

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2013 TERM

Docket No: \_\_\_\_\_

APPEAL OF PSNH RATEPAYERS

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APPENDIX TO APPEAL BY PETITION  
PURSUANT TO RSA 541:6 AND  
NEW HAMPSHIRE SUPREME COURT RULE 10

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**APPENDIX TO APPEAL BY PETITION  
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NEW HAMPSHIRE SUPREME COURT RULE 10**

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1 STATE OF NEW HAMPSHIRE  
 2 PUBLIC UTILITIES COMMISSION  
 3  
 4 December 18, 2012 - 10:12 a.m.  
 5 Concord, New Hampshire  
 6 RE: DE 12-292  
 7 PUBLIC SERVICE OF NEW HAMPSHIRE:  
 8 2013 Default Energy Service Rate.  
 9  
 10 PRESENT: Chairman Amy L. Ignatius, Presiding  
 11 Commissioner Robert R. Scott  
 12 Commissioner Michael D. Harrington  
 13  
 14 Sandy Deno, Clerk  
 15  
 16 APPEARANCES: Reptg. Public Service of New Hampshire:  
 17 Matthew J. Fossum, Esq.  
 18 Reptg. Residential Ratepayers:  
 19 Susan W. Chamberlin, Esq., Consumer Advocate  
 20 Stephen Eckberg  
 21 Office of Consumer Advocate  
 22 Reptg. PUC Staff:  
 23 Suzanne G. Amidon, Esq.  
 24 Steven E. Mullen, Asst. Dir./Electric Div.  
 Court Reporter: Steven E. Patnaude, LCR No. 52

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1 EXHIBITS  
 2  
 3 EXHIBIT NO. DESCRIPTION PAGE NO.  
 4 1 2013 Default Energy Service Rate 7  
 5 filing, including the Testimony  
 6 of Robert A. Baumann, with  
 7 attachments (09-28-12)  
 8 2 PSNH Joint Technical Statement and 9  
 9 updated exhibit of Robert A. Baumann  
 10 and Frederick B. White, including  
 11 updated attachments (12-12-12)  
 12 3 PSNH Retail Revenue by Rate Class 11  
 13 and Unbundled Component at the Rate  
 14 Levels Effective July 1, 2012, Based  
 15 on Actual Sales for the 12 Months  
 16 Ending December 2009, as Performed  
 17 for the Permanent distribution Rate  
 18 Case (DE 09-035), etc. (5 pages)  
 19 4 Direct Testimony of Stephen R. 66  
 20 Eckberg, including attachments  
 21 (11-21-12)  
 22 5 PSNH Response to OCA Data 67  
 23 Request 01-002  
 24 6 RESERVED (Record Request re: PSNH 85  
 Least Cost Integrated Resource  
 Plan response)  
 7 RESERVED (Response from OCA 85  
 regarding the Exhibit 6 submission,  
 if necessary)  
 8 RESERVED (Response from PUC Staff 85  
 regarding the Exhibit 6 submission,  
 if necessary)  
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1 PROCEEDING  
 2 CHAIRMAN IGNATIUS: Good morning. I'd  
 3 like to open the hearing in Docket DE 12-292. This is  
 4 Public Service Company of New Hampshire's 2013 Default  
 5 Energy Service rate. The Company filed a petition to set  
 6 the ES rate on January 1, 2013, that has since been  
 7 revised with a filing submitted on December 12th, 2012.  
 8 We issued an order of notice to address the case, and have  
 9 received no intervention requests, other than the notice  
 10 from the Office of Consumer Advocate that it would be  
 11 participating.  
 12 So, let us begin first with appearances.  
 13 Mr. Fossum.  
 14 MR. FOSSUM: Good morning. Matthew  
 15 Fossum, for Public Service Company of New Hampshire.  
 16 CHAIRMAN IGNATIUS: Good morning.  
 17 MS. CHAMBERLIN: Susan Chamberlin,  
 18 Consumer Advocate, for the residential ratepayers. With  
 19 me is Steve Eckberg.  
 20 CHAIRMAN IGNATIUS: Good morning.  
 21 MS. AMIDON: Good morning. Suzanne  
 22 Amidon, for Commission Staff. And, to my left is Steve  
 23 Mullen, the Assistant Director of the Electric Division.  
 24 CHAIRMAN IGNATIUS: Good morning. I  
 {DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall]

5

1 understand we have a panel of witnesses this morning. Are  
2 there any procedural matters to take up before we begin  
3 with evidence?  
4 (No verbal response)  
5 CHAIRMAN IGNATIUS: It appears there are  
6 none. So, I'll ask the court reporter to swear the  
7 witnesses.  
8 (Whereupon Robert A. Baumann,  
9 Frederick B. White, and Stephen R. Hall  
10 were duly sworn by the Court Reporter.)  
11 ROBERT A. BAUMANN, SWORN  
12 FREDERICK B. WHITE, SWORN  
13 STEPHEN R. HALL, SWORN  
14 DIRECT EXAMINATION

15 BY MR. FOSSUM:

16 Q. And, even though we just did this, we'll do it again.  
17 We'll start with Mr. Baumann and work down from there.  
18 Mr. Baumann, can you state your name and place of  
19 employment for the record?  
20 A. (Baumann) My name is Robert Baumann. I'm employed by  
21 Northeast Utilities Service Company, in Berlin,  
22 Connecticut. And, I'm the Director of Revenue  
23 Requirements for New Hampshire and Massachusetts.  
24 Q. And, have you previously testified before this  
{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall]

7

1 your knowledge and belief today?  
2 A. (Baumann) Yes.  
3 MR. FOSSUM: I'd like to offer as  
4 "Exhibit 1" for identification the September 28th filing.  
5 CHAIRMAN IGNATIUS: So marked.  
6 (The document, as described, was  
7 herewith marked as Exhibit 1 for  
8 identification.)  
9 BY MR. FOSSUM:  
10 Q. Mr. Baumann, could you very briefly summarize what was  
11 in that testimony.  
12 A. (Baumann) The September 28th filing supported with  
13 schedules an initial Energy Service rate proposed for  
14 2013 of 8.97 cents per kilowatt-hour. And, that Energy  
15 Service rate was an increase from the current rate that  
16 is being billed of 7.11 cents per kilowatt-hour that  
17 will end in December. That increase was driven by a  
18 few factors. Primarily, a large credit that is in the  
19 current 7.11 cents will have been refunded by December.  
20 That's going away. And, then, we have an increase in  
21 market prices in the fourth quarter of 2012, and  
22 projected into 2013. And, those increase in market  
23 prices are also driving up the rate. And, in the 7.11  
24 cents, we also had a one-time sale of oil of  
{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall]

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1 Commission?  
2 A. (Baumann) Yes.  
3 Q. And, Mr. Hall, could you state your name and place of  
4 employment for the record please.  
5 A. (Hall) My name is Stephen R. Hall. I am Manager-New  
6 Hampshire Revenue Requirements for PSNH.  
7 Q. And, have you previously testified before this  
8 Commission?  
9 A. (Hall) Yes, I have.  
10 Q. And, finally, Mr. White, could you state your name and  
11 place of employment for the record please.  
12 A. (White) Frederick White. I'm employed by Northeast  
13 Utilities Service Company. I'm a Supervisor in the  
14 Energy Supply Department.  
15 Q. And, Mr. White, have you previously testified before  
16 this Commission?  
17 A. (White) Yes, I have.  
18 Q. Now, Mr. Baumann, on September 28th, did you -- or, did  
19 you file prefiled testimony in this docket?  
20 A. (Baumann) Yes.  
21 Q. And, do you have any changes, corrections or updates to  
22 the testimony that you filed on September 28th?  
23 A. (Baumann) No.  
24 Q. And, is that testimony true and accurate to the best of  
{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall]

8

1 approximately \$8 million, which was, in effect, a  
2 credit in the existing rate, which was also a one-time  
3 credit. So, that's going away. So, all of those  
4 factors, combined with a slight increase in migration,  
5 has driven the Energy Service rate as proposed up from  
6 the current rate.  
7 Q. And, Mr. Baumann, did you prepare a technical statement  
8 and update in this docket?  
9 A. (Baumann) Yes.  
10 Q. And, that was a joint technical statement with Mr.  
11 White, is that correct?  
12 A. (Baumann) Yes. That was the one that was filed on  
13 December 12th.  
14 Q. And, that was -- and, that was filed on December 12th  
15 in this docket with this Commission?  
16 A. (Baumann) That's correct.  
17 Q. And, do you have any changes or updates to that filing  
18 at this time?  
19 A. (Baumann) No, I do not.  
20 Q. And, the information in that filing is true and  
21 accurate to the best of your knowledge and belief  
22 today, is that correct?  
23 A. (Baumann) Yes.  
24 MR. FOSSUM: I would like to offer as  
{DE 12-292} {12-18-12}

1 "Exhibit 2" for identification the technical statement of  
2 December 12th.

3 CHAIRMAN IGNATIUS: So marked.  
4 (The document, as described, was  
5 herewith marked as Exhibit 2 for  
6 identification.)

7 BY MR. FOSSUM:

8 Q. And, Mr. Baumann or Mr. White, who may be appropriate,  
9 can you describe very briefly what updates or changes  
10 are in that technical statement?

11 A. (Baumann) Well, in the December 12th filing, we filed a  
12 final updated proposed ES rate effective in  
13 January 2013 of 9.54 cents. That is up from the  
14 September rate of 8.97 cents, which was our initial  
15 filing, primarily due to increase in market prices for  
16 that time period. The rates contain the same cost and  
17 cost detail analysis that was contained in the  
18 September rate, just updated for market prices, and  
19 actual known costs for September and October as well.

20 Q. I have one other exhibit. I believe Mr. Hall will be  
21 the witness for this. Mr. Hall, I'm handing you a copy  
22 of a document. Can you please very briefly describe  
23 what that document is?

24 A. (Hall) Certainly.

{DE 12-292} {12-18-12}

1 CHAIRMAN IGNATIUS: All right. And, do  
2 the parties have copies of this?

3 MS. CHAMBERLIN: Yes.

4 CHAIRMAN IGNATIUS: All right. Then,  
5 let's mark it as "Exhibit Number 3" for identification.

6 (The document, as described, was  
7 herewith marked as Exhibit 3 for  
8 identification.)

9 CHAIRMAN IGNATIUS: Please proceed.

10 MR. FOSSUM: Thank you.

11 BY MR. FOSSUM:

12 Q. With that identification, please, Mr. Hall, continue  
13 with your description of the document.

14 A. (Hall) Sure. This is an exhibit that we've presented  
15 in the last three or four Energy Service and Stranded  
16 Cost Recovery Charge proceedings. And, the purpose of  
17 the exhibit is basically to show what current rates are  
18 and what we're proposing, and the impact of all of the  
19 changes, so that the Commission can get a feel for what  
20 we're proposing and what the result would be.

21 The first page shows PSNH's overall  
22 average rate level expressed in cents per  
23 kilowatt-hour, by rate component. Rate component is  
24 distribution, transmission, Stranded Cost Charge, and  
{DE 12-292} {12-18-12}

1 (Atty. Fossum distributing documents.)

2 BY MR. FOSSUM:

3 Q. Whenever you're ready.

4 A. (Hall) This is a document that summarizes the rate  
5 changes that we're proposing, both in this docket and  
6 in the Stranded Cost Recovery Charge docket that was  
7 held -- the hearing was held this morning, that was DE  
8 12-291. This exhibit we have --

9 Q. Hold on just a moment.

10 A. (Hall) Whoops.

11 Q. Thank you. I just wanted a brief description.

12 MR. FOSSUM: So, I would like to mark  
13 then for identification as "Exhibit 3" the rate comparison  
14 sheet that Mr. Hall has just described.

15 CHAIRMAN IGNATIUS: Before we mark it,  
16 let me make certain that this accurately reflects what we  
17 just heard in the prior hearing. Is the Stranded Cost  
18 Recovery Charge changed to accommodate the mistake that  
19 was discovered in the rate that was submitted before?

20 MR. FOSSUM: That is not reflected in  
21 this document.

22 WITNESS HALL: But I think I can provide  
23 -- I did some quick calculations, and I think I can  
24 provide at least some summary information.

{DE 12-292} {12-18-12}

1 so on. Those are the columns. And, the rows are the  
2 various classes of customers: Residential, General  
3 Service Rate G, Rate GV, and so on. So, that's a  
4 snapshot of where we are today.

5 If you go to the next page, the next  
6 page shows what the proposed rate levels are for each  
7 of those components. And, in this case, the only  
8 numbers that are changing from what was on Page 1 are  
9 numbers in the "SCRC" column and in the "Energy  
10 Service" column. Now, as we talked about just a few  
11 minutes ago, if you look at the bottom line of the  
12 "SCRC" column, it still says "0.67 cents" or "\$0.0067".  
13 We've now amended that request to "0.00737" for an  
14 overall average SCRC rate. I haven't had time to go  
15 through and recalculate all of the numbers. We can do  
16 so, and file this later today or first thing tomorrow.

17 CHAIRMAN IGNATIUS: Okay.

18 BY THE WITNESS:

19 A. (Hall) With the change to the SCRC number, in the  
20 bottom line, if you look at the far right-hand side,  
21 the "Total Revenue" column, bottom line, instead of  
22 "16.115 cents", that should be "16.182 cents". So,  
23 again, Page 2 is basically a spreadsheet that shows  
24 where we would be if our proposals today, and in the

{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall] 13

1 docket earlier this morning, were approved by the  
2 Commission.

3 The third page shows the change between  
4 Page 1, today's rates, and Page 2, the proposed rates  
5 for effect January 1st. And, as you can see, the only  
6 columns that change are the "SCRC" column and the  
7 "Energy Service" column. And, again, the bottom line  
8 of that "SCRC" column, instead of a "negative 0.01210",  
9 with our revised proposal in the earlier docket, that  
10 should be a "negative \$0.01142" per kilowatt-hour.

11 CHAIRMAN IGNATIUS: Can you do that  
12 number again please?

13 WITNESS HALL: Sure. Replace "0.1210"  
14 with "0.01142", or 1.142 cents.

15 BY THE WITNESS:

16 A. (Hall) Going to the far right-hand column, the "Total  
17 Revenue" column, replace the bottom line, the  
18 "0.01220", that should be a "\$0.01288" per  
19 kilowatt-hour, or 1.288 cents.

20 CHAIRMAN IGNATIUS: I'm sorry, I got  
21 lost.

22 WITNESS HALL: Okay.

23 CHAIRMAN IGNATIUS: Tell me again why  
24 the SCRC number -- oh, I'm sorry it says there's a  
{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall] 15

1 Cost Charge decrease that we're proposing, on average,  
2 would result in a 7.67 percent overall bill decrease,  
3 if you will. And, the "Total Revenue" column,  
4 "8.19 percent", that should also be "8.64 percent".  
5 And, we will revise these, and we can submit them very  
6 quickly.

7 CHAIRMAN IGNATIUS: Thank you.

8 BY THE WITNESS:

9 A. (Hall) Yes. The "Total Revenue" column, that  
10 represents an overall rate change, assuming customers  
11 are taking Energy Service rates. We have to somehow  
12 make an assumption as to what the Energy Service  
13 portion of the customer's bill will be. Since we don't  
14 know what customers are paying competitive suppliers,  
15 customers who don't take Energy Service from PSNH, we  
16 make a simplifying assumption for the purpose of this  
17 calculation, assuming that all customers do take Energy  
18 Service from PSNH. And, therefore, we come up with the  
19 total revenue percent changes shown in that "Total"  
20 column.

21 BY MR. FOSSUM:

22 Q. Just very briefly, I just wanted to ask one other  
23 question. In a prior ES docket, the Commission had  
24 requested that PSNH produce a report of certain  
{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall] 14

1 difference. I got it.

2 WITNESS HALL: Yes.

3 BY THE WITNESS:

4 A. (Hall) The third page of the attachment -- I'm sorry,  
5 the fourth page of the attachment, shows the percent  
6 changes that we're proposing by rate component. So, if  
7 you look at the bottom line of the "Stranded Cost  
8 Recovery Charge" column, instead of "negative  
9 64.38 percent", that ought to be "negative 60.78  
10 percent". And, what that means is, the change that  
11 we're proposing in just the Stranded Cost Recovery  
12 Charge portion of rates, from "1.879 cents" on Page 1,  
13 to "0.737 cents" on Page 2, that's a decrease of  
14 60.78 percent in that one component of rates. And, of  
15 course, the "Total Revenue" column should also change,  
16 from "8.19 cents" to "8.64 percent" -- I should have  
17 said "8.19 percent" to "8.64 percent".

18 The last page also shows percent  
19 changes. But, instead of percent changes to individual  
20 rate component, it shows percent change to overall  
21 revenue level. So, let's first make the correction to  
22 the "SCRC" bottom line amount, instead of a "negative  
23 8.12 percent", that ought to be "negative  
24 7.67 percent". And, what that says is, the Stranded  
{DE 12-292} {12-18-12}

[WITNESS PANEL: Baumann-White-Hall] 16

1 generation-related information. Has PSNH produced that  
2 report?

3 A. (Baumann) Yes, we have.

4 Q. And, has that been filed in this docket?

5 A. (Baumann) Yes. It was filed in a letter dated December  
6 12th, 2012, under Docket 12-292, which is this docket.

7 Q. Oh. And, one --

8 A. (Baumann) It's a separate filing.

9 Q. Yes. One last question I had, regarding Exhibit 2, the  
10 technical statement, just as a point of clarification.  
11 In the technical statement, there's a reference to the  
12 Rate ADE, in Docket DE 11-216. Is the Company  
13 requesting anything relative to that docket in this  
14 docket?

15 A. (Baumann) No, we are not. We just put that in for  
16 perspective, as the paragraph states.

17 MR. FOSSUM: Thank you. Just wanted to  
18 make that clear. I have no further direct.

19 CHAIRMAN IGNATIUS: Thank you.

20 Ms. Chamberlin.

21 MS. CHAMBERLIN: Thank you.

22 CROSS-EXAMINATION

23 BY MS. CHAMBERLIN:

24 Q. Mr. Hall, to follow up on Exhibit 3, when you talked  
{DE 12-292} {12-18-12}

1 about the assumptions that you're making for customers  
 2 taking the ES rate, when you referred to "all  
 3 customers", who is that?  
 4 A. (Hall) It's all customers taking delivery service.  
 5 Q. Today?  
 6 A. (Hall) Yes.  
 7 Q. Today? Right now, you've got some customers that have  
 8 migrated and some that have not.  
 9 A. (Hall) Correct.  
 10 Q. Are you talking about all those collectively or are you  
 11 just talking about the customers that have stayed?  
 12 A. (Hall) The former.  
 13 Q. All customers collectively?  
 14 A. (Hall) Yes. And, again, the reason that we make the  
 15 assumption is we're trying to demonstrate what the  
 16 overall rate change amount would be that we're  
 17 proposing on customer's bill amounts. If a customer  
 18 isn't taking Energy Service from us, we don't know what  
 19 they're paying for their Energy Service rates. I mean,  
 20 they're all different. So, in order to try to demon --  
 21 in order to try to show an approximate average percent  
 22 increase in total bill amounts from what we're  
 23 proposing, we have to make some sort of assumption for  
 24 the amount that they pay for Energy Service. And,  
 {DE 12-292} {12-18-12}

1 calculation is for illustration.  
 2 Q. It has no actual rate impact?  
 3 A. (Hall) No.  
 4 Q. Oh.  
 5 A. (Hall) No. Exhibit 3 is just illustrative, to try to  
 6 show the impact of all of the changes.  
 7 Q. All right. Then, let me go back to the Joint Technical  
 8 Statement and go through your major drivers of the  
 9 changes. Number 1, you talk about "higher forward  
 10 electric market prices". What are the major drivers  
 11 increasing the prices?  
 12 A. (White) The major drivers in the forward market prices?  
 13 Q. Right. Why do you project that they're going up?  
 14 A. (White) Well, we don't project. Those are -- those are  
 15 publicly provided prices from brokers in the market.  
 16 So, it's not unlike quotes on the New York Stock  
 17 Exchange, is at the end of the day there are publicly  
 18 published results of the trading day for transactions  
 19 for electricity in New England in forward months. And,  
 20 through time, as market conditions change, major  
 21 drivers being weather forecasts and gas price forecast,  
 22 natural gas price forecast, as the dynamics change due  
 23 to those factors, what people are willing to buy and  
 24 sell energy for in the future changes through time.  
 {DE 12-292} {12-18-12}

1 without any other information available, all we assume  
 2 is that they would pay PSNH's Energy Service rate.  
 3 Q. So, for the Energy Service rate, it's an actual -- it's  
 4 an actual cost?  
 5 A. (Hall) Yes.  
 6 Q. Because the whole transmission rate has all of these  
 7 variable components, but you're not talking about  
 8 those. You're just talking about the actual market  
 9 components?  
 10 A. (Hall) I'm not quite following your question.  
 11 Q. Well, I just -- let me get at it another way, perhaps.  
 12 I was looking at your December 12th filing. And, you  
 13 had -- it's the Joint Technical Statement, Section C,  
 14 and you're going over the changes. And, in Line 4 you  
 15 talk about -- I mean, in Line 5 on, I don't know what  
 16 this -- the page number is not given, you talk about  
 17 "an increase in migration from 40 to 42 percent."  
 18 A. (Hall) Uh-huh.  
 19 Q. And, I'm just not understanding why you don't reflect  
 20 that in this particular total revenue calculation?  
 21 A. (Hall) Because you'd get some pretty unusual results.  
 22 Q. Well, I must be looking at apples and oranges. Tell me  
 23 what I've done wrong.  
 24 A. (Hall) Yes. The only purpose of this total revenue  
 {DE 12-292} {12-18-12}

1 So, we monitor those markets. And, generally speaking,  
 2 that's -- those are accepted assumptions for the price  
 3 of power going forward.  
 4 Q. And, do you have a single source or is this a composite  
 5 of various sources that you put together?  
 6 A. (White) There are multiple sources. And, they all  
 7 essentially arrive at the same answer at the end of  
 8 every day. We get what are referred to as "broker  
 9 sheets" from a couple of different brokers, and, in  
 10 addition, NYMEX publishes electronically results from  
 11 their trading days.  
 12 Q. Okay. Going to Line 2, you've got Newington generation  
 13 decreasing. This is the Newington gas plant, and it's  
 14 decreasing because the gas prices are going higher?  
 15 A. (White) Yes. It's a dual-fired capability plant. But,  
 16 generally, in these times, it's on -- it's fired by  
 17 gas. And, what happened is, although market energy  
 18 prices increased, gas prices, its fuel, increased more.  
 19 So, its relative economics decreased slightly, and it  
 20 generated a bit less.  
 21 Q. And, Line 3 simply follows that, it's the IPP prices  
 22 are based on market prices, they are now going up, as  
 23 we discussed in the last docket?  
 24 A. (White) Correct. Those are in the ES rate at market  
 {DE 12-292} {12-18-12}



21

[WITNESS PANEL: Baumann-White-Hall]

1 prices.

2 Q. Line 4, you talk about "higher coal generation and

3 lower loads". Can you explain that a little more

4 fully?

5 A. (White) Well, on the "higher coal generation", which I

6 believe is Item 1 in this list of changes, since market

7 prices increased, the amount of energy provided from

8 our coal-fired generating fleet has increased. At the

9 same time, migration has increased. So, it's lowered

10 the overall load, the energy requirements to serve

11 load. The combination of those factors roughly equals

12 the "407 gigawatt-hours" noted in Item 4, adjustments

13 to market energy purchases.

14 Q. So, this projection for the next year doesn't take into

15 account a plant being shut down, this assumes a plant

16 continuing to operate?

17 A. (White) Well, it takes into account periods when

18 generating plants are on "economic reserve" status.

19 Q. Which is simply not operating, but still available to

20 operate?

