

EXHIBIT A

To Post-Hearing Brief and Closing
Statement of New England Power
Generators Association, Inc.

PUC Docket No. DE-10-160

**Bill as
Introduced**

SB 170 - AS INTRODUCED

2003 SESSION

03-1138
08/09

SENATE BILL

170

AN ACT

relative to Public Service of New Hampshire.

SPONSORS:

Sen. Clegg, Dist 14; Sen. Green, Dist 6; Sen. Odell, Dist 8

COMMITTEE:

Energy and Economic Development

ANALYSIS

This bill restricts PSNH from selling assets during the transition service period.

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to Public Service of New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Amend 2000, 249:7 as amended by 2001, 29:13 to read as follows:

2 II. The sale of PSNH fossil and hydro generation assets shall *not* take place ~~[no sooner than~~
3 ~~33 months after competition day as defined in RSA 369-B:2, III]~~ *during the transition service*
4 *period defined in RSA 369-B:3, IV(b)(1)(B). Subsequent to this period, PSNH may divest,*
5 *expand, or retire its generation assets if the commission finds that it is in the economic*
6 *interest of retail customers of PSNH to do so, and provides for the cost recovery of such*
7 *divestiture, expansion, or retirement.*

8 2 Authority to Issue Finance Orders to Finance RRB Costs. Amend RSA 369-B3, IV (b)(1)(A) to
9 read as follows:

10 (1)(A) From competition day until the ~~[completion of the sale of PSNH's ownership~~
11 ~~interests in fossil and entitlement interests in nuclear generation assets located in New Hampshire]~~
12 *end of the transition service period as defined in subparagraph (B), PSNH shall supply all,*
13 *except as modified pursuant to RSA 374-F:3, V(f), transition service and default service offered in its*
14 *retail electric service territory from its generation assets and, if necessary, through supplemental*
15 *power purchases in a manner approved by the commission. Once PSNH is no longer supplying*
16 *transition service, [to the extent applicable, any provider or providers of transition service shall have*
17 *been chosen through a competitive bid process, administered by the commission, to provide such*
18 *service or as determined under RSA 374-F:3, V(e). The commission may, if it finds it to be in the*
19 *public interest, divide the competitive bid process into multiple categories or multiple competitive*
20 *bids;] PSNH shall supply all default service offered to its retail electric service territory*
21 *from its generation assets, if any, and through supplemental power purchases in a manner*
22 *approved by the commission. The price of such default service shall be PSNH's actual,*
23 *prudent, and reasonable costs of providing such power, as approved by the commission.*

24 3 Effective Date. This act shall take effect upon its passage.

Committee Minutes

Date: March 4, 2003
Time: 3:35 PM
Room: LOB 102

The Senate Committee on Energy and Economic Development held a hearing on the following:

SB 170 relative to Public Service of New Hampshire.

Members of Committee present: Senator Odell
Senator Below
Senator Gallus
Senator Gatsas
Senator Prescott

The Chair, Senator Bob Odell, opened the hearing by calling upon the Prime Sponsor, Senator Robert Clegg.

Senator Robert Clegg, Jr., D. 14: Thank you, Mr. Chairman, members of the Committee. As you can see, there's a lot of people to talk so I will be very brief. I know you can look at the bill and see what I've done. But, let me start by saying that I was never fully convinced that deregulation was the way to go. In fact, you'll find that I'm on record as being totally opposing the deregulation, but it happened.

From my point of view, the best thing that happened was that we held onto PSNH's fossil and hydro plants. And, although I personally believe we should have also held onto Seabrook, we didn't, but holding onto the plants we have is the main reason, in my opinion, that we still have low rates.

I'm told New Hampshire is the only state in New England that still maintains regulatory control over its generation. It makes no sense for me to try to be like any of the other states and sell the back stop that we currently have because what it's done is it's produced higher and unstable rates.

The recent PUC proceeding, competitive suppliers were anxious to move our cost of energy from 4.6 cents per kilowatt hour to 6 cents per kilowatt hour with the sole purpose of opening up the market so they can try to compete with our existing rates. Let me restate that we now have energy at **4.6 cents per kilowatt hour**. What the competitors want us to do is move that

number higher to 6 cents in order to compete. The difference between the two numbers represents approximately \$75 to \$100 million a year for the consumer.

I think it's clear we need to do what's best for New Hampshire consumers especially today, and that is to maintain the generation systems for another period of time which guarantees that we have lower rates than anybody else in New England, allows us to expand our industrial base at a more reasonable cost and also assist the local consumer in keeping their electric rates low. I'll take any questions, Mr. Chairman.

Senator Bob Odell, D. 8: Thank you. Questions from the Committee?
Senator Below?

Senator Clifton Below, D. 5: Thank you, Mr. Chairman. Senator Clegg, what's the intent on line 6 and 7 of the bill where it talks about the commission allowing divestiture if it finds that it's in the economic interest of providing and that it provides for the cost recovery of such divestiture expansion or retirement? What's the intent of that in the context of the overall statute where there's a clear prescription as to what happens with the proceeds of the sale?

Senator Robert Clegg, Jr., D. 14: Basically...

Senator Clifton Below, D. 5: ...and considering that in the stranded cost recovery charge, we've already got provisions for full cost recovery of either stranded cost or capital cost related...

Senator Robert Clegg, Jr., D. 14: ...I'm just restating that they have the ability to get their stranded cost but the big part of that is that if we find that it's not in the consumer's best interest to maintain the power plants, that we have PSNH divest them.

Senator Clifton Below, D. 5: Further question?

Senator Bob Odell, D. 8: Further question.

Senator Clifton Below, D. 5: So, why does it talk about providing for cost recovery here when there's already been provisions and allowances for that in the statute?

Senator Richard Green, D. 6: If there's already provisions and you think it's redundant and not necessary, take it out.

Senator Clifton Below, D. 5: Further question?

Senator Bob Odell, D. 8: Further question.

Senator Clifton Below, D. 5: In the second section of the bill, there's a provision that *once PSNH is no longer supplying transition service, PSNH shall supply all default service...* Are you aware that in the restructuring principals we had a provision – RSA 374-F:3, V(c), that talks about *default service should be procured through the competitive market may be administered by individual third parties*. It goes on and talks about some provisions related to default service: *if the commission determines it to be in public interest, the commission may implement measures to discourage misuse, or long-term use, of default service*. Is it your intent to sort of override that provision in the restructuring principals...

Senator Robert Clegg, Jr., D. 14: ...it is my understanding that default service – if you haven't picked somebody, default service (under the restructuring) would go to almost anybody. What I'm trying to do is say that Public Service will be the default service because it's the cheapest rate going. I'm not trying to stymie competition but I'm trying to protect consumers. If we can generate power at 4.6 cents and the best competitors can do is 6 cents, then I'm saying that Public Service remains the default provider unless someone wants to go elsewhere on their own.

Senator Clifton Below, D. 5: Continuing with my question, do you realize that in doing that what PSNH –it's not apples to apples, obviously, because their capital costs have mostly been shifted off as not part of this price but probably part of the stranded cost recovery charge. So, they're just competing, if you will, or just providing based on strictly their operating cost.

Senator Robert Clegg, Jr., D. 14: It's still cheaper in the long-run for the consumer and I think that it's more important to protect the consumer than it is a group of investors who think that New Hampshire's right to make some money.

Senator Clifton Below, D. 5: Well, I certainly agree with you on that but a final question is, you're a Republican who doesn't believe in competitive markets? (laughter)

Senator Robert Clegg, Jr., D. 14: I didn't say I didn't believe in competitive markets, but yes, I'm a Republican. (laughter)

Senator Clifton Below, D. 5: And you don't believe competitive markets in the instance of power generation?

Senator Robert Clegg, Jr., D. 14: Since we killed the system during deregulation and forced them to sell Seabrook Power Plant with no guarantee that the state of New Hampshire would be able to obtain any power that they needed from that plant that's out on the free market, I don't think we did anything good there, no. Competitive wise, you're telling me that it's good to open up the market to gouge the customer, that's not competition.

Senator Clifton Below, D. 5: I didn't say that but ... (laughter)

Senator Robert Clegg, Jr., D. 14: Well that's what will happen if we don't do this.

Senator Bob Odell, D. 8: Other questions from the Committee members? Seeing none, thank you very much, Senator Clegg.

Senator Robert Clegg, Jr., D. 14: Thank you.

Senator Bob Odell, D. 8: I will call upon the Honorable Robert Theberge, State Representative from District 3.

Representative Robert Theberge, Coos, D. 3: Written testimony handed in and read. *See Attachment A.*

Senator Bob Odell, D. 8: Thank you, Representative. Questions from the Committee? Seeing none, thank you very much.

Representative Theberge: Thank you.

Senator Bob Odell, D. 8: I will call Dan Allegretti, from Constellation. Mr. Allegretti, welcome to the Committee.

