2007. Consistent with the instructions given by the Commission in ruling on the Existing Wood-Fired Plants motion to compel discovery, PSNH did not take into account the effect of the mechanism in the reconsideration motion that would reduce the allowable prudently incurred capital costs in these circumstances to \$77,500,000 (i.e., \$75 million plus half the difference between \$80 million and \$75 million). Using a simple linear analysis, this would have the effect of reducing the 2007 incremental revenue requirement in this scenario to approximately \$13,684,000. Assuming no offsetting incremental revenue from RECs or other sources, and applying the corrected incremental revenue requirement, \$4,585,000 of this requirement would be allocated to PSNH and the remaining \$9,100,000 would be allocated to customers via the Transition and Default Service reconciliation for the year.¹ Applying the forecasted megawatt-hour sales contained in Mr. Mullen's testimony, this amounts to a per-kilowatt-hour rate of \$0.001143, or an additional \$6.86 in the annual PSNH bill of a typical residential customer using 500 kilowatt-hours per month on Transition Service. This compares to approximately \$9.00 per month in the originally filed PSNH proposal and approximately

¹ This sum is derived by taking \$4,585,000 (half the applicable revenue target), adding the \$2,600,000 million attributed to incremental generation and emissions savings and adding an additional \$1,915,000 to reflect changes in the revenue requirement due to allowed increases in capital costs.

\$2.46 if Order No. 24,276 were not modified and the in-service date was January 1, 2006.²

In essence, we must decide whether additional risks of that magnitude are consistent with the public interest of PSNH's retail customers. We answer the question in the affirmative, in light of (1) the significant possibility if not the likelihood that such a scenario will not unfold because the project will enjoy the benefits of *some* offsetting incremental revenue from RECs and other sources, and (2) as already noted, the existence of significant other project benefits that inure to PSNH customers as well as the state at large.

For these reasons, we grant the motion for reconsideration. Accordingly, we set aside Order No. 24,276 to the extent it makes determinations that are at variance with those made herein or impose conditions on PSNH at variance with those approved herein if PSNH is to move forward with the Schiller modification project.

III. MOTION FOR REHEARING

As noted, *supra*, when we decided to hold a hearing on the reconsideration motion we determined it was appropriate to hold the Existing Wood Fired Plants' rehearing motion in abeyance. It is now ripe for decision.

A. Summary of the Motion

In their motion, the Existing Wood-Fired Plants contend that RSA 369-B:3-a required the Commission to determine that the project would provide a net benefit to PSNH customers as that standard is set forth in *Eastern Utilities Associates*, 76 NH PUC 236 (1991). Next they argue that the RSA 369-B:3-a standard required PSNH to demonstrate that its proposal

² The \$2.46 figure was derived by assuming \$69 million in capital costs, an in-service date of January 1, 2006 and an incremental revenue requirement of \$12,123,000 (per Attachment 11 to Mr. Mullen's testimony). This yielded \$8,900,000 in revenue for which PSNH was responsible under the Order No. 24,276 sharing mechanism, with ratepayers responsible for the remaining \$3,223,000. Again using the forecasted megawatt-hour sales in Mr. Mullen's testimony, this produced a cost per kilowatt-hour of \$0.000410 and therefore a \$2.46 cost per year to the typical 500 kilowatt-per-month residential customer.

is superior to alternatives. For this proposition, the Existing Wood-Fired Plants rely on *Appeal of Easton*, 125 N.H. 205 (1984), RSA 378:41 and RSA 374-F:3, IX. The Existing Wood-Fired Plants further maintain that Order No. 24,276 improperly failed to determine that the project would provide benefits to PSNH customers as opposed to the general public.

According to the Existing Wood-Fired Plants, PSNH's showing in the hearings that preceded Order No. 24,276 was deficient in several respects. They argue that PSNH failed to introduce evidence to support the Commission's determination that the project is in the best interests of PSNH's retail customers, based on the Existing Wood-Fired Plants' "net benefit" and project alternatives arguments, *supra*, as well as the lack of evidence justifying the risk-sharing approved in the previous order. Further, the Existing Wood-Fired Plants contend that record evidence was lacking as to the asserted benefits of improved air quality, fuel diversity and improved reliability.

The Existing Wood-Fired Plants also took the position that PSNH did not meet an obligation to demonstrate the project's consistency with PSNH's integrated least-cost resource plan pursuant to RSA 378:37 *et seq.*, and did not meet a similar obligation with respect to the electric industry restructuring policy principles set forth in RSA 374-F:3. It is the contention of the Existing Wood-Fired Plants that in light of these statutory requirements PSNH was obligated to, but did not, produce evidence that its proposed Schiller project is superior to alternatives.

B. Opposition of Public Service Company of New Hampshire

PSNH submitted a written objection to the rehearing motion. According to PSNH, the Existing Wood-Fired Plants seek to advance (1) an erroneous interpretation of RSA 369-B:3-a, (2) an erroneous application of the "net benefit" standard set forth in the *Eastern Utilities Associates* decision, (3) an erroneous contention that record evidence is lacking to

support the Commission's RSA 369-B:3-a determination, (4) an erroneous contention that PSNH was required to present evidence with respect to alternatives to the project, (5) an erroneous application of RSA 374-F:3, IX and the other restructuring policy principles set forth in RSA 374-F:3, (6) an erroneous contention that PSNH is obliged to comply with the least-cost planning principles set forth in RSA 378:37, and (7) even assuming applicability of RSA 378:37 an erroneous contention that the proposed Schiller conversion is inconsistent with such principles.

