



For a thriving New England

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**NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
IR 15-124**

Investigation into Potential Approaches to Ameliorate
Adverse Wholesale Electricity Market Conditions in New Hampshire

**COMMENTS OF CONSERVATION LAW FOUNDATION
IN RESPONSE TO STAFF REQUEST FOR INPUT**

Conservation Law Foundation (“CLF”) is grateful for the opportunity to submit comments regarding the issues at stake in the New Hampshire Public Utilities Commission’s (the “Commission”) pending investigation into “potential approaches to ameliorate adverse wholesale electricity market conditions in New Hampshire” (the “Investigation”), which was initiated by an Order of Notice dated April 17, 2015. These comments are offered in response to the Commission Staff request for input at the May 12, 2015 stakeholder meeting in this docket and as set forth in a letter from Staff dated May 14, 2015.

INTRODUCTION AND BACKGROUND

CLF is a non-profit environmental advocacy organization dedicated to solving New England’s toughest environmental problems with the law, science, and markets. CLF has offices in New Hampshire, Massachusetts, Rhode Island, Maine, and Vermont. For several years, CLF has been deeply engaged in state and regional discussions regarding wholesale electricity market conditions—and solutions—as part of CLF’s practice before the region’s public utility commissions and CLF’s participation in the end-user sector of the New England Power Pool (“NEPOOL”) and NEPOOL and ISO-NE committees. CLF has also advanced solutions in advocacy before the Federal Energy Regulatory Commission (“FERC”).

Through this Investigation, the Commission appears to be considering an unprecedented intervention into New England’s—not just New Hampshire’s—wholesale gas and electric markets. In its request for input, Commission Staff has invited proposed “solutions” and detailed commercial and analytical data regarding those solutions.

The Order of Notice states that the Investigation is intended to identify “potential approaches involving New Hampshire’s electric distribution utilities (EDCs) to address cost and price volatility issues currently affecting wholesale electricity markets in New Hampshire.” Order at 1. The Order states the Commission’s understanding that:

During recent winters, significant constraints on natural gas resources have emerged in New England, despite abundant natural gas commodity production in the Mid-Atlantic States and elsewhere. These constraints have led to extreme price volatility in gas markets

in the winter months in our region, which, in turn have resulted in sharply higher wholesale electricity prices.

Order at 2. The Order goes on to note the Commission's agreement with "ISO-NE's view, expressed in its 2014 Regional System Plan, that the potential development of additional natural gas resources for the benefit of the electricity supply in our region should be carefully considered." *Id.* The Order describes the Investigation as a "targeted" effort to identify solutions to a "gas resource restraint problem that is affecting New Hampshire's EDCs and electricity consumers generally." Order at 3. In its May 14 letter, Commission Staff indicated that it was seeking input on the "root cause of high winter wholesale and/or retail electricity prices" and proposed gas pipeline "solutions" to those high prices, and also non-pipeline and non-gas solutions.¹

CLF gratefully acknowledges the Commission's and its Staff's commitment to conducting this inquiry in an open and public proceeding. This is especially important because a number of the electric utilities who have been ordered to participate are not disinterested observers—they are major equity investors in new infrastructure projects. These circumstances, along with the substantial public concern with the prospect of new natural gas infrastructure, require assiduous impartiality and openness on the part of the Commission and its Staff as the inquiry proceeds. And while confidential treatment of the information collected from stakeholders may be appropriate in some instances, it should be aggressively discouraged. To the extent that Staff conducts discovery, all non-confidential discovery should be posted online on the docket. Moreover, it should be an iterative process where information is posted online as it is collected, not solely as part of a final Staff report. Indeed, Staff should reconsider issuing a draft report for stakeholder comment. Staff should also consider field hearings, especially in regions that may be affected by energy infrastructure projects.

Over the last three years, many of the discussions among energy officials about regional energy solutions, including those discussions that led to the announcement of the Governors' regional energy infrastructure initiative in December 2013,² have taken place in private or semi-private settings. As discussed below, in CLF's view the apparent consensus among the region's energy officials about the state of the market and the need for gas infrastructure, which is reflected in the

¹ Despite Staff's effort to broaden the request for input on non-pipeline solutions, it is unclear how seriously such solutions will be considered. It appears from the Order of Notice and the Commission's statements in the FERC filing attached to the May 14 letter that, without any public process and in advance of the Investigation, the Commission has already concluded that a pipeline solution is needed and that alternatives such as liquefied natural gas are unreliable. *See* Commission Comments attached to May 14 letter, at 7 ("New England continues to have a high winter electricity price problem that can be addressed economically only through the addition of new pipeline capacity."). The evidence for these judgments is sorely lacking, as discussed in these comments.

² *See* New England Governors' Statement on Regional Energy Infrastructure, December 5, 2013, at http://nescoe.com/uploads/New_England_Governors_Statement-Energy_12-5-13_final.pdf. It is puzzling that neither the Order of Notice, the discussion at the May 12 stakeholder meeting, nor the May 14 Staff letter references the initiative, despite this docket's role as part of the New England Governors' recent "action plan" and the FERC filing attached to the May 14 Staff letter indicating the Commission's "staunch support[]" of the initiative. *See* New England Governors' Actions for a Cleaner, More Reliable, and More Affordable Energy Future, April 24, 2015, at http://nescoe.com/uploads/6_State_Action_Plan_FINAL_4-22-15_1-5.40_pf.pdf.

Order of Notice and the Staff request for input, is fundamentally flawed and deserves much greater scrutiny and debate in public forums.

CLF urges Commission Staff in this Investigation to reexamine and fully scrutinize the factual assumptions inherent in the Order of Notice and the Staff request for input, including the Commission FERC submission attached to Staff's May 14 letter, before proceeding to evaluating or prioritizing stakeholder-proposed "solutions."

Likewise, as promised at the May 12 stakeholder meeting, Staff should prepare and release for stakeholder comment at the earliest possible stage of this Investigation its legal analysis of the Commission's authorities with respect to ratepayer investments intended to lower wholesale gas and electric market prices. Commission-sponsored efforts do not warrant further investigation if they are inconsistent with New Hampshire or federal law.

In these comments, CLF does not offer a "solution" *per se*, in part because the problem has not been well defined.³ Instead, we address:

- The extraordinary shifts in the wholesale gas and electric markets during the winter of 2014-2015, which demonstrate the risks of out-of-market electric customer investments in gas infrastructure;
- Factors that are moderating household and business energy bills and should inform the Commission's concerns about the effects of wholesale market conditions on retail customers;
- The characteristics of winter gas constraints that confound the assumption that new gas infrastructure will lower wholesale gas and electric prices during peak winter periods;
- Information regarding the role of liquefied natural gas ("LNG"), incremental market-based pipeline projects, and non-gas alternatives in addressing winter peak conditions;
- Factual findings and testimony in an ongoing Maine Public Utilities Commission docket regarding electric customer investment in gas infrastructure, which show that the costs of out-of-market investments in new gas infrastructure likely outweigh the benefits;
- The need for the Commission to take into account the full suite of state policies and plans that seek to reduce greenhouse gas emissions, increase the use of local and renewable energy sources, and encourage energy conservation before endorsing any "solution" that impedes those goals; and
- The potential legal challenges of implementing solutions requiring electric customer investment in gas infrastructure.