21 A. (White) Yes.

22 Q. So, all I'm getting at is that you've made this

23 assumption that this plant is operating, it's going to

24 operate a little bit more, maybe not a lot more, but

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23

[WITNESS PANEL: Baumann-White-Hall]

1 modeled an assumption into the rate that could in and

2 of itself impact migration. If we assumed increasing

3 migration, the rate would be higher, that would drive

4 further migration. If we assumed less, it would lower

5 the rate, that could drive reverse migration. So, we

6 feel it's best to use the figure, actual data that we

7 know, the latest available, at the time of the

8 forecast.

9 Q. One way to stop or slow migration would be to lower

10 your prices, correct?

11 A. (White) A lower rate you would believe would tend to

12 stop or slow migration, or reverse it.

13 Q. Which you're not proposing in this docket?

14 A. (White) No, we're not.

15 Q. From historic numbers, looking at migration, has the

16 curve gone up, down, up, you know, wavered, from the

17 past to the present?

18 A. (White) There are -- there's a monthly variation to

19 this migration statistic. It's not continually

20 increasing. It goes up and down some. The general

21 slope of migration over the past three years has been

22 positive, which perhaps is what you're getting at. In

23 2012, the rate of migration is a bit higher than it was

24 in 2011. So, that slope is a little higher. Is

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22

[WITNESS PANEL: Baumann-White-Hall]

1 that's your projection for the year?

2 A. (White) Correct.

3 Q. Did you include the Berlin Plant coming on line? Is it

4 the Laidlaw Plant? He's telling me the proper name is

5 the "Berlin BioPower Plant"?

6 A. (White) We have not included the assumption that that

7 will be on line in the fall. We're aware that's the

8 current projection. We haven't made the assumption

9 that that's going to come to pass. It may well, but

10 schedules, construction schedules can change

11 dramatically through time. It's far enough out that we

12 have not included that in this forecast.

13 Q. In terms of customer migration, on Line 5, you have the

14 increase from "40 to 42.5 percent". Do you, in your

15 projection, does that line continue to go up or does it

16 flatten at about 42 percent?

17 A. (White) In this forecast, for the proposed 2013 rate,

18 42 percent is the assumed migration throughout 2013.

19 Q. And, you're not looking beyond that, you're just

20 looking at 2013?

21 A. (White) Well, this is a 2013 ES rate docket. So, in

22 that context, no, we're not looking beyond 2013. Some

23 of the thinking with that is that, if you were to

24 assume increasing or decreasing migration, you've

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24

[WITNESS PANEL: Baumann-White-Hall]

1 that --

2 Q. That's what I was getting at. Yes.

3 A. (White) Just to add one point. I mentioned the

4 "monthly variation", in fact, that statistic decreased

5 a bit through November. We now have available actual

6 data through November, and it dropped to below

7 42 percent. So, there are -- it does vary a bit on a

8 monthly basis.

9 Q. One of the other points, are we on number -- number 7,

10 we're talking about increases to Schiller 5, "Other

11 forecasted changes totaling a net 1.3 million". Are

12 you with me?

13 A. (White) Yes.

14 Q. Can you explain the updates to Schiller 5?

15 A. (White) The update to Schiller 5 has to do with the

16 credit to customers based on the value of Class I RECs

17 that are sold, generated by Schiller 5 and sold in the

18 market. And, the assumed price at which those sales

19 would occur was lowered slightly in this forecast. So,

20 the credit to customers is a little bit less than in

21 the prior forecast.

22 Q. "Congestion and losses" is the next issue?

23 A. (White) The primary component of that is the cost to

24 move output from our coal fleet, from their price nodes

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1 at their locations to the New Hampshire load zone,  
 2 which is the price that load sees. There's a small  
 3 price separation, and with -- and it's an overall cost,  
 4 it's an added cost, with higher generation that cost  
 5 has increased somewhat.

6 Q. Are there plans to improve the transmission to lower  
 7 that increasing price?

8 A. (White) The transmission topography is always changing.  
 9 Maintenance and projects are always in play. I don't  
 10 believe we're aware of any that would dramatically  
 11 change the relationship we've seen.

12 Q. The "ISO ancillary and expenses", what makes that?

13 A. (White) That component actually decreased. And,  
 14 essentially, those are ratable components. And, with  
 15 less load, there are administrative charges from  
 16 ISO-New England that are charged off to load, that  
 17 we've modeled a little less load in this forecast,  
 18 those costs have gone down.

19 Q. And, is that the same with the "RGGI expenses", if you  
 20 modeled less load, the expenses go up?

21 A. (White) No.

22 Q. Oh. All right.

23 A. (White) RGGI expenses are actually based on generation  
 24 output at our coal fleet and Newington, and the coal  
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1 MR. MULLEN: Good morning.  
 2 WITNESS BAUMANN: Good morning.  
 3 BY MR. MULLEN:  
 4 Q. Sticking with the REC issue for a moment, with respect  
 5 to Massachusetts, could you explain, Mr. White, the  
 6 changes for 2013 and how that impacts the sale? And,  
 7 for the next couple of years or so after that, what, if  
 8 anything, may change beyond that?

9 A. (White) I'm going to qualify my statements up front  
 10 that I'm not an expert on this. And, if what I provide  
 11 isn't sufficient, there are others in the room who  
 12 could probably provide more detail. Massachusetts has  
 13 changed their REC regulations in that, for the output  
 14 from biomass facilities to qualify in Massachusetts,  
 15 they have made the requirement stricter. And, my  
 16 understanding is, it's based on an addition to how the  
 17 wood is harvested, the type of wood, and even soil  
 18 composition. The impact on us is that we believe that  
 19 we -- we acquire wood for burning at Schiller 5 from  
 20 many different suppliers. And, some of the fuel  
 21 supplied will qualify, some of it won't. We believe it  
 22 will be less than 50 percent of what we buy as fuel  
 23 will qualify in Massachusetts. Therefore, as discussed  
 24 previously, we'll sell the other output into other  
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1 fleet producing more energy, moves RGGI costs up.

2 Q. Okay. On the Class I RECs, there were changes in the  
 3 Massachusetts definition of a "REC". Does that affect  
 4 your ability to count on those revenues coming out of  
 5 Massachusetts?

6 A. (White) It would affect our ability to make sales into  
 7 Massachusetts. However, there are other markets out  
 8 there to sell into, New Hampshire, Rhode Island, we  
 9 have transacted in those markets in the past. They  
 10 will be available in the future. In addition, we  
 11 intend to sell into Connecticut markets as well. So,  
 12 it's true that some of our RECs will not qualify in  
 13 Massachusetts markets anymore, but there are other  
 14 outlets to make those sales.

15 Q. So, this is a regional market, the New England region,  
 16 essentially?

17 A. (White) Yes.

18 MS. CHAMBERLIN: That's all I have.  
 19 CHAIRMAN IGNATIUS: Thank you. Ms.  
 20 Amidon.  
 21 MS. AMIDON: Thank you. I ask that  
 22 Steve Mullen be permitted to conduct the cross. Thank  
 23 you.  
 24 CHAIRMAN IGNATIUS: That's fine.  
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1 markets.  
 2 There's been a little price separation  
 3 seen in the markets, in that Class I RECs, in  
 4 Massachusetts, their price has increased a bit relative  
 5 to Class I RECs in other markets. In addition to that,  
 6 the Mass. regs are changing efficiency requirements  
 7 effective in 2016. And, Schiller 5 output will not  
 8 qualify under those stricter efficiency standards.

9 Q. But, with that, you currently still expect to be able  
 10 to sell those RECs, as you mentioned, in New Hampshire  
 11 and Rhode Island? And, are you certified yet in  
 12 Connecticut?

13 A. (White) I believe that's in process. That's subject to  
 14 check. I don't believe we are yet.

15 Q. Okay.

16 A. (White) But, yes. Yes. The price assumptions in this  
 17 forecast are from the broker sheets from the markets  
 18 we've been talking about. And, there hasn't been a  
 19 decrease in the market assumptions for the value of  
 20 RECs. As I said, the only change has been the  
 21 Massachusetts RECs have increased slightly. So, for a  
 22 portion of our output, it may actually have a little  
 23 bit more value, to the extent we can still sell into  
 24 Massachusetts.  
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[WITNESS PANEL: Baumann-White-Hall]

1 Q. Overall, in terms of not just Class I, but for the  
 2 various classes of RECs, do you see PSNH's costs  
 3 increasing going forward?  
 4 A. (White) In out years?  
 5 Q. We'll start with 2013, and then beyond that.  
 6 A. (White) Well, I guess, yes. I mean, the market is  
 7 designed, I think, that prices will increase, the  
 8 requirements for the various classes are typically --  
 9 the volume necessary is typically a percent of load.  
 10 And, those percentages increase every year, at varying  
 11 rates for the different classes. In addition, the  
 12 Alternative Compliance Payment is indexed to CPI. So,  
 13 absent a physical sale or purchase, the rate that's  
 14 applied is a rate that increases through time,  
 15 presumably as the CPI increases. So, costs would go up  
 16 through time, I think, by design.  
 17 Q. And, that's essentially, all else being equal, assuming  
 18 like your load stayed the same, if your load were to  
 19 decrease, then, of course, your percentage of that load  
 20 that you have to pay in -- that you would have to  
 21 acquire RECs would also change accordingly?  
 22 A. (White) That's correct.  
 23 Q. So, it's kind of a trade-off from one to the other?  
 24 A. (White) Yes. I was speaking more in terms of a rate.  
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[WITNESS PANEL: Baumann-White-Hall]

1 capacity factor was decreasing in our projections, when  
 2 based on a monthly average view. So, we've, this year,  
 3 implemented a more rigorous dispatch algorithm for the  
 4 Schiller plants based on a daily dispatch, to, we feel,  
 5 more accurately represent its expected operation during  
 6 2013. So, it's a more detailed dispatch algorithm.  
 7 Q. Mr. Baumann, if you could turn to Exhibit 2, and I'm  
 8 looking at Attachment RAB-2, Page 7. And, this is  
 9 showing detail of wood IPP purchases. We had some  
 10 discussion of the Wood IPPs in the prior proceeding  
 11 this morning, and I wanted to just touch base on this a  
 12 little bit.  
 13 CMSR. SCOTT: Mr. Mullen, can you tell  
 14 us where we are again?  
 15 MR. MULLEN: Sure. I'm on Attachment  
 16 RAB-2, Page 7, of Exhibit Number 2. It should have at the  
 17 top, the top right corner should say "Docket Number DE  
 18 12-292". And, this should be a spreadsheet that has  
 19 detail of wood IPP purchases for the year 2013.  
 20 CMSR. SCOTT: Just for clarity sake,  
 21 that's "RAB-4", correct? "Attachment RAB-4"?  
 22 MR. MULLEN: No. I'm looking at RAB-2,  
 23 Page 7.  
 24 CMSR. SCOTT: Got it. Thank you.  
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[WITNESS PANEL: Baumann-White-Hall]

1 But, in terms of dollars, absolutely, your load volume  
 2 would have a large impact on the dollar amount.  
 3 Q. In terms of, and I don't know if you could address  
 4 individually, the Newington and Schiller and Merrimack  
 5 Station, how the planning assumptions for those may  
 6 have changed for purposes of this filing, as compared  
 7 to the past?  
 8 A. (White) Okay. I'll start with Newington, which the  
 9 planning assumptions for Newington are essentially  
 10 unchanged, compared to previous projections. Newington  
 11 is a gas-fired utility. Gas is the most economic fuel  
 12 currently, and has been for the last few years. So,  
 13 our approach for modeling Newington really hasn't  
 14 changed.  
 15 With regard to Merrimack, not a lot of  
 16 change there. We adjust -- we adjust months during  
 17 which they will operate, based on changes in forward  
 18 market prices. And, given different forward prices,  
 19 the pattern of generation changes, as we've seen from  
 20 our September projection to now. And, we typically  
 21 view Merrimack dispatch on either a monthly or a weekly  
 22 basis. That hasn't changed a whole lot.  
 23 With regard to Schiller, as our fuel  
 24 stock for Schiller has increased a bit, and its  
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[WITNESS PANEL: Baumann-White-Hall]

1 MR. MULLEN: Okay.  
 2 BY MR. MULLEN:  
 3 Q. Mr. Baumann, looking at this, if I was to look at the  
 4 first set of horizontal lines that are labeled  
 5 "Generation - Megawatt-Hours", and starting in the  
 6 months where the zeros show, does that mean that those  
 7 contracts will be ending in the prior month?  
 8 A. (Baumann) Yes.  
 9 Q. So, as we look through the end of 2013, looks like  
 10 there's only one of those contracts that's still in  
 11 effect as of the end of the upcoming year?  
 12 A. (Baumann) Yes. That would be Springfield.  
 13 Q. And, beyond -- and, beyond those contracts, there's no  
 14 additional commitments to purchase from those units?  
 15 A. (Baumann) That's correct.  
 16 Q. Would it be a fair summary of the changes in Exhibit 2,  
 17 as compared to Exhibit 1, to say that gas prices have  
 18 increased a bit and market prices have increased a bit,  
 19 therefore, you plan to run the Newington on gas less,  
 20 but your coal plants more to meet the load?  
 21 A. (White) Yes. That's accurate.  
 22 Q. And, with the other major change associated, it has to  
 23 do with customer migration, in terms of the loads?  
 24 A. (White) Yes.  
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1 Q. Mr. Baumann, will this be the last time you're before  
 2 the Commission as a witness?  
 3 A. (Baumann) No. I believe I may be here in January, some  
 4 week in January.  
 5 Q. Then, I won't put the cart before the horse.  
 6 A. (Baumann) Giddy-up.  
 7 (Laughter.)  
 8 MR. MULLEN: Thank you. I have nothing  
 9 further.  
 10 WITNESS BAUMANN: But thanks, though.  
 11 CHAIRMAN IGNATIUS: I feel like we  
 12 missed an announcement somewhere. I guess we have to wait  
 13 until January. Questions from the Commissioners?  
 14 CMSR. HARRINGTON: Yes.  
 15 CHAIRMAN IGNATIUS: Commissioner  
 16 Harrington.  
 17 BY CMSR. HARRINGTON:  
 18 Q. Okay. I guess we'll start with Exhibit 2, on Section  
 19 C.1. And, I guess it's Page 2. And, on the top line  
 20 there, which is 1, it says "Projected coal generation  
 21 increases...due to higher forward electric market".  
 22 So, apparently, what you're saying is, because the  
 23 clearing price in the electric market -- the energy  
 24 markets is going to increase, that the coal plants  
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1 changes. The Commission rules require the filing of a  
 2 document called a "bingo sheet".  
 3 Q. A "bingo sheet"?  
 4 A. (Hall) "Bingo sheet", yes. It's basically a -- I can't  
 5 remember what rule it is, but it's basically a table  
 6 that shows present rates, proposed rates, amount change  
 7 and percent change, by rate class. And, bingo sheets  
 8 are based on kilowatt-hour sales from the test year,  
 9 which is also the time frame used to calculate PSNH's  
 10 rates and prices -- rates and charges in its tariff.  
 11 So, to be consistent with the rates and charges that  
 12 are calculated in the tariff, and with the bingo sheet  
 13 requirement, we use the same data here. So that the  
 14 "twelve months ending 2009" was the test year in our  
 15 last rate case.  
 16 Q. Okay. Now, I understand. Then, when you say "actual  
 17 sales" here, are you talking sales as in distribution  
 18 or sales as in energy?  
 19 A. (Hall) Distribution.  
 20 Q. Distribution?  
 21 A. (Hall) Yes.  
 22 Q. And, has there been much of a change over that period  
 23 of time?  
 24 A. (Hall) Bear with me for just one moment.  
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1 will, therefore, clear more often and they will be  
 2 dispatched more often economically?  
 3 A. (White) That's correct.  
 4 Q. So, then, in your previous estimate, what were you  
 5 estimating for your capacity factor for the coal plants  
 6 for the year?  
 7 A. (White) Approximately 25 percent at the Merrimack  
 8 units, and 5 percent at the Schiller units.  
 9 Q. And, now, the new estimates had them go to?  
 10 A. (White) Just over 30 percent at the Merrimack units,  
 11 and seven and a half percent at the Schiller units.  
 12 Q. Okay.  
 13 A. (White) Eight percent, actually.  
 14 Q. Okay. Thank you for that information. And, on, I  
 15 guess, again, whoever is most appropriate should  
 16 answer, rather than me try to select them, on Exhibit  
 17 3, which has the various charts of how rates get  
 18 affected and so forth, on each of the charts, up in the  
 19 title, it talks about "Based on Actual Sales for the  
 20 Twelve Months Ending December 2009." First, I guess to  
 21 start with, why are we using old information? I assume  
 22 we know actual sales much more updated than that.  
 23 A. (Hall) This information is prepared from information we  
 24 use to file what's known as a "bingo sheet" for rate  
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1 Q. I'm not looking for an exact number, but just maybe a  
 2 round --  
 3 A. (Hall) Well, I can give you sales from the test year.  
 4 In megawatt-hours, it was 7,657,472 megawatt-hours,  
 5 7,657,472. What I was doing is I was going to try to  
 6 compare that to the numbers in Mr. Baumann's attachment  
 7 that was a projection of sales for 2013.  
 8 Q. Which, if memory serves me right, it's going to be  
 9 pretty close.  
 10 A. (Hall) It is. 2013 projected sales are 7,785,920.  
 11 Q. Okay. Thank you. There was discussion on the  
 12 migration. And, it was stated that the migration  
 13 dropped through November or is that -- I guess I take  
 14 it, some customers who left had come back?  
 15 A. (White) Yes. I think there's always customer movement.  
 16 It could also be the way different customers' energy  
 17 usage changes from month to month, as they adjust  
 18 operations, because it's really a statistic that looks  
 19 at the relative consumption between two groups.  
 20 Q. So, that could be a statistical anomaly showing a small  
 21 return?  
 22 A. (White) It's possible. I think it's real, it's actual  
 23 data.  
 24 Q. Uh-huh.  
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1 A. (White) And, there's a seasonal pattern to it. So, it  
 2 may well have to do with heating, some customers  
 3 heating more than others, things like that.  
 4 Q. Okay. And, you -- in the exhibit, it says "45" --  
 5 "42.5 percent" was the migration rate that you were  
 6 using for the year. Now, does that represent what you  
 7 project it to be on January 1st or is it a monthly  
 8 average or for the whole year or what exactly does that  
 9 figure mean?  
 10 A. (White) That's based on actual data through October of  
 11 2012, which was the latest available data we had for  
 12 this filing.  
 13 Q. Okay. And, as I think in the questions from the OCA,  
 14 you said that the trend for migration has been going  
 15 up. So, it would be safe to say that, if this is  
 16 actual data from October, that, once we hit January,  
 17 that number is probably going to be outdated, and, in  
 18 fact, the number would be higher, and it would continue  
 19 to get higher as the higher rate came in and progressed  
 20 that way throughout the year?  
 21 A. (White) You could make that assumption, I suppose. I  
 22 think market conditions would probably logically leave  
 23 you there -- lead you there. Again, we don't want to  
 24 influence that by making an assumption up front. So,  
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1 some discussions and proposals around that. There was  
 2 a docket established to discuss migration. I don't  
 3 think we're unaware of what's been happening and what  
 4 may happen in the future.  
 5 Q. But the Company, for economic planning purposes, has  
 6 not done any analysis as to what they think the  
 7 migration rate will be in 2013?  
 8 A. (White) Well, --  
 9 Q. That should be a "yes" or "no" question please.  
 10 A. (White) No. We have looked at different scenarios.  
 11 Was that -- does that answer --  
 12 Q. Yes. So, you have done analysis then. I guess you  
 13 would say that would qualify, looking at different  
 14 scenarios, would say you've done analysis on what could  
 15 be migration rates in 2013?  
 16 A. (White) Yes.  
 17 Q. Okay.  
 18 A. (Baumann) Commissioner, just to add, there is -- I  
 19 believe there's a data request in this docket that  
 20 asked for that. And, Mr. White may be referring to  
 21 that as his analysis. I think it assumed a migration  
 22 rate up to 48 percent, and what the rate impact  
 23 potentially would be.  
 24 Q. That's what I was looking for.  
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1 we go with what we know.  
 2 Q. So, you go with what you know, and you go into 2013 and  
 3 you just close your eyes and cover your ears and hope  
 4 that "I don't know anything about migration rates, and  
 5 let's hope they don't go up when we look at them next  
 6 time"? I mean, there's no projection by the Company as  
 7 to what you think a year from today, for example, the  
 8 migration rate will be?  
 9 A. (White) Well, again, if we made those assumptions, we  
 10 would influence the result. Keep in mind also that  
 11 weather patterns can have a great deal to do with load  
 12 volume.  
 13 Q. Well, let me make my question a little bit clearer  
 14 then. I can understand where you're afraid of the  
 15 cause-and-effect relationship of making an assumption  
 16 that will tend to drive more people to migrate, so you  
 17 don't want a public number. But are you sitting there  
 18 telling me that the Company has no internal  
 19 confidential number of what they think the migration  
 20 rate will be in 2013? You just ignore that fact?  
 21 A. (White) Well, no. I think it's been the subject of  
 22 much discussion, internally and in this forum. That,  
 23 should migration continue to increase, what are the  
 24 impacts to customers and the Company? There have been  
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1 A. (Baumann) And, I think that -- I think it was about a  
 2 tenth of a cent for every two, two and a half percent  
 3 of migration, would be a general ballpark figure.  
 4 CHAIRMAN IGNATIUS: Can you say that  
 5 again? A tenth of percent -- a tenth of a cent for --  
 6 WITNESS BAUMANN: Yes. About a tenth of  
 7 a cent, which I call a "mill", some people like mills, for  
 8 about two, two and a half percent. It's Data Request OCA  
 9 1, Number 2.  
 10 CHAIRMAN IGNATIUS: All right. We don't  
 11 have that available to us. So, perhaps OCA can produce  
 12 that when Mr. Eckberg is on the stand. Thank you.  
 13 CMSR. HARRINGTON: That would be  
 14 helpful. Thank you.  
 15 BY CMSR. HARRINGTON:  
 16 Q. Getting off migration rates for a little bit. Someone  
 17 had said that bringing on the -- I guess the correct  
 18 term is "Berlin Biomass Power Plant", something to that  
 19 effect, it was scheduled to come on in the fall. But,  
 20 in your projected rates, you didn't account for that  
 21 coming on line, is that correct?  
 22 A. (White) That is correct.  
 23 Q. And, the reason for that is, do you know something  
 24 about it? Are they behind schedule? Are they facing  
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1 some delays or --

2 A. (White) No. I believe that projected fall in-service

3 date is actually a significant acceleration to the

4 original schedule, which was something like mid 2014.

5 Q. And, then, why was that not incorporated into the rate

6 for 2013, if it looks like it could have an impact on

7 the rates? Excuse me.

8 A. (White) I guess the confidence level in that in-service

9 date is -- didn't lead us to believe it should be

10 included.

11 Q. Okay. So, what happens then, if it does come on,

12 let's, for the sake of argument, October 1st, that's

13 kind of mid fall, the fall, then would you be coming

14 back with your Default Service rates for next year and

15 have to recoup that money, so it would be slightly

16 higher to make up for, say, whatever, October,

17 November, December, the Laidlaw production?

18 A. (White) Yes. Eventually, it would have to be

19 recovered. Typically, we would update the ES rate for

20 July 1st.

21 Q. Uh-huh.

22 A. (White) Filing in the May and June time frame. We'll

23 know more at that point whether that schedule has

24 moved.

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1 communicate with ISO regarding fuel inventories. And,

2 so, they're aware of our ability to run in those

3 circumstances. So, we are prepared to meet those

4 needs. Our coal facilities may be some they turn to.

5 Q. And, in Newington, you mentioned selling the oil. If

6 there was one of these cold snaps, and gas -- does

7 Newington have firm gas? Let me start with that.

8 A. (White) Newington does not have firm gas. They would

9 be impacted by constraints on the system. Newington

10 does have oil inventory.

11 Q. So, they would be able to run in a gas constraint

12 situation?