Dan Allegretti, Constellation: Thank you very much, Mr. Chairman. Senator Below, members of the Committee, just briefly let me mention who the heck is Constellation. We're a Fortune 500 Company. We're based in Baltimore, Maryland. We are affiliated with Baltimore Gas and Electric, which is the nation's oldest regulated utility and we're affiliated with Constellation New Energy, which is the leading retail electricity supplier in the company right now. We also are the wholesale supplier of full requirements to the Granite State Electric Company here in New Hampshire as well as a licensed competitive supplier.

We're opposed to the legislation and we would actually favor divestiture for several reasons. We think it accomplishes several important goals and we think that there are benefits that outweigh the potential risks.

When I speak of divestiture, I don't necessarily mean that it has to be a sale to a third party in auction similar to what was done in Seabrook, although that is the prevailing trend in New England and is certainly a way to proceed. Proceeding by way of divestiture that requires the transfer of book value with appropriate regulatory oversight to an affiliate is an alternative way to proceed that we also believe is acceptable. The fundamental point though, is that the regulated delivery business should be completely separate from the unregulated competitive generation business. When a regulated company owns a generating plant, the investment in that plant is a risk that is borne by the rate payer. When a competitive company owns that plant, the risk is borne by shareholders. It's a lesson we learned and we learned it the hard way in New Hampshire with an enormous stranded cost burden. When investors, not rate payers, take the risk of owning infrastructure, of building infrastructure and recovering its cost, that risk is a risk where the down-side is borne by the investor who can manage it. Preventing stranded cost in the future should be a goal and we believe that divestiture helps promote that.

In addition, divestiture avoids any possibility that there can be allegations of self-dealing or favoritism or exercise of market power as a result of a regulated company leveraging its regulated delivery monopoly in order to gain an advantage in the sale of generation and the sale of electricity.

We do not, by any means, accuse Public Service of engaging in any such conduct but we think it's wise to establish a market structure that prevents even an allegation of such conduct in the future and that effectively makes it impossible.

Thirdly, divestiture allows for a rate design that promotes competition. I have to say, there's no such thing as a free lunch. I think Senator Below was on to the very point, which is that if you sell electricity at below market prices, you're going to pay for it somewhere else. The place where it shows up is in the stranded cost portion of the bill, either in the deferred expense that must be recovered or in the loss of an opportunity to lower stranded cost to pay it off more quickly through sales into the competitive marketplace.

There's no avoiding the fact that the price of electricity is up right now because the price of natural gas is up. This is due to a number of factors including possibility of war in the Middle East. But, hanging on to the generation assets, keeping them in the regulated company isn't going to bring down the price of natural gas. That's a cost that's going to be embedded in

the price of electricity regardless of what facilities that electricity comes from. It's a market cost. It's part of the New England mix. There's no question that that fuel cost has to be paid when it's up and when it's down. The issue is one of generation capacity. Right now there is plenty of competitive generation capacity in New England. We're able to provide the full requirements of Granite State Electric Company by going to the competitive marketplace, by taking advantage of competitive prices and offering them to customers. If prices go up in the future, customers are protected through forward contracts that we've entered into and committed to provide that energy to Granite State. If prices go down, our competitive affiliate, Constellation New Energy, will be in there offering lower prices.

This is the market structure that's been used in Maine, Massachusetts, New Jersey. It's been in Maryland. It's been very successful and we believe that it's the appropriate structure for New Hampshire. We think that this legislation will impede the Public Utility Commission's ability to get from here to there to complete the transition along this model, which we believe is in the best interest of New Hampshire and its rate payers. I'd be happy to answer any questions. Thank you.

Senator Bob Odell, D. 8: Thank you, Mr. Allegretti. Questions from the Committee? Senator Prescott?

Senator Russell E. Prescott, D. 23: You mentioned that it would cost the state of New Hampshire divestiture and stranded costs, would elaborate upon the failure of the system as it is now?

Mr. Allegretti: Well, if you think back on the investment in, for example, Seabrook. At the time it turned out to be a very expensive generating plant. When we moved to competition, there was concern, justifiable concern, on the part of utilities that if their customers were to leave them, they would be stuck with generating assets and no one to sell the electricity to, that the investment they had made would be stranded and that they were entitled to recovery of that investment as part of the transition to a competitive market.

Well, if you look at what we've got today, we're paying off that stranded cost, that transition cost if you will, but we're leaving ourselves with a system in which the utility continues to own the generating facility and the customers. So, what was the stranded cost for? Why did we structure the bill that way? By bill I mean the rate payer's bill. What we need is a structure that completes the transition, that allows the utility to exist the generating business and allows future investments in infrastructure and generating plants to be made by shareholders where if it turns out to be a very expensive plant, a bad investment, it's their problem, not the rate payers. When you

allow for the recovery of a stranded cost, you're saying that the rate payer needs to step up to the plate and make the utility whole for that investment. Given it was made under a regulated paragon, I think that's fair and appropriate but it's something that we need to get away from in making the complete transition to a competitive market. Did I answer your question?

Senator Bob Odell, D. 8: Further questions from the Committee? Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: Thank you. Mr. Allegretti, can you tell me what the cost of power is in the state of Maine? Spot market?

Mr. Allegretti: At what location, over what term, for what kind of a customer? There are so many factors that figure into it. The long-term price of power on a ten-year contract is going to look very different than price for the next hour alone. That's a function of market volatility in the spot market and in the forward market. What I can tell you is that there's a great deal of generation capacity that's been built in Maine and there are some transmission bottlenecks getting it out of Maine that actually keep a surplus of capacity in Maine that long-term forward prices for power in Maine are lower than they are in New Hampshire and significantly lower than they are in Boston. To actually quote you a price, I'd need a lot more information but in general, the long-term price of power in Maine would be somewhat lower than here because of that excess generating capacity.

Senator Theodore L. Gatsas, D. 16: Follow-up. So, the answer to your question is, is the power in Maine is probably less expensive?

Mr. Allegretti: Yes.

Senator Theodore L. Gatsas, D. 16: Than it is in New Hampshire?

Mr. Allegretti: It should be.

Senator Theodore L. Gatsas, D. 16: So, the bottleneck that happens, what is the price of power in Connecticut?

Mr. Allegretti: It depends on where you are in Connecticut. They have the reverse situation in that their transmission infrastructure doesn't prevent generation from getting out, it prevents it from getting in. They have an inadequate amount of generating capacity in the southwest portion of Connecticut relative to the demand for electricity there and as a result, electricity is scarce in southwest Connecticut unless and until additional infrastructure is built and as a result, we can expect to see higher prices

particularly in the southwest portion of the State than we would here in New Hampshire.

Senator Bob Odell, D. 8: Other questions for Mr. Allegretti? Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: So, you would recommend to this Body that we should eliminate the preservation of low rates for the people in New Hampshire to open up competition where rates are much lower in Maine but they have a bottleneck of getting the supply out which doesn't even come to New Hampshire?

Mr. Allegretti: Well, 1400 megawatts of it does flow over the lines out of Maine and into the rest of the New England system as well as generation from Vermont, from Rhode Island, from Western Massachusetts, from parts of Connecticut. We're actually fortunate here in New Hampshire in that we're in a region of the grid that that's not characterized by a significant amount of congestion and so, the available capacity that can reach loads here in New Hampshire is actually quite substantial. In fact, relative to the total requirement of the New England Region because the Region is somewhat overbuilt at the moment, there's quite a competitive market for providing generation capacity for what we would refer to as the "rest of pool", outside the pockets of Maine and southwest Connecticut.

We believe there's certainly adequate infrastructure and in fact taking advantage of the lowest cost plant, whether it be Newington, Schiller or whether it be someone else's plant in Western Massachusetts or in Vermont or in Rhode Island, the next least expensive plant is the one that should be providing electricity in any given hour. Taking advantage of the combination of contracts in the spot and forward market enable us as a portfolio supplier to do that. So, we believe that there's actually less risk, more reliability and in the long-term, better and more stable pricing available from the market and the rest of pool than would be available from a very limited portfolio of fixed resources that are currently held by PSNH.

Senator Theodore L. Gatsas, D. 16: So I guess the short of that answer is, is that it's more expensive in Connecticut?

Mr. Allegretti: Well, it's all about supply and demand and right now the supply is short, the price goes up and we can expect in the marketplace the response will be that people will see that high price and say *that's a good place to increase supply*. That's a place to increase by building transmission, by building new generation, by providing responsive demand in that part of the state to take advantage of those high prices and that supply response, in

turn, brings the price down. That's the effect of the so-called invisible hand of the marketplace.

Senator Bob Odell, D. 8: Any other questions? Anything else? Any follow-ups, Senator?