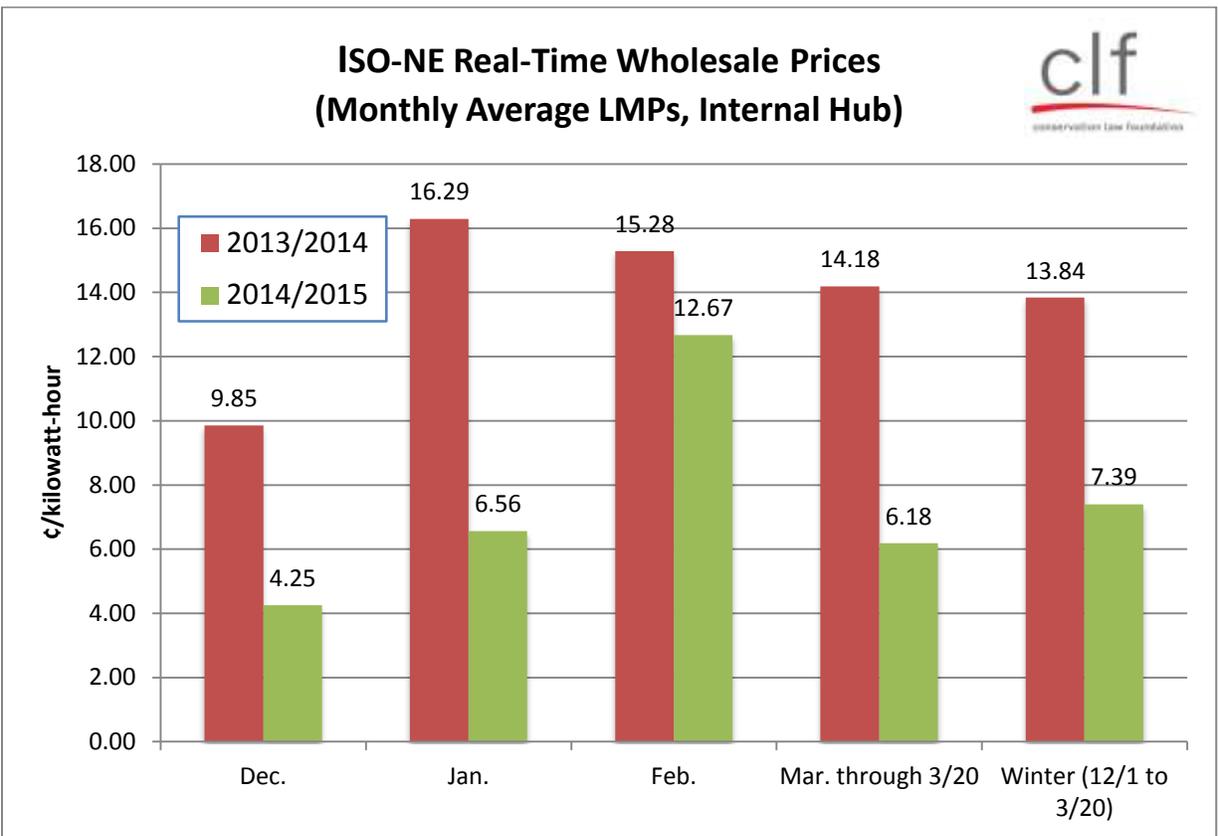
Taken together, the information presented in these comments counsels extreme caution on the part of the Commission and its Staff during this Investigation and beyond. Under New Hampshire's restructuring act and other enabling authorities, the Commission and its Staff should be loathe to sanction—in advance of any formal petition or request—significant state interventions that would place risks and inherent market uncertainty on the backs of utility customers, has the potential to undermine the energy markets, and could result in the build-out of unnecessary infrastructure that will have long term environmental and economic costs for New Hampshire.

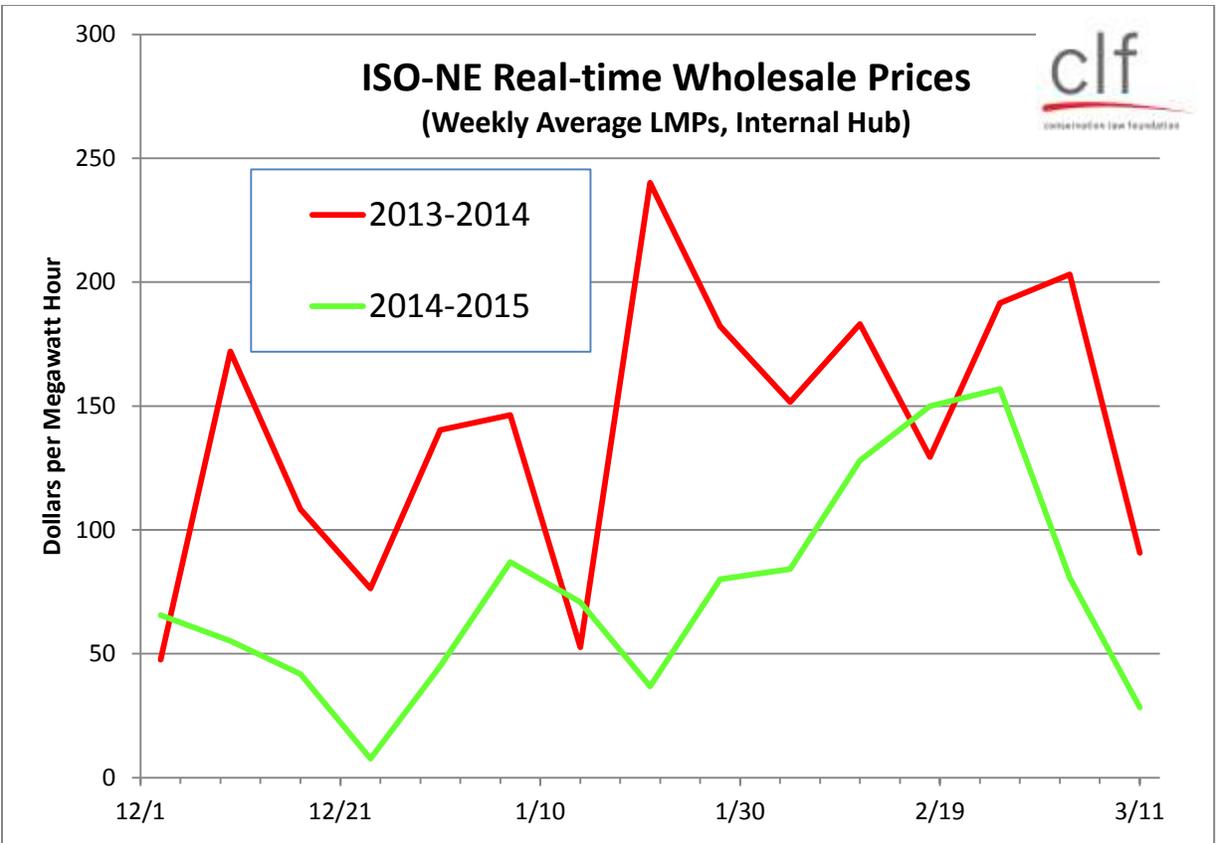
³ While not submitted with these comments, CLF is working with a gas markets expert to develop a proposal for states to revise their policies related to LDC on-system storage and increased use of LNG that will allow LDCs to design and sell gas products based upon enhanced utilization of this available gas capacity.

DETAILED COMMENTS

I. Winter 2014-2015 Price Reductions in New England Wholesale Energy Markets Demonstrate the Risks of Commission Action to Influence Energy Prices.

As the Commission acknowledges in the FERC comments attached to the May 14 letter, the wholesale energy markets did not experience the same level of seasonal price increases during the winter of 2014-2015 that occurred during the winter of 2013-2014. While February 2015 was the coldest month in decades and the winter was colder overall, average wholesale electric prices were well below the prior winter's prices, as reflected in the charts below. Average wholesale electric prices for the winter as a whole were down 45%. Absent February's historic cold, in a more typical winter, winter prices would likely have been much lower, consistent with the prices in January and March. Even accounting for February and excluding the warm month of December, wholesale prices for the first five months of 2015 are down 40% from the first five months of 2014, averaging approximately 6 ¢/kwh, which is less than the average price in 2014 as a whole.