13 A. (White) That's correct.

14 Q. Okay. Good. Just a general question on, when you do

15 your projections, you had said you had had capacity

16 factors, and then they went up slightly due to increase

17 in market rates. Overall, is there a point where the

18 -- I'm trying to get the level of where the cost

19 becomes beneficial, the running becomes more beneficial

20 to the consumer? In other words, we have the cost, and

21 let's just take Merrimack, whether it's running or not,

22 it's in the rate base, the customers are paying for

23 that. Now, if it's running at a lower percentage,

24 that's because it's cheaper for the customers to buy

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1 Q. So, you have a high confidence level of the schedule at

2 that time, so you're waiting until then to make any

3 adjustments?

4 A. (White) We'll have a higher confidence level, yes.

5 Q. Fair enough. The ISO has been looking at things for

6 probably this winter, and maybe the winter after this,

7 there's been a concern over overdependence on natural

8 gas, the fact that there's a lack of dual-fuel

9 capability from a lot of the plants. And, one of their

10 proposals is to basically run some plants out of merit

11 in preparation for potential cold snaps, where they

12 would think that they would need non-gas provided

13 generation. Is there any thing in your proposed rate

14 that would account for this fact that, you know, that

15 Merrimack Station could possibly be dispatched a day or

16 two in anticipation of extremely cold weather, and they

17 could, even if the cold weather didn't materialize,

18 that they would be paid uplift costs, and, of course,

19 if it did, then they would be up and running and ready

20 to go at a time of what would potentially be higher

21 rates? I know that's very difficult to account for.

22 I'm just wondering if there was any attempt to do that

23 in here?

24 A. (White) We haven't explicitly modeled that. And, we do

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1 the power from the market than it is to turn that on

2 and absorb the additional cost of fuel. So, is there

3 some point where -- some capacity factor where you

4 actually could lower rates through increased running or

5 is that just strictly based on getting a market rate

6 high enough so that that would occur?

7 A. (White) As market prices increase, a pure market -- a

8 pure full requirements service off the market increases

9 faster than our ES rate would increase. Because, as

10 you said, as the price increases, our units would come

11 on line at a certain price and cap costs at that point.

12 So, yes, there is a price point in the market. And, if

13 it was met in every month, our units would generate in

14 every month.

15 Q. And, that is around 45? I mean, or is that

16 confidential?

17 A. (White) Forty-eight dollars, let's say.

18 CMSR. HARRINGTON: Forty-eight dollars,

19 okay. All right. Thank you. That's all I had.

20 CHAIRMAN IGNATIUS: Commissioner Scott.

21 CMSR. HARRINGTON: I appreciate, because

22 those were kind of complicated questions, bearing with me.

23 Thank you.

24 CMSR. SCOTT: Thank you. Good after --

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1 good morning still. And, again, I'll direct these  
 2 questions to whoever is best.  
 3 BY CMSR. SCOTT:  
 4 Q. And, probably, back to the migration question, and this  
 5 may be just my faulty memory, which is not unheard of.  
 6 So, on Exhibit 2, you talk about an increase in  
 7 migration up to 42 and a half percent. I thought I  
 8 remembered recent filings on 44 to 45 percent, is that  
 9 correct?  
 10 A. (White) I believe that's correct. There are a -- there  
 11 are separate filings for migration, that I'm not  
 12 directly involved with. It's a slightly different  
 13 statistic than what's utilized here. This looks at  
 14 both energy and capacity. The other quarterly filings  
 15 that the Company makes are energy only. And, this is  
 16 monthly load, and the other filing is based on sales,  
 17 which has some meter read components to it, in the  
 18 timing. So, I think you're correct, some of those more  
 19 recent filings indicated a higher migration level than  
 20 what's shown here. They're two -- they're calculated  
 21 two different ways, both are valid statistics. We feel  
 22 that, for this purpose, this is the correct calculation  
 23 to be made. Does that get to your question?  
 24 Q. Okay. I think so. So, you don't find the two  
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1 getting on the customers' meters.  
 2 Q. Okay.  
 3 A. (White) The data used here is actual monthly data.  
 4 It's load that actually occurs during a calendar month.  
 5 Q. Okay. And, again, I apologize for rehashing this with  
 6 some of the same questions. So, I believe I understand  
 7 the Company's position, that you don't want to project  
 8 -- you want to take a snapshot, I don't mean -- I don't  
 9 want to put words in anybody's mouth, but you  
 10 effectively want to take a snapshot of migration and  
 11 apply that, so you don't, basically, have an impact on  
 12 causing more migration by doing a projection. Is that  
 13 a fair statement?  
 14 A. (White) Yes. That's a fair statement. We use the most  
 15 recently -- the most current actual data available.  
 16 Q. Okay. But, having said that, and I understand they're  
 17 perhaps apples and oranges, obviously, your projection  
 18 on fuel prices and other things that potentially raise  
 19 your service rate, is that correct?  
 20 A. (White) Yes. There are many assumptions that go into  
 21 this forecast. Cost of fuel being a major one.  
 22 Q. Okay. I'll go onto another topic.  
 23 A. (Baumann) Commissioner, I just want to add, I'm sitting  
 24 here with a burning desire, but we've talked about this  
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1 inconsistent then, the way you've done it?  
 2 A. (White) No. There are good reasons for the differences  
 3 between the two.  
 4 Q. Okay. I'll accept that. All right.  
 5 A. (White) Well, as I said, they are calculated -- the  
 6 calculations are simply different.  
 7 A. (Baumann) The calculations that he's referring to, some  
 8 of them are based on billed sales. So, they're not as,  
 9 in my opinion, they're not as accurate, on a monthly  
 10 basis, on looking at the actual monthly migration  
 11 rates. Because, you know, Mr. White goes off of actual  
 12 generation load in a particular calendar month.  
 13 Whereas, billed sales will be calendar reads from the  
 14 previous month and the current month, it's kind of a  
 15 blend. So, any time you do an analysis of energy and  
 16 generation, we always stay with the load analysis.  
 17 Because, when you start looking at billed sales, you  
 18 know, you may say "gee, the billed sales were down in  
 19 November". Well, not really, because half of those  
 20 billed sales in November come from October, depending  
 21 on weather patterns. Billed sales analysis can get a  
 22 little less intuitive, just because of the change and  
 23 the impact that you have on billed sales, and then the  
 24 delay and timing of those billed sales, you know,  
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1 internally. But, then, you have to start bringing the  
 2 situation, let's say we get the Alternative Default  
 3 Service rate. How would that impact migration? I  
 4 mean, there are a lot of, really, a lot of unknowns.  
 5 And, that's one of the drivers that has, you know,  
 6 brought us to the decision as to not to try to project  
 7 something because of the unknowns. Certainly, we're  
 8 not sitting here today saying that this increasing rate  
 9 is going to decrease migration. But the question is,  
 10 what will the markets do and what is going to happen  
 11 with an ADE, and how might that impact the markets?  
 12 Because the ADE rate that we've put down here in the  
 13 lost paragraph of the technical statement is starting  
 14 to become market competitive. Depending on when we set  
 15 that ADE rate, it may even be set lower in the future.  
 16 What's the presumption of large customers? It doesn't  
 17 take a lot of customers to come back, potentially, to  
 18 impact migration, if they're large. You know, tens of  
 19 thousands of small residential customers can be dwarfed  
 20 by one or two large industrials. So, relationships  
 21 that they might have with their suppliers; sometimes  
 22 they're smooth and sometimes they're not, and sometimes  
 23 customers want a little more stability.  
 24 So, there's just so many unknowns to us.  
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1 And, we've sat there and discussed this, and we said  
 2 "not sure how we would even do it." Other than, "yes,  
 3 well, price is going up, will probably be some more  
 4 migration." But then we get into the "what ifs" and  
 5 "what ifs" and "what ifs", and it's just very difficult  
 6 to quantify.

7 Q. Okay. Thank you for that. So, moving on to RAB-4 --  
 8 excuse me, 2. I just, generally, when I look at, in  
 9 this case, the RGGI costs, there are certain months  
 10 where you show zero cost. I was just curious how you  
 11 project all that?

12 A. (White) RGGI costs are a result of generation --  
 13 emissions from generation. So, in months where our  
 14 generation is not running, --

15 Q. Oh. Okay.

16 A. (White) -- we show no RGGI costs in those months.

17 Q. Okay. That makes a lot of sense. Okay. Thank you.  
 18 Similarly, the RPS costs, I assume, since you're  
 19 projecting selling as much as you can in the  
 20 Massachusetts market, where you get -- I assume that's  
 21 because you get the most money for the RECs you  
 22 generate, you've already talked about perhaps selling  
 23 into the New Hampshire and Connecticut markets to make  
 24 up for anything that you can't do for the Massachusetts

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1 If it's necessary to do that, we will. We just need to  
 2 make sure the court reporter knows that we're heading  
 3 there, and we need to have people who are not authorized  
 4 to receive the confidential information to be out of the  
 5 room. So, it's a cumbersome thing to do. We want to  
 6 block those questions together and not have people popping  
 7 in and out. So, think about questions and answers, and  
 8 try to reserve anything that really delves into the  
 9 confidential matters to do as a block.

MR. FOSSUM: And, Commissioner, before

11 you begin, I don't know that, necessarily, the members of  
 12 the panel who are present up there are the best -- would  
 13 be the best to answer any questions you might have. We  
 14 have others in the room who would probably be better  
 15 suited for your questions about that report specifically.  
 16 If you'd like, we can have them sworn, I guess. But that  
 17 would depend on the nature of your questions.

CMSR. SCOTT: So, would it be best to do this later in the proceeding?

20 CHAIRMAN IGNATIUS: Maybe so. Why don't  
 21 we continue with the materials contained in the Energy  
 22 Service filing, testimony and Joint Statement, Joint  
 23 Technical Statement. And, then, maybe think about what  
 24 the questions are, and whether we need to call Mr. Smagula

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1 market. So, are the costs shown here for the RPS, are  
 2 those for making the New Hampshire ACP payments? Is  
 3 that what that is?

4 A. (White) Essentially, yes. Those are the costs  
 5 associated with our load. They do not include the  
 6 credits associated with the revenues we receive for  
 7 Schiller 5, which are actually netted out of Line 12 in  
 8 RAB-2, "Fossil energy costs".

9 Q. Okay. You anticipated my question, so that's -- all  
 10 right. Great.

11 CMSR. SCOTT: Excuse me for just a  
 12 second.

13 (Cmsr. Scott conferring with Chairman  
 14 Ignatius.)

15 BY CMSR. SCOTT:

16 Q. I wanted to briefly discuss your separate filing, which  
 17 you've asked to be considered "confidential". And, my  
 18 intention is to ask you questions that are not  
 19 confidential in nature, but general. But, again, we  
 20 can go, well, --

21 CHAIRMAN IGNATIUS: Yes. I think, in  
 22 any of these, when we have confidential information, we  
 23 want to be very careful to first start general, and see  
 24 how far we can go without going into confidential matters.

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1 or otherwise, whoever else to the stand.

2 CMSR. SCOTT: If that's the case, I'm  
 3 all set for now..

4 CHAIRMAN IGNATIUS: All right. I have a  
 5 few more questions on the matters having to do with the  
 6 calculations for Energy Service.

7 BY CHAIRMAN IGNATIUS:

8 Q. You gave us capacity factors for Merrimack 1 and 2, and  
 9 the Schiller coal units, in questioning from  
 10 Mr. Harrington. Do you have the current capacity  
 11 factors for, and then the projected ones, for 2013, for  
 12 Newington and for the Schiller Bio, Unit 5?

13 A. (White) The projected capacity factors in this filing,  
 14 will that answer your --

15 Q. If you have current and projected, that would be  
 16 helpful.

17 A. (White) Current being our September filing versus the  
 18 December filing?

19 Q. If that's -- if that was the basis of the ones to  
 20 Commissioner Harrington, --

21 A. Yes.

22 Q. -- was it September?

23 A. (White) Yes, it was.

24 Q. Okay. That's fine.

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[WITNESS PANEL: Baumann-White-Hall]

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- 1 A. (White) Excuse me. Schiller 5 was 79 percent, and  
2 remains at 79 percent. It's baseload dispatch.  
3 Newington went from 3 percent to 2 percent. I believe  
4 there's some rounding in those numbers. I don't know  
5 that it's a full one percent delta there, but those are  
6 the rounded numbers. The hydro facilities were at  
7 67 percent, and are still at 67 percent. And, the ICUs  
8 do not dispatch in either, in either case.  
9 Q. What are "ICUs" ?  
10 A. (White) The jets, the internal combustion units, the  
11 very high-priced peaking units.  
12 Q. All right. So, that's consistent with a response I  
13 think you gave to Ms. Chamberlin, that you expected  
14 that, with market increases in natural gas, you would  
15 dispatch Newington a bit less, and coal, the coal units  
16 a bit more?  
17 A. (White) Correct.  
18 Q. So, is it correct then that the increases in natural  
19 gas you're expecting are significant enough that coal  
20 is now a more economic fuel source?  
21 A. (White) Yes. That's what's occurred in the changes to  
22 price projections. So, they have dispatched in more  
23 months and saved customers money. They're still  
24 available in all months, should prices increase in  
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[WITNESS PANEL: Baumann-White-Hall]

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- 1 of the plant, that would make the difference? Or, are  
2 there two different changes going on at once?  
3 A. (White) It's both. There are two different changes to  
4 the regulations.  
5 Q. On the changes to how the Company intends to dispatch  
6 Schiller, were you talking about Schiller Unit 5 or  
7 would it be the other Schiller units?  
8 A. (White) It was the coal units, 4 and 6.  
9 Q. Okay. And, that you were, instead of looking at them  
10 on a monthly basis, you'd be looking at them on a daily  
11 basis?  
12 A. (White) Correct. That's a change to the modeling that  
13 we made.  
14 Q. Is it your expectation that, by looking at on a  
15 day-by-day basis, there will be more opportunities  
16 where it would be economic to bid in the Schiller unit  
17 -- those Schiller coal units?  
18 A. (White) Yes. And, that's why we did it. In the past,  
19 it was, let's say, it was efficient to look at monthly  
20 averages. We didn't feel that was an accurate  
21 representation any longer. Schiller 4 and 6 do, in  
22 fact, have a fair amount of dispatch flexibility. So,  
23 and, in fact, ISO, in recent months, has utilized them  
24 in that fashion more and more. So, we felt it was the  
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[WITNESS PANEL: Baumann-White-Hall]

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- 1 those months, to a certain level. But that's what's  
2 happened.  
3 Q. Also, on the RPS changes in Massachusetts, and the  
4 impacts on Class I RECs, is it -- is it a flash-cut in  
5 the changes under the new Massachusetts rules or is  
6 there a phasing out of the -- or, a phasing in of the  
7 new requirements, if anyone knows? It seems to me I've  
8 heard that it's a phased process, but it seems as  
9 though your testimony was it was a flash-cut?  
10 A. (White) It's my understanding that it's a "flash-cut",  
11 as you say, effective January 1st, 2013, for the new  
12 qualification as Class I RECs. The efficiency  
13 standards are phased in in 2015 and '16, I believe.  
14 Q. All right. Is there any analysis of what it would take  
15 for Schiller Unit 5 to become eligible under the new  
16 standards in Massachusetts?  
17 A. (White) Again, I'm not the expert. We worked with a  
18 consultant to look at exactly that. As we discussed,  
19 we have multiple suppliers of wood fuel for the  
20 facility. So, it would -- it's a look at each  
21 supplier's capability to provide the new RECs that meet  
22 the new Mass. qualifications. So, that's probably  
23 about as much as I know about it.  
24 Q. So, it's wood supply, and not the operating efficiency  
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[WITNESS PANEL: Baumann-White-Hall]

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- 1 correct adjustment to make.  
2 CHAIRMAN IGNATIUS: All right. I have  
3 no other questions. I think what would make sense --  
4 okay, another question, Commissioner Harrington, not on  
5 the confidential portion?  
6 CMSR. HARRINGTON: Yes. Just getting  
7 back -- excuse me for all this coughing, I apologize.  
8 BY CMSR. HARRINGTON:  
9 Q. On, let's say, Merrimack, you said your projection was  
10 going up to about a 30 percent capacity factor for next  
11 year. And, again, if this is anything confidential,  
12 just say so. As far as bidding strategy, you bid into  
13 the day-ahead market?  
14 A. (White) Yes.  
15 Q. And, is there a minimum time offer associated with  
16 that? Because, being a large thermal plant, you don't  
17 -- you know, clearing for one hour is not going to do  
18 you much good.  
19 A. (White) Unit parameters are part of the offers that go  
20 into ISO-New England on a daily basis.  
21 Q. So, you bid in daily. And, then, when those parameters  
22 are met, and the clearing price is high enough, then  
23 you would be dispatched?  
24 A. (White) That's correct.  
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1 CMSR. HARRINGTON: Okay. That's what I  
2 was trying to get clarified. Thank you.

3 CHAIRMAN IGNATIUS: What I'd like to do  
4 is take a fifteen minute break to give everybody a chance  
5 to think about questioning in the confidential matters,  
6 and including the ultimate question, "is it appropriate at  
7 this point to go there or should that be taken up at  
8 another time?" I've just been sort of stewing over that  
9 in my own mind for the last few minutes. I know it was  
10 submitted on September -- excuse me, December 12th. I  
11 don't know if the OCA received a copy of it?

12 (Atty. Chamberlin nodding in the  
13 affirmative.)

14 CHAIRMAN IGNATIUS: Looks like you did.  
15 And, I know, in Mr. Eckberg's testimony, there was a  
16 comment about, you know, not being able to really address  
17 things that haven't yet been received. It has now been  
18 received, but not for very long. And, whether there's  
19 been any discovery among the parties on those matters.

20 MS. CHAMBERLIN: Your Honor, we were  
21 going to ask that we address this sometime in the future.  
22 Because we've read it, but we've done no discovery, and we  
23 don't really have time to do an analysis of it.

24 CHAIRMAN IGNATIUS: Ms. Amidon.  
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1 MS. AMIDON: Thank you. I would echo  
2 that. And, our approach, as Staff, is that we, obviously,  
3 didn't have time to look at it, when we have an Energy  
4 Service rate that they want for effect January 1. And, as  
5 this docket continues into 2013, we believe it will be  
6 appropriate to make inquiry of it, and perhaps have some  
7 kind of recommendation in the mid year review or the mid  
8 year adjustment to the rates. And, we briefly sort of  
9 aired that with everyone, which is why we, the Consumer  
10 Advocate mentioned that, we envision this going forward  
11 and being able to take more careful examination going  
12 forward. Thank you.

13 CHAIRMAN IGNATIUS: Mr. Fossum, any  
14 thoughts on that to add or --

15 MR. FOSSUM: No. That is accurate.  
16 That was shared with us, the desire to continue reviewing  
17 this, the report, going forward, with a potential  
18 recommendation or discussion sometime down the road.

19 CHAIRMAN IGNATIUS: All right. Let's  
20 take a short break, and we'll talk about that among  
21 ourselves as well. Thank you. Let's resume, actually, in  
22 ten minutes, at 11:45.

23 (Recess taken at 11:37 a.m. and the  
24 hearing resumed at 11:50 a.m.)

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1 CHAIRMAN IGNATIUS: We had a chance to  
2 think a little bit about how best to approach the filing  
3 that the Company made at our request. And, I think, for a  
4 number of reasons, we're not going to go into it today  
5 with witnesses. We agree with all of the parties'  
6 comments that there is more discovery and more detailed  
7 analysis needed on all of our parts, and don't want to  
8 launch into it today.

9 There are a couple of things that would  
10 help to clarify, really, let the parties know that we  
11 would find it useful to clarify as you go through the  
12 discovery process. And, so, really just to make sure that  
13 you know a couple of things that occurred to us in the  
14 first very quick read through the materials, just let you  
15 know what we were thinking, and that will help in the  
16 discovery, so you're not caught by surprise when we do  
17 come back to go into it in more detail. I think each,  
18 both Commissioner Scott and Commissioner Harrington had  
19 things they wanted to raise, to just sort of give you a  
20 heads-up.

21 CMSR. SCOTT: This may be the same issue  
22 for both of us. As you move forward, I would just ask the  
23 Company to, in the filing you gave us a little lot of  
24 metrics, and we certainly appreciate it, what you've done  
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1 here. It would be helpful for the Commission to -- if the  
2 Company could make an attempt to look at and give us,  
3 basically, a frame of reference. So, what do other  
4 companies, to the extent of your knowledge, do for these  
5 different metrics that you've discussed. Certainly, the  
6 closer you can get to New Hampshire and your competition,  
7 so to speak, that that would be helpful. Obviously, you  
8 have other sister/brother entities in the region,  
9 certainly could do that, I'm sure, also. So, it would be  
10 helpful just to have a baseline of that type of  
11 information, if that's clear enough. I can go into more  
12 details, if you need it.

13 MR. FOSSUM: I guess I would be curious,  
14 since it's a generation report, and you said, you know,  
15 the Company has sister companies in the area, none of  
16 which own generation, though. So, I'm not sure what  
17 comparisons it is that you'd be looking for us to make  
18 there.

19 CMSR. SCOTT: All right. I'll be more  
20 specific, so thank you. The last thing I want is you to  
21 walk away with a big question mark in your mind, which I  
22 may cause anyway. So, on the generation side, to the  
23 extent you can, and I know merchant plants are, again, it  
24 may not be public, but, to the extent you can compare some

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1 of the data you've provided to a comparable merchant  
2 plant, that's important to us.  
3 Less generally, your labor costs, that  
4 type of thing, and, you're right, it has to do with  
5 generation. But, if there are other type of overhead-type  
6 things that you can compare to your sister companies, and  
7 if that's not -- you don't feel that's constructive,  
8 that's fine also. But I was really looking for something  
9 we could look at to judge against others, if that makes  
10 sense.

11 CHAIRMAN IGNATIUS: Commissioner  
12 Harrington.

13 CMSR. HARRINGTON: Yes. Just to sort of  
14 follow up on that, I feel the same thing that Commissioner  
15 Scott did, that, you know, you need to look at your  
16 competition in this market, what sets the price that we  
17 talked, of the \$48, is being set by merchant plants. And,  
18 whether we -- everybody likes it or doesn't like it,  
19 that's the way the market works in New England. So, I  
20 think that's what you need to compare to. There's  
21 certainly a large number of, for example, oil plants that  
22 have a very low capacity factor, even lower than the  
23 proposal for Newington. How much do they reduce staff?  
24 What do they do with maintenance requirements? Have they

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1 operating 100 percent of the days, is that what that  
2 implies, even though your capacity factor would be very,  
3 very low? So, maybe for consistency, this seems to be a  
4 new term, if you could stick with the standard definition  
5 of "capacity factors", rather than this new one, or at  
6 least define what this new one is, it would help me out.  
7 And, thanks for putting up with all my coughing, by the  
8 way.

9 CHAIRMAN IGNATIUS: One other, just  
10 clarifying thing. On the Pages 10 through 12, there are a  
11 number of graphs. And, I'm sure, in color, it's clear  
12 which is which, but, in black and white, it's a little  
13 mysterious. Do the numbers -- do the lines follow the  
14 order, you know, to the right, is it "Merrimack",  
15 "Schiller", "Newington", and "Totals", do the lines  
16 depicted follow that same pattern or do they move up and  
17 down? They all look the same to me.

18 MS. TILLOTSON: You want an answer? The  
19 totals would typically be on the top. So, even though  
20 it's listed on the bottom, that -- so, no, they don't go  
21 together. Sorry.

22 CHAIRMAN IGNATIUS: So, maybe, if it's  
23 possible, to resubmit at some point, with either one in  
24 color or change to some sort of hash marks across them or  
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1 been able to cut their operating costs substantially,  
2 simply because they're not running very often? So, those  
3 are the type of things that we need to be looking at  
4 there. There's other coal plants in New England that have  
5 had a major reduction in capacity factor as well. What  
6 kind of reaction have they taken? I don't know how much  
7 of this information is public, but, to the best you could,  
8 to provide that would be very helpful.