Senator Theodore L. Gatsas, D. 16: The flow of energy from Maine through New Hampshire currently costs us money to get it to Connecticut. So it could cost us much more if we started deregulating and allowing that flow. I'm a great believer that if it's going to past through this State, it should be a tariff that we're collecting through this State and not an expense to this State.

Mr. Allegretti: I guess I'm not clear how it is an expense to the State, the power flows on an integrated transmission system that covers all of New England, all be it, with certain bottlenecks. Here in New Hampshire we have the ability to take advantage of most of the marketplace. There certainly is a limit in terms of what can come out of Maine and there certainly is a cost, a transmission tariff, where revenues are collected and are paid to the owners of the transmission lines including Public Service Company of New Hampshire. So, there is a toll that is charged, in effect, for passage through New Hampshire. I'm not sure how the movement of electricity through those lines increases the cost to the State. If anything, it produces transmission revenues.

Senator Bob Odell, D. 8: Any other questions? (turn over tape) Between Senator Below and me, I think we probably represent 90% or 100% of people that are currently served by Connecticut Valley Electric Company, how's that hand working now?

Mr. Allegretti: Certainly the upper valley is connected to the need pool transmission system and supply of electricity from around the region are capable of reaching that portion of the electric grid, so the wholesale marketplace certainly is available. The issue really comes down to, I think, the retail market up there and that has more to do with the structure of rates that are administered by the Public Utilities Commission and the overall investments that are made by the utilities serving the region.

Senator Bob Odell, D. 8: Senator Below and I are cosponsors of legislation to enable Public Service of New Hampshire to purchase the assets and provide the service to about 10,000 households in that region. Through the process, those of us that didn't know much about electricity came to learn a little bit about the cost of electricity and learn a little about abuse that's been going on for 10 or 12 years in terms of the fact that we're paying inward in the high electric rates in comparison of the rest of New England and

particularly in comparison of the rest of the State – the highest of the State. And by being purchased by Public Service of New Hampshire, they will be able to provide that service at a substantial cost reduction beginning January 1, 2004. One of the reasons that this transaction is very popular to a group of people in an area of the State where we've paying this disproportionate price for power, is the fact that there's sort of a longevity to the lower pricing that is predictable by the mix production or generating facilities that are now currently in the hands of Public Service of New Hampshire.

What you're presenting in opposition to Senator Clegg's bill seems to take away some of the advantages that that area might have in terms of catching up with lower prices for some period of time.

Mr. Allegretti: Well, I got to warn you again about the free lunch. To the extent that lower cost power will now be available to the upper valley, that's a good thing. I would think that in looking for lower cost power, you'd want to look not just to one company that owns some power plants but you'd want to throw it open to the marketplace and say *who's got the cheapest? Who's got the best price?* That always is the better route to go to get the best possible price by taking advantage of competitive forces. To the extent that Public Service Company of New Hampshire has some ability to charge a cost to some of their other rate payers and provide a savings to the upper valley, that may benefit your constituents but I don't know that that's good policy for the State.

I think to the extent that your constituents are given access to the marketplace to get the best price available out there, that's good for your constituents and for the rest of the State. To the extent that they want long-term price stability, contracts are available in the longer-term. They can certainly put that load out to bid for 2 years, 3 years, 4 years, 5 years or some combination of long-term or short-term contracts. There are a lot of good ways to structure a portfolio to supply and certainly leaving it to the utility and the Utility Commission to come up with the best solution would be my recommendation.

Senator Bob Odell, D. 8: Thank you very much. Any other questions? Thank you for your testimony.

Mr. Allegretti: My pleasure.

Senator Bob Odell, D. 8: I will now call Jim Rodier?

Jim Rodier, Freedom Energy: Written testimony handed in. *See Attachment B.*

My name is Jim Rodier. I'm here representing Freedom Energy, today. Just a very quick background, we started to work on this in 1994. We actually had a Supreme Court case in 1996 that said there weren't any monopoly franchises but to bring you up to date, our activity – we sell in Maine, New Hampshire and Massachusetts. *(Begins reading from written testimony)*

Senator Bob Odell, D. 8: Thank you for your testimony. Any questions from the Committee? Senator Prescott?

Senator Russell E. Prescott, D. 23: We're a Granite State Electric customer and my neighbor is a Public Service Company of New Hampshire customer.

Mr. Rodier: What town are you in, Sir?

Senator Russell E. Prescott, D. 23: Kingston.

Mr. Rodier: Okay.

Senator Russell E. Prescott, D. 23: I have suggested language be any customer staying with Granite State Electric shall be eligible for a credit equal to the cost difference between PSNH and Granite State. That's what we think – what I think what we're here for is to keep cost down.

Mr. Rodier: I agree.

Senator Russell E. Prescott, D. 23: PSNH is down and Granite State is up.

Mr. Rodier: Again, my credit doesn't change Public Service's bill because I'm sensitive to where the Committee's coming from. Are you saying that Granite State's rates are higher than Public Service's are right now?

(Senator Prescott nods his head)

Mr. Rodier: I really – one of the things though is that – one of the things is if you look at Granite State's rates, the stranded cost is maybe a cent, that's going to be paid off in just a few more years. Public Service is like 3 cents – now that's going to go down over time but it's hard to – Granite State's transition price is higher but PSNH's stranded cost recovery, on the other hand, is high. One thing to have a high transition price is at least you get a chance to not pay it. You know what I mean? If you can find a supply that's less. If it's in the stranded cost, there's not way of bypassing it but again, I have no – the Public Service, you know, keeping those plants, I think they're capable of running them well, etc. If that's the wisdom of the Committee, I

respectfully request that we try to build some other mechanism into our model that would allow some choice and possibility of savings for the larger customers.

Senator Russell E. Prescott, D. 23: Follow-up?

Senator Bob Odell, D. 8: Follow-up.

Senator Russell E. Prescott, D. 23: Then how would the -- explain again how this amendment would be effective to lowering rates?

Mr. Rodier: Well, it's not going to affect -- if somebody doesn't choose to go to a competitive supplier, it doesn't apply. It's only for, you know, pick a large customer, I won't name one but if they leave, they would get this credit and the credit is equal to the value of the power that Public Service no longer has to buy for them. Or, if the customer leaves and they're stuck with excess power, we would have to compute what is the value that they get when they sell it into the wholesale market, which right now is a lot of money. So, it's not going to affect anybody's bill at all that doesn't choose. It's only if you decide to go, you're going to get a credit that reflects PSNH savings or avoided cost. I think we -- is that wonderful? No, but I think that would be, from a competitive choice point of view, a big step forward. It's a legitimate comparison of apples to apples; what Public Service has to pay on the open-market for that power and what we have to pay on the open-market for that power. It could result in savings for some of the institutions and the big employers that we really rely on.

Senator Bob Odell, D. 8: Any more questions? Thank you very for your testimony.

Mr. Rodier: Pleasure. Thank you.

Senator Bob Odell, D. 8: I'll call Gary Long? Welcome, Mr. Long.

Gary Long, President, Public Service Company of New Hampshire: Thank you, Senator. Thank you for the opportunity to speak with you. I'm Gary Long. I'm the President of Public Service Company of New Hampshire. We are supportive of the bill as written and for some very basic reasons. I think the first is the mention already, is it has a huge economic impact on consumers. Senator Clegg mentioned \$75 to \$100 million. If we were charging what suppliers estimate as the market rate today that the Commission ruled against instead of our cost for service, our customers should be paying about \$100 million more this year than by taking power

from PSNH's power plants. I heard the number \$75 to \$100. That's a reasonable range.

That's the sort of economic impact that is created by this bill. In other words, by passing this bill and by using PSNH's existing generation under state regulated control for the benefit of our customers, has an economic impact of \$75 to \$100 million. So, this is a very, very important decision.

When we first settled our restructuring issues and implemented, we agreed to and fully expected and we are prepared to divest our generation plant. One thing I want to make very clear is that PSNH has an open system. We are one of only sixteen states in the nation that have an open system. We don't want to change that. We do not want to go back to the old model. We want to continue with an open system. We want to continue with customers having a choice of energy suppliers. I want to make it very clear that we are not trying to turn the clock back in any way.

What we have is some generation, we have a very unique model in that this state controls that generation. It is the only state in New England where that is the case. It is what happened, but it is a jam. It is a huge economic value to customers. I think to keep the New Hampshire advantage, PSNH should retain generation so long as it is economic for customers.

Senator Below asked the question about there is some retirement and other words in there. Public Service Company supports the bill as written. When we first had ... (inaudible) ... we expected to divest so no one even talked about retirement of the plant. These plants are old plants. Merrimack One was built in 1960. The Schiller plants were both in the 50's. We are not sure how many years they can run.

The settlement agreement doesn't really address the situation where you are retiring plants. So that's why I think the cost recovery words are very important to PSNH. We want to be in a situation where the situation is defined and where these plants are used to the economic benefit of customers.