Critically, these price reductions occurred without any additional regional energy infrastructure and despite the retirement of four large non-gas power plants (Vermont Yankee, Norwalk, Mount Tom, and Salem Harbor) and several significant outages or downrates of non-gas resources (the Phase I/II line, Pilgrim, and Brayton Point).

Given this past winter’s experience, futures markets for wholesale electricity are predicting another moderately priced winter, even accounting for a risk premium. As of June 1, 2015, the CME Group 5 MW day-ahead on-peak product for ISO-NE’s internal hub (a reasonable reflection of traders’ expectations of on-peak prices in the New England wholesale electric market) for the six months December 2015 to May 2016 (the Unitil winter service period, during which in 2014-2015 small customers paid default energy rates of 15.5 ¢/kwh) was trading at an average price of less than 8 ¢/kwh.⁴ If these future prices remain steady through the fall when the EDCs make their winter energy purchases (or even drop on a potential expectation of warmer winter conditions than the past two winters), retail prices in effect for this coming winter will be far lower than this winter.⁵

⁴ See CME Group, at <http://www.cmegroup.com/trading/energy/electricity/nepool-internal-hub-5-mw-peak-calendar-month-day-ahead-swap-futures.html> (visited June 1, 2015).

⁵ In the context of these market conditions, it is hard to understand the Commission’s statement in its FERC comments that “[t]he expectation that winter wholesale electricity prices will continue at high and volatile levels until new natural gas infrastructure is built is a troubling prospect for the New England states.” Commission Comments attached to May 14 letter, at 3-4.

These dramatic reductions in wholesale and futures market prices reflect a number of factors that affected New England energy markets during the winter of 2014-2015, including additional utilization of liquefied natural gas infrastructure, lower fuel oil prices, a greater volume of deliveries over existing gas pipelines, increased fuel contracting for power generation, ISO-NE pricing reforms that took effect in December 2014 and improved wholesale price signals, and adjusted trading patterns in the wake of the prior winter's volatile prices.

In the context of this past winter, there is substantial uncertainty regarding the duration of the conditions that supposedly support the Commission undertaking this docket or considering action to reduce market prices. Conversely, there can be no guarantee that New England will see any specific range of prices in any given winter. The experience of the last several winters shows that it is inherently difficult to compare, in advance, the costs of a gas-oriented Commission intervention in the market against the potential benefits of lower market prices because (1) market prices may decline anyway, without Commission action as they so plainly and dramatically did this past winter, and (2) market prices may go up based on the global or national movement of fossil fuel prices or other factors we cannot now anticipate, despite Commission action. Any cost-benefit analyses supporting proposed "solutions" offered in this docket must account for and overcome this challenging degree of uncertainty.

II. The Commission Is Overstating New Hampshire Energy Costs.

In describing the problem of high prices, the Order of Notice notes that New England's retail electric prices are the highest in the continental United States and may pose a threat to New Hampshire's economic competitiveness. For several reasons, this perspective is incomplete and therefore overstates the extent of New Hampshire's energy costs and the need for Commission intervention in the market.

First, the Energy Information Administration data cited by the Order of Notices focuses on monthly electric *rates* from early 2015, which do not take into account the lower rates in effect for the second half of the year. All New Hampshire utilities have announced significant energy service rate reductions for the second half of 2015; in the case of Unitil, its rate has declined by almost half, to less than 7 ¢/kwh, for the six-month period beginning June 1. Averaged over the course of the year, New Hampshire electric bills have not risen dramatically above the bills paid in previous years.

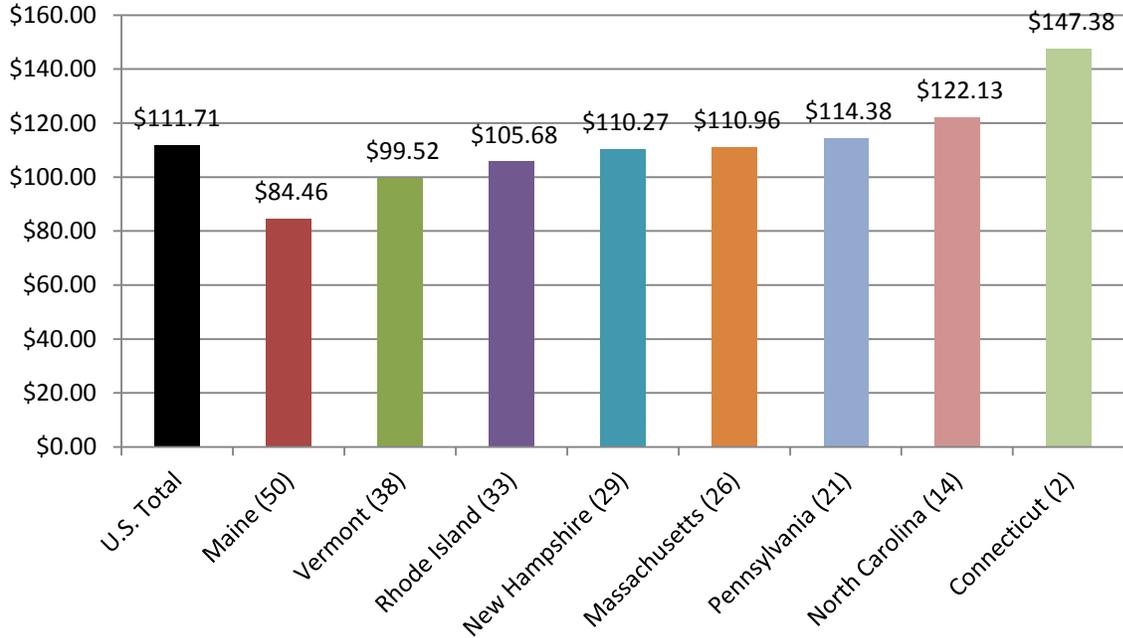
Second, simple comparisons of rates do not recognize that customers do not pay rates, but rather bills based on usage, and New England and New Hampshire customers use less electricity than most regions and states. In the case of New Hampshire residential households, the most recent full year price data, from 2014, when combined with the most recent average usage data, from 2013, show that **New Hampshire residential electric bills were 29th highest in the United States and the District of Columbia, below the national average.** Residential bills in New England overall were very consistent with the national average, and less than in the regions often cited for lower energy costs such as the South and the Middle Atlantic.

Average Residential Customer Monthly Electric Bill in 2014, by State*
(and rank of bill amount among 50 U.S. states and D.C.)