9 One other, just as a question on the  
10 report, without getting into specifics or anything  
11 confidential, I'm just looking for a definition. On Page  
12 3, it says "Overview: Capacity factor discussions". And,  
13 on the top of the page, it talks about "high capacity  
14 factor", and then goes into Newington Station  
15 historically. And, you're talking what I assume is the  
16 standard use of the word "capacity factor". How many  
17 hours do you run at what percentage of full power in the  
18 course of a year? And, then, down the bottom of the page,  
19 sort of a new term comes out that I'm not that familiar  
20 with, where you talk about Newington's operation "45 to  
21 50 percent of the days", and Merrimack Unit 1 and 2 from  
22 "60 to 70 percent of the days". So, I just would like to  
23 see that defined. And, I could guess to mean, if you  
24 operated one hour in each day for a year, you would be

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1 something, so that we can follow. You don't need to print  
2 everything in color, that's expensive. But something to  
3 differentiate would be helpful. Thank you.

4 We have the OCA calling Mr. Eckberg in  
5 this case, correct?

6 MS. CHAMBERLIN: Yes.

7 MR. FOSSUM: Before continuing, may I  
8 ask one process question about this report is, the request  
9 itself from the Commission was set out in an order, and  
10 was very particular to PSNH and PSNH's operations,  
11 materials, and capital costs. And, it sounds like now  
12 you're looking for a comparison with other companies or  
13 other entities and additional information. Will there be  
14 an additional order that comes out that sort of explains  
15 this differently, in light of the questions that you have  
16 about the report?

17 CHAIRMAN IGNATIUS: That wasn't our  
18 intent. It was really to be able to have some sort of a  
19 benchmark to compare, put the submission in context with  
20 other units. If you feel you don't have that information,  
21 we can explore other ways to obtain it.

22 MR. FOSSUM: No, no. As I said, it was  
23 a process question mostly. Because the way that I had  
24 read the Commission's request before, it was very

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1 particular to PSNH's costs and what those costs are, and  
2 that's what we had provided. So, to the extent that it's  
3 a comparison of PSNH's costs to some other costs, that's  
4 what I was curious as to -- if you'd prefer not to issue  
5 that as part of a separate order, we can simply issue an  
6 addendum to the report for some additional information or  
7 to just expand the report and resubmit it, we can do that.

8 CHAIRMAN IGNATIUS: All right. And,  
9 we'll consider your question, whether we should have an  
10 order. I don't think it was a conclusion that you weren't  
11 in compliance or there was something inadequate in the  
12 filing. It's just, as we looked at it, realized that that  
13 context was important.

14 All right. Anything further? I think  
15 our hope is to plow forward right now, call Mr. Eckberg,  
16 not take a lunch break, and see if we wrap up without need  
17 to take a break. Is that acceptable to everyone?

18 MS. CHAMBERLIN: That's fine.

19 CHAIRMAN IGNATIUS: All right. Good.  
20 Then, Ms. Chamberlin.

21 (Whereupon Stephen R. Eckberg was duly  
22 sworn by the Court Reporter.)

23 STEPHEN R. ECKBERG, SWORN  
24 DIRECT EXAMINATION

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1 to OCA 01-002, is that correct?

2 MS. CHAMBERLIN: That's correct. Right?

3 CHAIRMAN IGNATIUS: All right. And, I  
4 appreciate you digging that out. And, we will mark this  
5 as Exhibit 5.

6 (The document, as described, was  
7 herewith marked as Exhibit 5 for  
8 identification.)

9 MS. CHAMBERLIN: We're going to assume  
10 that everyone has read the testimony, and we'll forgo a  
11 summary, unless you wish it?

12 CHAIRMAN IGNATIUS: Can you speak into  
13 the microphone?

14 MS. CHAMBERLIN: Oh.

15 CHAIRMAN IGNATIUS: Thank you.

16 MS. CHAMBERLIN: Would the Commission  
17 like a summary of the testimony or are you fine?

18 CHAIRMAN IGNATIUS: I think everyone has  
19 read it, I know everyone's read it. So, I don't think we  
20 need to do a summary.

21 MS. CHAMBERLIN: Then, I would make  
22 Mr. Eckberg available for cross-examination:

23 CHAIRMAN IGNATIUS: All right. Mr.  
24 Fossum.

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1 BY MS. CHAMBERLIN:

2 Q. Mr. Eckberg, please state your name and position for  
3 the record.

4 A. My name is Stephen R. Eckberg. I'm employed by the  
5 Office of Consumer Advocate.

6 Q. And, did you file testimony in this docket on  
7 November 21st, 2012?

8 A. Yes, I did.

9 Q. And, do you have any changes to make to that testimony?

10 A. No, I do not.

11 MS. CHAMBERLIN: I'd ask that this be  
12 submitted as the next exhibit, "Exhibit 4".

13 CHAIRMAN IGNATIUS: So marked.  
14 (The document, as described, was  
15 herewith marked as Exhibit 4 for  
16 identification.)

17 MS. CHAMBERLIN: And, I'll go ahead and  
18 do this now. At the request of the Commission, I think  
19 everybody already has copies of this, but this is the  
20 response to OCA 1 of 1 -- 002 of 01. So, we will hand  
21 that out.

22 (Atty. Chamberlin distributing  
23 documents.)

24 CHAIRMAN IGNATIUS: This is the response

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1 MR. FOSSUM: Thank you. I just had a  
2 few clarifying questions for Mr. Eckberg.

3 CROSS-EXAMINATION

4 BY MR. FOSSUM:

5 Q. In your testimony, you had noted a couple of things  
6 that you had concern about, and you were waiting for  
7 more information. So, I would just like to ask about  
8 those very briefly. The first one that I'm looking at  
9 is on Page 4 of your testimony. And, on Lines 15 to  
10 19, you noted a concern about the "increase in property  
11 taxes for Merrimack Station that may be related  
12 to...the Clean Air Project". Has that concern been  
13 addressed by the Company?

14 A. Yes. As you correctly stated, at the time I prepared  
15 my testimony, we were waiting for additional  
16 information from the Company. And, additional tech  
17 session data responses were provided by the Company.  
18 And, one of those responses addressed this issue. And,  
19 the Company replied, in fact, that the increase in  
20 property taxes that was observed, that was of concern,  
21 was related to an increase in the property tax rates  
22 for 2013, rather than any increase in the plant value  
23 for -- that may have been related to the Clean Air  
24 Project. So, that response did alleviate my concern on

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[WITNESS: Eckberg] 69

1 that issue, yes.

2 Q. Thank you. And, I think, similarly, going onto the

3 next page, you had mentioned a concern about "possible

4 payroll tax increases". And, has the Company addressed

5 that concern as well?

6 A. To the best of my knowledge, I don't believe that any

7 additional information was provided by the Company on

8 that issue. Though, there were -- I may be in error

9 there, and you're welcome to correct me. Looks like

10 I'm about to be corrected.

11 Q. I'll just provide this to you. Tell me what that

12 document is.

13 A. This looks to be the Company's response to Tech Session

14 Question 1-3.

15 Q. And, does that address the payroll tax issue from your

16 testimony?

17 A. It does address this issue, generally, yes. It may

18 very well be the case that, in reading the many data

19 responses and tech session responses, that I missed

20 this one. But this is -- that is certainly the subject

21 of this response, yes.

22 Q. Okay. Thank you. I don't have any particular question

23 on it. I just wanted to make sure that the Company had

24 indeed addressed the concern that you had raised?

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[WITNESS: Eckberg] 71

1 that I am comfortable with the numbers that are in the

2 filing now. And, I don't need to -- I don't feel the

3 need to make any recommendation to change the amounts

4 that are included in the filing.

5 MR. FOSSUM: Thank you. I have nothing

6 further at this time.

7 CHAIRMAN IGNATIUS: Thank you. Ms.

8 Amidon.

9 MS. AMIDON: We have no questions for

10 Mr. Eckberg.

11 CHAIRMAN IGNATIUS: All right.

12 Questions from Commissioners? I have a question about a

13 couple of things of the clarifications you just made.

14 BY CHAIRMAN IGNATIUS:

15 Q. On the depreciation, on Page 6 of your testimony, you

16 described that, because of certain changes to

17 depreciation rates, the overall impact was a reduction

18 in depreciation expense, but that, for Schiller

19 Station, there was an increase. Is that something

20 that, the clarification you just went through with Mr.

21 Fossium, which we haven't seen, is it -- does it explain

22 how that happens, that some things going down, some

23 things going up, or were some of the number assumptions

24 not correct?

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[WITNESS: Eckberg] 70

1 A. I can confirm that by looking at that response, yes.

2 Q. Thank you. And, again, just, as I say, just going

3 right down your testimony and the concern that you

4 raised, a little lower on Page 5, you had raised a

5 concern about "depreciation costs" for Schiller

6 Station. Has the Company addressed that concern as

7 well?

8 A. I did have -- I do have that response. And, indeed,

9 the Company did provide some additional information

10 about the depreciation amounts in their response, Tech

11 Session 1-1, a supplemental response that they provided

12 to that. And, I would say that, generally, they did

13 address the issue. I think that I still have some

14 outstanding questions about this issue. But I

15 understand that the Energy Service rate that is under

16 consideration here today is comprised of the Company's

17 best estimates for a number, a large number of

18 ingredients that go into that rate. And, whereas the

19 Commission has directed its Staff to engage in a

20 specific review of depreciation costs in the

21 reconciliation docket for 2012, which is not yet filed,

22 I believe that there will be certainly plenty of

23 additional opportunities to review these numbers for

24 2012, as well as for 2013 ongoing. So, I would say

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[WITNESS: Eckberg] 72

1 A. Well, the explanation that was provided by the Company

2 said that there was no change to the depreciation rate

3 for Schiller Station, which the Company has confirmed

4 in other responses, and I believe actually an

5 attachment to my testimony, Attachment SRE-5, which

6 would be Bates Page 25, the next to last page of my

7 testimony package. This is a data response from a

8 prior Energy Service docket, last year. And, where the

9 Company -- where we got more information about the

10 changes to average year of final retirement for certain

11 generation plants. And, the reader can see that, on

12 Line 8 here, for instance, the Schiller Station shows

13 no change in the average year final retirement. That

14 means that there was no change to the depreciation rate

15 or the period over which the remaining asset value is

16 going to be depreciated. However, this supplemental

17 response that the Company provided indicated that there

18 was a change to the book value of the Schiller Station

19 plant. And, that is one of those areas where I would,

20 you know, seek to get some more information from the

21 Company in future proceedings. This docket will remain

22 open, and we'll probably have an opportunity to pursue

23 that further, or we'll have an opportunity to inquire

24 about that in the reconciliation docket for 2012 as

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1 well.

2 Q. All right. And, the payroll tax issue that you said

3 was resolved with further discovery information, since

4 we haven't seen that, and it's all right, you don't

5 need to make that an exhibit, but can you just

6 summarize what the resolution of your concern now is?

7 A. Well, Mr. Fossum provided the response for me. I

8 looked at it briefly. And, I can see, as I tried to

9 indicate in my statement a few moments ago, that it

10 seems clear that the Company was responsive and

11 provided some additional information. But I haven't

12 looked at it extensively in response to Mr. Fossum's

13 question. I was indicating that the Company was

14 responsive to the issue that I raised.

15 So, I guess I don't know -- I don't have

16 an exact further clarification on the information that

17 was provided in that response. I don't feel able to

18 expound upon that for you further at the moment.

19 Q. So, is there still a concern for this docket or is this

20 still one of the items to make note of for future --

21 the reconciliation docket, perhaps, the issue of

22 payroll taxes?

23 A. I would say that I would continue to look at this issue

24 and examine it a little further as future opportunities

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1 on the Motion for Confidential Treatment of the materials

2 submitted in response to the Commission's request on

3 generation costs. Thank you for submitting a Motion for

4 Confidential Treatment. And, do the OCA and Staff have

5 positions on whether confidentiality is appropriate?

6 MS. CHAMBERLIN: Your Honor, I have to

7 say I did not analyze it with that question in mind. It

8 looked to me that, you know, quite a bit of it is

9 non-confidential, but I did not parse it. And, would be

10 interested in meeting with the Company to see if we could

11 at least agree on certain areas.

12 CHAIRMAN IGNATIUS: One second.

13 (Cmsr. Scott and Chairman Ignatius

14 conferring.)

15 CHAIRMAN IGNATIUS: Mr. Fossum.

16 MR. FOSSUM: I was just thinking that

17 the Company, to the extent that the OCA and/or the Staff

18 would like to discuss further possible revisions to the

19 report to provide some public information, the Company is

20 willing to have that conversation certainly.

21 CHAIRMAN IGNATIUS: All right. I think

22 we would welcome that in any filing, to try to make it a

23 redacted document, rather the entire document, and that

24 some -- much of this it seems to me appropriate to

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1 arise. I know there's certainly plenty of information

2 in the general press about changes in tax rates

3 potentially coming January 1st. And, so, I don't know

4 whether the Company has included some possible impact

5 of that. I think that we know that there's a very high

6 likelihood that Social Security taxes or FICA taxes

7 will increase by about two percent. And, so, one of

8 the components that they may refer to in this increased

9 payroll taxes might be related to that. It's all about

10 that "fiscal cliff" thing that we've been hearing a lot

11 about.

12 CHAIRMAN IGNATIUS: Thank you. Those

13 are my questions. Anything further from the

14 Commissioners?

15 (No verbal response)

16 CHAIRMAN IGNATIUS: No. Any redirect,

17 Ms. Chamberlin?

18 MS. CHAMBERLIN: No. Nothing further.

19 CHAIRMAN IGNATIUS: All right. Then,

20 you're excused. Thank you, Mr. Eckberg. Although, why

21 don't you just stay where you are.

22 The only procedural matters that I'm

23 aware of before we conclude have to do with, obviously,

24 the exhibits, but also whether the parties have positions

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1 protect. So, it may be not all that useful in the

2 redacted version, but still to try to -- to try to limit

3 the amounts protected as much as possible. So, I'd

4 welcome that. And, then, maybe people can submit in

5 writing, if they have -- if there's a revised version and

6 any responses people want to submit in response to that,

7 before we rule on it, on the motion. Prior to completion

8 of that process, we will keep it confidential. That's

9 always our practice, that it not be released during the

10 pendency of sorting out the appropriate level of

11 confidentiality.

12 Is there any objection to striking the

13 identification on the exhibits?

14 (No verbal response)

15 CHAIRMAN IGNATIUS: Seeing none, we will

16 make them full exhibits. Are there any other matters to

17 take up before closings?

18 MS. CHAMBERLIN: Your Honor, I have one.

19 And, it is a request, essentially, to the Commission to

20 address RSA 378:40. This was an issue that was raised in

21 a filing in the Least Cost Integrated Resource Plan. And,

22 it just states that "no rate change shall be approved with

23 respect to any utility that does not have an IRP plan

24 filed and approved." However, the Commission has the

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1 authority to waive that. And, so, since it has been more  
2 than two years since they filed the IRP filing, to keep us  
3 statutorily and procedurally in line, I would simply ask  
4 that the Commission exercise its authority to either  
5 direct PSNH to file a new plan or to suspend -- to allow  
6 rate changes to take place, even though the integrated  
7 rate plan is over two years old.

8 CHAIRMAN IGNATIUS: It's actually a  
9 funny statute, because I think it says "changes have to be  
10 in conformance with the last plan approved", not  
11 necessarily the last plan "submitted". And, so, it's a  
12 little bit odd as it was drafted. But it's a very good  
13 point. I think we're a little behind in getting that  
14 order out on the LCIRP docket, and working to be able to  
15 issue it. Asking for a new plan right now I don't think  
16 serves anyone's purposes. And, it -- we have not gone --  
17 it's a good point, we have not gone into questions of  
18 witnesses today on whether the plan -- that the rate  
19 changes that are requested are in accordance with the last  
20 plan that was filed and reviewed.

21 I suppose we have a couple of choices.  
22 One is to recall a witness and address that. The request  
23 that we waive the requirement, we couldn't do, because we  
24 have a statute. Or a rule, we can waive a rule, but we

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1 strike a filing that they had made. Their statements  
2 about "PSNH not being in compliance for having not filed a  
3 plan within two years", we've not really had a chance to  
4 review those meaningfully. They don't appear to have any  
5 bearing whatsoever on the motion to strike, that at least  
6 it would presume to be their genesis. So, you know, the  
7 nature of that request and where that came from and why  
8 that's all of a sudden a front and center issue before the  
9 Commission is not entirely clear to us at the moment.

10 That said, while, again, we haven't had  
11 time to fully review this issue, there was not, to my  
12 reading, any place in that statute that indicated when the  
13 two years begins to run. And, if it is, in fact, two  
14 years between dates of filing, then, yes, more than two  
15 years has passed. But, if it's two years from the date of  
16 the most recently approved Commission plan, we filed our  
17 previous plan in 2010. It's still pending. It's pending  
18 review. To file another plan now, before that review has  
19 been finished, and we know what the Commission is  
20 expecting of us for future filings, I think would serve no  
21 practical purpose whatsoever. So, those are some other  
22 issues that are bound up in this request. And, so, to  
23 deny PSNH the opportunity to have a rate change in that  
24 circumstance would seem to be at least unfair.

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1 can't waive a statute. So, and I think we, at times, are  
2 more focused on this provision than others, and at times  
3 we think to ask it and at times we do not. One second.

(Chairman and Commissioners conferring.)

4 CHAIRMAN IGNATIUS: All right.  
5 Everyone's been madly flipping through -- now you can go  
6 sit down.

7 MR. ECKBERG: Thank you, madam Chairman.  
8 I was hoping I wouldn't get any questions about that new  
9 issue.

10 CHAIRMAN IGNATIUS: We've all been  
11 flipping through the statute. And, I think you really  
12 need to read 378:40 and 378:41 together, that -- to be  
13 able to make sense of what, to the extent you can, make  
14 sense of what this is requiring, it helps.

15 Mr. Fossum, it looks like you do have a  
16 view on this, before I go any further?

17 MR. FOSSUM: Well, I have a view sitting  
18 here right now, you know, subject to further discussion  
19 and research that may be appropriate. My understanding  
20 about the issue in the Least Cost Integrated Resource Plan  
21 came up in a filing from Conservation Law Foundation that  
22 was made yesterday. And, as I understand the nature of  
23 that filing, that was made in response to our motion to  
24

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1 CHAIRMAN IGNATIUS: Well, I don't think  
2 anyone's suggesting that. I think it was, and I don't  
3 know, I haven't looked at the other filing, and I want to  
4 keep that very separate, because Commissioner Scott is not  
5 a part of that other docket, but assuming it's -- well,  
6 maybe I've got the wrong docket, I don't know.

7 MR. FOSSUM: It's 2010 -- or, DE 10-261.

8 CHAIRMAN IGNATIUS: Oh. All right. I  
9 was assuming a different docket. So, I think that the  
10 real question today is, for full conformance with the  
11 statutory requirements, and there are times where we have  
12 inquired in any rate change proceeding the relationship  
13 between the request and the Least Cost Plan on file, we  
14 haven't done that in this case. And, in some we have --  
15 sometimes we do and sometimes we don't, and that's our  
16 problem, that we should be more consistent on.

17 I think the only question is today, what  
18 -- how best to complete the record? Not to require a new  
19 filing or to reject the petition in this docket. So, my  
20 thought is to ask one of your witnesses to take the stand  
21 who could address, and if you look particularly at 378:41,  
22 the extent to which the request the Company's made today,  
23 and in the 292 -- 291 docket we heard earlier this  
24 morning, that the request is in conformance with the Least

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1 Cost Integrated Resource Plan most recently filed and  
2 found adequate by the Commission, which would refer you  
3 back to the prior -- the prior filing, not the one that's  
4 currently pending.

5 MR. FOSSUM: I suppose we could do that.  
6 We don't have anybody here today who's particularly  
7 familiar with our existing and approved Least Cost  
8 Integrated Resource Plan. So, to the extent that you'd be  
9 looking for any specifics, I don't know that we could  
10 provide them as we sit here today.

11 So, you know, I don't know, we could  
12 provide a statement perhaps later today from somebody more  
13 familiar, you know. Yes. I'm not exactly sure what else  
14 to offer right at the moment. I don't -- I don't know  
15 that the Company could, in good faith, offer somebody to  
16 make that representation at this moment.

17 (Chairman and Commissioners conferring.)

18 MS. CHAMBERLIN: Your Honor, if I may?

19 CHAIRMAN IGNATIUS: Yes, please.

20 MS. CHAMBERLIN: My intent was to  
21 forestall a collateral attack on whatever order is issued,  
22 essentially. I certainly don't have any objection to the  
23 Company bringing the -- you know, making a filing from  
24 someone who's best, you know, who can best do it in a  
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1 the evidence that's submitted, or even to have some  
2 further recalling of witnesses and questioning. But I  
3 don't -- my sense is it's not an issue that really calls  
4 for that.

5 MS. CHAMBERLIN: No, I don't think so  
6 either. Well, it's hard to make a decision with not  
7 knowing what they're going to file. But I see it from my  
8 -- primarily as a procedural one. I'm not looking for  
9 them to file another IRP before they can get this rate. I  
10 just wanted to be, you know, to get things in order and to  
11 keep things moving forward, and that was my intent.

12 CHAIRMAN IGNATIUS: Okay. Thank you.  
13 (Chairman and Commissioners conferring.)

14 CHAIRMAN IGNATIUS: All right. We've  
15 got two different ideas to throw out as a way to wrap this  
16 up. One would be to forgo oral closings today, give  
17 everyone an opportunity, within a couple of days of  
18 receipt of the record request we just spoke about, to  
19 submit a written closing, and in that address any  
20 responses that they feel they need to say, having seen the  
21 Company submission. The alternative would be to, in  
22 addition to reserving the record request for the Company's  
23 submission, to set aside a exhibit, to the extent anyone  
24 wants to respond, from OCA or Staff, to the Company's  
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1 short turnaround. I also -- I learned about this statute,  
2 this is new for me, too. I learn about the statute  
3 yesterday. And, in reading it, I realized that it had an  
4 effect. I'm also happy to write up what I think the  
5 effect is. I don't know that you need -- that you want  
6 that. But, if you do, I'd certainly do that.

7 CHAIRMAN IGNATIUS: Well, I appreciate  
8 that. Our thought had been to, rather than have someone  
9 take the stand today, to offer to do it through a record  
10 request, if that's agreeable to the parties. There's no  
11 opportunity for questioning on it. And, so, that's the  
12 only issue, if that would be a concern. But, if not, then  
13 to do it through a record request, submit it in the next  
14 few days would be acceptable to us. Is there any --

15 MR. FOSSUM: We are willing to do that.

16 CHAIRMAN IGNATIUS: Okay. Does that  
17 work for everyone?

18 MS. CHAMBERLIN: So, the record request  
19 would come in and we would not have an opportunity to say  
20 anything about it?

21 CHAIRMAN IGNATIUS: That's the  
22 difficulty in doing it through a record request. There's  
23 no cross-examination. We could further expand the record  
24 by an opportunity for people to respond through briefs to  
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1 exhibit, so that there's both, you know, there could be  
2 two additional exhibits, if people felt the need to  
3 respond to that, and go forward with oral closings this  
4 afternoon. Because of the timing and trying to meet a  
5 January 1 date, we just don't have a lot of days to work  
6 with, and know that people are maybe traveling over  
7 Christmas Holiday and that sort of thing. So, do you have  
8 a preference on the two? We can do either one.

9 MS. AMIDON: Staff prefers oral closing.

10 CHAIRMAN IGNATIUS: And, just the  
11 opportunity, if you felt the need to respond to the  
12 Company's submission, to submit your own?