Also, there is the word may expand. I know some of you are probably aware that we would like to put a new boiler at Schiller for the purpose of burning wood on an economic basis so that we can address a very severe issue on the forest products industry and the forestry industry in New Hampshire. We think words like expand, if it is in the interest of customers and if the PUC approves it, has the right balance of checks and controls.

I also want to address the issue of stranded costs. Our existing generation that we are talking about and is addressed in this bill, there are no stranded

costs associated with this generation. All of the costs, the capitol costs, property taxes, overhead costs, labor costs, fuel costs, everything is in that 4.67 cent cost that the Commission found and that we are currently billing customers. There is no other stranded cost. No other charge. So, that gives you an indication of how economic it is. 4.67 cents is our total cost, including supplemental purchases we have to make on the market compared to a price of 6 cents or more that was advocated by suppliers. I will tell you, in the last three days, the day time price has been 10 to 15 cents a kilowatt hour. So, we feel that thank goodness our power plants have been running during this cold spell. It is going to be to the great economic benefit of our customers.

Senator Gatsas was asking about the State of Maine. I can tell you that the residential transition service price for Maine last month, I'm not sure what it is today, was 4.95 cents per kilowatt hour versus our residential of 4.6. The reports that come out of Maine are that they expect a 20 to 30% increase. I'm watching that. I want to see what really happens there. I can tell you that their market prices for their zone has been in the same ballpark as everyone else of 10 to 15 cents the last few days. So, to give you a little bit of information, Senator, on your question about Maine.

The theories that Mr. Allegretti has spoken to are I guess dejavu. We have heard them many times. We heard them when Enron was here. We have heard them before California deregulated. They are very interesting theories, but I'm not really here to talk about theories. I really want to talk about facts. We have learned a lot since this whole restructuring thing started. The theories are not playing out as people have anticipated. There has been some good created. I think one of the good is that there have been a lot of power plants built in New England. They all happen to be gas and they all happen to be in an upward spiral right now. But, I'm not here to talk about theories. I really want to talk about just raw economics.

New Hampshire has an advantage. The state of New Hampshire regulates this generation. Once you give that up, once you divest, the state of out of the picture and you lost control forever. The economics are just so overwhelming. The idea of PSNH needing to sell our power plants to facilitate competition is just not correct. As Representative Theiberge said, PSNH only owns 4% of the generation in New England. We only own 4% of all the generation that's in New England. If we were to sell our power plants, there would be no appreciable impact on New England markets. It is just too small. New England has nearly 50% reserve margin now. There would be no appreciable change in the market. There would be a \$100 million impact on consumers.

So, if you weigh PSNH has market power with PSNH does not have market power. As a regulated company, you can't have market power. Our

regulators oversee us. We are in there every six months. We are in there showing the data that those units are only used for one purpose – to serve our customers. So, I think the whole concept of selling power plants that you don't have market power is a theory that just doesn't play out indicates that PSNH 'cause we have such little generation in all of New England.

Another thing is about 70%, 69% of generation in New Hampshire, is not state regulated, is not owned by PSNH. So, we are talking about generation that is about 31% of what's in New Hampshire.

This generation, as I said, the costs is under four cents, but when you include purchases that we have to make on the market, we don't quite have enough generation to serve all of our load. The all in cost is 4.67 cents per kilowatt hour. Why is PSNH's cost so low? One of the reasons is that the plants are old and highly depreciated. The other main reason is that it is more significant if we have an incredible fuel mix, a fuel diversity, that is a jam under state control that once you give it up, you lose it. We have 35% of our power is coal; another 17% can burn coal or oil; we have another 35% that can burn oil or gas. Coal is incredibly stable price, incredibly stable. When gas prices go up 400 or 500% as they have recently, coal prices hardly change at all. So, it is a huge head, this huge insurance policy for consumers to be able to have that power dedicated to consumers.

Mr. Rodier mentioned that Freedom has been successful in creating some savings for a customer. I think that is terrific and I would like to see more of that happen, but not at the expense of raising rates to customers. If anybody out there can beat the rate, the 4.67, I'm thrilled. I'm thrilled because the customers are better off and because we don't have to buy as much power. So, we agreed to have an open system; we agree with the idea of having competition. We do not agree with the idea of raising rates so that you can have more players make money in New Hampshire.

I guess I will leave it at that. I think the bill, as written, works quite well. It puts matters in the hands of an overseeing body, the Public Utilities Commission. It defines what is currently an ambiguous situation that is very difficult for us to tell customers what to expect for rates in the future. This ambiguous situation makes it very hard for us to understand how we... Should we manage our power plants? Should we sell them? Or, should we manage our power plants so they will run? There are two different philosophies there and we certainly would like this bill to pass to clear up the ambiguity.

Senator Bob Odell, D. 8: Senator Gatsas?

Senator Theodore L. Gatsas, D. 16: Thank you, Mr. Chairman. Good afternoon, Mr. Long.

Mr. Long: Good afternoon, Senator.

Senator Theodore L. Gatsas, D. 16: What a difference two years makes.

Mr. Long: As I told you, you were right the first time.

Senator Theodore L. Gatsas, D. 16: I thought that we were going to be sitting here and talking about buckets again.

Mr. Long: Well, we're passed that.

Senator Theodore L. Gatsas, D. 16: No, we aren't because I assume you probably know that Senator Below also has a sister bill that is very similar to this. If not, I'm sure you will know.

Mr. Long: It doesn't address some of the issues that this addresses for us.

Senator Theodore L. Gatsas, D. 16: Can you be more specific?

Mr. Long: This bill, as this is written, it gets to what I think is the ultimate question. Transition service is temporary and what do you do when transition service is over? I think we have learned enough in the last two or three years to answer that question. What this bill says is that default service will be provided through PSNH's power plant. So, it defines what our new model is and defines it very clearly. It doesn't leave any questions open. It is not just changing a date that we are here next year. As a person who manages power plants, I don't know what to do. I don't know if I should manage them so that they are winding down to be sold or we should manage them so they can run for a while.

So, this bill answers the questions and the other bill, from what I have seen, doesn't answer the questions.

Senator Theodore L. Gatsas, D. 16: Follow up? If I was right, as you said I was, two years ago, then why wouldn't I be right again this year?

Mr. Long: Well, I think you were right in being one of the main movers on having divestiture delayed. I think there was some discussion then whether it should be permanent or temporary and, at that point, we said it should be temporary. You might have argued it should be permanent. We were all making an adjustment at that time 'cause we were all prepared to sell the

power plant. I think now, I would say, you are probably right. We would have made it permanent back then. I think it should be made stabilized now and defined rather than left open. Every two years it is... We are taking a gamble that we will put some money in the plants so they will operate for the long term, but, is that what we should do or should we just let them wind down and try to sell them?

Senator Theodore L. Gatsas, D. 16: I don't think I'm prepared to tell PSNH what they should do.

Mr. Long: Well, you do by policy. You do by setting the law.

Senator Theodore L. Gatsas, D. 16: I agree. I think that I was right two years ago to take a look at this position that we are in today and I think the same decision should be open for us to look at it again in two years because maybe the spot market at that time might be three cents and maybe the four point seven that you are quoting us now won't be a fair market. And, maybe it's going to be ten cents on a regular basis and maybe we may say we should extend this for another five years.

Mr. Long: That just continues to put it in a period of unknown and, as I said, not well-defined and no one knowing how they should proceed, customers not knowing what to expect for rates, the PUC not knowing how they should regulate us, us not knowing how to manage a power plant.

If the prices go down to three cents, this bill says, if it becomes economic, then we go to the PUC and say it is time to do something, time to close the plants down, it's time to sell them. So, this bill already answers that question. If the market changes, I think the Public Utilities Commission is quite capable of presenting information to them and saying, "Okay, divest if you think there is a market" or "They are old plants, shut them down".

You don't need to look at it every two years because this sets the standard of economics for customers and I think it is a good standard.

Senator Bob Odell, D. 8: Any other questions from the Committee?
Senator Below?

Senator Clifton Below, D. 5: Thank you, Mr. Chairman. Good afternoon, Gary.

Mr. Long: Good afternoon, Senator.

Senator Clifton Below, D. 5: I'm a little confused about a couple of things. Line 4 talks about the sale not taking place during the transition service period defined in RSA 359-B3, IV (b)(1)(B). When I look at that, IV(b)(1)(B) there is a small Roman I, small Roman II and a small Roman III, and I don't see where the transition service is defined in that section. There is reference to transition service twenty-four months after initial service end date. But, we're almost to that point right now and I don't think that's your intent - your intent, Senator Clegg's intent.

I guess what your intent is and I think you should take a look at how that actually ...(inaudible)... off.

Mr. Long: I pulled this off the website. I probably did look at that reference. I will look at it again and we can get back to see whether we confirm it is an appropriate reference.