Source: Energy Information Administration

*2014 retail electric prices and 2013 average electric consumption (most recent data)

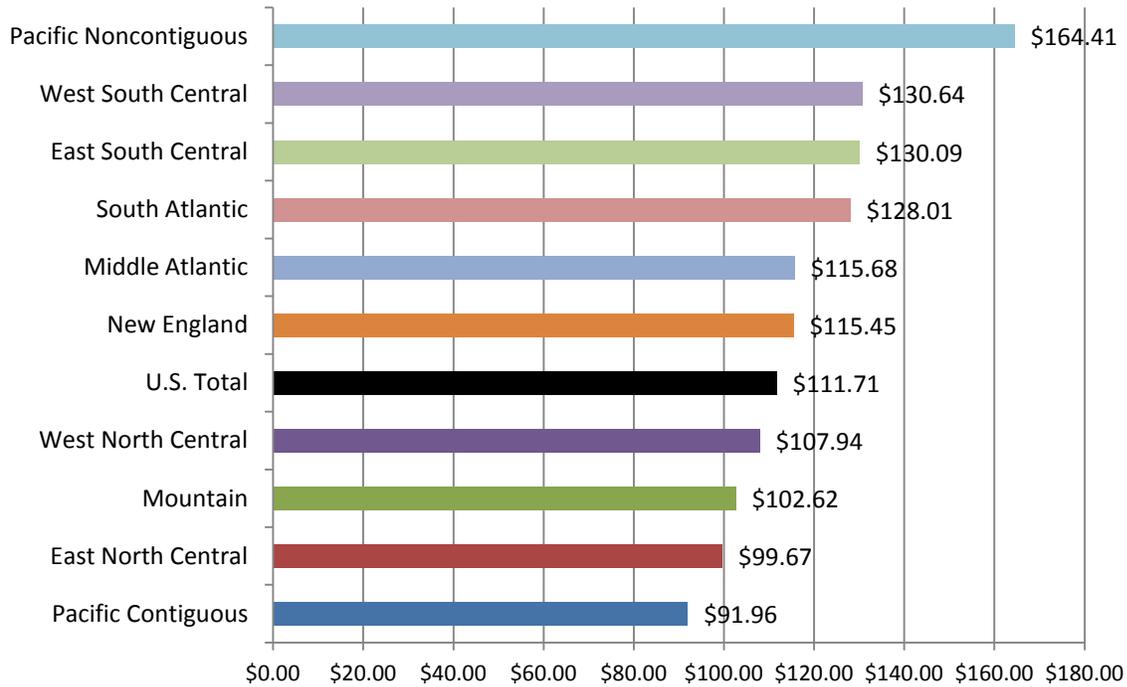


Average Residential Customer Monthly Electric Bill in 2014, by Region*



Source: Energy Information Administration

*2014 retail electric prices and 2013 average electric consumption (most recent data)



Third, the Commission's evident alarm over increasing electric rates fails to recognize that customers' overall *energy* bills may in fact be lower now than in the recent past. With much lower fuel oil and gasoline prices, many New Hampshire residents and businesses saved more than enough versus last year's prices to offset any increased electric bills during the winter months.⁶ Even as the Commission appropriately focuses on retail electric rates that are squarely within its jurisdiction, this reality of lowered energy bills should temper the Commission's sense of urgency to pursue action for macroeconomic reasons, such as the economic competitiveness issues referenced in the Order of Notice.

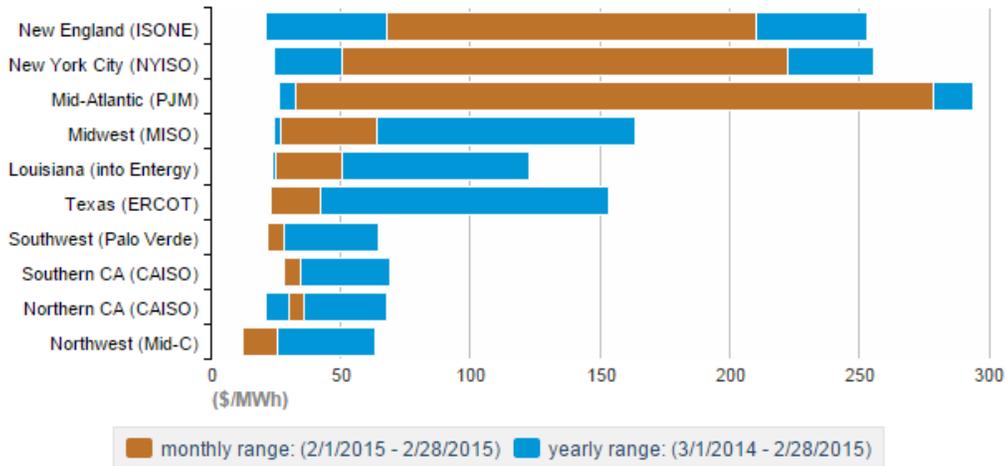
III. Winter Wholesale Price Spikes Are Not Necessarily Resolved by New Pipeline Infrastructure.

The Commission, in the FERC comments attached to the May 14 letter, appears to have an expectation that new pipeline infrastructure will inevitably and reliably reduce winter gas and electric price spikes and the seasonal differential (the "basis") between gas pricing points in the Marcellus region (or at Henry Hub) and New England delivery points. In part, the Commission points to the "unconstrained" gas and electric pricing of the winter of 2011-2012 as the benchmark for judging the reasonableness of market costs. *See* Commission Comments attached to May 14 letter, at 2-3. The Commission's perspectives ignore several confounding factors that further illustrate the risks of out-of-market pipeline investments as an approach to reducing wholesale market prices.

First, neither new pipeline capacity nor proximity to Marcellus wellheads ensures protection from cold-weather price spikes. During the cold month of February 2015, PJM and NYISO often experienced price spikes at the same times as New England, with spot wholesale electric prices at times exceeding New England prices.

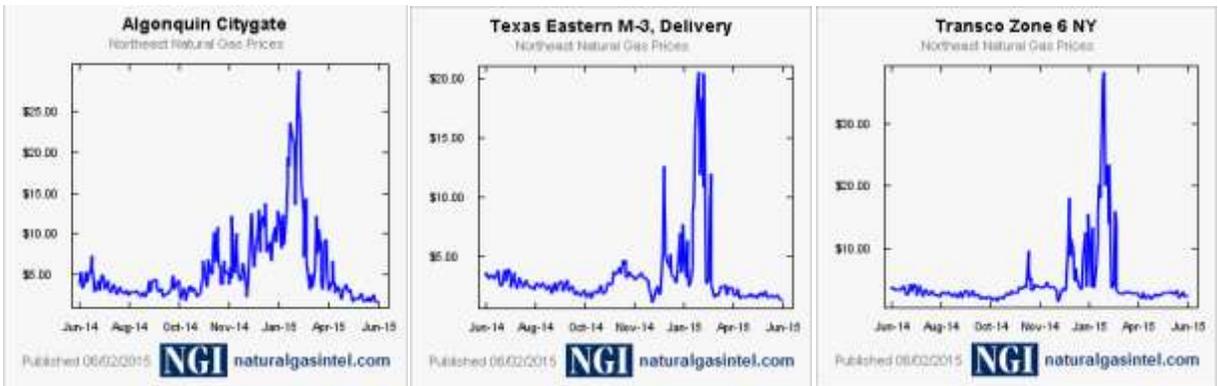
⁶ According to an April EIA estimate, the average U.S. household's gasoline spending is set to decline by \$700 in 2015 versus 2014. *See* EIA, U.S. Household Gasoline Expenditures Expected to Fall in 2015, April 10, 2015, at <http://www.eia.gov/todayinenergy/detail.cfm?id=20752>. EIA projected a similar decline in household spending on heating oil. *See* Cardwell & Schwartz, Lower Oil Prices Provide Benefits to U.S. Workers, New York Times, Jan. 17, 2015, at <http://www.nytimes.com/2015/01/18/business/economy/lower-oil-prices-offer-a-bonanza-to-us-workers.html>. These declines equate to overall reductions of \$60-\$120 per month in energy spending.