13 MS. AMIDON: Yes.

14 MS. CHAMBERLIN: OCA will agree with  
15 that.

16 CHAIRMAN IGNATIUS: Is that all right  
17 with the Company?

18 MR. FOSSUM: That's fine.

19 CHAIRMAN IGNATIUS: Okay. Let's do that  
20 then. So, we'll set aside Exhibit 6 for the Company  
21 submission. And, then, to the extent OCA or Staff want to  
22 submit, the OCA would be 7 and Staff would be 8. All  
23 right. And, if there's no need to submit, you don't need  
24 to use your number.  
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1 (Exhibit 6, Exhibit 7, and Exhibit 8  
2 were reserved.)

3 CHAIRMAN IGNATIUS: All right. Let's go  
4 then to Ms. Chamberlin for a closing statement.

5 MS. CHAMBERLIN: Thank you, your Honor.  
6 If I were looking at this filing from a vertically  
7 integrated utility that did not have any competition, I  
8 would have very few problems with it. The information  
9 that I received certainly is consistent with market data  
10 and other information that I have reviewed and my staff  
11 has reviewed.

12 My ongoing problem is that we've got a  
13 large amount of older generation, which has now become  
14 peaking generation, essentially. The cost of that  
15 generation being borne by an ever-diminishing number of  
16 people. And, just that inverted triangle is -- it's an  
17 unjust -- it results in an unjust rate. It's an unjust  
18 concept. It's simply -- it's neither -- it's neither  
19 competition nor regulation. And, that has to -- we have  
20 to move out of that.

21 And, my example I think of is, you know,  
22 my mom, who is 80 years old, and she's on a fixed income,  
23 and she's paying her electric rate, and she's probably not  
24 going to switch, even if I told her to. She should not  
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1 But that it just needs to move.

2 CHAIRMAN IGNATIUS: Are you recommending  
3 a different rate for January 1st?

4 MS. CHAMBERLIN: I cannot recommend a  
5 different rate, because I don't have any indication that  
6 the rate that they are proposing is not consistent with  
7 Default Energy Service rates. All their components seem  
8 to add up. My issue is the larger -- the larger issue,  
9 the structural one, which is not specifically at issue in  
10 this case, but is really the overall problem with the  
11 rates.

12 CHAIRMAN IGNATIUS: Thank you. Ms.  
13 Amidon.

14 MS. AMIDON: Thank you. Staff has  
15 reviewed the filing, and has determined that the Company  
16 calculated the Energy Service rate for 2013 as they have  
17 in the past. But we can't ignore the fact that the  
18 resulting rate is above market, and that is of concern for  
19 customers of PSNH.

20 And, further, you know, if customer  
21 migration continues to be an issue, we are concerned that  
22 there will be an additional increase as time goes by.  
23 However, insofar as the rate proposed for January 1 in the  
24 December 12th filing, we have no objection to that.

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1 have to pay for the Merrimack Station and the Schiller  
2 Station. That's simply -- that simply is not correct.

3 The fact now that there are competitive  
4 options for residential ratepayers is a good thing.  
5 Absolutely, there's some more options, people are  
6 exercising them. As the witness said, the rate of  
7 migration is going up. I would argue that it's likely to  
8 continue to go up when the rates increase even further.  
9 They're getting further away from the market price and  
10 they're getting more and more top heavy. And, people are  
11 going to really dig in and look at their options.

12 I don't think there's a magic number,  
13 once we hit X rate, it's no longer fair. I think the  
14 situation is unfair. Where the industrial customers have  
15 all left already, they're not sharing this cost. It may  
16 be, and it likely is, that these coal plants have some  
17 value, but to have that value borne by primarily the  
18 residential ratepayers is unjust and unreasonable.

19 As I said, the actual -- the actual  
20 filing, when we look at its components, it's a reasonable  
21 filing. It's consistent with the information I'm aware  
22 of. But it's the overall structure that cannot -- cannot  
23 continue. And, exactly when that changes? The sooner the  
24 better. Will it change by January 1? No, probably not.

{DE 12-292} {12-18-12}

1 CHAIRMAN IGNATIUS: Thank you. Mr.  
2 Fossum.

3 MR. FOSSUM: Thank you. Just briefly.  
4 While we understand the concerns of the OCA and Staff,  
5 and, to a degree, share them ourselves, this is a docket  
6 to set PSNH's proposed Energy Service rate going forward.  
7 And, as you've heard, PSNH has done so in a manner  
8 consistent with that which it has done in the past, and  
9 has done so based on the costs that are part of its  
10 structure. So, to that extent, PSNH would request that  
11 the Energy Service rate as proposed be permitted to go  
12 into effect January 1st. Thank you.

13 CHAIRMAN IGNATIUS: All right. Unless  
14 there's anything further, we will take it under  
15 advisement. Excuse me, Commissioner Harrington.

16 CMSR. HARRINGTON: The record request on  
17 the Least Cost Integrated Plan, when will we expect to see  
18 that?

19 MR. FOSSUM: My hope would be before the  
20 close of business tomorrow.

21 CHAIRMAN IGNATIUS: Thank you. That's  
22 fine. Then, we will take it under advisement. We know  
23 that there's a January 1 date for this, which we will  
24 meet. And, we appreciate everyone's time and attention in

{DE 12-292} {12-18-12}

1 sorting out a couple of unusual things today. Thank you.  
2 We're closed.

3 (Whereupon the hearing ended at 12:37  
4 p.m.)  
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{DE 12-292} {12-18-12}

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| \$  | 216 [1] 16/12<br>21st [1] 66/7<br>25 [1] 72/6<br>25 percent [1] 34/7<br>261 [1] 80/7<br>27 [1] 2/8<br>28th [4] 6/18 6/22 7/4 7/12<br>291 [2] 10/8 80/23<br>292 [5] 1/6 4/3 16/6 31/18 80/23   | 47/24 49/22 51/7 51/15 51/23 54/23 54/23<br>55/6 56/10 57/5 57/16 58/20 59/2 62/13<br>62/20 64/8 64/16 68/6 68/7 68/10 69/3<br>69/10 70/5 70/10 70/14 71/12 72/9 72/24<br>74/2 74/7 74/9 74/11 78/9 78/21 79/2 82/1<br>82/2 82/20 83/18<br>above [1] 87/18<br>absent [1] 29/13<br>absolutely [2] 30/1 86/5<br>absorb [1] 44/2<br>acceleration [1] 41/3<br>accept [1] 46/4<br>acceptable [2] 65/17 82/14<br>accepted [1] 20/2<br>accommodate [1] 10/18<br>accordance [1] 77/19<br>accordingly [1] 29/21<br>account [5] 21/15 21/17 40/20 42/14<br>42/21<br>accurate [6] 6/24 8/21 32/21 46/9 55/20<br>58/15<br>accurately [2] 10/16 31/5<br>ACP [1] 50/2<br>acquire [2] 27/19 29/21<br>across [1] 63/24<br>actual [20] 3/10 9/19 18/3 18/4 18/8 19/2<br>23/6 24/5 34/19 34/22 35/16 36/22 37/10<br>37/16 46/10 46/11 47/3 47/15 86/19 86/19<br>actually [11] 25/13 25/23 28/22 34/13 41/3<br>44/4 47/4 50/7 58/21 72/4 77/8<br>add [5] 24/3 39/18 47/23 58/14 87/8<br>added [1] 25/4<br>addendum [1] 65/6<br>addition [6] 20/10 26/10 27/16 28/5 29/11<br>83/22<br>additional [13] 32/14 44/2 64/13 64/14<br>65/6 68/15 68/16 69/7 70/9 70/23 73/11<br>84/2 87/22<br>address [11] 4/8 30/3 57/16 57/21 69/15<br>69/17 70/13 76/20 77/22 80/21 83/19<br>addressed [5] 68/13 68/18 69/4 69/24<br>70/6<br>ADE [4] 16/12 48/11 48/12 48/15<br>adequate [1] 81/2<br>adjust [3] 30/16 30/16 36/17<br>adjustment [2] 56/1 58/8<br>adjustments [2] 21/12 42/3<br>administrative [1] 25/15<br>advisement [2] 88/15 88/22<br>Advocate [6] 1/16 1/17 4/10 4/18 58/10<br>66/5<br>affect [2] 26/3 26/6<br>affected [1] 34/18<br>affirmative [1] 57/13<br>afraid [1] 38/14<br>after [3] 27/7 42/6 44/24<br>afternoon [1] 84/4<br>again [19] 5/16 12/23 13/7 13/12 13/23<br>17/14 31/14 34/15 37/23 38/9 40/5 45/1<br>47/5 50/19 54/17 56/11 60/23 70/2 79/10<br>against [1] 61/9<br>ago [2] 12/11 73/9<br>agree [3] 59/5 75/11 84/14<br>agreeable [1] 82/10<br>ahead [2] 56/13 66/17<br>Air [2] 68/12 68/23<br>aired [1] 58/9<br>algorithm [2] 31/3 31/6<br>all [62] 8/3 11/1 11/4 11/18 12/15 15/17<br>17/2 17/4 17/10 17/13 17/20 18/1 18/6 19/6<br>19/7 20/6 21/22 25/22 26/18 29/17 40/10<br>44/19 44/19 46/4 49/11 50/9 52/3 52/4<br>53/12 53/24 54/14 56/2 56/7 58/19 59/5<br>59/7 60/19 63/7 63/17 65/8 65/14 65/19<br>67/3 67/23 71/11 73/2 73/4 74/9 74/19 |
| '16 [1] 54/13   | 3   |  |
| 0   | 3 percent [1] 53/3<br>30 percent [2] 34/10 56/10<br>33 [1] 2/9<br>378:40 [2] 76/20 78/13<br>378:41 [2] 78/13 80/21  |  |
| 0.00737 [1] 12/13<br>0.01142 [1] 13/14<br>0.01210 [1] 13/8<br>0.01220 [1] 13/18<br>0.1210 [1] 13/13<br>0.67 [1] 12/12<br>0.737 [1] 14/13<br>002 [3] 3/15 66/20 67/1<br>01 [1] 66/20<br>01-002 [2] 3/15 67/1<br>035 [1] 3/12<br>09-035 [1] 3/12<br>09-28-12 [1] 3/5  | 4<br>40 [2] 18/17 22/14<br>407 [1] 21/12<br>42 [1] 45/7<br>42 percent [4] 18/17 22/16 22/18 24/7<br>42.5 percent [2] 22/14 37/5<br>44 [1] 45/8<br>45 [3] 37/4 44/15 62/20<br>45 percent [1] 45/8<br>48 percent [1] 39/22  |  |
| 1   | 5<br>5 percent [1] 34/8<br>50 percent [2] 27/22 62/21<br>52 [2] 1/23 2/10<br>56 [1] 2/9   |  |
| 1-1 [1] 70/11<br>1-3 [1] 69/14<br>1.142 [1] 13/14<br>1.288 [1] 13/19<br>1.3 million [1] 24/11<br>1.879 [1] 14/12<br>10 [1] 63/10<br>10-261 [1] 80/7<br>100 percent [1] 63/1<br>10:12 [1] 1/4<br>11 [1] 3/9<br>11-21-12 [1] 3/14<br>11-216 [1] 16/12<br>11:37 [1] 58/23<br>11:45 [1] 58/22<br>11:50 [1] 58/24<br>12 [6] 3/5 3/8 3/10 3/14 50/7 63/10<br>12-12-12 [1] 3/8<br>12-291 [1] 10/8<br>12-292 [4] 1/6 4/3 16/6 31/18<br>12:37 [1] 89/3<br>12th [9] 4/7 8/13 8/14 9/2 9/11 16/6 18/12<br>57/10 87/24<br>15 [1] 68/9<br>16 [1] 2/7<br>16.115 [1] 12/22<br>16.182 [1] 12/22<br>18 [1] 1/4<br>19 [1] 68/10<br>1st [8] 13/5 37/7 41/12 41/20 54/11 74/3<br>87/3 88/12 | 6<br>60 [1] 62/22<br>60.78 [1] 14/9<br>60.78 percent [1] 14/14<br>64.38 percent [1] 14/9<br>66 [2] 2/13 3/13<br>67 [1] 3/15<br>67 percent [2] 53/7 53/7<br>68 [1] 2/14  |  |
| 2   | 7<br>7,657,472 [2] 36/4 36/5<br>7,785,920 [1] 36/10<br>7.11 [3] 7/16 7/19 7/23<br>7.67 percent [2] 14/24 15/2<br>70 [1] 62/22<br>71 [1] 2/15<br>79 percent [2] 53/1 53/2  |  |
| 2 percent [1] 53/3<br>2009 [3] 3/11 34/20 35/14<br>2010 [2] 79/17 80/7<br>2011 [1] 23/24<br>2012 [11] 1/4 3/10 4/7 7/21 16/6 23/23<br>37/11 66/7 70/21 70/24 72/24<br>2013 [30] 1/7 3/4 4/4 4/6 7/14 7/22 9/13<br>22/17 22/18 22/20 22/21 22/22 27/6 29/5<br>31/6 31/19 32/9 36/7 36/10 38/2 38/20 39/7<br>39/15 41/6 52/11 54/11 58/5 68/22 70/24<br>87/16<br>2014 [1] 41/4<br>2015 [1] 54/13<br>2016 [1] 28/7   | 8<br>8.12 percent [1] 14/23<br>8.19 [2] 14/16 14/17<br>8.19 percent [1] 15/4<br>8.64 percent [3] 14/16 14/17 15/4<br>8.97 [2] 7/14 9/14<br>80 [1] 85/22<br>85 [4] 2/20 3/16 3/18 3/20<br>87 [1] 2/21<br>88 [1] 2/22   |  |
|   | 9<br>9.54 [1] 9/13  |  |
|   | A<br>a.m [3] 1/4 58/23 58/24<br>ability [3] 26/4 26/6 43/2<br>able [9] 28/9 43/11 57/16 58/11 62/1 64/18<br>73/17 77/14 78/14<br>about [59] 12/10 17/1 17/10 17/11 18/7<br>18/8 18/15 18/16 19/9 21/2 22/16 24/10<br>28/18 34/19 38/4 40/1 40/6 40/8 40/24 45/6 |  |

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| <p><b>A</b></p> <p>all... [13] 75/21 76/1 78/5 78/11 79/8 80/8 83/14 84/16 84/22 85/3 86/15 87/7 88/13</p> <p>alleviate [1] 68/24</p> <p>allow [1] 77/5</p> <p>already [3] 49/22 66/19 86/15</p> <p>also [16] 7/23 7/24 8/2 14/15 14/18 15/4 29/21 35/9 36/16 38/10 54/3 60/9 61/8 74/24 82/1 82/4</p> <p>alternative [3] 29/12 48/2 83/21</p> <p>although [2] 20/17 74/20</p> <p>always [5] 25/8 25/9 36/15 46/16 76/9</p> <p>am [2] 6/5 71/1</p> <p>amended [1] 12/13</p> <p>Amidon [7] 1/18 2/21 4/22 26/20 57/24 71/8 87/13</p> <p>among [2] 57/19 58/20</p> <p>amount [8] 14/22 17/16 17/24 21/7 30/2 35/6 55/22 85/13</p> <p>amounts [5] 17/17 17/22 70/10 71/3 76/3</p> <p>Amy [1] 1/9</p> <p>analysis [11] 9/17 39/6 39/12 39/14 39/21 46/15 46/16 46/21 54/14 57/23 59/7</p> <p>analyze [1] 75/7</p> <p>ancillary [1] 25/12</p> <p>and/or [1] 75/17</p> <p>announcement [1] 33/12</p> <p>anomaly [1] 36/20</p> <p>another [6] 18/11 47/22 56/4 57/8 79/18 83/9</p> <p>answer [6] 20/7 34/16 39/11 51/13 52/14 63/18</p> <p>answers [1] 51/7</p> 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60/2</p> <p>attention [1] 88/24</p> <p>Atty [3] 10/1 57/12 66/22</p> <p>authority [2] 77/1 77/4</p> <p>authorized [1] 51/3</p> <p>available [10] 18/1 21/19 23/7 24/5 26/10 37/11 40/11 47/15 53/24 67/22</p> <p>average [8] 11/22 12/14 15/1 17/21 31/2 37/8 72/10 72/13</p> <p>averages [1] 55/20</p> <p>aware [5] 22/7 25/10 43/2 74/23 86/21</p> <p>away [4] 7/20 8/3 60/21 86/9</p> | <p>begin [3] 4/12 5/2 51/11</p> <p>begins [1] 79/13</p> <p>behind [2] 40/24 77/13</p> <p>being [12] 7/16 19/21 21/15 29/17 47/21 52/17 56/16 57/16 58/11 61/17 79/2 85/15</p> <p>belief [2] 7/1 8/21</p> <p>believe [20] 9/20 21/6 23/11 25/10 27/18 27/21 28/13 28/14 33/3 39/19 41/2 41/9 45/10 47/6 53/3 54/13 58/5 69/6 70/22 72/4</p> <p>below [1] 24/6</p> <p>benchmark [1] 64/19</p> <p>beneficial [2] 43/19 43/19</p> <p>Berlin [4] 5/21 22/3 22/5 40/18</p> <p>best [14] 6/24 8/21 23/6 45/2 51/12 51/13 51/18 59/2 62/7 69/6 70/17 80/18 81/24 81/24</p> <p>better [2] 51/14 86/24</p> <p>between [5] 13/3 36/19 46/3 79/14 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<p>brokers [2] 19/15 20/9</p> <p>brother [1] 60/8</p> <p>brought [1] 48/6</p> <p>burning [2] 27/19 47/24</p> <p>business [1] 88/20</p> <p>but [61] 10/22 14/19 18/7 20/15 21/19 21/24 22/9 26/13 28/9 28/16 29/1 30/1 32/20 33/10 35/5 36/1 38/17 39/5 40/19 47/9 47/16 47/24 48/1 48/9 49/4 50/19 50/19 51/16 53/5 54/1 54/8 57/18 57/22 60/24 61/5 61/8 62/7 63/12 64/2 66/19 69/20 70/14 71/18 73/5 73/11 74/24 75/9 76/2 77/12 77/24 79/15 80/5 82/6 82/12 83/2 83/7 86/17 86/22 87/1 87/10 87/17</p> <p>buy [3] 19/23 27/22 43/24</p> |
| <p><b>B</b></p> <p>back [8] 19/7 36/14 41/14 45/4 48/17 56/7 59/17 81/3</p> <p>ballpark [1] 40/3</p> <p>base [2] 31/11 43/22</p> <p>based [15] 3/10 20/22 24/16 25/23 27/16 30/17 31/2 31/4 34/19 35/8 37/10 44/5 45/16 46/8 88/9</p> <p>baseline [1] 60/10</p> <p>baseload [1] 53/2</p> <p>basically [7] 11/17 12/23 35/4 35/5 42/10 47/11 60/3</p> <p>basis [8] 24/8 30/22 46/10 52/19 55/10 55/11 55/15 56/20</p> <p>Bates [1] 72/6</p> <p>BAUMANN [40] 2/4 3/5 3/7 5/8 5/11 5/17 5/18 5/20 5/20 6/2 6/18 6/20 6/23 7/2 7/10 7/12 8/7 8/9 8/12 8/16 8/19 8/23 9/8 9/11 16/3 16/5 16/8 16/15 31/7 32/3 32/8 32/12 32/15 33/1 33/3 33/6 39/18 40/1 46/7 47/23</p> <p>Baumann's [1] 36/6</p> <p>be [128]</p> <p>Bear [1] 35/24</p> <p>bearing [2] 44/22 79/5</p> <p>because [25] 18/6 18/21 20/14 33/22 36/18 43/24 44/9 44/21 46/11 46/17 46/19 46/22 48/7 48/12 49/21 56/16 57/22 62/2 64/23 71/16 77/9 77/23 80/4 84/4 87/5</p> <p>become [3] 48/14 54/15 85/13</p> <p>becomes [2] 43/19 43/19</p> <p>been [29] 4/6 7/19 16/4 23/21 28/2 28/18 28/18 28/20 30/12 35/22 37/14 38/21 38/24 39/3 42/5 42/7 57/8 57/17 57/17 57/19 62/1 68/12 68/23 74/10 77/1 78/6 78/11 79/19 82/8</p> <p>before [19] 5/2 5/24 6/7 6/15 10/15 10/19 33/1 33/5 51/10 64/7 64/24 74/23 76/7 76/17 78/17 79/8 79/18 83/9 88/19</p>   | <p><b>C</b></p> <p>C.1 [1] 33/19</p> <p>calculate [1] 35/9</p> <p>calculated [4] 35/12 45/20 46/5 87/16</p> <p>calculation [4] 15/17 18/20 19/1 45/22</p> <p>calculations [4] 10/23 46/6 46/7 52/6</p> <p>calendar [3] 46/12 46/13 47/4</p> <p>call [3] 40/7 51/24 65/15</p> <p>called [1] 35/2</p>   |   |

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AFFIDAVIT

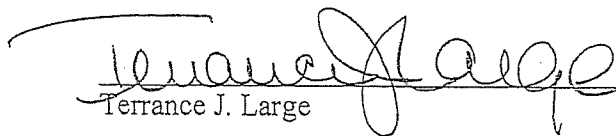
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| <b>ORIGINAL</b>                      |
| N.H.P.U.C. Case No. <u>DE 12-292</u> |
| Exhibit No. <u>#6</u>                |
| Witness _____                        |
| <b>DO NOT REMOVE FROM FILE</b>       |

I, Terrance J. Large, being duly sworn, depose and say as follows:

1. My name is Terrance J. Large, and I am employed by Public Service Company of New Hampshire ("PSNH") in Manchester, New Hampshire, as the Director of Business Planning and Customer Support Services. My duties include overseeing the development of PSNH's Least Cost Integrated Resource Plan ("LCIRP"). The most recently filed LCIRP found adequate by the Commission is PSNH's 2007 LCIRP, which I filed with the Commission on September 28, 2007. On September 30, 2010 PSNH filed an LCIRP that was docketed as Docket No. DE 10-261. That docket is currently pending before the Commission.

2. PSNH has requested that the Commission permit PSNH to amend its Stranded Cost Recovery Charge ("SCRC") and its Energy Service ("ES") Rate. Those requests are docketed as DE 12-291 and DE 12-292, respectively. The Company's "energy service" and "default service" were discussed throughout PSNH's 2007 LCIRP. Based upon my personal knowledge of PSNH's LCIRP, a decision by the Commission to implement the SCRC and ES Rate as proposed by PSNH will be in conformity with the LCIRP most recently filed and found adequate by the Commission.

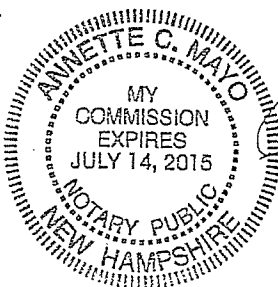
3. Further the affiant sayeth not.

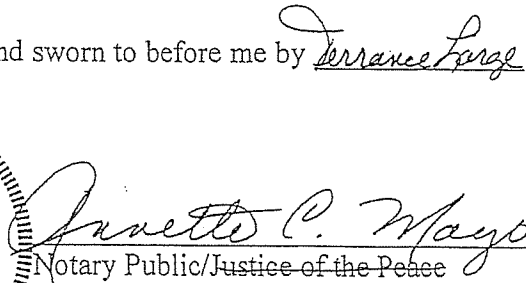
  
Terrance J. Large

State of New Hampshire  
County of Hillsborough

The foregoing Affidavit was subscribed and sworn to before me by Terrance Large this 18th day of December, 2012.

Commission expires:



  
Notary Public/Justice of the Peace





For a thriving New England

CLF New Hampshire 27 North Main Street  
Concord, NH 03301  
P: 603.225.3060  
E: 603.225.3059  
www.clf.org

December 21, 2012

Via Electronic Mail: Original and Six Copies by Overnight Mail

Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429



Re: Docket No. DE 12-292, Public Service Company of New Hampshire  
2013 Energy Service Rate

Dear Ms. Howland,

This letter is submitted in accordance with Puc 203.18, on behalf of the Conservation Law Foundation and its members, and addresses a response to a record request from the Commission provided by Public Service Company of New Hampshire ("PSNH") on December 19, 2012 in the above-referenced proceeding. PSNH's response includes the affidavit of Terrance J. Large, (the "PSNH Affidavit") which was, upon information and belief, provided to demonstrate that PSNH's pending rate change request in the instant docket would, if approved by the Commission, meet the requirements of statute, including, without limitation, RSA 378:40 and RSA 378:41. CLF hereby asserts that the rate change requested by PSNH<sup>1</sup> does not meet the requirements of RSA 378:40 and the Commission is thus devoid of statutory enabling authority to approve the rate change sought in this proceeding.