I think you asked earlier the question, does this section supercede some other section? Transition service is mentioned probably three or four, six different places and I would view that this does supercede other sections, just like when it was defined two years ago, it superceded earlier sections. But, I would be very happy to check that reference and have our lawyers and myself look at it to see if we think it does what we thought it did, we think it does. It defines how we move forward in the future.

Senator Clifton Below, D. 5: Further question?

Senator Bob Odell, D. 8: Further question.

Senator Clifton Below, D. 5: In the next paragraph, it says subsequent to this period. I take it you're thinking this period is something longer than May of this year, April of this year. But, it is some longer period. It's still not clear to me what the period is, but assuming it is a couple more years further out or something or indefinite, whatever it is. Subsequent to this period, PSNH may expand its generation assets and so forth. Does that mean PSNH can expand its generation assets through that date? Might it be interpreted that way? One of the things that you wanted to get some language, you might want to expand. I'm just reading that and I think the plain language is just... It talks about after that date you could expand if the Commission provides the cost recovery of such expansion.

Mr. Long: Let me tell you how I read this and I understand your point. I understand your point, particularly. As I mentioned, I think we are going to be talking to more people about, if the economics work out, perhaps wood for

fuel and we have to look at schedules and see how that works given what you just said, if there a restriction before that time.

But, the way I read this is, there was a concept last time that said, and in current law, that says during transition service, you can't do anything with your generation. You have to use your generation to serve load. The way I read this, it's still there. That requirement is still there.

I don't care if transition. I shouldn't say I don't care, but I should care it is not so critical that transition service last for one more year or five more years. Right now, transition service periods for different utilities varies a little bit and I think, at some point, we need to get past transition service and just put that term behind us and get to the subsequent period. And, the way I read subsequent period, that's really the period when transition service no longer exists and we are in what is called default service. I view that default service would continue to use our generation to provide default service, which will probably be for more of the customers, certainly I think, for most residential and small customers. But, once we get past this kind of moratorium that we can't divest, then as we go out in time, and we have to do what Senator Gatsas implied, which is, as circumstances change, we may have to go back to the Commission and say circumstances changed. But, if it continues to be that this is highly economic for customers, then we continue to serve customers from that generation, as long as it is running.

The only thing that I want to think more about is what you said. Is that date 2006 and do we have some kind of an expansion for wood power before that date and does it work well with that? Maybe we don't have a problem, but we would certainly like to look at that.

Senator Clifton Below, D. 5: Another question. In the default service area, you had expressed the hope that you would, that the intent of this is that PSNH would use its generation to provide that default service. Again, I'm a little concerned about the construction of this sentence and whether it matches your intent because the question is, do you always want to be the default service provider overwriting the provision and the restructuring principle, allowing the possibility that default service could be procured through some competitive means? Do you just want to be the default service provider as long as you don't have a significant number of generation assets?

Mr. Long: Maybe the definitions... I think of the concept and I know you are very familiar with this. Provider of last resort, which is... You can think of it as default power, but the concept of provider of last resort. I know you do, but you don't understand it well. I think that forever and ever that provider of last resort has to be a state-regulated entity. I think that the very nature

of provider of last resort is because no one else has served a customer and people cannot be without electricity. It's unlike any other market. People cannot be without electricity. You can't just let them be victims of whatever the market price is because the market price can zoom. I mean, that's why California had their problems and why New England has to have price caps.

So, PSNH is always going to be the provider of last resort. Granite State Electric is always going to be the provider of last resort, as is the Coop and other utilities. The question is, how do you do that? If we have to be the provider of last resort, do we use the resources that are in New Hampshire to the benefit of New Hampshire consumers or do we go out to the market place and just makes those consumers susceptible to whatever happens in the market place? Right now, I think, and I think for the foreseeable future, the economics are overwhelming for our customers to use the assets in New Hampshire that the state controls for default service.

So, yes, PSNH is a supplier either way. One says you don't have assets; one says you do.

Senator Bob Odell, D. 8: Any other questions? Seeing none, thank you very much Mr. Long for being here. We have three additional speakers. My apologies to those that are waiting for the last bill we're going to take up today, that we are running about fifty minutes late. So, we will try to catch up a little bit here. I will next call on Mark Dean for New Hampshire Electric Coop.

Attorney Mark Dean: Thank you and I'll try to help you catch up. My name is Mark Dean. I am a lawyer with the law firm of Devine, Millimet & Branch and I represent the New Hampshire Electric Cooperative and, for about fifteen years, I have been following Gary Long in these types of hearings.

Today, I have indicated neither supporting or opposing the bill. I really have a clarification issue with the bill and then maybe some unsolicited observations from a client who has been in the wholesale market place, maybe in a different manner than anyone else in the room.

The clarification is in the third line in Roman number II and it has to do with the word expand. If the word means it is talking about the Schiller plant and wood burning, then it really is quite specific to PSNH. It doesn't really have anything to do with the other utilities and I need no further clarification. My first reading of it, I frankly presumed it meant that subject to Commission approval, it is was in the economic interest of PSNH customers that PSNH might be in a position to either acquire or construct new generation facilities. Quite frankly, having represented my client in the wholesale market place, I

can certainly envision situations where you might consider that desirable and if, in any way, the state were going to take this policy step that opens that door, that possibility that there be future acquisitions or constructions of generating facilities by utilities, then I think it should be decided in a manner that basically deals with all the utilities and it wouldn't be PSNH specific. So, I take comfort from Gary's description of what was the thinking there, but I do think the word expand doesn't really limit it to the narrow subject that was discussed. Again, I think my client would be interested in seeing some flexibility in the future as well.

And, I guess the only other thing I would like to add is, whether this will be comfort to you or not, is the Cooperative is out in the wholesale market place. It is different than all the other utilities at this point. Neither its distribution charges, nor its what used to be called transition service, are regulated by the PUC. There is no end date to that service. It is open to competition. The Coop has been out in the wholesale market place buying different forms of power supply, as Mr. Allegretti was discussing and I can tell you that that market place does function. You can supply all the requirement needs of electric customers in that market place. I can also tell you it's not a pretty or comfortable place to be some days. The Cooperative has entered contracts.

We have a four-year contract, which is pretty much comparable, slightly higher on average, that what PSNH is able to provide to its customers using its own facilities. That said, we entered it with a large national corporation which, within months of entering the contract, defaulted on its financing obligations. We had to terminate the contract, go out and replace it. We now believe we have essentially made our customers whole through the contract provisions. But, that is a market place where, on any given day, it is very difficult to make reasoned decisions about what the market is going to look like in the future. Do you go short? Do you go long? To some extent, you really are trading when you talk about the divestiture issue. You are trading the risks of, if you hold onto the plants, New Hampshire risks. How do the plants actually operate? Versus the risks outside of New Hampshire, which is what's affecting the broader price of electricity.

So, I think it is really pointing to Senator Gatsas' issue of what's it going to be two years from now? The answer is, whatever answer you give is going to be wrong. You just don't know what it is going to be. Whichever way you go on this decision, you may feel you are a genius or slapping yourself in the head, depending on what happens in the market place. The hand of Adam Smith a couple times I felt come right up side my head. So, that is something to both be aware of and, at the same time, there are opportunities.

Senator Bob Odell, D. 8: Thank you, Mr. Dean, for your testimony. Questions from the Committee? Thank you again. I will call on Michael Giaimo. Welcome to the Committee.

Michael Giaimo: Thank you. It is nice to be here. Unlike most of the others who came before you, I am going to keep my comments based on policy. But, as a form of introduction, good afternoon, Mr. Chairman and Senators, my name is Michael Giaimo. I am Vice President of the Business & Industry Association and responsible for Energy Affairs with the Association and I appreciate the opportunity to come before you to discuss this important Senate bill.

The BIA supports SB 170. Why? Well, the answer is simple. The bill will insure low prices and stable rates well into the future for a large portion of the electricity consumers in the state.

Today, the business community feels that, given the economic climate, the most important thing in the energy arena is low rates and the BIA believes that this legislation will achieve that objective.

This bill requires PSNH to use its existing self-owned fossil and hydro power plants to supply power to their customers who do not choose an alternative energy supplier. This will result in PSNH's consumers getting lower cost while staying protected from the volatility and instability which is characteristic of today's electricity market.

Stated simply, the BIA believes that this bill makes sense. It protects PSNH's customers from price spikes and volatility and the facts that surround us today make supporting this an easy decision. The facts that make this an easy decision include: there are only a handful of retail customers in New Hampshire that have taken energy from an alternative energy supplier; many companies that are in the industry that have purchase or built power plants or traded energy have either folded or experience financial difficulty and, energy cost volatility could last indefinitely or at least until stability is reached in the Middle East.