Monthly and annual range of wholesale electricity prices for selected regional trading hubs, February 2015



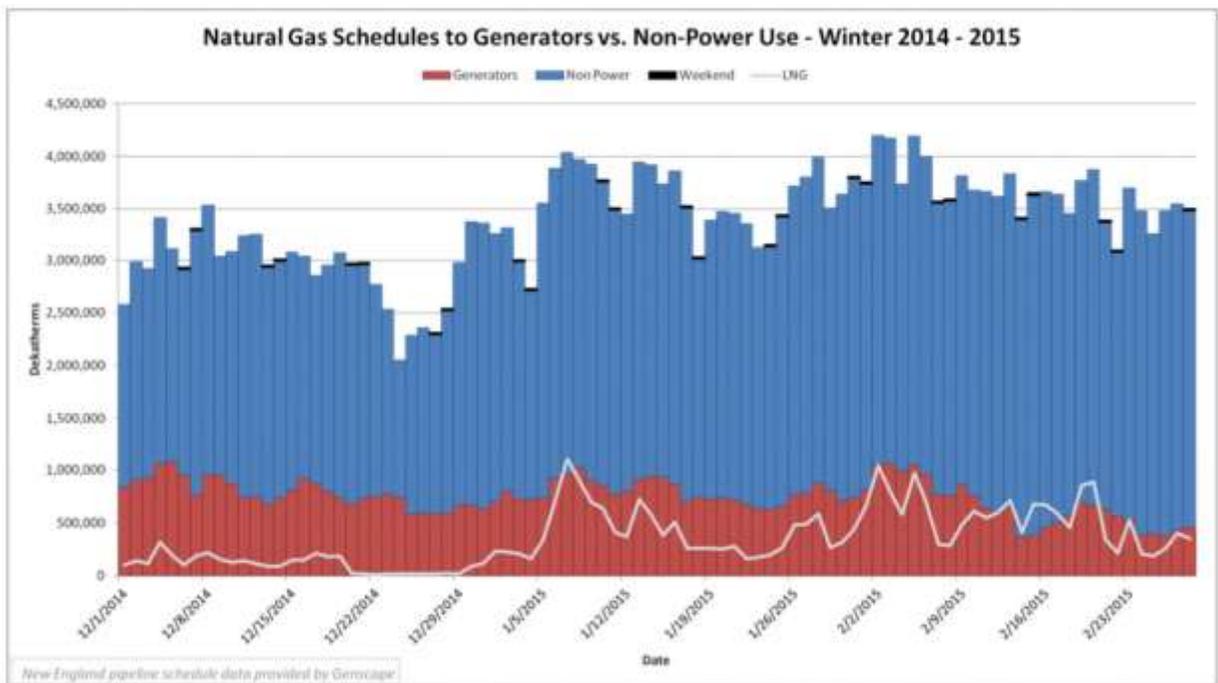
eia Source: U.S Energy Information Administration based on SNL Energy

In eastern Pennsylvania, with robust access to Marcellus gas supplies, wholesale gas prices rose at the Texas Eastern M-3 delivery point in tandem with New England prices in February, topping \$20/MMBtu at peak. Likewise, prices for natural gas delivered to the New York City pricing point Transco Zone 6 spiked along with, and at times surpassed, New England prices, and often reflected a similar basis differential relative to Marcellus or Henry Hub prices. This pattern is a strong indicator that more gas infrastructure does not necessarily lead to low or stable wholesale energy prices.



Second, the winter of 2014-2015 showed that increasing cold-weather gas delivery to power plants through the existing pipeline system was possible, with increased utilization of existing pipelines, east-west flows from Canada, and greater LNG imports. As shown in the ISO-NE chart below, in February, New England set several records for natural gas transportation, with several days exceeding 4 billion cubic feet, despite statements that pipelines had been “full” during the winter of

2013-2014. Thus, the market was able to take advantage of existing pipeline capacity to serve users and to reduce scarcity concerns, without the cost of new pipeline capacity.



Source: ISO-NE Winter 2014/2015 Report to NEPOOL Participants Committee

Third, the unintended price effects of adding new pipeline capacity to New England are unknown, especially if idle capacity is utilized to fuel substantial new exports at existing and new LNG facilities. What is clear is that billions of dollars are currently pouring into export terminal permitting and construction. As of April 2015, six new LNG export terminals have been approved for construction or retrofit in the United States, all of which are located in the Atlantic Basin.⁷ In Maine, Downeast LNG has sought FERC approval to build an export terminal.⁸ In New Brunswick, Canada Canaport LNG is likewise planning to add export capability to its existing import facility.⁹ The risk that Marcellus prices will rise in response to global demand has been identified but not quantified. In the long term, the projected increase in LNG export terminals could strain domestic supplies and result in an increase in U.S. domestic natural gas prices.¹⁰ In this case, the supposed winter benefits of better access to low-cost Marcellus gas would certainly fail to materialize if Marcellus gas is no longer low-cost.

⁷ FERC North American LNG Import/Export Terminals – Approved (last updated Apr. 14, 2015), <http://www.ferc.gov/industries/gas/indus-act/lng/lng-approved.pdf>.

⁸ Downeast hopes to begin construction in 2016 and finish by 2020. Docket No. PF14-19, Oct. 22, 2014 Public Meeting in re Downeast Export Terminal, 20, at <http://www.ferc.gov/CalendarFiles/20141113072659-PF14-19-10-22-14.pdf>.

⁹ FERC, North American LNG Import/Export Term–Existing (last updated Apr. 14, 2015), <http://www.ferc.gov/industries/gas/indus-act/lng/lng-existing.pdf>.

¹⁰ EIA, Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets, 12 (Oct. 29, 2014), at <http://www.eia.gov/analysis/requests/fe/pdf/lng.pdf> (“Increased LNG exports lead to increased natural gas prices.”).

Finally, the Commission should recognize that the mild winter of 2011-2012, with the lowest winter wholesale prices since the implementation of standard market design and much lower-than-normal heating loads, is not an appropriate benchmark for assessing market conditions in very cold New England weather, nor is it a gauge of “just and reasonable” wholesale electric prices. Likewise, comparing the value of the overall wholesale electric market during the compared winters does not meaningfully identify the extent of annual cost impacts to end users, especially in light of the overall moderation in prices during the other three seasons.

No matter how much pipeline capacity New England has, the spot market price of gas will respond to the price of gas at delivery points between production areas and New England, which have been elevated in cold periods despite ample pipeline access. With increased coal-gas switching and coal retirements in the Mid-Atlantic states and the Midwest, the Northeast can expect these same patterns of elevated prices in cold weather periods of high heating and electric generation demand, at least until the overall gas and electric markets become better coordinated—a major goal of recent regulatory efforts at FERC.¹¹ But the evidence from market experience to date is that adding additional pipeline capacity does not necessarily translate to low or stable spot market gas or electric prices.

IV. Liquefied Natural Gas and Storage Are Promising and Cost-Effective Approaches to Addressing Winter Peak Issues.

During the winter of 2014-2015, LNG imports played an instrumental role in lowering wholesale gas and electric prices and supplying the region’s power generation fleet. LNG imports make use of existing natural gas infrastructure and are uniquely well-suited for meeting peak needs that are limited in duration, including coincident heating and electric generation needs on cold winter days. As illustrated in the figure in the preceding section, LNG met most of the electric sector’s demand for gas on the coldest days. A variety of market-based signals during 2014 led to the landings of additional LNG cargoes at the Canaport facility in New Brunswick, Distrigas in Everett, Massachusetts, and the offshore Excelerate terminal off the Massachusetts coast, including additional use of contracting by gas buyers and attractive New England market prices.

Until this winter, it was widely assumed that New England was an unreliable market for LNG imports given the much higher demand and prices previously available in Asia and Europe. However, the current global glut of LNG has substantially reduced prices to \$6-7/MMBtu, from prior Asian prices of \$20/MMBtu or more.

¹¹ See, e.g., Order 809, 151 FERC ¶ 61,049 (Apr. 16, 2015).

World LNG Estimated June 2015 Landed Prices



Source: Waterborne Energy, Inc. Data in \$/USMMBtu. Landed prices are based on a netback calculation.
Note: Includes information and Data supplied by IHS Global Inc. and its affiliates ("IHS"). Copyright (publication year) all rights reserved.