RSA 378:40, entitled "Plans Required," explicitly and directly imposes an affirmative requirement on utilities seeking approval for a rate change to file a least cost integrated resource plan at least biennially. It states that "[n]o rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39." RSA 378:40. Under RSA 378:38, "each electric utility shall file a least cost integrated resource plan (LCIRP) with the commission at least biennially" (emphasis added). Accordingly, PSNH "shall" (i.e., is required)<sup>2</sup> to file a least cost integrated resource plan ("LCIRP") "at least" every two years, and in addition, must have timely filed an LCIRP in order for the Commission to approve a rate change. In this instance, PSNH has failed to do so.

<sup>1</sup> The instant proceeding was brought by PSNH to request approval of a change in its default energy service rate from 7.11 cents/kwh to 9.54 cents/kwh, amounting to an approximately 34% rate increase.

<sup>2</sup> The use of the term "shall" in the statute emphasizes that PSNH is *directed* to file an LCIRP at least every two years. *State v. Johanson*, 156 N.H. 148, 151 (2007); *City of Rochester v. Corpening*, 153 N.H. 571, 574 (2006).

CLF NEW HAMPSHIRE

CLF MAINE

CLF MASSACHUSETTS

CLF NEW HAMPSHIRE

CLF RHODE ISLAND

CLF VERMONT



According to the PSNH Affidavit, the company last filed an LCIRP on September 30, 2010. As of today's date it has been more than two years plus eighty one days since PSNH last filed an LCIRP. Clearly, PSNH did not comply with the requirement to file an LCIRP biennially and is therefore in violation of RSA 378:38.

The regulation of public utilities and the establishment of rates to be charged by a public utility are, in the first instance, legislative functions which, in New Hampshire, have been delegated to the Commission. *Legislative Utility Consumers' Council v. Public Service Company Of New Hampshire*, 119 N.H. 332, 340 (1979). Under RSA 378:40, the Commission lacks the statutory enabling authority to approve PSNH's request for an increase in the default energy services rate in this proceeding. PSNH's failure to undertake the statutorily mandated duty to file an LCIRP vitiated the Commission's authority to approve PSNH's proposed massive rate increase and any attempt by the Commission to grant such increase would be *ultra vires* and void *ab initio* as a matter of law. *In Re Town of Nottingham*, 153 N.H. 539, 555 (2006) ("An agency 'must also comply with the governing statute, in both letter and spirit,') (quoting, *Appeal of Morin*, 140 N.H. 515, 519, 669 A.2d 207 (1995)). Cf. *In re Campaign for Ratepayers' Rights*, 162 N.H. 245, 256 (2011) ("Absent subject matter jurisdiction, a tribunal's order is void.") (quoting *Gordon v. Town of Rye*, 162 N.H. 144, 149 (2011)). See also, *In re Alexis O.*, 157 N.H. 781, 790 (2008) ("Administrative regulations that contradict the terms of a governing statute exceed the agency's authority, and are void.").

The PSNH Affidavit (at par. 1) notes that the September 20, 2010 LCIRP is currently pending before the Commission. The statutory exception in RSA 378:40 for LCIRPs undergoing Commission review does not apply, however, where the utility has failed to timely make the required LCIRP filing (i.e., within two years). That a timely filing is first required is unequivocal in the text of the statute. The relevant text states,

[h]owever, nothing contained in this subdivision shall prevent the commission from approving a [rate] change, [] where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

RSA 378:40. The condition precedent for the statutory exemption contains two elements: 1) "the utility has made the required plan filing in compliance with RSA 378:38"; and, 2) "the process of review is proceeding in the ordinary course but has not been completed." It is indisputable that PSNH did not make the required plan filing in compliance with RSA 378:38 because the statute directs PSNH to make the filing biennially and more than two years have passed. Accordingly, PSNH failed to meet the statutory condition precedent for the exception.

RSA 378:38 is explicit that the deadline for filing an LCIRP occurs two years from the filing of its last LCIRP. The language in RSA 378:38 is clear. There is no ambiguity in the statute. Ascribing the "plain and ordinary meaning to the words used" leaves no uncertainty: the



conservation law foundation

General Court mandated that PSNH was required to make the filing biennially and PSNH did not. See, *State v. Hynes*, 159 N.H. 187, 193 (The intent of the statute is discerned by examining the language of the statute, and, where possible, applying “the plain and ordinary meaning to the words used.”).

Although the Commission is empowered to waive certain requirements to file an LCIRP, such authority is not relevant here because PSNH did not request one nor has a waiver been granted. RSA 378:38-a. In fact, on a prior occasion in 2004, PSNH requested such a waiver under RSA 378:38-a as it related to the generation elements of least cost integrated resource planning. See *re Public Service of New Hampshire, Order on Request for RSA 378:38-a Waiver*, Order 24,435 (Feb. 25, 2005). Evidently PSNH is aware of its right to petition for a waiver, and chose not to seek a waiver in this instance.

Even a cursory review of prior Commission orders and precedent make it abundantly plain that in the absence of a waiver (i.e., extension) granted by the Commission, PSNH was required to file an LCIRP by September 30, 2012, within two years of its last filed plan. See, *Re Public Service Company of New Hampshire*, 91 NH PUC 527 (2006) (PSNH LCIRP filed June 30, 2005; Commission approval order November 8, 2006 which extended filing date for next plan to September 30, 2007); *Re Public Service Company of New Hampshire*, 94 NH PUC 103 (2009) (PSNH LCIRP filed September 28, 2007; Commission approval order February 27, 2009 which extended filing date for next plan until February 28, 2010; subsequently extended to September 30, 2010 in *Re Public Service of New Hampshire*, 97 NH PUC 760 (2009)). Most notable about PSNH’s prior LCIRP filings is that there was never a single day in which the date in which it filed an LCIRP extended beyond two years from the prior LCIRP submittal without first obtaining an extension by order from the Commission. Indeed, CLF did not find a single instance prior to the instant proceeding in which a utility missed the biennial LCIRP filing deadline without first obtaining an extension by order from the Commission and complying with such extension.<sup>3</sup>

In fact, in at least one prior instance a utility filed an LCIRP while its prior plan was still under review by the Commission in order to comply with the two-year requirement in RSA 378:38. See, *Re Granite state Electric Company dba National Grid*, 93 NH PUC 96 (2008)(LCIRP filed May 19, 2005 and then May 1, 2007; Commission order approving both LCIRPs Feb. 29, 2008 ). **The most glaring characteristic of the instant proceeding is that PSNH is seeking Commission approval for one of the largest rate hikes in the state’s history, without first complying with its statutory obligation to file a plan under RSA 378:38 and thus is also in violation of RSA 378:40.**

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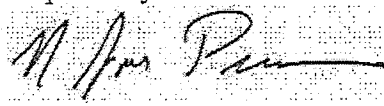
<sup>3</sup> The extent to which the Commission is empowered to waive the “biennially” requirement *sua sponte* without a utility first petitioning for a waiver is beyond the scope of this comment and CLF hereby reserves any and all rights with respect to same.



It is important to recognize that the failure of PSNH to adequately plan, or for that matter, to take seriously the General Court's policy mandating least cost integrated resources planning is the cause for PSNH seeking massively above market rates in the first instance. The Commission is undoubtedly aware of PSNH's witness Terrence Large's brazen comments during the hearing in DE 10-261, that the LCIRP planning process "sadly has very limited value" Transcript ("Tr.") Day 1 PM, p. 115, lines 14-15); that the LCIRP drives decision-making "[t]o a very limited degree." Tr. Day 1 PM, p. 116, lines 3-4; and suggesting that the only purpose of the planning process is to "satisfy the requirements of the law". Tr. Day 1 PM, p. 120, line 14. This was after PSNH made clear in testimony that its least cost planning does not consider forward price curves for natural gas, does not project energy margins or clearing prices, does not consider forecasts of customer migration, and does not meaningfully consider future environmental costs for PSNH's generation fleet. See, CLF Post-Hearing Brief, DE 10-261 (June 13, 2012).

PSNH has now acted on its dismissive beliefs, and taken its haughtiness to a new unprecedented level. It decided to disregard the statutory deadline for filing an LCIRP while at the same time seeking a 34% rate increase to impose above-market costs upon New Hampshire's captive, most vulnerable ratepayers. PSNH's failure to file a timely LCIRP as required by statute has the effect of negating the Commission's authority to approve its requested rate increase and the Commission may not do so in compliance with the law.<sup>4</sup>

We appreciate the opportunity to provide our comments and respectfully request that the Commission consider these comments in rendering its decision in the above referenced docket.

Respectfully submitted  
  
N. Jonathan Peress  
Conservation Law Foundation  
(603) 225-3060  
njperess@clf.org

cc: Service List in DE12-292

<sup>4</sup> Although CLF is not a party to the instant proceeding, it is empowered by law to protect its rights and those of its members. See, RSA 541:3 (stating that in addition to any party to a proceeding before the commission, "any person directly affected thereby . . . may apply for a rehearing. . ."); RSA 541:6 (applicant for rehearing may appeal by petition to the supreme court). See also *Appeal of Richards*, 134 N.H. 148, 154 (1991) ("A party or any person directly affected by the PUC's decision or order may apply for a rehearing with respect to 'any matter determined in the action or proceeding, or covered or included in the order.' RSA 541:3. If the motion for rehearing is denied, the party may then appeal by petition to this court. RSA 541:6.") (first emphasis added; second emphasis in original) (holding that Campaign for Ratepayer Rights, which was not a party to the proceeding, had standing to appeal denial of motion for rehearing).

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 12-292

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Default Energy Service Rate for 2013

Order Approving 2013 Energy Service Rate

ORDER NO. 25,448

December 28, 2012

**APPEARANCES:** Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; the Office of Consumer Advocate by Susan W. Chamberlain, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

**I. PROCEDURAL HISTORY**

On September 28, 2012, Public Service Company of New Hampshire (PSNH or Company) filed a proposal to establish its default energy service (ES) rate to take effect for service rendered on and after January 1, 2013. Pursuant to RSA 369-B:3, IV(b)(1)(A), customers taking ES from PSNH are billed an ES rate equal to PSNH's actual, prudent and reasonable costs of providing power, as approved by the Commission. In its filing, PSNH provided an initial estimate of 8.97 cents per kilowatt hour (kWh) for the 2013 ES rate, but stated that a final proposed rate would be filed prior to the hearing to reflect the most recent estimates of fuel and energy costs. In support of its filing, PSNH submitted the testimony and related exhibits of Robert A. Baumann, Director of Revenue Requirements for Massachusetts and New Hampshire for Northeast Utilities Service Company (NUSCO). NUSCO provides centralized services to the Northeast Utilities operating subsidiaries, including PSNH.

The Commission issued an order of notice on October 9, 2012, scheduling a prehearing conference for October 24, 2012. On October 11, 2012, the Office of Consumer Advocate

(OCA) notified the Commission of its participation on behalf of residential ratepayers consistent with RSA 363:28. On October 25, 2012, Staff filed a proposed procedural schedule, which the Commission approved by secretarial letter dated October 29, 2012. The procedural schedule noticed a hearing for December 18, 2012.

The OCA filed the testimony of Stephen R. Eckberg on November 21, 2012. Pursuant to the procedural schedule, on December 12, 2012, PSNH updated its ES rate calculations and provided a technical statement that explained the changes between the initial filing and the update. The update requested approval of an ES rate of 9.54 cents per kWh. Also on December 12, 2012, PSNH filed a report entitled "Review of Costs/PSNH Generation" (Generation Report) as required by Order No. 25,380 (June 27, 2012) in Docket No. DE 11-215, the docket designated for the review of PSNH's 2012 ES rate. Pursuant to RSA 91-A:5, IV and N.H. Code Admin. Rules Puc 203.08, PSNH filed a motion for protective order requesting confidential treatment of the contents of the Generation Report.

The hearing was held as scheduled. On December 19, 2012, in response to a record request generated at the hearing, PSNH filed the affidavit of Terrance J. Large, Director of Business Planning and Customer Support Services for PSNH which addressed the conformance of PSNH's filing with its least cost integrated resource plan (LCIRP) most recently filed and found adequate by the Commission pursuant to RSA 378:40.

Conservation Law Foundation (CLF) filed public comment on Mr. Large's affidavit on December 24, 2012. On December 24, 2012, the OCA filed a letter commenting on the affidavit of Mr. Large. Also on December 24, 2012, CLF filed an objection to PSNH's motion for protective order for the Generation Report, and PSNH filed a motion to strike the objection of

CLF. On December 27, 2012, the Commission issued a secretarial letter designating Mr. Large's affidavit as Exhibit 6 and the OCA response as Exhibit 7 in the instant docket.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. Public Service Company of New Hampshire

In prefiled testimony, PSNH witness Robert A. Baumann stated that the Company's current ES rate of 7.11 cents per kWh was established by the Commission in Order No. 25,380 (June 27, 2012) in Docket No. DE 11-215, PSNH's 2012 ES filing. Based on the Company's preliminary calculations, Mr. Baumann said that for the period January 1, 2013 through December 31, 2013, PSNH's prudent and reasonable cost of providing energy service was expected to be 8.97 cents per kWh. Mr. Baumann testified that the proposed ES rate of 8.97 cents per kWh includes the temporary rate of 0.98 cents per kWh approved by the Commission in Order No. 25,346 (April 10, 2012) for recovery of costs associated with the installation of the wet flue gas desulfurization (Scrubber) system at PSNH's Merrimack Station generation unit. See, Docket No. DE 11-250, *PSNH, Investigation into Scrubber Cost and Cost Recovery*.

Mr. Baumann testified that the major cost categories comprising the ES costs are revenue requirements for owned generation assets and the costs of purchased power obligations, the fuel costs associated with PSNH's generation assets, the costs from supplemental energy and capacity purchases, certain Independent System Operator-New England ancillary service charges and the cost of compliance with the New Hampshire Renewable Portfolio Standard (RPS) (RSA 362-F) and the Regional Greenhouse Gas Initiative (RSA 125-O:19 *et seq.*). The generation revenue requirements include non-fuel costs of generation, including non-fuel operation and maintenance costs, allocated administrative and general costs, depreciation, property and payroll taxes and a return on the net fossil/hydro investment.

PSNH included Independent Power Producer (IPP) generation as a source of power to meet PSNH's load requirements and stated that IPP power costs are based on projected market costs for energy and capacity. PSNH explained that the over-market costs of purchases from the IPPs are recovered through Part 2 of the stranded cost recovery charge (SCRC). As market prices change, the value of IPP purchases recovered through the ES rate changes. At the same time, however, there is a corresponding change to the SCRC for the above-market value of IPP purchases. To properly match the recovery of IPP costs, PSNH said it also separately filed for a change in the SCRC for effect on January 1, 2013 (Docket No. DE 12-291).

Mr. Baumann testified that the level of migration (the percentage of customer load receiving energy supply service from competitive suppliers) assumed in the Company's initial filing reflected the actual August 31, 2012 migration level of 40.0%. In proposing an ES rate for 2013, PSNH said it did not presume that customers will migrate more or less than the actual level of 40%.

In accordance with the procedural schedule, PSNH updated its ES rate calculations on December 12, 2012 and provided a technical statement that explained the changes between the initial filing and the update. The update requested approval of an ES rate of 9.54 cents per kWh, an increase of 0.57 cents per kWh from the ES rate of 8.97 cents per kWh proposed in the initial filing, and an increase of 2.43 cents per kWh over the current rate of 7.11 cents per kWh. PSNH testified that it included the temporary Scrubber cost recovery rate of 0.98 cents per kWh in the calculation of the 9.54 cents per kWh rate. According to PSNH, the increase in the ES rate calculated for 2013 is primarily due to an increase in the forecasted market price of power and an increase in the rate of customer migration from 40.0% in the initial filing to 42.5%, reflecting



migration as of October 2012. In addition, PSNH forecast that ES sales would be 4% lower than the estimates forecast in the initial filing, primarily due to customer migration.

During the hearing, PSNH introduced Exhibit 3 which depicted the cost components included in overall customer rates and the percentage increases and decreases proposed for effect in the SCRC and ES rate beginning January 1, 2013. According to Exhibit 3, the updated request for the 2013 ES rate to 9.54 cents per kWh represents an increase of 34.18% over the current rate of 7.11 cents per kWh

PSNH testified that the Generation Report was filed pursuant to Commission Order No. 25,380. Regarding the Report, PSNH said that Staff, the OCA and the Company agreed that the Generation Report should be fully investigated and that it was premature to address it in the hearing on ES rates proposed for effect beginning January 1, 2013.

The OCA raised a question at hearing regarding whether all of the contents of the Report should be entitled to confidential treatment as requested in PSNH's motion for protective order. PSNH said that it would discuss this issue with Staff and the OCA to determine whether any information in the report could be provided in a public filing.

The OCA also asked the Commission to determine whether PSNH complied with RSA 378:40, relative to least cost planning requirements, in its petition to establish an ES rate for 2013. PSNH did not have a witness available at the hearing who could speak to the Company's compliance with RSA 378:40 and, consequently, the Commission reserved Exhibit 6 for the Company's response.<sup>1</sup> On December 19, 2012, PSNH filed the affidavit of Mr. Terrance J. Large (Exhibit 6) in which Mr. Large attested that the filing in the instant docket conformed to PSNH's 2007 LCIRP, the LCIRP most recently filed with and found adequate by the

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<sup>1</sup> At the hearing, the Commission provided Staff and the OCA opportunity to comment on PSNH's record request response. The OCA filed a letter with the Commission on December 24, 2012; Staff did not make a comment filing.

Commission. Mr. Large further stated that PSNH's most recent LCIRP filing in Docket No. DE 10-261 is currently pending before the Commission.

#### B. Office of Consumer Advocate

The OCA stated that PSNH's operation model causes the fixed price of generation to be borne by a shrinking customer rate base consisting primarily of residential customers, and that the result is unfair to those customers. The OCA stated that as PSNH's ES rate moves higher than the market price, more customer migration will result. The OCA opined that it is unfair that large customers are not supporting the fixed cost of generation. The OCA said that the filing is reasonable, however, the overall structure of PSNH's ES rates cannot continue. The OCA referred to the Generation Report and stated that it had not had time to review it, that the Generation Report would be subject to ongoing review, and that the OCA would participate in that review.

On December 24, 2012, the OCA filed a letter stating that it was unable to take a position regarding the affidavit of Mr. Large because the affidavit did not add to the record in a substantive manner.

#### C. Staff

Staff said that PSNH had calculated the ES rate consistent with the manner in which it calculated the ES rate in previous filings and stated that it did not object to the petition. Staff noted that the Company's proposed rate is over market which is of concern from a customer perspective and cautioned that the rate may cause more customer migration which would continue to push PSNH's rates higher going forward. With respect to PSNH's Generation Report, Staff said that it had discussed the matter with the Company and the OCA and that the parties were in agreement that, due in part the limited time available to review the Generation

Report for this hearing, the Staff and the OCA should be given an opportunity to examine the Generation Report. Staff said that any recommendations that result from the examination could be addressed in the proceeding to consider PSNH's the mid-year adjustment to its ES rate.

### III. COMMISSION ANALYSIS

Pursuant to RSA 369-B:3, IV(b)(1)(A), the price of PSNH's ES shall be its "actual, prudent, and reasonable costs of providing such power, as approved by the commission." The genesis of the two-part procedure for calculating default service rates, which PSNH refers to as ES rates, and the reconciliation of those rates, lies in RSA 374-F, and the Settlement Agreement in Docket No. DE 99-099, which implemented electric utility restructuring for PSNH, and Docket No. 02-166, Order No. 24,117 (January 30, 2003), which further refined the mechanism for setting transition service rates, now ES rates. Because PSNH is entitled to recover its *actual* costs of providing power and those costs cannot be known prior to providing that power, the Commission has adopted a two-step process for setting ES rates. The first step, which is determined in this docket, is based upon an estimate of future costs for the following calendar year. The second step, which occurs after the power has been produced or purchased and delivered, involves reconciling the estimated rate with the actual costs and reviewing the prudence of those costs.

PSNH has requested an ES rate of 9.54 cents per kWh for effect with service rendered on and after January 1, 2013 and the Company has provided supporting data and documentation that demonstrates that the rate was correctly calculated. While there is no technical deficiency to the filing, the fact that the proposed ES rates are increasing by such a significant percentage impacts PSNH's energy service customers and could exacerbate customer migration. By our calculation,

for a residential customer using 500 kWh per month, the energy service component of their bill would increase by \$12.15 per month, from \$35.55 to \$47.70—a significant increase.

In calculating the costs for power in 2013, PSNH stated it did not consider the volume of purchased power commitments and the associated price of that power resulting from a power purchase agreement between the Company and Berlin Station, a biomass-fired generating plant under construction in Berlin, New Hampshire. According to the Company, Berlin Station may begin producing power in the fall of 2013. While we understand there is some uncertainty regarding the expected in-service date for the Berlin Station, we expect that if PSNH has updated information on the status of the Berlin Station at the time it files for a mid-year adjustment to the ES rate, that the Company will include information and any associated costs in that mid-year filing.

As noted above, at hearing, the OCA asked the Commission to determine whether PSNH complied with RSA 378:40 in its petition to establish an energy service rate for 2013. The statute reads as follows:

No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 38:39. However, nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

At the hearing, we pointed out that RSA 378:41 is also implicated in proceedings before the Commission. RSA 378:41 reads as follows:

Any proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission.

Because PSNH did not have a witness at the hearing to address compliance with RSA 378:40, we issued a record request to allow PSNH to provide a written response on the issue. The response provided by PSNH was an affidavit signed by Mr. Large which addressed the request for adjustment to the SCRC rate in Docket No. DE 12-291 and the adjustment to PSNH's ES rate in the instant docket. In the affidavit, Mr. Large attested to the instant filing being in conformance with PSNH's 2007 LCIRP, the most recent LCIRP filed with and found adequate by the Commission. Mr. Large further stated that PSNH's most recent LCIRP filing in Docket No. DE 10-261 is currently pending before the Commission.

We have reviewed the assertions made by Mr. Large in his affidavit and find that, as Mr. Large averred, the LCIRP most recently reviewed and found adequate by the Commission was filed by PSNH on September 28, 2007 in Docket No. DE 07-108. In Order No. 24,966 (May 1, 2009) in Docket No. DE 07-108, the Commission ruled on a motion for rehearing and required PSNH to file its next LCIRP no later than May 3, 2010. Subsequently, in Docket No. DE 09-180, PSNH's 2010 Energy Service docket, we directed the Company to file its next LCIRP no later than September 30, 2010, the date on which PSNH made the LCIRP filing in Docket No. DE 10-261. *See* Order No. 25,061 (December 31, 2009).<sup>2</sup> The filing in DE 10-261 is currently pending our review.

The 2007 LCIRP, which was found adequate by the Commission, contains several sections which describe the process whereby PSNH provides energy service to its default service customers, including the following description of the annual establishment of ES rates.

Energy Service Rate – The Energy Service rate for 2007 is based upon the currently effective Energy Service rate, updated for current power market conditions as of February 14, 2007. The Energy Service rates for 2008-2012 are adjusted annually to reflect the forecasted energy and capacity cost from PSNH's owned generating assets and

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<sup>2</sup> In Order No. 25,061, the Commission extended the LCIRP filing deadline to allow PSNH additional time to perform a continued unit operation study of its Newington generation unit. Order No. 25,061 at 31.

the projected market cost of purchasing additional energy to serve load. PSNH LCIRP filing, September 28, 2007 p 21-22.