All of these factors, coupled with PSNH's ability to produce power from a diverse and low cost fuel mix, which has helped and should continue to help keep customer energy rates low and stable, is why the BIA supports this bill.

We are confident that PSNH's assertions that they will be able to provide stable and low rates into the future are accurate, conditioned upon their ability to insure that they are able to retain their power plants. The fact that PSNH's plants operate on low-cost energy gives PSNH the ability to produce

below market and, so long as PSNH retains their plants, that benefit will be passed on to their customers, who represent 70% of the state's consumers. The state and its businesses and citizens should be afforded the benefit of PSNH's low cost production and the low rates that are attached to it.

We are confident that when the state regulators evaluate the economics and the customer benefits associated with PSNH's power plants, that it will come to the conclusion that they should be able to retain their power plants, at least in the short term. It is important to remember that, at the end of transition service, the Public Utilities Commission will protect the public regarding divestiture, expansion or retirement of the plants and will determine the appropriate next steps for PSNH's existing assets, giving consideration to the public interest. If the PUC determines that a sale would be appropriate, they would require that the plants be sold at a good price and the customers will be protected. It is also important to note that the PUC will continue to oversee and regulate PSNH's decisions regarding its power plants.

The fact that PSNH's rates are low is not the per se death of competition in New Hampshire. Rather, it just means that competitive suppliers will have a low rate to compete against. As far as the BIA is concerned, the alternative of PSNH being forced to sell their plants, resulting in higher rates, just on the off chance that there will be competition, is not an alternative at all. Forcing PSNH to sell the plants, increasing costs is a big risk without any guaranteed savings during tough economic times.

The final point I would like to make and bring to your attention is this. If you require PSNH to sell its plants now, then there is no turning back. A forced sale is irrevocable. If forced to sell, there is no guarantee that the low cost power produced in New Hampshire will actually be used by customers in the state, nor is there any guarantee that the citizens will be pay as low a price as they would if PSNH had retained their assets.

The BIA's end objective is low cost for our members.

I appreciate the opportunity to be heard on this and I will take any questions.

Please see Attachment C.

Senator Bob Odell, D. 8: Thank you very much. Questions from the Committee? Seeing none, thank you very much for your participation. I will now call on Michael Holmes of the Office of Consumer Advocate.

Attorney Michael Holmes: Thank you and good afternoon. I am Michael Holmes from the Office of Consumer Advocate. It is a state agency, a small state agency. It represents the interests of residential customers.

I guess I would like to start by saying that I supported restructuring for years and I still support restructuring and I don't want anything I say here today to mislead you. The Legislature found, six years ago, that regulation had failed to provide reasonable rates to customers. What I don't want to see us do is go back there 'cause I don't think it is going to be any different if we go back there. I am concerned about this language that seems to me to allow PSNH to again expand its assets and, whatever the cost of expanding those assets, the ratepayers would be on the hook for it, just like before. So, I am concerned about that language.

Having said that, I still think that something has to be done to give PSNH some direction and to allow PSNH to have some confidence in hanging on to its assets for some period of time. I'm not sure what that period of time is. The problem is that I don't think that we can bet, at least for the foreseeable future, that we are going to have a competitive market out there that is going to provide us the kind of energy that we expected when we started down this road. I think it is going to happen. I feel confident that it is going to happen. But, let me give you a couple of examples of some of the problems that we incurred on the path.

It has only been a few months ago that we finally ended one crisis and that's when ISO New England was looking at combining with ISO New York. Now, New York is short of power and therefore, their rates are fairly high. New England has somewhat of an excess of power and that tends to help keep the rates down in New England. So, what the two ISOs wanted to do was combine into one large regional ISO, if you will, and have the power flow to the highest bidder without, without any compensation to New England customers for making that transition. That's just within the last few months.

In the last two years, basically, the needs of ISO have staggered from one crisis to another. A lot of it has to do with FERK. Now, FERK, five months ago, was saying everybody in the country had to operate under the same rules, the exact same rules. It didn't matter what your circumstances were, what your grid looked like. Everybody had the same rules. Three months ago they changed that. Now they are going to look at regional differences, only because a lot of members of Congress got into the act and asked them why it was that they were going to be forcing regions in one part of the country to live with rules that worked appropriately in another part of the country, but not necessarily every place.

So, these are the kind of realities that I think we have come up against in trying to get to where we were headed when we deregulated. I think it is just going to take time to work these things out. You can't even be sure that we have worked out all the potential from manipulating power markets. From some of the things we saw last summer, it seems pretty clear to me that there was some manipulation, although you will find that all the folks involved are going to deny that. So, with these things going on, I think that we do need to give Public Service Company some assurances and put some money in so that it can hang onto these for some reasonable period of time until we are assured that we have a level playing field out there, that we have generation being developed, that we have a good fuel mix in the region. Until those things happen, I think it makes sense to hang onto these. When that's going to be and how we are going to determine is something that I think now is a good time for you to start looking at.

Senator Bob Odell, D. 8: Thank you very much for your testimony. Questions from the Committee members? Seeing none, thank you very much. Our last speaker, I believe, is Gary Epler from the Public Utilities Commission. Welcome to the Committee.

Attorney Gary Epler: Thank you, Mr. Chairman. Senator and members of the Committee, my name is Gary Epler; I am general counsel for the Public Utilities Commission. The Commission does not take a position on this bill at this time. We are happy to provide the Committee with any technical assistance that it requires. I do have a number of technical questions and some points I would like to raise with respect to some of the language in the bill and I would also be happy to answer any questions.

The first kind of technical issue is similar to a question that was raised by Senator Below earlier and it is whether or not the intent of this, of the provisions with respect to default service and transition service, are to override language that currently exists in 374-F:3, I believe it is Roman IV, with respect to default service and transition service being provided by the market at some period of time. If that's the case, I think it would help to maybe clarify that point.

There is also a question about the use of language in line 4 of Roman numeral II in the proposed bill that talks about the economic interest of retail customers. Currently there is a provision in RSA 374:30 where the Commission has to give its approval for any sale or transfer of a utility plant and that is under a public good standard. The question the Commission has is, is this economic interest of retail customers appears to be a new standard and if it was in the interest of the Senate to provide us with some guidance as

to how that would be applied, that might be helpful and how it compares, in contrast, to a public good standard.

There are a number of factors that a public good standard, as I think a broader standard, takes into account as compared to an economic test, which may be viewed as more narrow.

There is also some question as to the inclusion of the term expands. I think a number of other speakers have brought attention to that. While I won't raise the issue of whether or not it would be in the interest to have PSNH expand its generating assets, there is a question, however, if they were to come to the Commission for approval of expansion, in other words, to either refurbish or to build a new plant, if that is what is contemplated here. Then there is a requirement in the statute that that plant be used to provide default service. The question is whether or not that creates a certain right in the company such that if the term, if the requirement for them to provide default service in the future were to change, whether or not they would have a cross claim on that expanded generation portion. So, I think, if the Legislature is in a position to allow expansion, it should clarify whether or not there can be any expectation of a future stranded cost recovery on that expanded plant if the situation and the requirement to provide default service were to change.

Those are technical issues. I am available for any questions.

Senator Bob Odell, D. 8: Thank you for your testimony. Questions from Committee members? Seeing none, thank you very much. Are there any other people who wish to speak on this particular issue? Yes.

Lisa Shapiro: Thank you, Senator Odell. My name is Dr. Lisa Shapiro. I am Chief Economist for Gallagher, Callahan & Gartrell and we represent Granite State Electrical Company. I had not planned on testifying today, but a number of questions raised by other parties, I just wanted to make myself available to work with the Committee if you choose to fine tune the bill.

We have similar questions about what Mark Dean raised for the Coop and how it would apply to Granite State Electric. Unlike the Coop, which is unregulated by the PUC, Granite State Electric is. Our transition service ends in 2006. We would certainly hope that the market would become more competitive by then and we would have many options for our customers. If PSNH is taken out of the market, that has implications for what the state of the market is likely to be like here. That may be overall a good benefit for PSNH customers, but we want to make sure that the 39,000 customers in Charlestown, Lebanon and Salem and Pelham and throughout those two parts of the state, that we can procure a default service or whatever the state

policy will be to make sure that we can get the lowest rates for our customers as well.

So, we could be looking for clarity on how the default service should be applied; whether or not there is enough flexibility in the current statute. Perhaps we don't need a legislative solution. Perhaps the flexibility within the Granite State Electric settlement and the existing statutes, we can just work with the PUC on what to do post 2006. We are taking a look at that right now because I certainly wouldn't want a situation where we do something that secures low cost power for one part of the state, especially if it is Granite State Electric was the first utility to go to deregulation, worked very hard for lower rates. In fact, when it divested itself of all its plants, it made sure that there was a seven-year period to buy back the power. We had to fight the Enrons and the competitive suppliers because they didn't want that. Ultimately, this Legislature, in their wisdom, expanded the transition service and we were able to offer comparable rates to PSNH when you look at the total. So, we are looking forward to making sure there is flexibility going forward for those customers as well.