Updated: April 2015

These prices have effectively converged with European natural gas prices and are anticipated to direct more LNG shipments to U.S. ports, especially to receipt points with access to Northeast U.S. pricing during peak winter periods. The dramatic drop in LNG prices in 2014-2015 highlights the potential for LNG to significantly ameliorate the wholesale market conditions associated with needle peak demand in upcoming winters. With this convergence of LNG prices, LNG is now cost-competitive with natural gas on the U.S. spot gas market during peak months, reducing the pressure to build new natural gas pipelines.

New England has approximately 20 bcf of LNG storage on its pipeline system, between smaller facilities owned by local gas distribution companies ("LDCs") (16 bcf) and larger storage at LNG import facilities. Current regulatory policies and requirements encourage LDCs to retain this stored gas all winter to ensure availability for heating customers. *See, e.g.,* Puc 506.03. The consequence of these policies is that stored gas is underutilized and not available to natural gas generators at times of peak need and price. CLF is working with a gas markets expert to develop a proposal for states to revise their policies related to LDC on-system storage and increased use of LNG that will allow LDCs to design and sell gas products based upon enhanced utilization of this available gas capacity. Stored gas can serve to offset need at times of peak demand and thereby minimize the need for new gas pipeline capacity.¹²

¹² Earlier this spring, GDF Suez, the owner of the Everett Distrigas facility, announced contracts to supply LDC storage totaling 9.5 bcf for the winter of 2015-2016, including a long-term contract with a major LDC for at least 3 bcf/year in subsequent winters through 2024. Press Release, Distrigas to Fulfill Multiple LNG Contracts with Gas Utilities in New England; One Agreement Spans 10 Years of Supply, May 11, 2015, at

V. Incremental Market-Based Pipeline Projects Are Advancing, Materially Adding to Regional Pipeline Capacity.

Several proposed pipeline expansions, if built, will significantly increase the region's pipeline capacity by 10% or more, including the Tennessee Gas Pipeline Connecticut Expansion ("TGP-CT") (72,100 Dth/day) and the Algonquin Incremental Market project ("AIM") (342,000 Dth/day). The TGP-CT and AIM pipelines both expect to be in service by November 2016. Combined, these projects are expected to add over 400,000 Dth/day of capacity to the New England region and are proceeding under long-term transportation contracts with LDCs, without further state action or electric customer funding. It is likely these projects will have some effect on wholesale electric markets and could achieve all or most of the objectives that special Commission action may target, without additional costs for electric customers. As was evident during the winter of 2014-2015, even small changes to the gas market can place significant downward pressure on prices, and the effects of these permanent expansions should be fully understood before the Commission or its Staff consider additional pipeline "solutions" requiring out-of-market support.

In addition to these two projects, there are at least four major pipeline expansions proposed for the region: Atlantic Bridge (220,000 Dth/d), Northeast Energy Direct (up to 2,200,000 Dth/d), Access Northeast (up to 1,000,000 Dth/d), and Continent to Coast (167,000 Dth/d).¹³ If all of these projects proceed at their maximum proposed capacities, they would double the region's gas pipeline capacity. Some or all of these projects have sought, or may seek, investment from the states and electric customers, but some may proceed on a market basis.

VI. Extensive Analysis of Electric Customer Investments in Pipeline Projects at the Maine Public Utilities Commission Shows New Greenfield Pipeline to be a Bad Economic Deal for States.

In this Investigation, CLF encourages Commission Staff to make use of the administrative record before the Maine Public Utilities Commission, which is considering whether to exercise that commission's authority to enter into contracts for gas pipeline capacity with electric customer dollars. *See* Investigation of Parameters for Exercising Authority Pursuant to the Maine Energy Cost Reduction Act, 35-A M.R.S. §1901, Docket No. 2014-00071. As an active intervener in that investigation, CLF does not agree with the Maine commission's decision to solicit proposals for pipeline capacity following the first phase of its inquiry—a decision that the evidence in the proceeding did not support.¹⁴

<http://www.businesswire.com/news/home/20150511005685/en/Distrigas-Fulfill-Multiple-LNG-Contracts-Gas-Utilities#.VW1HeM9Viko>.

¹³ *See* Northeast Gas Association, Planned Enhancements as of May 20, 2015, at http://www.northeastgas.org/pdf/system_enhance0515.pdf.

¹⁴ CLF Comments on Phase 2 of Investigation, Jan. 20, 2015, at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=84859&CaseNumber=2014-00071>. *See also* CLF Post-Hearing Brief, Aug. 14, 2014, at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=83072&CaseNumber=2014-00071>.

However, Staff should take careful note of the analysis of their counterparts on the Maine commission staff, who concluded that it was “unlikely that the benefits to Maine consumers would exceed the costs of pipeline capacity” if Maine were to exercise its procurement authority, unless the cost of capacity was very low.¹⁵ The Maine commission staff helpfully assessed the risks to ratepayers from speculative investments in pipeline capacity when incremental market-based projects were in various stages of development and would change the underlying conditions without additional customer investment. CLF and other stakeholders in this Investigation submitted detailed testimony that informed the Maine commission staff’s findings and has considerable applicability to the Investigation here.¹⁶ Public versions of all filings in that docket are available from the Maine Public Utilities Commission online filing system.

VII. Alternative Approaches Prioritizing Non-Gas Resources Would Contribute to Lower Energy Costs for New Hampshire While Advancing Public Policies.

The focus of the Order of Notice appears to be new gas infrastructure. Staff’s May 14 letter invites alternative solutions, but seeks to evaluate them exclusively as efforts to reduce wholesale and retail electric prices.

It is an odd posture for stakeholders to be asked to propose and justify approaches that utilize efficiency and renewable resources. As the Sustainable Energy Division of the Commission should attest, there are major energy efficiency opportunities as well as new renewable and distributed generation resources that could target peak winter demand through existing or restructured programs already within the Commission’s jurisdiction. Commission Staff should also examine the potential for cost-effective energy storage to help address winter price spikes.

There are numerous Commission efforts that could contribute to this objective, including the Energy Efficiency Resource Standard docket (which is mentioned as an apparently unrelated effort in the Order of Notice), the Commission’s oversight of the state’s Renewable Energy Fund and Energy Efficiency Fund, the Commission’s role in the utility CORE energy efficiency programs funded by the System Benefit Charge and other sources, and the Commission’s review of all gas and electric utility least-cost integrated resource plans. This last Commission authority was comprehensively revised in 2014 with the input of Commission Staff to encourage holistic utility planning and to prioritize demand management measures over new investments in supply. *See* RSA §§ 378:37-41. The least-cost planning statute requires consideration of the state’s manifold public policies supporting investments in these resources as part of utility planning, yet the Order of Notice cites the law only in passing and the May 14 letter fails to suggest any nexus between this inquiry and the utilities’ planning obligations.

¹⁵ *See* Examiners’ Report, Docket No. 2014-00071, 1 (Oct. 1, 2014), at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=83636&CaseNumber=2014-00071>.