In this petition, PSNH seeks to make the annual adjustment to its ES rate consistent with the terms of the 2007 LCIRP, the LCIRP most recently filed and found adequate by the Commission. In addition, pursuant to RSA 369-B:3, IV(1)(A), the price for PSNH default service shall be PSNH's "actual, prudent, and reasonable costs of providing such power, as approved by the commission." Based on the foregoing, we find that PSNH's energy service filing conforms to the most recent LCIRP filed and found adequate by the Commission pursuant to RSA 378:41.

PSNH filed a motion for protective order for its Generation Report related to the costs of its generation units. At hearing, the OCA expressed concern that some of the material in the Generation Report is not entitled to confidential treatment and the Commission noted that the entire Generation Report was redacted. In response to this concern, PSNH agreed that it would review the information contained in the Generation Report with the OCA and Staff to determine whether any information in the Report could be made publicly available. We expect that, in the event that the Company determines that some of the information need not be protected, it will withdraw the pending motion for protective order and file a more limited pleading for confidential treatment.

CLF filed an objection to PSNH's motion for protective order. CLF states that it was a party to Docket No. DE 11-215, the proceeding in which the Commission directed PSNH to file the Report on generation costs. Order No. 25,380 (June 27, 2012). The Commission rules provide that if a party has a duty, right, privilege or interest in a proceeding, the party may file a motion to intervene in that proceeding. New Hampshire Code Admin. Rules Puc 203.17. CLF did not file a motion to intervene in the instant proceeding.

PSNH filed a motion to strike CLF's objection on the basis that CLF is not a party to this proceeding and is therefore not eligible to file formal pleadings. Because PSNH is now evaluating whether the request for protection was broader than it needed to be, it would be premature at this time to take any action on PSNH's motion for protective order or CLF's objection to the motion. If a revised motion for protective treatment is not submitted within 14 days of this order, we will rule on PSNH's December 12, 2012 motion as well as the CLF objection and PSNH motion to strike.

Based upon the foregoing, it is hereby

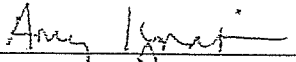
ORDERED, that the petition of Public Service Company of New Hampshire to adjust its energy service rate to 9.54 cents per kilowatt hour effective with service rendered on and after January 1, 2013 is hereby APPROVED; and it is

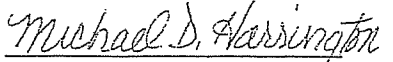
FURTHER ORDERED, that issues regarding PSNH's motion for protective treatment are held in abeyance pending PSNH's opportunity, within 14 days of the date hereof, to seek a modified request for protection; and it is

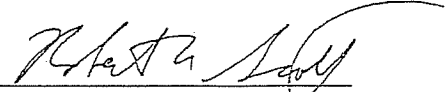
FURTHER ORDERED, that PSNH shall file tariffs conforming to this Order within 30 days of the date hereof.

DE 12-292

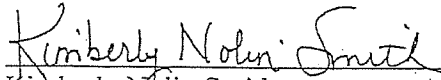
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of  
December, 2012.

  
Amy D. Ignatius  
Chairman

  
Michael D. Harrington  
Commissioner

  
Robert R. Scott  
Commissioner

Attested by:

  
Kimberly Nolin Smith  
Assistant Secretary



STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

2013 Default Energy Service Rate

Docket No. DE 12-292

CONSERVATION LAW FOUNDATION'S AND RATEPAYERS'  
MOTION FOR REHEARING OF ORDER No. 25,448

Conservation Law Foundation ("CLF"), and the undersigned ratepayers purchasing energy service (the "PSNH Ratepayers") from Public Service Company of New Hampshire ("PSNH") hereby request rehearing of Order No. 25,448, issued December 28, 2012 ("the Order"), pursuant to RSA 541:3. PSNH Ratepayers are: Alexandra M. Dannis and James G. Dannis, William Hopwood, Janet Ward, George Chase, and Amy Matheson. Each of the foregoing individuals has authorized CLF to represent that he/she is joining in this Motion as an individual ratepayer.<sup>1</sup> Collectively, CLF and the PSNH Ratepayers are referred to herein as "Petitioners." In support of this Motion, Petitioners state as follows:

1. The rights, privileges and immunities of each of the Petitioners are affected by the Order and/or the rates established by the Commission therein as set forth below.

2. A non-profit environmental membership organization, CLF's mission is to protect New England's environment for the benefit of all people by using the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Consistent with its mission, CLF is dedicated to the protection and responsible use of resources affected by the generation, transmission and distribution of electric

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<sup>1</sup> CLF prepared this Motion which is being filed on behalf of itself, and by each PSNH Ratepayer. CLF is *not* acting in the capacity of legal counsel for, nor otherwise representing the PSNH Ratepayers, and each is a separate party to the instant motion.

power, and to advancing solutions that strengthen New England's – and New Hampshire's – economic vitality. CLF represents the interests of its members in ensuring that environmental impacts resulting from electric utility operation in New Hampshire and the region are minimized, and in avoiding adverse economic impacts associated with continued use and reliance on uneconomic, environmentally unsustainable electricity generation such as coal-fired generation at PSNH's Merrimack and Schiller Stations. In order to achieve its organizational objectives, CLF's focus includes advocacy regarding the design and operation of the region's energy markets, including those regulated by state Public Utility Commissions like the retail market in New Hampshire in which PSNH participates, and the wholesale electricity market in New England, as regulated by the Federal Energy Regulatory Commission. In this regard, CLF has been a voting member and participant in the New England Power Pool ("NEPOOL") since 2004 because we believe that vibrant competitive energy markets facilitate competition and innovation which attenuates environmental impacts.

3. CLF has over 3,300 members, including 435 members residing in New Hampshire and more than 300 members who reside in PSNH's service territory, many of whom are default energy service customers of PSNH, including but not limited to some of the PSNH Ratepayers joining this Motion. CLF joins in this Motion on behalf of itself and its members, whose rights and interests are directly affected by the 34% rate increase, constituting massive above market costs granted to PSNH by the Order in this proceeding.<sup>2</sup> CLF has regularly been granted intervention by the Commission in PSNH ratemaking proceedings including most

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<sup>2</sup> In addition to its stand alone rate impacts, the impacts of Order No. 25,448 are also far broader causing more fundamental market and policy effects. Within days of issuing the Order, the Commission opened "an investigation pursuant to RSA 365:5 and RSA 374:4 to examine the circumstances of PSNH's default service rates and the degree to which those circumstances affect the ability of PSNH to provide safe and reliable service at just and reasonable rates to its default service customers." DE 13-020 Order of Notice ("OON"). In the OON, the Commission expressly connected "long- and short-term environmental, economic and energy price and supply impact on the State" within PSNH's least cost planning to recent developments with PSNH's default energy service rates.

recently DE 10-121 (Energy Service Rate Reconciliation) and DE 11-215 (Proposed Energy Service Rate). In addition, CLF was granted intervention in DE 10-160 (PSNH Customer Migration) and pending DE 10-261 (PSNH Least Cost Integrated Resource Plan) and DE 11-250 (Scrubber Cost Recovery).

4. PSNH Ratepayers, as ratepayers directly bearing the cost of the increased above-market rates charged by PSNH, experience a direct economic injury from the rate increase in the Order. *Appeal of Richards*, 134 N.H. 148 (1991).

5. Although the Petitioners are not parties in the instant proceeding, they are empowered by law to protect their respective rights. See RSA 541:3 (stating that in addition to any party to a proceeding before the commission, “any person directly affected thereby . . . may apply for a rehearing. . . .”); *Appeal of Richards* at 154 (“A party or any person directly affected by the PUC’s decision or order may apply for a rehearing with respect to ‘any matter determined in the action or proceeding, or covered or included in the order.’”) (emphasis added).

6. The Commission may grant rehearing when the motion states “good reason for the rehearing.” RSA 541:3. Good reason may be shown by identifying specific matters that were either “overlooked or mistakenly conceived in the original decision and thus invite[] a reconsideration upon the record upon which that decision rested.” *Lambert Const. Co. v. State*, 115 N.H. 516, 519 (1975) (citations omitted).

7. This Motion arises out of PSNH’s request for approval of its proposed default energy service rate for 2013. PSNH initially requested an 8.97 cents/kwh default energy service rate on September 28, 2012, but increased the requested rate to 9.54 cents/kwh on December 12, 2012. The requested 9.54 cents/kwh rate, which the Commission approved in the Order, represents a 34% increase over the 2012 default energy service rate of 7.11 cents/kwh.

8. CLF submitted comments to the Commission in this proceeding on December 24, 2012 (“Comment Letter”) attached hereto as Exhibit 1 and which, in order to avoid duplication, we hereby incorporate by reference. The Comment Letter was filed in response to information provided by PSNH in the affidavit of Terrance J. Large (“PSNH Affidavit” attached hereto as Exhibit 2), which was filed on December 19, 2012 as part of PSNH’s response to a Commission record request in this proceeding. The Comment Letter asserted that the Commission lacked the statutory authority to approve the default energy service rate change sought in this proceeding because PSNH’s rate change request does not meet the requirements of RSA 378:40.

9. On December 28, 2012, the Commission approved PSNH’s default energy service rate increase of 34% in the Order. The Order noted that CLF had filed comments in response to the PSNH Affidavit on December 24. Order at 2. The Order did not otherwise acknowledge or discuss the content of CLF’s Comment Letter. Petitioners now move for rehearing of the Order in light of the legal arguments raised in the Comment Letter.

10. Specifically, Petitioners request that the Commission rehear the Order and disapprove PSNH’s 2013 default energy service rate increase on the basis of PSNH’s failure to comply with the requirements of RSA 378:38 & 378:40. As is further described in the Comment Letter, the Commission lacks the statutory authority to approve a rate change when the requesting utility has failed to file plans required under RSA 378:38, which includes least cost integrated resource plans (“LCIRP”) filed at least biennially. RSA 378:38, 378:40. PSNH’s most recent LCIRP was filed on September 20, 2010. See PSNH Affidavit. For these reasons, Petitioners request that the Commission rehear the Order in response to the legal arguments presented by CLF in the Comment Letter and above.

11. The Office of Consumer Advocate has authorized Petitioners to represent that it does not object to the relief requested herein.

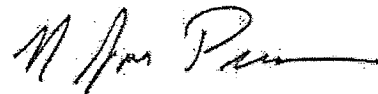
WHEREFORE, Petitioners respectfully requests that the Commission:

- A. Grant this Motion for Rehearing of Order No. 25,448; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

**CONSERVATION LAW FOUNDATION**

By:



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Dated: January 28, 2013

**PSNH RATEPAYERS**

/s/ Alexandra Dannis, /s/ James Dannis  
Alexandra M. Dannis and James G. Dannis  
117 McGinty Road  
Dalton, New Hampshire 03598

/s/ William Hopwood  
William Hopwood  
706 Bunker Road  
Elkins, New Hampshire 03233

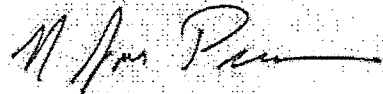
/s/ Janet Ward  
Janet Ward  
82 Watchtower Road  
Contoocook, New Hampshire 03229

/s/ Amy Matheson  
Amy D. Matheson  
105 Exeter Road, Apt. 2  
North Hampton, New Hampshire 03862

/s/ George Chase  
George Chase  
497 Putney Hill Road  
Hopkinton, New Hampshire 03229

CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of January 2013, a copy of the foregoing Motion for Rehearing Order No. 25,448 was sent electronically or by First Class Mail to the service list.



\_\_\_\_\_  
N. Jonathan Peress  
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Fax: (603) 225-3059  
njperess@clf.org

Dated: January 28, 2013

**EXHIBIT 1**



For a thriving New England

CLF New Hampshire 27 North Main Street  
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www.clf.org

December 21, 2012

Via Electronic Mail; Original and Six Copies by Overnight Mail

Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

Re: Docket No. DE 12-292, Public Service Company of New Hampshire  
2013 Energy Service Rate

Dear Ms. Howland,

This letter is submitted in accordance with Puc 203.18, on behalf of the Conservation Law Foundation and its members, and addresses a response to a record request from the Commission provided by Public Service Company of New Hampshire ("PSNH") on December 19, 2012 in the above-referenced proceeding. PSNH's response includes the affidavit of Terrance J. Large, (the "PSNH Affidavit") which was, upon information and belief, provided to demonstrate that PSNH's pending rate change request in the instant docket would, if approved by the Commission, meet the requirements of statute, including, without limitation, RSA 378:40 and RSA 378:41. CLF hereby asserts that the rate change requested by PSNH<sup>1</sup> does not meet the requirements of RSA 378:40 and the Commission is thus devoid of statutory enabling authority to approve the rate change sought in this proceeding.

RSA 378:40, entitled "Plans Required," explicitly and directly imposes an affirmative requirement on utilities seeking approval for a rate change to file a least cost integrated resource plan at least biennially. It states that "[n]o rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39." RSA 378:40. Under RSA 378:38, "each electric utility shall file a least cost integrated resource plan (LCIRP) with the commission at least biennially" (emphasis added). Accordingly, PSNH "shall" (i.e., is required)<sup>2</sup> to file a least cost integrated resource plan ("LCIRP") "at least" every two years, and in addition, must have timely filed an LCIRP in order for the Commission to approve a rate change. In this instance, PSNH has failed to do so.

<sup>1</sup> The instant proceeding was brought by PSNH to request approval of a change in its default energy service rate from 7.11 cents/kwh to 9.54 cents/kwh, amounting to an approximately 34% rate increase.

<sup>2</sup> The use of the term "shall" in the statute emphasizes that PSNH is *directed* to file an LCIRP at least every two years. *State v. Johanson*, 156 N.H. 148, 151 (2007); *City of Rochester v. Corpening*, 153 N.H. 571, 574 (2006).





According to the PSNH Affidavit, the company last filed an LCIRP on September 30, 2010. As of today's date it has been more than two years plus eighty one days since PSNH last filed an LCIRP. Clearly, PSNH did not comply with the requirement to file an LCIRP biennially and is therefore in violation of RSA 378:38.

The regulation of public utilities and the establishment of rates to be charged by a public utility are, in the first instance, legislative functions which, in New Hampshire, have been delegated to the Commission. *Legislative Utility Consumers' Council v. Public Service Company Of New Hampshire*, 119 N.H. 332, 340 (1979). Under RSA 378:40, the Commission lacks the statutory enabling authority to approve PSNH's request for an increase in the default energy services rate in this proceeding. PSNH's failure to undertake the statutorily mandated duty to file an LCIRP vitiated the Commission's authority to approve PSNH's proposed massive rate increase and any attempt by the Commission to grant such increase would be *ultra vires* and void *ab initio* as a matter of law. *In Re Town of Nottingham*, 153 N.H. 539, 555 (2006) ("An agency 'must also comply with the governing statute, in both letter and spirit,') (quoting, *Appeal of Morin*, 140 N.H. 515, 519, 669 A.2d 207 (1995)). Cf. *In re Campaign for Ratepayers' Rights*, 162 N.H. 245, 256 (2011) ("Absent subject matter jurisdiction, a tribunal's order is void.") (quoting *Gordon v. Town of Rye*, 162 N.H. 144, 149 (2011)). See also, *In re Alexis O.*, 157 N.H. 781, 790 (2008) ("Administrative regulations that contradict the terms of a governing statute exceed the agency's authority, and are void.").

The PSNH Affidavit (at par. 1) notes that the September 20, 2010 LCIRP is currently pending before the Commission. The statutory exception in RSA 378:40 for LCIRPs undergoing Commission review does not apply, however, where the utility has failed to timely make the required LCIRP filing (i.e., within two years). That a timely filing is first required is unequivocal in the text of the statute. The relevant text states,

[h]owever, nothing contained in this subdivision shall prevent the commission from approving a [rate] change, [] where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

RSA 378:40. The condition precedent for the statutory exemption contains two elements: 1) "the utility has made the required plan filing in compliance with RSA 378:38"; **and**, 2) "the process of review is proceeding in the ordinary course but has not been completed." It is indisputable that PSNH did not make the required plan filing in compliance with RSA 378:38 because the statute directs PSNH to make the filing biennially and more than two years have passed. Accordingly, PSNH failed to meet the statutory condition precedent for the exception.

RSA 378:38 is explicit that the deadline for filing an LCIRP occurs two years from the filing of its last LCIRP. The language in RSA 378:38 is clear. There is no ambiguity in the statute. Ascribing the "plain and ordinary meaning to the words used" leaves no uncertainty: the



General Court mandated that PSNH was required to make the filing biennially and PSNH did not. See, *State v. Hynes*, 159 N.H. 187, 193 (The intent of the statute is discerned by examining the language of the statute, and, where possible, applying “the plain and ordinary meaning to the words used.”).

Although the Commission is empowered to waive certain requirements to file an LCIRP, such authority is not relevant here because PSNH did not request one nor has a waiver been granted. RSA 378:38-a. In fact, on a prior occasion in 2004, PSNH requested such a waiver under RSA 378:38-a as it related to the generation elements of least cost integrated resource planning. See *re Public Service of New Hampshire, Order on Request for RSA 378:38-a Waiver*, Order 24,435 (Feb. 25, 2005). Evidently PSNH is aware of its right to petition for a waiver, and chose not to seek a waiver in this instance.

Even a cursory review of prior Commission orders and precedent make it abundantly plain that in the absence of a waiver (i.e., extension) granted by the Commission, PSNH was required to file an LCIRP by September 30, 2012, within two years of its last filed plan. See, *Re Public Service Company of New Hampshire*, 91 NH PUC 527 (2006) (PSNH LCIRP filed June 30, 2005; Commission approval order November 8, 2006 which extended filing date for next plan to September 30, 2007); *Re Public Service Company of New Hampshire*, 94 NH PUC 103 (2009) (PSNH LCIRP filed September 28, 2007; Commission approval order February 27, 2009 which extended filing date for next plan until February 28, 2010; subsequently extended to September 30, 2010 in *Re Public Service of New Hampshire*, 97 NH PUC 760 (2009)). Most notable about PSNH’s prior LCIRP filings is that there was never a single day in which the date in which it filed an LCIRP extended beyond two years from the prior LCIRP submittal without first obtaining an extension by order from the Commission. Indeed, CLF did not find a single instance prior to the instant proceeding in which a utility missed the biennial LCIRP filing deadline without first obtaining an extension by order from the Commission and complying with such extension.<sup>3</sup>

In fact, in at least one prior instance a utility filed an LCIRP while its prior plan was still under review by the Commission in order to comply with the two-year requirement in RSA 378:38. See, *Re Granite State Electric Company dba National Grid*, 93 NH PUC 96 (2008)(LCIRP filed May 19, 2005 and then May 1, 2007; Commission order approving both LCIRPs Feb. 29, 2008 ). **The most glaring characteristic of the instant proceeding is that PSNH is seeking Commission approval for one of the largest rate hikes in the state’s history, without first complying with its statutory obligation to file a plan under RSA 378:38 and thus is also in violation of RSA 378:40.**

<sup>3</sup> The extent to which the Commission is empowered to waive the “biennially” requirement *sua sponte* without a utility first petitioning for a waiver is beyond the scope of this comment and CLF hereby reserves any and all rights with respect to same.



conservation law foundation

It is important to recognize that the failure of PSNH to adequately plan, or for that matter, to take seriously the General Court's policy mandating least cost integrated resources planning is the cause for PSNH seeking massively above market rates in the first instance. The Commission is undoubtedly aware of PSNH's witness Terrence Large's brazen comments during the hearing in DE 10-261, that the LCIRP planning process "sadly has very limited value" Transcript ("Tr.") Day 1 PM, p. 115, lines 14-15); that the LCIRP drives decision-making "[t]o a very limited degree." Tr. Day 1 PM, p. 116, lines 3-4; and suggesting that the only purpose of the planning process is to "satisfy the requirements of the law". Tr. Day 1 PM, p. 120, line 14. This was after PSNH made clear in testimony that its least cost planning does not consider forward price curves for natural gas, does not project energy margins or clearing prices, does not consider forecasts of customer migration, and does not meaningfully consider future environmental costs for PSNH's generation fleet. See, CLF Post-Hearing Brief, DE 10-261 (June 13, 2012).

PSNH has now acted on its dismissive beliefs, and taken its haughtiness to a new unprecedented level. It decided to disregard the statutory deadline for filing an LCIRP while at the same time seeking a 34% rate increase to impose above-market costs upon New Hampshire's captive, most vulnerable ratepayers. PSNH's failure to file a timely LCIRP as required by statute has the effect of negating the Commission's authority to approve its requested rate increase and the Commission may not do so in compliance with the law.<sup>4</sup>

We appreciate the opportunity to provide our comments and respectfully request that the Commission consider these comments in rendering its decision in the above referenced docket.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'N. Jonathan Peress', written over a horizontal line.

N. Jonathan Peress  
Conservation Law Foundation  
(603) 225-3060  
njperess@clf.org

cc: Service List in DE12-292

<sup>4</sup> Although CLF is not a party to the instant proceeding, it is empowered by law to protect its rights and those of its members. See, RSA 541:3 (stating that in addition to any party to a proceeding before the commission, "any person directly affected thereby . . . may apply for a rehearing. . ."); RSA 541:6 (applicant for rehearing may appeal by petition to the supreme court). See also *Appeal of Richards*, 134 N.H. 148, 154 (1991) ("A party or any person directly affected by the PUC's decision or order may apply for a rehearing with respect to 'any matter determined in the action or proceeding, or covered or included in the order.' RSA 541:3. If the motion for rehearing is denied, the party may then appeal by petition to this court. RSA 541:6.") (first emphasis added; second emphasis in original) (holding that Campaign for Ratepayer Rights, which was not a party to the proceeding, had standing to appeal denial of motion for rehearing).

**EXHIBIT 2**

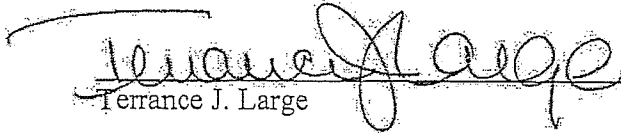
AFFIDAVIT

I, Terrance J. Large, being duly sworn, depose and say as follows:

1. My name is Terrance J. Large, and I am employed by Public Service Company of New Hampshire ("PSNH") in Manchester, New Hampshire, as the Director of Business Planning and Customer Support Services. My duties include overseeing the development of PSNH's Least Cost Integrated Resource Plan ("LCIRP"). The most recently filed LCIRP found adequate by the Commission is PSNH's 2007 LCIRP, which I filed with the Commission on September 28, 2007. On September 30, 2010 PSNH filed an LCIRP that was docketed as Docket No. DE 10-261. That docket is currently pending before the Commission.

2. PSNH has requested that the Commission permit PSNH to amend its Stranded Cost Recovery Charge ("SCRC") and its Energy Service ("ES") Rate. Those requests are docketed as DE 12-291 and DE 12-292, respectively. The Company's "energy service" and "default service" were discussed throughout PSNH's 2007 LCIRP. Based upon my personal knowledge of PSNH's LCIRP, a decision by the Commission to implement the SCRC and ES Rate as proposed by PSNH will be in conformity with the LCIRP most recently filed and found adequate by the Commission.

3. Further the affiant sayeth not.

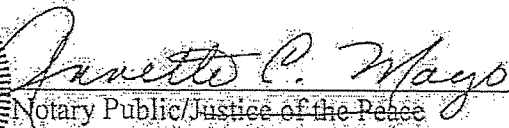
  
Terrance J. Large

State of New Hampshire  
County of Hillsborough

The foregoing Affidavit was subscribed and sworn to before me by Terrance Large this 18th day of December, 2012.