Senator Bob Odell, D. 8: Thank you very much for your testimony. Are there any questions from Committee members? Seeing none, thank you very much. Any other individual who cares to speak that hasn't spoken before? Does anyone who has spoken before wish to speak again? Seeing none, I will close the public hearing on SB 170.

Hearing concluded at 5:05 p.m.

Respectfully submitted,



Merideth Chandler
Senate Secretary
3/17/03

Attachment A

Robert L. Théberge, Ph.D.
NH State Representative, District 3

30 Oxford Street, Berlin, NH 03570-0271, Tel. (603) 752-5672; E-mail: rolath@ncia.net

March 4, 2003

NH State Senate
33 North State Street
Concord, NH 033301

Re: SB 170 / Letter of Support

Dear Senate "Energy & Economic Development" Committee Members:

I thank you for the opportunity to address you this afternoon. My name is Robert L. Théberge, State Representative from District 3. Prior to being elected as a State Representative, I was the City Manager in Berlin for nearly 4 years.

Friday, February 21st of this year, the City of Berlin ended its three year effort to acquire the J. Brodie Smith Hydro Facility from Public Service of New Hampshire (PSNH). The City of Berlin withdrew its petition before the state's Public Utilities Commission (PUC) to take the facility by eminent domain. PSNH, the owner of the 14.2 megawatt Smith Hydro facility had strongly opposed the City's efforts. Given the City's current economic situation most of which are related to the recent mill closing, City of Berlin officials felt that it was no longer prudent to pursue the hydro's acquisition and that the City must place its efforts on economic development. The J. Brodie Smith Hydro Facility is PSNH's jewel in the crown. While it is a run-of-the-river facility, flow levels on the river are controlled by a series of dams and lakes on the headwaters of the Androscoggin River.

In brief, the City began its effort to acquire Smith Hydro when it appeared PSNH would be forced to divest its power plants under the state's electric deregulation agreement. Early on in 2001, both Manchester and Berlin filed a joint petition to have the PUC set a fair market value for two PSNH facilities. Berlin was looking at purchasing Smith Hydro while Manchester was considering purchasing the Amoskeag plant in that city. A referendum on the City of Berlin ballot, for the acquisition of the facility passed with a 2/3rd majority of the citizens voting in favor. Shortly thereafter, the State Legislature voted to postpone until February 2004 at the earliest, the requirement that PSNH divest its generation facilities. The City's efforts were greatly weakened by the Legislature's action. Manchester

withdrew its

Rep. Théberge, SB170, 03/04/03

petition but Berlin opted to go forward taking Smith Hydro under RSA 38, or an eminent domain proceeding. The City of Berlin recently won several key legal rulings before the PUC. The commission granted the City's petition, requiring PSNH to move forward with setting a valuation for the facility.

The final cost of the City's bid to acquire the hydro facility will be close to \$260,000. It would have cost the City another \$100,000 to continue with its petition. PSNH had made it clear that it would fight tooth and nail to retain ownership.

Despite a difference of opinions, the City has always had an excellent working relationship with Public Service of New Hampshire. To the extent that the issue of Smith Hydro has never hampered PSNH and the City from working together. Both parties merely agreed to disagree. PSNH has continue its support of Berlin and has assisted with several economic endeavors such as: the Berlin Main Street Program, Northern Forest Heritage Park, the Brown Company Barn Restoration Project, local events such as Winterfest, improving NH Public Radio's signal to the North Country, to mention a few.

I am here to voice my support of SB 170. For the reasons stated below, the ability of PSNH to hold onto its generation is in the best interest of our constituents. Currently, New Hampshire is the only deregulated New England state that has retained some control over power supply and price by requiring PSNH to retain its power plants until it can no longer provide a "backstop" against high market prices. PSNH's generation is cost effective because of its diversity. By having hydro, coal, low cost fossil fuel, oil and gas, it provides a buffer against large swings in national energy trends.

Although, PSNH has not divested its generation facilities, it accounts for only 31% of the total energy generated in the state. The Seabrook facility is now owned by Florida Power & Light. Furthermore, with restructuring, the market is no longer just a NH market, it is a northeast market in which PSNH accounts for a mere 4% of the New England market. PSNH is a minor player in the New England market, why would anyone advocate selling plants only to increase electric rates?

Since deregulation, PSNH retail rates are 14% lower. Electric rates are stable today and PSNH's are competitive regionally. Its distribution system has been accessible

to competitive energy suppliers since May 2001.

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There are some among us who say that requiring PSNH to continue to own generation facilities brings to a grinding halt the intent of the Legislature when it voted to deregulate its energy market. There were three main objectives involved with deregulation, all of which were accomplished and are as follows:

- ◆ lower electric rates and as a consequence lower monthly bills;
- ◆ the achievement of competitive rates regionally to assist with job creation and economic development opportunities; and
- ◆ finally, to allow consumers a choice by providing independent energy suppliers to make use of PSNH's distribution system.

The City of Berlin was hampered with its efforts to acquire the Smith Hydro Facility when the Legislature extended the timetable for divestiture by 33 months. The City was further crippled with the recent mill closings. Cost effective measures were implemented in the hopes of keeping local property taxes in check. By allowing SB 170 to pass, the Legislature would help the City of Berlin efforts toward economic diversification and development.

In closing, I thank you for your patience and understanding and would be pleased to answer any questions you may have.

Attachment B

Testimony on SB 170

- Freedom Energy, www.freedomenergy.com, now markets electricity in ME, MA, NH.
- In NH, the two largest manufacturers in GSEC territory are Freedom's customers. We currently have a petition before the NHPUC to allow another GSEC manufacturer to buy directly from NEPOOL.
- The only large customer to have left PSNH transition is a Freedom customer. This customer is now saving over \$100k per year on electricity.

Key Points

- The NEPOOL Standard Market Design (including locational pricing), and the improvements it will bring to the wholesale electricity market, commenced operation on 3/1/03.
- Competitive suppliers purchase at wholesale from the NEPOOL Market and resell to endusers at retail.
- It is possible to have retail electricity competition without divestiture of utility generation assets.
E.g., PA & TX

PSNH Makes Substantial Purchases and Sales from and to the NEPOOL Marketplace

- Q Okay. So, if this mythical customer stays with you, you're buying power at 4.882 to serve that customer?
- A [PSNH] At the margin, yes.
- Q Yes. And, if they should leave, you're saving 4.882?
- A [PSNH] Yes.
- Q The customer no longer pays the 4.58 or -- well, 4.60, the customer doesn't pay the 4.60, and you save 4.882?
- A [PSNH] Yes. And, that's primarily driven by the fact that, with the resource mix we currently have, *we need to make some purchases during the peak hours.*

Transcript, Day 1 at 53, 54.

Impact on Competitive Markets

- PSNH is buying on peak power from the NEPOOL Market to provide Transition Service to its large customers.
- If a large customer leaves, PSNH would not have to buy this power (or could sell its excess power into the NEPOOL Market).
- The value of this power is determined by the NEPOOL wholesale market.

Suggested Language to Add to

SB 170

- ***“Any large customer leaving PSNH Transition Service shall be eligible for a bill credit equal to the costs avoided by PSNH as a result thereof; said credit shall be determined in a manner approved by the NHPUC.”***
- This approach could result in significant savings for some large customers without any cost shifting.



Business & Industry Association of New Hampshire

To promote and preserve the economic well-being of New Hampshire.

March 4, 2003

The Honorable Chairman Senator Bob O'Dell,
Senate Environment & Economic Development Committee
102 Legislative Office Building
Concord, New Hampshire 03301

RE: BIA's Comments on SB 170- Relative to Public Service of New Hampshire

Good afternoon Senators, my name is Michael S. Giaimo, and I am Vice President responsible for Energy Affairs and Policy for the Business & Industry Association of New Hampshire (BIA). I appreciate the opportunity to come before you today and discuss with you the BIA's thoughts regarding SB 170.

The BIA supports SB 170, an act relative to Public Service of New Hampshire. Why? The answer is simple, this bill will ensure low and stable rates well into the future for a large portion of the electricity consumers in the state.

Today, the business community feels that given the economic climate, the most important thing in the energy arena is low rates, and the BIA believes that this legislation will achieve that objective.

This bill requires PSNH to use its existing self-owned fossil and hydro power plants to supply power to their customers who do not choose an alternative energy supplier. This will result in PSNH's consumers getting lower cost energy while staying protected from the volatility and instability which is characteristic of today's electricity market.