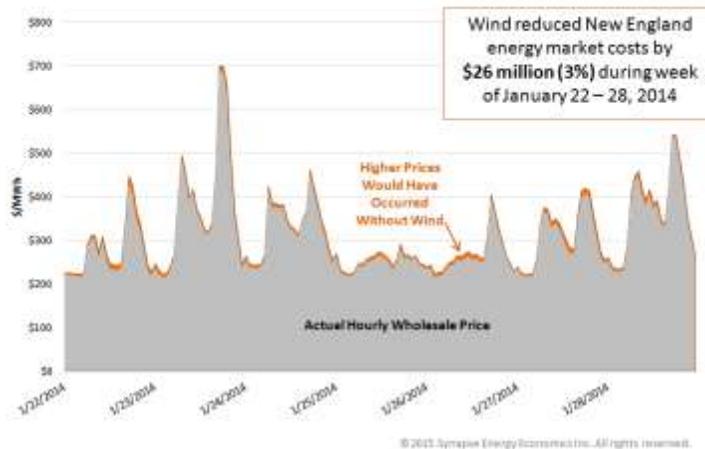
¹⁶ *See, e.g.*, Direct Testimony of Greg Lander, July 11, 2014, at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=82540&CaseNumber=2014-00071>; Testimony of Gregory Crisp & Susan Tierney, July 11, 2014, at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=82537&CaseNumber=2014-00071>.

As a component of its oversight of utility planning or otherwise, for example, Staff should investigate in this docket the potential hedge value associated with additional utility procurement of renewable energy and RECs under existing state authority authorizing long-term contracts, and the corresponding short-term indirect reductions in wholesale electric prices. *See* RSA 362-F:9. According to analysis by RENEW Northeast, existing wind projects reduced wholesale electric prices by \$26 million during one week of extremely cold weather in January 2014. Cost-effective power purchase agreements with new projects could result in greater cost reductions in the future. Following the Investigation, the Commission could readily direct the utilities to prepare and issue requests for proposals, incorporating evaluation of potential wholesale price reductions as part of the review process.



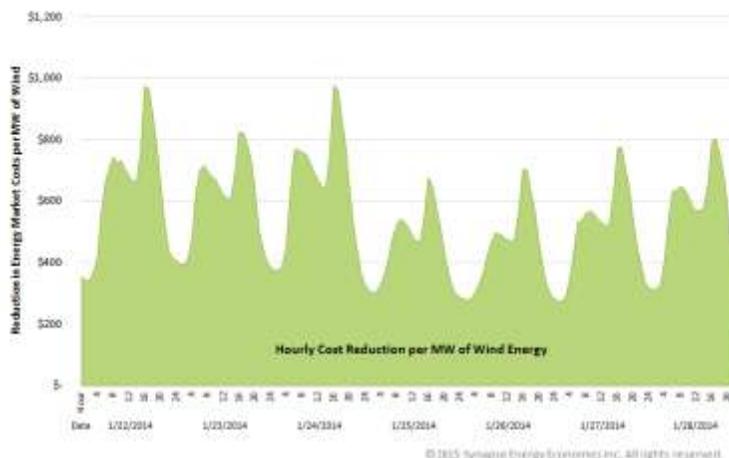
Value of Wind During Polar Vortex

Wind helped to lower market prices during the polar vortex. Although it only constituted approximately 1% of energy, wind reduced total energy market costs by approximately 3% during the Polar Vortex.



Hourly Cost Reduction During Polar Vortex

Each MW of wind energy produced during the polar vortex reduced wholesale energy costs by an average of \$544 each hour.



Likewise, approaches that increase utilization of existing infrastructure—including pipelines, LNG terminals, and LDC storage, as discussed above—are likely to be more cost-effective, less environmentally problematic, and quicker to implement than new pipeline projects. During the course of the Investigation, Staff should undertake its best efforts to identify and evaluate approaches that prioritize use of existing infrastructure before recommending pipeline solutions.

Finally, Staff must coordinate with, and incorporate in this docket the implications of, the Commission’s parallel docket examining utility purchasing practices for default energy service. If purchasing improvements can be identified that will moderate retail prices—to achieve, for example, the lesser volatility and lower retail prices experienced in Maine, Vermont, and New Hampshire Electric Cooperative territory, the extent of the “high price” problem identified by the Commission will be reduced in a manner that should inform the extent of Staff’s recommendations, if any, for further action following this Investigation.

VIII. New Gas Infrastructure Presents Risks to Climate and Environmental Goals Embodied in New Hampshire Laws and Public Policies.

New England’s system-wide average greenhouse gas emissions are already lower than the emissions from the most efficient new natural gas plant.¹⁷ In this context, Commission action to further entrench natural gas with new infrastructure for fifty years or more with new pipeline infrastructure is emphatically not a positive step for achieving the needed reductions in carbon emissions from the electric sector to achieve New England and New Hampshire’s climate goals. It is essential that the Commission, in exercising whatever general authority it possesses here, consider the environmental and economic impacts of any action on the state’s more specific environmental and energy laws that seek to limit and reduce fossil fuel use and air pollution that harms human health and the climate.

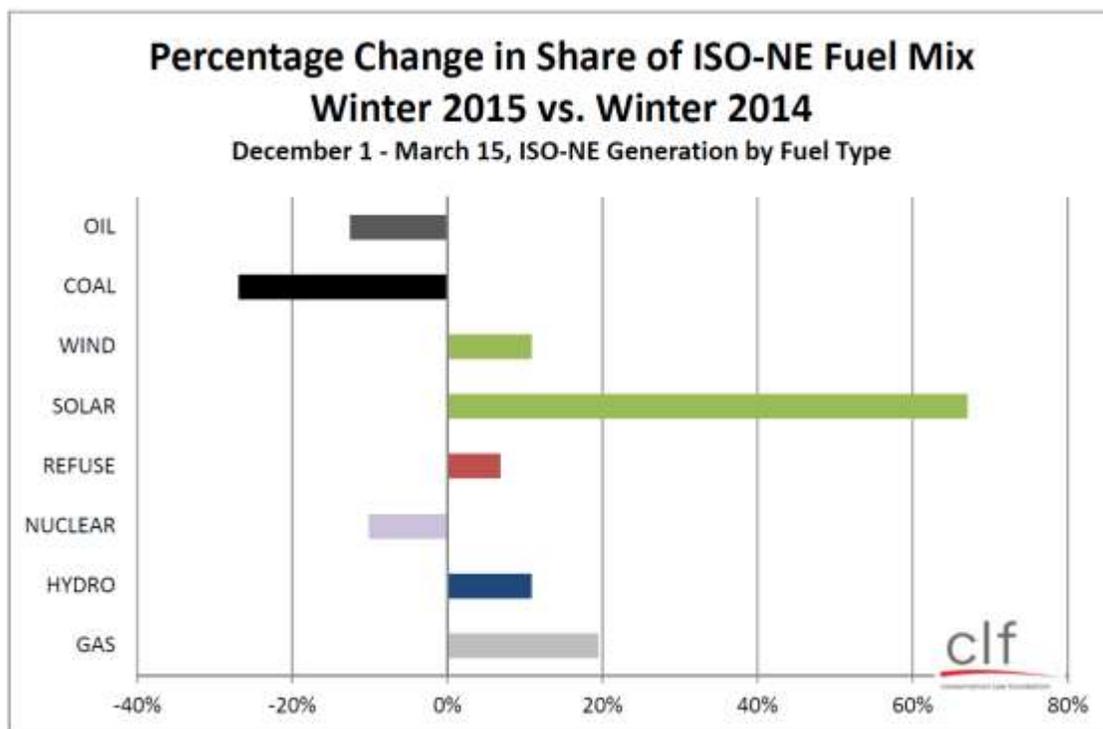
While the Order of Notice does not mention the New Hampshire Climate Action Plan, the Commission was a key stakeholder in its development. That plan calls for an 80% reduction in greenhouse gas emissions from 1990 levels by 2050, a goal that may not be achievable if the state directs investment to new natural gas infrastructure that will outlive the 2050 deadline. Focusing any Commission action first on non-gas alternatives or existing infrastructure will avoid compromising the State Energy Strategy,¹⁸ the Climate Action Plan, and the state’s numerous public policies favoring renewable energy deployment, energy efficiency, and greenhouse gas emissions

¹⁷ See generally 2013 ISO-NE Electric Generator Air Emissions Report, at http://www.iso-ne.com/static-assets/documents/2014/12/2013_emissions_report_final.pdf (average system-wide emissions in 2013 of 730 lbs CO₂/MWh). The new Footprint Power combined cycle gas facility in Salem, Massachusetts, will be subject to an initial annual average CO₂ emissions limit of 895 lbs/MWh.

¹⁸ The Commission’s citation to the State Energy Strategy in the Order of Notice significantly overstates the Strategy’s endorsement of natural gas infrastructure, See State Energy Strategy (Sept. 2014), at 47 (“The State should closely monitor any distribution expansion that occurs as well as remaining active in regional discussions of transmission expansion. The State should also continue supporting policies that increase the utilization of existing infrastructure in order to provide access to natural gas to more customers already on existing networks, while minimizing environmental disruption and making existing systems more cost effective.”). The Strategy nowhere encourages the initiation of a docket like this one, but does encourage other steps, such as a grid modernization docket, that the Commission has not yet taken.

reductions. These include the Regional Greenhouse Gas Initiative, Renewable Portfolio Standards, New Hampshire’s clean air statutes, and New Hampshire’s electric restructuring law, among others.

It is not the case, as the Commission’s FERC comments suggest, that the region’s and state’s climate goals are at grave risk from the recent pattern of utilizing existing coal and oil generators more frequently during specific brief periods of the year. This dynamic has already begun to wane, as illustrated in the figure below; and the use of these older resources will decline further as the generators grow increasingly uneconomic and the gas system is more fully utilized and coordinated with the electric system, as FERC is seeking to promote and as ISO-NE expects in the aftermath of Pay-for-Performance requirements taking effect in 2018. While new gas power plants are incorporating dual fuel capability in their designs and some existing gas power plants may add the capability, infrequent use of oil is unlikely to contribute meaningfully to regional greenhouse gas emissions and will decline in the medium term as energy storage and renewable resources take oil’s place in meeting peak energy demands.



The far greater risk to the region’s climate goals is investment in long-lived natural gas infrastructure that will either (i) preclude us from achieving climate goals at the utilization required to recover development costs or (ii) cannot and should not be utilized in the long-term as the energy system completes a necessary transition to a decarbonized electric grid, resulting in stranded infrastructure costs that will burden yet another generation of electric customers.

IX. Electric Ratepayer Charges for Gas Infrastructure Are Legally Questionable.

CLF appreciates Staff’s commitment to issuing a draft legal memorandum regarding the scope of the Commission’s authority to take actions that may be contemplated following this Investigation. As

mentioned above, the Commission’s legal authority is a threshold question that should be answered before additional consideration of the merits of Commission action.

In light of the forthcoming memorandum, and the promised opportunity to comment on it, CLF will confine its comments on the Commission’s legal authority to the following overarching points.

First, the Commission’s forthright and direct focus on ameliorating “wholesale market conditions” risks treading on FERC’s exclusive jurisdiction over wholesale rate setting as established by the Federal Power Act (“FPA”) and the Natural Gas Act (“NGA”) and violating the dormant Commerce Clause. It is well-established law that the dormant Commerce Clause of the U.S. Constitution prohibits states from regulating wholesale electric and gas sales between utilities in different states, as such state regulation places a direct burden on interstate commerce.¹⁹ In response to these rulings, Congress enacted the FPA and the NGA and vested in FERC the authority to regulate wholesale energy rates.²⁰ The NGA and FPA have long been recognized as comprehensive schemes of federal regulation of all wholesale sales of energy in interstate commerce that, pursuant to the Supremacy Clause of the U.S. Constitution, preempt state regulation in the area of wholesale energy rates.²¹ FERC’s jurisdiction over interstate wholesale rates is exclusive.²² In this area, “if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject.”²³ The federal wholesale rate scheme “leaves no room either for direct state regulation of the prices of interstate wholesales of [energy], or for state regulations which would indirectly achieve the same result.”²⁴

In light of the title of the Investigation and the focus of the Order of Notice and the May 14 letter, it is clear that the Commission is seeking to influence wholesale electric and gas rates in such a way as to secure specific reductions. Since it would be undertaken with an express intent to influence wholesale energy markets beyond its jurisdiction, Commission action may be a federally preempted action affecting interstate wholesale rates.

Second, Commission action to invest in natural gas pipeline infrastructure with electric ratepayer dollars could conflict with axiomatic principles of utility rate regulation, including that the Commission set rates that are “just and reasonable.” CLF’s most basic concern is that Commission action would amount to a substantial and uncertain gamble on future wholesale market conditions. Given the ebb and flow of market prices, it is likely that any ratepayer dollars committed by Commission action to promote pipeline infrastructure would have such indirect and speculative returns that any benefits would be inherently difficult to attribute to the ratepayer investment itself. Moreover, Commission action could burden non-gas electric customers—a very large class of customers in New Hampshire—with paying for gas pipeline capacity that has no direct nexus to

¹⁹ *Missouri ex rel. Barrett*, 265 U.S. 298 (1924); *Pub. Utils. Comm’n of R.I. v. Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927).

²⁰ See 16 U.S.C. § 824(a) and 15 U.S.C. § 717 *et seq.*; *New York v. F.E.R.C.*, 535 U.S. 1, 20 (2002).

²¹ *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467, 482 (4th Cir. 2014); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300 (1988).

²² *Appalachian Power Co. v. Pub. Serv. Comm’n*, 812 F.2d 898, 902 (4th Cir. 1987). See also *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340 (1982).

²³ *Miss. Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 377 (1988) (Scalia, J., concurring in the judgment).

²⁴ *N. Natural Gas Co. v. State Corp. Comm’n*, 372 U.S. 84, 91 (1963).

their energy use. Depending on its structure, form, and safeguards, Commission action also has the potential to burden some utility customers with paying for costly infrastructure, the benefits of which are shared with free-riding customers of other utilities or in other customer classes.

Third, Commission action may run afoul of the policy principles that are intended to guide electric regulation following restructuring, including the principles that “[r]estructuring of the electric utility industry should be implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another” and that “[c]osts should not be shifted unfairly among customers.” *See* RSA 372-F:3, VI. *See also* RSA-F:3, VII (“The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.”). In this case, the market interventions that the Commission and its Staff are considering in this Investigation may conflict with this prohibition against unfairness in allocating costs and burdens but also restructuring’s broader goals of relying on market forces, favoring unbundled services and customer choice, and ensuring energy company investors, not electric customers, bear the market risks of those companies’ decisions.

Fourth, the Commission and its Staff should remain vigilant throughout this Investigation and in any subsequent Commission effort that the EDCs, LDCs, and stakeholders may have sponsorship, affiliate, or other financial interests in proposed “solutions” to the “high price problem” identified in the Order of Notice. Any such interests should inform the Investigation’s evaluation of any specific proposal. In addition, the interest should be disclosed and managed in accordance with all applicable Commission rules and, in the context of this Investigation, presented to other stakeholders and the public as openly and directly as possible. In addition, the Commission should be cautious to avoid prejudging the policy merits of any proposal that relies on energy infrastructure requiring a Site Evaluation Committee certificate, as the Commission’s findings may color or influence the Committee’s determination of whether the project “serves the public interest” and meets the other statutory criteria. *See* RSA 162-H:16, IV(e).

* * *

CLF appreciates the opportunity to provide comments on the matters to be considered in the Investigation. Again, CLF is grateful for the Commission’s open approach to pursuing this docket and recommends the greatest possible transparency as it proceeds.

Respectfully submitted,



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Conservation Law Foundation