C. Commission Analysis

RSA 541:3, governing motions for rehearing, authorizes us to grant such relief upon a showing of good cause. We have carefully reviewed the Existing Wood-Fired Plants' motion and have determined that they have not demonstrated good cause for revisiting any of the challenged determinations.

In *Eastern Utilities Associates*, the relevant issue was whether the "public interest" standard set forth in the statute governing utility mergers, RSA 374:33, required the Commission to determine that a proposed merger would provide a net benefit to the public or merely that it would cause no harm to the public. *Eastern Utilities Associates*, 76 NH PUC at 252-53. The Commission concluded that the "no harm" test was "most consistent" with what the Commission described as the "leading case on the public good standard," *Grafton County Electric Light and Power Co. v. State*, 77 N.H. 539 (1915). We discern nothing in the *Eastern Utilities Associates* decision that sheds light on RSA 369-B:3-a or otherwise suggests a requirement to make a specific determination here that the Schiller project would provide a net benefit to PSNH's retail customers.

Nor are we able to agree that PSNH was required under RSA 369-B:3-a to demonstrate that its proposal is superior to alternatives. There is simply no basis for concluding

that such a plainly worded statute contains such an implicit requirement. The motion of the Existing Wood-Fired Plants refers to a “common law requirement that a utility analyze and present to the Commission alternative courses of action.” The Commission “is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute.” *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1066 (1982) (citing *Petition of Boston & Maine R.R.*, 82 N.H. 116, 116, 129 A. 880, 880 (1925)). Thus we are aware of no “common law” requirements of the kind asserted here. To the extent that the Existing Wood-Fired Plants are arguing that some judicial construction of our statutory authority requires consideration of alternatives in this case, we find no basis for such a construction.

Likewise, there is no basis for concluding that PSNH was obliged to make a showing as to the project’s consistency with the utility’s most recent least-cost integrated resource plan submitted pursuant to RSA 378:37 *et seq.* To the extent that PSNH would ordinarily have had such an obligation, we read RSA 369-B:3-a as carving out an exception to it by requiring PSNH, instead, to demonstrate that the proposal is consistent with the public interest of PSNH’s retail customers. PSNH is obliged pursuant to RSA 369-B:3, IV(b)(1)(A) to use its generation assets to supply Transition Service to its customers, with PSNH recovering only its actual, prudent and reasonable costs of such provision. Both this provision and RSA 369-B:3-a explicitly contemplate a determination at some point after April 30, 2006 as to whether PSNH should sell its generation portfolio. This is, in effect, a specific and legislatively mandated resource plan with respect to PSNH’s generation assets. It would therefore be illogical to conclude the Legislature intended PSNH to remain obligated to make a showing under the RSA 378 least-cost planning regime that was enacted in the era of electric utilities that were vertically

integrated. Moreover, RSA 378:38-a specifically allows for waiver of the requirement that supply related options be included in least cost integrated resource plans. The focus of such plans is now on transmission and distribution.

Further, we are unable to agree with the Existing Wood-Fired plants that PSNH was obligated to demonstrate the project's consistency with RSA 374-F:3, IX (providing that "[i]ncreased future commitments to renewable energy resources should be consistent with the New Hampshire energy policy as set forth in RSA 378:37³ and should be balanced against the impact on generation prices"). RSA 374-F:3, IX is one of the "interdependent policy principles" set forth in the Electric Industry Restructuring Act. As we have already determined in this case, the policy principles are a "guide" rather than a set of individually binding rules, and are part of an evolving statutory scheme. Order No. 24,276, slip op. at 57-58. We reiterate our previous determination that it is not appropriate to take one of the restructuring policy principles in isolation and deem it to preclude what a subsequent enactment, RSA 369-B:3-a, explicitly permits. *See id.* at 58.

The remainder of the arguments in the rehearing motion relate to the adequacy of PSNH's evidentiary showing. It suffices to note our confidence that the record amply supports the relevant determinations in Order No. 24,276. We note only that in finding that the Schiller project would contribute to fuel diversity with respect to PSNH's generation portfolio, we relied upon generally established facts about the fuels presently used by utility-owned generation facilities in New Hampshire, i.e., that none presently use wood.

³ RSA 378:37 provides that

it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities.

IV. CONCLUSION

For the foregoing reasons, we grant the pending motion to reconsider Order No. 24,276 and deny the pending motion for rehearing of the same order. The proposed modification of Unit 5 of PSNH's Schiller Station, as conditioned by the terms set forth in the reconsideration motion, is in the public interest of PSNH's retail customers as required by RSA 369-B:3-a.

Based upon the forgoing, it is hereby

ORDERED, that the motion of Public Service Company of New Hampshire, the Office of Energy and Planning, the Office of Consumer Advocate and the New Hampshire Timberland Owners' Association for reconsideration of Order No. 24,276 is GRANTED; and it is

FURTHER ORDERED that pursuant to RSA 365:28 the determinations in Order No. 24,276 are set aside to the extent inconsistent with the determinations made herein; and it is

FURTHER ORDERED, that the motion of Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company L.P. and Hemphill Power & Light Company for rehearing of Order No. 24,276 is DENIED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary