

State of New Hampshire
before the
New Hampshire Public Utilities Commission

Public Service Company of New Hampshire
Petition for Declaratory Ruling Re: Penacook Lower Falls Pricing
Docket No. DE 09-174

Pre-filed Testimony of Richard C. Labrecque

1 **Q. Please state your name, position and business address.**

2 A. My name is Richard C. Labrecque. My business address is Public Service Company of
3 New Hampshire (“PSNH”), Energy Park, 780 North Commercial Street, Manchester,
4 New Hampshire. I am Supplemental Energy Sources Manager for PSNH.

5 **Q. What are your duties and responsibilities in your position of Supplemental Energy**
6 **Sources Manager?**

A. My duties include the administration of interconnection agreements and purchase
contracts with non-utility generators.

7 **Q. Have you previously testified before the Commission?**

8 A. Yes. I have testified on several occasions before the Commission. A summary of my
9 educational background and experience is contained in Attachment 1.

10 **Q. What is the purpose of your testimony?**

1 A. The purpose of my testimony is to explain PSNH's position with regard to the pricing
2 issues raised in PSNH's Petition for Declaratory Ruling.

3 **Q. Please provide an overview of the pricing terms of the Contract.**

4 A. The pricing terms of the Contract are contained in Article 3 of the Contract. The
5 Contract was attached to the Petition for Declaratory Ruling filed on September 21, 2009.
6 My affidavit attached to the Petition for Declaratory Ruling and the Stipulation of Facts
7 filed on January 25, 2010 explain the pricing terms. I incorporate the affidavit and
8 Stipulation of Facts into my testimony.

9 **Q. Please provide an overview of the contract terms that are in dispute.**

10 A. The primary focus of the dispute is the interpretation of the mechanism to be used to
11 provide for recovery of the 2.00 cents per KWH adder applied to the index rate of 9.00
12 cents per KWH during the first eight (8) years of the contract. Section A, Article 3 of the
13 contract, which provides for the 2.00 cents per KWH adder, states that "all payments
14 made by PUBLIC SERVICE to SELLER which exceed the index price must be
15 recovered by PUBLIC SERVICE, during later Contract years, in accordance with Section
16 D.1., Article 3." Section D.1 states "Beginning on the ninth Contract year, and
17 continuing for the term of the Contract, a recovery amount equal to 5.47 cents per KWH
18 shall be deducted from the Contract rate. This deduction allows PUBLIC SERVICE to
19 recover the payments made under Section A, Article 3, which exceeded the index price."

20 **Q. How do you interpret the first sentence of Section D.1?**

21 A. That sentence provides clear and explicit contract terms. The deduction of 5.47 cents per
22 KWH is to be effective until the contract term has expired.

1 **Q. Does that conflict with the second sentence of Section D.1?**

2 A. No. The second sentence provides an explanation of the purpose of the deduction. In no
3 way does it provide for termination of the deduction prior to the expiration of the
4 contract.

5 **Q. How does your interpretation differ from that of Briar Hydro Associates (“Briar
6 Hydro”)¹?**

7 A. It is my understanding that Briar Hydro believes the 5.47 cent per KWH deduction
8 should be discontinued as of the point in time at which all of the 2.00 cents per kilowatt-
9 hour payments in excess of the index rate of 9.00 cents per KWH have been recovered by
10 PSNH.

11 **Q. Do the terms of the contract support this interpretation?**

12 A. No. It is my belief that Briar will attempt to infer contract terms that simply do not exist.
13 If the situation was reversed, it is inconceivable that Briar Hydro would be willing to
14 make a payment to PSNH for any shortfall of recovery. The contract does not allow for
15 discontinuation of the deduction prior to the end of the contract term, nor does it allow
16 PSNH to make any claim for additional recovery if the deduction as of the end of the
17 contract term were insufficient to fully recover the value of the adder during the first
18 eight years of the contract. Both parties were at risk that the present value of the 2.00
19 cent per KWH adder paid by PSNH during the first eight (8) years of the term would be
20 equal to the present value of the reduction in price during the remaining term of the
21 Contract.

¹ The Contract was negotiated and executed by New Hampshire Hydro Associates. Briar Hydro Associates later succeeded to New Hampshire Hydro associates’ rights and obligations under the Contract. For the purposes of clarity I have used Briar Hydro to refer to both entities.

1 **Q. What contract language would have been required to provide for early termination**
2 **of the 5.47 cent per KWH deduction?**

3 A. The contract would have to explicitly state in Section D.1 that the deduction, rather than
4 “continuing for the term of the Contract”, would “continue until such time that payments
5 in excess of the index have been recovered on a present value basis”.

6 **Q. What other language might have been required to fully provide for this early**
7 **termination of the deduction?**

8 A. The contract would have required an appropriate discount rate to be used to determine the
9 time value of money associated with the 2.00 cents per kilowatt-hour payments in excess
10 of the index rate during the first eight (8) years of the contract. Alternatively, the
11 Contract language would have to specify that the recovery method would be a simple
12 nominal recovery, i.e. that PSNH would not be compensated for the time value of money.

13 **Q. Does the contract make reference to a discount rate for any purpose?**

14 A. No.

15 **Q. Are you aware of how the two parties to the contract arrived at the terms in dispute,**
16 **specifically the 5.47 cent per KWH deduction?**

17 A. I was not personally involved in the 1981 and 1982 negotiations. However, I have
18 located a March 19, 1982 memo from PSNH to Richard Norman of New Hampshire
19 Hydro Associates that references the calculation of the 5.47 cent per KWH recovery rate
20 using a 17.61% interest rate. I have included that memo as Attachment 2. The recovery
21 rate was calculated assuming uniform annual hydro production. Nowhere in the letter or
22 attachment thereto does there appear any dollar amount associated with the amount of

1 hydro production. Rather, the calculations attached to the letter are exclusively premised
2 upon cents per KWH. The present value of the 5.47 cents per KWH reduction in the last
3 22 years is equal to the present value of the 2.00 cents per KWH adder in the first 8 years.

4 **Q. What is the current contractual payment rate for production from the facility?**

5 A. The payment rate is the index rate of 9.00 cents per KWH, as adjusted by the 5.47 cents
6 per KWH deduction, or 3.53 cents per KWH.

7 **Q. Can you speculate as to why, in 1982, Briar Hydro Associates would have executed a**
8 **contract that included a payment rate as low as 3.53 cents per KWH during the final**
9 **twenty-two years of the term?**

10 A. No. I cannot speculate on proprietary business conditions that may have influenced
11 Briar's decision, such as an urgent need for financing to support construction, for
12 example. However, I will point out the provision of Section C., Article 3. That section
13 included a provision that, should 96% of PSNH's incremental energy cost ever exceed
14 the index rate of 9.00 cents per KWH, the contract pricing would become indexed to
15 PSNH's incremental energy costs.

16 **Q. Why is that important to note?**

17 A. During the period of these contract negotiations, PSNH was forecasting incremental
18 energy costs to escalate in a manner that, given the final contract terms in Section C.,
19 would have provided for a payment rate of 12.58 cents per KWH in the year 2000, a rate
20 of 30.95 cents per KWH in the year 2010, and a rate of 41.53 cents per KWH in the final
21 contract year (2013). This forecast was provided to Briar Hydro's predecessor via the
22 March 19, 1982 letter which is Attachment 2 to this testimony. Briar Hydro may have
23 placed a significant weight on the likelihood of PSNH's incremental energy costs

1 escalating and, thus, reached a business decision that the overall contract terms, including
2 the potential for rates as low as 3.53 cents per KWH, were acceptable because, at that
3 time, the likelihood of the pricing dropping to today's level appeared to be very low.

4 **Q. Are there any other contract terms you would like to discuss?**

5 A. Yes. Section D.2, Article 3 includes another pricing adjustment mechanism. That
6 section provides for a 1.00 cent per KWH deduction during the first eight (8) contract
7 years, followed by a 0.67 cent per KWH adder during years nine (9) through twenty (20).
8 Additionally, the section states "The total of said additional payments, for any given year,
9 shall not exceed one-twelfth (1/12) of the money subtracted during the first eight contract
10 years".

11 **Q. Why did you want to discuss this section of the contract?**

12 A. This section is notable in that the two parties were able to negotiate and explicitly
13 document the exact terms by which the adjustment of Section D.2 would be administered.
14 The parties agreed that the adder to recover the downward adjustment would terminate
15 after the twentieth contract year. This is in contrast to the dispute over Section D.1 which
16 contains no such language. Therefore, Briar Hydro's argument is based on inferred
17 contract terms, rather than explicit contract terms. If the intent of the parties was to
18 terminate the 5.47 cents per KWH price deduction once the 2.00 cents per KWh adder
19 had been recovered, such language would have been included in the Contract.

20 **Q. Does this conclude your testimony?**

21 A. Yes.

QUALIFICATIONS OF RICHARD C. LABRECQUE

CURRENT POSITION AT PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Manager, Supplemental Energy Sources Department

Responsibilities include coordinating the electrical requirements and administrating the interconnection agreements between PSNH and any non-PSNH generator connected to the PSNH system; administering power purchase agreements and rate orders with Independent Power Producers; and procuring renewable energy certificates and managing our compliance obligations related to the Renewable Portfolio Standard.

EDUCATIONAL BACKGROUND

Bachelor of Science Degree in Nuclear Engineering from Rensselaer Polytechnic Institute in 1988

Master of Nuclear Engineering Degree from North Carolina State University in 1992

Master of Science Degree in Management from Rensselaer Polytechnic Institute in 1999

PRIOR WORK POSITIONS AND EXPERIENCE

Engineer – General Dynamics – Electric Boat Division 1988 - 1991

Engineer – Northeast Utilities – Nuclear Safety Analysis – 1992 – 1999

Engineer / Sr. Engineer – Northeast Utilities – Wholesale Power Contracts – 1999 - 2009

PREVIOUS TESTIMONY

Docket No. Docket Subject

DE 09-186	Renewable Default Energy Service Rate
DE 09-091	Reconciliation of Energy Service and Stranded Costs for 2008
DE 08-066	Reconciliation of Energy Service and Stranded Costs for 2007
DE 07-057	Stranded Cost Recovery Charge Reconciliation for 2006
DE 06-068	Stranded Cost Recovery Charge Reconciliation for 2005
DE 05-088	Stranded Cost Recovery Charge Reconciliation for 2004
DE 04-071	Stranded Cost Recovery Charge Reconciliation for 2003
DE 08-113	Proposed Default Energy Service Rate for 2009
DE 07-096	Proposed Default Energy Service Rate for 2008
DE 06-125	Proposed Default Energy Service Rate for 2007

NOTED MAR 1 1982 R.V.P.

March 19, 1982

FILE COPY

Mr. Richard A. Norman
New Hampshire Hydro Associates
99 North State Street
Concord, NH 03301

Subject: Contract for the Purchase and Sale of Electric Energy
Penacook Lower Falls Hydro

Dear Mr. Norman:

Enclosed are two copies of the subject contract. If you find the contract terms acceptable, please date, sign and return both copies. We will then execute the contract and return one copy to you.

Also enclosed is a revised schedule of estimated contract payments. The recovery amount was recalculated to be 5.47 cents per KWH, based on an interest rate of 17.61%.

Very truly yours,

J. E. Lyons, P.E.
Manager
Supplementary Energy Sources

JEL/dfb

Enclosure

cc: H. J. Ellis
D. R. Sklar

CONTRACT PRICING PROVISIONS
PENACOOK LOWER FALLS HYDRO

YEAR	PSNH ¹ IEC	%	% x IEC	FRONT-END RATE	ADJUST- MENT	RECOVERY	ESTIMATED ² PAYMENT
1984	5.94						10.00
85	6.56						10.00
86	5.53						10.00
87	4.72						10.00
88	5.30						10.00
89	6.42						10.00
1990	7.91						10.00
91	9.01						10.00
92	11.63						10.00
93	13.24						10.00
94	13.44						10.00
95	16.01						10.00
96	18.97						10.00
97	19.83						10.00
98	21.56						10.00
99	24.28						10.00
2000	27.16						10.00
01	30.11	96	11.16	11.00	-1.00	-5.47	6.36
02	33.39	92	12.18		+0.67		7.38
03	37.01	88	11.83				7.03
04	41.04	84	13.45				8.65
05	45.50	80	15.18				10.38
06	49.99	76	15.07				10.27
07	54.92	72	15.52				10.72
08	60.34	68	16.51				11.71
09	66.30	64	17.38				12.58
2010	72.84	60	18.07				13.27
11	79.31	56	18.70				13.90
12	86.34	52	19.25				14.45
13	93.99	50	20.52				15.05
			22.75				17.28
			25.00				19.53
			27.46				21.99
			30.17				24.70
			33.15				27.68
			36.42				30.95
			39.66				34.19
			43.17				37.70
			47.00				41.53

1 Estimated PSNH "Incremental Energy Cost."

2 These rates are based on PSNH estimates. The rates shown for years 1992 thru 2013 are not guaranteed by PSNH.

NOTED MAR 10 1982 RVP.