Stated simply, the BIA believes that this bill makes sense. It protects PSNH's customers from price spikes and volatility. The facts that surround us today make supporting this an easy decision. These include:

- there are only a handful of retail customers in New Hampshire that have taken energy from alternative energy suppliers;
- many companies that are in the industry that have purchased or built power plants or traded energy have either folded or are experiencing financial difficulty; and
- energy cost volatility could last indefinitely, or at least until stability is reached in the Middle East.

All of these facts, coupled with PSNH's ability to produce power from a diverse and low cost fuel mix, which has helped and should continue to help keep customer energy rates low and stable, is why the BIA supports this bill.

The BIA is confident that PSNH's assertion that they will be able to provide stable and low rates into the future is accurate, conditioned on their ability to insure that they are able to retain their power plants. The fact that PSNH's plants operate on low-cost energy gives PSNH the ability to produce below market, and so long as PSNH retains their plants, that benefit will be passed on to their customers, who represent

approximately 70% of the state's consumers. The state and its businesses and citizens should be afforded the benefit of PSNH's low cost production, and the low rates that are attached to it.

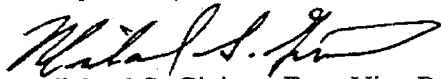
The BIA is confident that when the state regulators evaluate the economics and the customer benefits associated with PSNH's power plants that it will come to the conclusion that PSNH should be able to retain their power plants, at least in the short term. It is important to remember that at the end of "Transition Service," the Public Utilities Commission (PUC) will protect the public regarding divestiture, expansion, or retirements of the plants, and will determine the appropriate next steps for PSNH's existing assets giving consideration to the public's interest. If the PUC determines that a sale would be appropriate, they would require that the plants be sold at a good price and the customers will be protected. It is also important to note that the PUC will continue to oversee and regulate PSNH's decisions regarding its power plants.

The fact that PSNH's rates are low is not the per se death of competition in New Hampshire, rather it just means that competitive suppliers will have a low rate to compete against. As far as the BIA is concerned, the alternative of PSNH being forced to sell their plants, resulting in higher rates, just on the off chance that there will be competition is not an alternative at all. Forcing PSNH to sell their plants, increasing costs is a big risk without any guarantee savings during tough economic times.

The final point the BIA would like to bring to your attention is that if you require PSNH to sell its plants now, then there is no turning back. A forced sale is irrevocable. If forced to sell, there is no guarantee that the low cost power produced in New Hampshire will actually be used by customers in the state, nor is there any guarantee that the citizens will pay as low a price as they would if PSNH had retained the assets.

I appreciate this opportunity to offer the perspectives of the business community on this important issue. The BIA's objective is to have as low a cost as possible for energy for our members.

Respectfully submitted,



Michael S. Giaimo, Esq., Vice President
Business & Industry Association of New Hampshire

Speakers

Testimony

Amendment to SB 170

Amend the title of the bill by replacing it with the following:

AN ACT relative to transition service and the sale of PSNH generation assets.

Amend the bill by replacing all after the enacting clause with the following:

1 Electric Rate Reduction Financing; Definitions; Initial Transition Service End Day. Amend RSA 369-B:2 by striking out paragraph VII :

~~[VII. "Initial transition service end day" means 33 months after competition day.]~~

2 Authority to Issue Finance Orders to Finance RRB Costs; Cost Reconciliation. Amend RSA 369-B:3, IV(b)(1)(B-D) to read as follows:

(B) (i) Transition service for residential customers, street lighting customers, and general delivery service rate G customers shall be available until ~~[at least 24 months after initial transition service end day or as extended by the commission under RSA 374-F:3, V.] April 30, 2006.~~ From competition day until 21 months after competition day, the price of transition service for these customers shall be \$0.044 per kilowatt-hour together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component. From 21 months after competition day until ~~[initial transition service end day,] April 30, 2006,~~ the price of transition service for these customers shall be \$0.046 per kilowatt-hour together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component;

~~[(ii) From initial transition service end day to the day that PSNH ceases to provide transition service, the price of transition service shall be PSNH's actual, prudent, and reasonable costs of providing such power, as approved by the commission, together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component. Thereafter, the price of transition service, if offered, shall be the competitively bid price for transition service, or as determined under RSA 374-F:3, V(e), together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component;]~~

(iii) At the end of the transition service period, up to 25 percent of the residential customers, street lighting customers, and general delivery service rate G customers who have not chosen a competitive supplier may be assigned randomly to registered competitive suppliers other than the transition service supplier or suppliers, if the commission finds such random assignment to be in the public interest. The commission shall develop procedures and regulations for this assignment process. Any random assignment must be affirmatively approved by an individual customer;

(C) Transition service for all other customers shall be available until ~~[at least 12 months after initial transition service end day or as extended by the commission under RSA 374-F:3, V.] April 30, 2006.~~ From competition day to 21 months after competition day, the price of transition service for these customers shall be \$0.044 per kilowatt-hour together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component. From 21 months after competition day to the day that PSNH ceases to provide transition service, the price of transition service shall be PSNH's actual, prudent, and reasonable costs of providing such power as approved by the commission, together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the

price of the renewable energy component. Thereafter, the price of transition service, if offered, shall be the competitively bid price for transition service, or as determined under RSA 374-F:3, V(e), together with, for those customers choosing a renewable energy transition service option under RSA 374-F:3, V(f), the price of the renewable energy component;

(D) Any difference between the price of transition service, exclusive of the portion attributable to the renewable energy component under RSA 374-F:3, V(f), from competition day to the day that PSNH ceases to provide transition service and PSNH's actual, prudent, and reasonable costs of providing such power as determined by the commission shall first be separated between the 2 groups of customers described in subparagraphs (b)(1)(B) and (b)(1)(C), used first to offset any differences described in subparagraph (b)(1)(B), and the net then reconciled for each group of customers ~~[either]~~ by changing the recovery end date, ~~[or]~~ by decreasing the stranded cost recovery charge, *or by implementing some other form of reconciliation*, as the commission finds to be in the public interest;

i) PSNH shall be responsible for prudently managing its fossil/hydro generating assets until such time as they are sold, retired or transferred to another entity.

ii) The commission may authorize new investments in capital improvements and replacements to PSNH generation assets used to provide Transition Service and the recovery of the costs of such investments to the extent they are found to be prudent and in the public interest and provided that they do not create new stranded costs for any customer who purchases or otherwise obtains retail electric service from any entity other than from PSNH. Before commencing any proceeding to consider approving any capital investment in excess \$10 million, PSNH and the commission shall consult with the Legislative Oversight Committee on Electric Utility Restructuring.

3 Authority to Issue Finance Orders to Finance RRB Costs; Cost Reconciliation. Amend RSA 369-B:3, IV(b)(1)(F) to read as follows:

(F) The selection of a provider or providers of default service prior to ~~[24 months after initial transition service end day]~~ *April 30, 2006*, may be combined with the selection of a provider or providers of transition service to the extent that the commission finds it to be in the public interest;

4 Authority to Issue Finance Orders to Finance RRB Costs; Cost Reconciliation. Amend RSA 369-B:3, IV(b)(3)(D) to read as follows:

(D) PSNH shall absorb the first \$7,000,000 of difference of costs that results in the event that transition service costs during the 12 months following ~~[the initial transition service end day]~~ *February 1, 2004*, exceed the transition service price for that 12 months, as provided in RSA ~~369-B:3, IV(b)(1)(DB)(i)~~;

5 Sale of PSNH Generation Assets; Date. Amend 2000, 249:7, II, as amended by 2001, 29:13 to read as follows:

II. The sale of PSNH fossil and hydro generation assets shall take place no sooner than ~~[33]~~ *60* months after competition day as defined in RSA 369-B:2, III. *Prior to commencing a proceeding to authorize or order the sale of PSNH fossil or hydro generation assets the commission shall consult with the Legislative Oversight Committee on Electric Utility Restructuring.*

6 Initial Transition Service End Day; Legislative Oversight Committee on Electric Utility Restructuring Report

The legislative oversight committee on electric utility restructuring established by RSA 374-F:5 shall submit a report no later than November 1, 2004, to the governor, the speaker of the house, the senate president, the senate energy and economic development committee, the house science, technology and energy

committee, the state library, and the public utilities commission, recommending legislation to address the provision of transition service and default service subsequent to April 30, 2006. In preparing the report, the committee shall consider the amount and volatility of wholesale and retail electricity prices in New Hampshire and throughout New England; the viability and number of competitive electric suppliers providing service in New Hampshire and throughout New England for different customer classes; the risks, costs, and benefits associated with different options for all electric utilities' continued provision of transition service; and other policy options to promote competition, low-cost energy, and renewable power.

7 Effective Date. This act shall take effect 60 days after its passage.

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Energy and Economic Development

to which was referred Senate Bill 170

AN ACT relative to Public Service of New Hampshire.

VOTE: 4 to 1

2003-0888s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Clifton Below
For the Committee