Commission expires:



  
Notary Public/Justice of the Peace

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

2013 Default Energy Service Charge  
Docket No. DE 12-292

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO  
CONSERVATION LAW FOUNDATION'S AND RATEPAYERS' MOTION FOR  
REHEARING OF ORDER NO. 25,448

January 30, 2013

Pursuant to RSA Chapter 541 and New Hampshire Code of Administrative Rules Puc 203.07(f), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to "Conservation Law Foundation's and Ratepayers' Motion for Rehearing of Order No. 25,448" (the "Motion")<sup>1</sup> filed on January 28, 2013 in the above docket with the New Hampshire Public Utilities Commission ("Commission"). The bases for this Objection are that the Motion is nothing more than a reassertion of prior arguments that were rejected by the Commission and any argument that the Commission did not address the matters asserted in the context of this case is simply incorrect.

In support of its objection PSNH states as follows:

1. On September 28, 2012, PSNH filed a proposed default energy service rate for calendar year 2013 which was docketed as DE 12-292. Following discovery and the submission of testimony of various parties, PSNH filed an updated proposal on December 12, 2012. A duly

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<sup>1</sup> The Motion was filed by CLF on behalf of itself and a group of named ratepayers, referred to collectively in the Motion as the Petitioners. The Motion states in a footnote that CLF was not "acting in the capacity of legal counsel for, nor otherwise representing the PSNH Ratepayers, and each is a separate party to the instant motion." Motion at footnote 1. For convenience, PSNH references only CLF in this objection.

noticed hearing was held on PSNH's proposal on December 19, 2012. On December 24, 2012, Conservation Law Foundation ("CLF"), which was not a party to the docket, filed a letter commenting on PSNH's proposal. Specifically, CLF's comment letter contended that PSNH's default energy service rate filing did not conform with various statutes relating to PSNH's Least Cost Integrated Resource Plan ("LCIRP").<sup>2</sup> See RSA 378:38-42.

2. On December 28, 2012, the Commission issued Order No. 25,448 approving PSNH's proposed default energy service rate. On January 28, 2013, CLF filed the Motion contending that other than noting the filing of CLF's comment letter, Order No. 25,448 "did not otherwise acknowledge or discuss the content of CLF's Comment Letter." According to the Motion, "Petitioners now move for rehearing of the Order in light of the legal arguments raised in the Comment Letter." The Motion contends that the Commission should grant rehearing of Order No. 25,448 and deny PSNH's rate change "in light of the legal arguments raised in the Comment Letter." Motion at 4.

3. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

4. PSNH notes first that CLF was not a party to Docket No. DE 12-292. This fact was admitted by CLF ("[T]he Petitioners are not parties in the instant proceeding..." Motion at ¶5), and was noted by PSNH in its objection to another CLF filing in the docket, see PSNH's December 26, 2012 Motion to Strike Objection of Conservation Law Foundation of December

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<sup>2</sup> On January 29, 2013, the Commission issued Order No. 25,459 approving PSNH's LCIRP.

24, 2012, as well as by the Commission itself in Order No. 25,448. Accordingly, it is not clear that the Commission was ever required to address the content of CLF's letter within the context of its Order. Instead, the Commission was well within its discretion to treat the document as a comment from the public. As such, the Commission's alleged failure to acknowledge or discuss CLF's letter provides no basis for rehearing.

5. Further, PSNH notes that CLF is now attempting to transform its comment letter into a more substantive filing by referencing it in the Motion and admonishing the Commission for failing to respond to it. Thus, CLF's Motion merely reargues issues raised previously in search of a different result. CLF's argument that the Commission did not, or did not adequately, address the arguments CLF made in a prior document submitted to the Commission provides no justification to grant rehearing.

6. Should the Commission decide to address the argument within CLF's Motion, rather than dismiss the Motion on its face, the Motion presents no justification for rehearing. As noted, the entire argument in the Motion is that PSNH's default energy service rate filing did not conform to PSNH's LCIRP, that although the issue had been raised the Commission did not address it, and that the Commission lacks the statutory authority to approve a rate change unless a utility files a new LCIRP within two years of the date of its last filing. These contentions lack merit and do not require rehearing of the underlying Order.

7. During the hearing on this case, the Office of Consumer Advocate ("OCA") specifically raised the issues discussed by CLF in its letter and the Motion. *See* Transcript of December 18, 2012 hearing in DE 12-292 (Tr.) at 76-77. Moreover, the OCA noted that the issue was "raised in a filing in the Least Cost Integrated Resource Plan." Tr. at 76. The referenced LCIRP filing was one made by CLF in the context of Docket No. DE 10-261 regarding PSNH's LCIRP. Thus,



the arguments regarding the conformance of PSNH's filing to the requirements of the LCIRP were directly before the Commission in this docket and the Commission specifically addressed, and rejected, those arguments.

8. In Order No. 25,448, the Commission specifically stated "at hearing, the OCA asked the Commission to determine whether PSNH complied with RSA 378:40 in its petition to establish an energy service rate for 2013." Order No. 25,448 at 8. Following a well-reasoned discussion, the Commission concluded, in relevant part, that "PSNH's energy service filing conforms to the most recent LCIRP filed and found adequate by the Commission pursuant to RSA 378:41." Order No. 25,448 at 10. Therefore, regardless of whether the Commission directly addressed the substance of CLF's letter – which, as PSNH has noted it was not required to do – the entirety of the argument was before the Commission and was found wanting. As such, the Motion fails to establish any basis for rehearing.

9. PSNH recently briefed the requirements of RSA 378:38, *et seq.*, regarding the biennial filing of least cost integrated resource plans. That pleading, entitled "Motion to Strike and Objection to the December 17, 2012 Objection of Conservation Law Foundation," was filed in Docket No. DE 10-261 on December 19, 2012, and its content is incorporated by reference herein.<sup>3</sup>

10. Moreover, RSA 378:38-a provides that "The commission may waive any requirement to file least cost integrated resource plans by an electric utility under RSA 378:38, except for plans relating to transmission and distribution." This statute provides the commission with broad "waiver" authority pertaining to "any requirement to file" which would include the timing of

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<sup>3</sup> See ¶¶ 5-12. For the convenience of the Commission and parties, a copy is attached hereto as Attachment 1.

such filings. The Commission's broad waiver authority was noted by the Office of Consumer Advocate during the December 18, 2012, hearing in this proceeding. Tr. at 76-77.

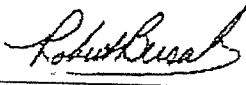
11. Accordingly, based upon the record in this case, it is clear that any present argument in the Motion regarding the statutory authority of the Commission to effectuate the rate changes contained in Order No. 25,448 is nothing more than a reassertion of prior arguments that were rejected by the Commission, and any argument that the Commission did not address PSNH's LCIRP in the context of this case is simply incorrect. Thus, CLF's Motion should be denied.

**WHEREFORE**, PSNH respectfully requests that the Commission deny CLF's Motion for Rehearing of Order No. 25,448, and order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

January 30, 2013  
Date

By:   
Robert A. Bersak  
Assistant Secretary and Assistant General Counsel  
Robert.Bersak@PSNH.com


Matthew J. Fossum  
Counsel  
780 North Commercial Street  
Post Office Box 330  
Manchester, New Hampshire 03105-0330  
(603) 634-2961  
Matthew.Fossum@PSNH.com

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the attached pleading to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

January 30, 2013

Date



Robert A. Bersak

Attachment 1

Public Service Company of New Hampshire's Motion to Strike and Objection to the  
December 17, 2012 Objection of Conservation Law Foundation

Docket DE 10-261

December 19, 2012

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire  
Least Cost Integrated Resource Plan

Docket DE 10-261

Public Service Company of New Hampshire's  
Motion to Strike and Objection to  
the December 17, 2012 Objection  
of  
Conservation Law Foundation

Public Service Company of New Hampshire ("PSNH" or the "Company"), in accordance with Rule Puc 203.07, hereby moves to strike, and in the alternative, objects to "Conservation Law Foundation's Objection to Public Service Company of New Hampshire's Motion to Strike CLF's November 29, 2012 Supplemental Filing" dated December 17, 2012 (the "CLF Objection"). The reason for this Motion is that CLF's Objection addresses issues beyond the scope of PSNH's December 6, 2012, Motion to Strike, in an attempt to introduce new issues without following the procedural requirements of the Commission's administrative rules.

In support of this motion, PSNH states as follows:

1. On September 30, 2010, PSNH filed its LCIRP consistent with RSA 378:38 and Commission Order No. 24,945, as amended by Order No. 24,966 and Order No. 25,061. Notably, the cited Orders initially established, then amended, the date for the filing of the Company's 2010 LCIRP. ("FURTHER ORDERED, that Public Service Company of New

Hampshire file its next least cost integrated resource plan on or before February 28, 2010, consistent with the determinations made herein.” Order No. 24, 945 at 21; “FURTHER ORDERED, that Public Service Company of New Hampshire file its next least cost integrated resource plan on or before May 3, 2010, consistent with the determinations made in Order No. 24,945.” Order No. 24,966 at 8; “FURTHER ORDERED, that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010 and shall include a continuing unit operation study for Newington Station in that filing.” Order No. 25,061 at 33.)

2. On November 3, 2010, the Commission issued an Order of Notice opening this docket. Thereafter, numerous parties petitioned to intervene and over the ensuing year and a half, extensive discovery was conducted, testimony was filed and a multi-day hearing was held. By Secretarial letter, the Commission established a deadline for filing of briefs of June 13, 2012. Such post-hearing briefs were filed by numerous parties, including CLF, in accordance with that deadline, and the case is awaiting the Commission’s decision.

3. On November 29, 2012, CLF filed a request for the Commission to take administrative notice pursuant to Rule Puc 203.27 of various regulations adopted by the Massachusetts Department of Energy Resources in August 2012. CLF argued that these regulations may impact the ability of Schiller Station Unit 5 (“Northern Wood Power Project” or “NWPP”) to sell renewable energy certificates (“RECs”) in Massachusetts in the future, and, therefore, the regulations are relevant to PSNH’s 2010 LCIRP filing. In other words, CLF contended that newly adopted regulations, which may affect the NWPP at some point in the future, are somehow relevant to a determination on PSNH’s 2010 LCIRP, which has been pending for more than two years. In a December 6, 2012, Motion, PSNH moved the Commission to strike CLF’s

November 29<sup>th</sup> filing from the record because it was deficient in numerous respects, most notably that, “[t]he information provided in the filing is neither new nor relevant to the review of the 2010 LCIRP.”

4. On December 17, 2012, CLF filed what it captioned as “Conservation Law Foundation’s Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing.” In the CLF Objection, CLF agreed with PSNH that the information in its November 29 Supplemental Filing was not available at the time PSNH prepared and filed its 2010 LCIRP. Indeed, CLF admits that the information in question was *“new information which CLF did not have at the time of the hearing in this proceeding.”* CLF Objection at ¶1. If CLF *“did not have [this information] at the time of the hearing in this proceeding”* - - hearings which ended on May 10, 2012 - - it is inconceivable how this information is relevant or should be considered by the Commission to determine the adequacy of PSNH’s 2010 LCIRP filing filed nearly two years earlier, which is the purpose of this proceeding under RSA 378:39.

5. Rather than addressing the issues contained in PSNH’s December 6 Motion to Strike, the CLF Objection attempts to interject entirely new issues into this proceeding. The vast majority of the CLF Objection focuses on its allegation that “PSNH was required to file an LCIRP *within two years of the date when it previously filed one.*” CLF Objection, ¶4 (emphasis in original). The CLF Objection states, “RSA 378:39 (sic) required PSNH to file a new LCIRP before September 30, 2012 by mandating that ‘[] each electric utility shall file a least cost integrated resource plan with the commission at least biennially.’” (The correct statutory reference is to RSA 378:38.) In a footnote, CLF asserts, “While not necessarily relevant to the

instant proceeding, PSNH's failure to submit a timely (sic) LCIRP also (sic) precludes the Commission from approving an increase in rates charged by PSNH. RSA 378:40."

6. The CLF Objection, by requesting that the Commission "[g]rant such further relief as it deems appropriate," may be read as a request for an order or ruling regarding the biennial filing schedule of RSA 378:38, and the applicability of RSA 378:40 to the instant proceeding. Procedurally, per Rule Puc 102.08, "a request made to the commission or a presiding officer after the commencement of a contested proceeding for an order or ruling" is defined to be a "Motion." Rule Puc 203.07 sets forth the procedural requirements for the filing of a "motion." The requirements of Rule Puc 203.07 were not complied with by CLF in either its original request for administrative notice or the CLF Objection. Hence, the Commission should strike the CLF Objection, to the extent it seeks to interject new issues for which it desires an order or ruling.

7. In the event the Commission decides to address the new issues interjected by CLF in the CLF Objection, PSNH objects. CLF's statement of the law is incomplete, incorrect, and misleading.

8. CLF's main argument is that RSA 378:38 requires a utility "to file an LCIRP at least every two years." CLF Objection, ¶4. However, the statute does not address when the two-year period begins. CLF contends that utilities are required to file least cost plans every other year, regardless of whether the Commission's review and approval process for previously filed least cost plans has been completed. CLF's interpretation of the law could, and would lead to the absurd result of "pancaking" of least cost plan filings by the state's electric utilities. *See Re Granite State Electric Company dba National Grid*, 93 NH PUC 96 (2008) (order addressing both the 2005 and 2007 plans filed by National Grid.) New plans would be filed before the



Commission and intervening parties have had an opportunity to review and comment on prior plans, and before the Commission has completed its review of the adequacy of each utility's planning process as required by RSA 378:39. CLF's interpretation of the least cost plan filing requirement would result in inefficiencies and the wasting of resources (both time and money) by the state's electric utilities, the Commission and its staff, and other parties.

9. The Commission has previously addressed the ambiguous language contained in RSA 378:38. In *re Public Service Co. of New Hampshire*, 91 NH PUC 527 (2006), the Commission decided the adequacy of the LCIRP filed by PSNH on June 30, 2005. In that Order, the Commission ordered PSNH to file its next LCIRP filing by September 30, 2007 -- a period greater than two years from the date of the prior filing. Notably, the Commission stated, "We view this change as consistent with the requirement in RSA 378:38 that such plans be filed at least biennially." *Id.* at 538. Similarly, in *re Public Service Co. of New Hampshire*, 94 NH PUC 103 (2009), the Commission decided the adequacy of the LCIRP filed by PSNH on September 28, 2007 (pursuant to the 2006 Order). In that Order, the Commission directed PSNH to file its next LCIRP -- the one that is the subject of the instant proceeding -- "one year from the date of this order" (*Id.* at 110), on or before February 28, 2010, [a period 29 months from the previous filing]. (*Id.* at 113). Subsequently, in *re Public Service Co. of New Hampshire*, 97 NH PUC 760 (2009), the Commission delayed the instant filing, ordering "that Public Service Company of New Hampshire shall file its next Least Cost Integrated Resource Plan on or before September 30, 2010." Thus, the Commission directed that the LCIRP that is the subject of this proceeding be filed 19 months from the February 27, 2009 approval of the previous plan (97 NH PUC 760), but more than three years from the date of the Company's previous September 28, 2007, filing.

10. From the Commission precedent cited above, it is clear that the Commission has deemed the least cost plan filing requirement of RSA 378:38 to be met if a utility files a new plan within two years of the date that the Commission approves that utility's prior LCIRP. "It is a well established principle of statutory construction that a longstanding practical and plausible interpretation given a statute of doubtful meaning by those responsible for its implementation without any interference by the legislature is evidence that such a construction conforms to the legislative intent. *Trice v. City of Cranston, R.I.*, 297 A.2d 649, 652 (1972); see *Bellows Falls etc. Co. v. State*, 94 N.H. 187, 190, (1946)." *New Hampshire Retail Grocers Ass'n v. State Tax Comm'n*, 113 N.H. 511, 514 (1973); see also *Hamby v. Adams*, 117 N.H. 606, 609 (1977) ("[W]here a statute is of doubtful meaning, the long-standing practical and plausible interpretation applied by the agency responsible for its implementation, without any interference by the legislature, is evidence that the administrative construction conforms to the legislative intent."). The Commission's interpretation of RSA 378:38 is indeed "practical and plausible," has been in effect for years, and has not been interfered with by the legislature. As a result, CLF's opinion regarding the filing requirements of RSA 378:38 is incorrect.

11. Moreover, CLF's footnoted suggestion - - which CLF itself expressly notes is "not necessarily relevant to the instant proceeding" - - that "PSNH's failure to submit a timelt (sic) LCIRP als (sic) precludes the Commission from approving an increase in rates charged by PSNH. RSA 378:40," is similarly incorrect. The second sentence of RSA 378:40 expressly provides that "nothing contained in this subdivision shall prevent the commission from approving a change [in rates], otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed." In the instant proceeding, "the

process of review is proceeding in the ordinary course but has not been completed” for the LCIRP timely filed by PSNH in accordance with the Commission’s Order at 97 NH PUC 760.

12. Further, given that PSNH timely filed the LCIRP, CLF assertions that “[w]hile PSNH cites in its Motion to Strike a number of Commission rules, there is no rule that addresses the manner in which matters germane to least cost integrated resource planning for a utility are to be addressed after the utility fails to comply with the statutory mandate for it to file an IRP,” should be disregarded. CLF Objection, ¶6. PSNH maintains that the issues raised by CLF are not, in fact, germane to this LCIRP proceeding and, as noted above, that PSNH has not failed to comply with any statutory mandate. Moreover, in the instant proceeding, the Commission has already ruled that regulations (NH DES’s Regional Haze Plan) that were not finalized prior to the submission of PSNH’s LCIRP were “beyond the scope of this docket.” Order No. 25,220 (May 4, 2011). The Commission should adhere to that decision regarding the Massachusetts DOER regulations presented in CLF’s supplemental filing.


WHEREFORE, PSNH respectfully requests that the Commission:

- A. Strike the November 29, 2012, Supplemental Filing of Conservation Law Foundation;
- B. Strike the December 17, 2012, “Conservation Law Foundation Objection to Public Service Company of New Hampshire’s Motion to Strike CLF’s November 29, 2012 Supplemental Filing;”
- C. In the alternative, grant PSNH’s objection to the new issues CLF seeks to interject into this proceeding by its November 29, 2012 Objection; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

Public Service Company of New Hampshire

December 19, 2012  
Date

By:   
Robert A. Bersak  
Assistant Secretary & Associate General Counsel

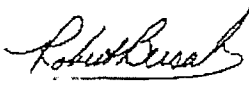
Matthew J. Fossum  
Counsel

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(603) 634-2961  
Matthew.Fossum@nu.com

### CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the above pleading to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

December 19, 2012  
Date

  
Robert A. Bersak



conservation law foundation

March 29, 2013

Via Electronic Mail and Hand Delivery

Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

Re: Docket No. DE 12-292  
Public Service Company of New Hampshire 2013 Energy Service Rate

Dear Ms. Howland:

On January 28, 2013, the Conservation Law Foundation ("CLF") and six ratepayers who purchase energy service from Public Service Company of New Hampshire ("PSNH") ("PSNH Ratepayers") timely filed a motion for rehearing in the above-captioned docket pursuant to RSA 541:3. A copy of such motion is appended hereto and fully incorporated herein by reference.

CLF's and the PSNH Ratepayers' motion requests rehearing of Order No. 25,448, in which the Public Utilities Commission ("Commission") approved PSNH's request for a 9.54 cents/kwh rate – amounting to a 34 percent increase over PSNH's 2012 default energy service rate of 7.11 cents/kwh. The motion requests rehearing on the grounds that PSNH had not filed a timely Least Cost Integrated Resource Plan ("LCIRP"), as mandated by RSA 378:38, and that, therefore, the Commission lacked statutory authority to approve PSNH's requested rate change. See RSA 378:40 ("No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39.").

RSA 541:5 establishes clear, unambiguous requirements for the Commission relative to motions for rehearing filed pursuant to RSA 541:3, stating:

**Action on Motion.** Upon the filing of such motion for rehearing, the commission *shall within ten days* either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order or suspension may be upon such terms and conditions as the commission may prescribe.

RSA 541:5 (emphases added). Thus, the Commission was required to have issued an order on CLF's and PSNH Ratepayers' motion for rehearing within ten days of its filing, or no later than February 7, 2013. Despite this requirement, as of the date of this correspondence, fully 59 days after the filing of the subject motion for rehearing, the Commission still has failed to take action.

For a thriving New England

CLF New Hampshire 27 North Main Street  
Concord, NH 03301  
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F: 603.225.3059  
www.clf.org



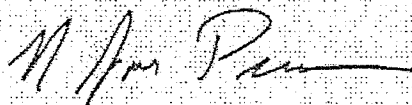
That the Commission act on CLF's and PSNH Ratepayers' motion for rehearing within a finite, ten-day period, is not a matter of discretion. To the contrary, as RSA 541:5 makes clear, it is a statutory *requirement* which the Commission, as a matter of law, was required to fulfill. Indeed, based on this unambiguous language, the New Hampshire Supreme Court strongly rejected the notion advocated by the state, on behalf of the Commission, that the ten-day limitation in RSA 541:5 is somehow "directory[,] not mandatory." *Appeal of Concord Natural Gas Corp.*, 121 N.H. 685, 690 (1981). As the Court stated with respect to the language of RSA 541:5, "[a]bsent an indication of legislative intent to the contrary, the word 'shall' acts as a command." *Id.* (concluding that the Commission "was in error in delaying action on the motion for rehearing for almost two months.").

The Commission's failure to timely act on CLF's and PSNH Ratepayers' motion for rehearing violates both RSA 541:5 and a specific directive of the Supreme Court in *Appeal of Concord Natural Gas Corporation*. There, despite concluding that appellants had not been prejudiced by the Commission's delay in responding to a motion for rehearing (appellants had alleged no such prejudice), the Court specifically directed: "the agency should conform its procedures to the statutory commands, and we require the PUC to do so in the future." *Id.* at 691.

The Commission's failure to comply with the ten-day limitation established by RSA 541:5 is contrary to law, depriving CLF and PSNH Ratepayers of due process, and materially prejudicing the interests of CLF, its members, and PSNH Ratepayers, by, without limitation, imposing a significantly higher energy service rate that, as set forth in the pending motion for rehearing, the Commission was not authorized to approve in the first instance.

In light of its clear statutory obligations, the Commission must immediately take action on CLF's and PSNH Ratepayers' motion for rehearing, vacating Order No. 25,448 and remedying the material prejudice already suffered by CLF and PSNH Ratepayers as well as any further material prejudice yet to occur during the pendency of the motion for rehearing.

Respectfully submitted,



N. Jonathan Peress  
Conservation Law Foundation  
(603) 225-3060  
[njperess@clf.org](mailto:njperess@clf.org)

cc: Service List in DE 12-292  
Alexandra Dannis  
James Dannis  
William Hopwood  
Janet Ward  
Amy Matheson  
George Chase



For a thriving New England

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January 28, 2013

Ms. Debra A. Howland, Executive Director & Secretary  
N.H. Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

RE: Docket No. DE 12-292  
Public Service Company of New Hampshire  
2013 Default Energy Service Rate.

Dear Director Howland:

Please find enclosed for filing with the Commission an original and seven (7) copies of Conservation Law Foundation's and Ratepayers' Motion for Rehearing of Order No. 25,448. A copy of this filing has this day been sent electronically to all parties on the PUC's service list.

Thank you for your attention to this matter. Please feel free to contact me at 225-3060 should you have any questions.

Sincerely,

N. Jonathan Peress, Director  
Clean Energy and Climate Change Program

NJP/dlh

Encls.

cc: DE 12-292 Service List

STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

2013 Default Energy Service Rate

Docket No. DE 12-292

CONSERVATION LAW FOUNDATION'S AND RATEPAYERS'  
MOTION FOR REHEARING OF ORDER No. 25,448

Conservation Law Foundation ("CLF"), and the undersigned ratepayers purchasing energy service (the "PSNH Ratepayers") from Public Service Company of New Hampshire ("PSNH") hereby request rehearing of Order No. 25,448, issued December 28, 2012 ("the Order"), pursuant to RSA 541:3. PSNH Ratepayers are: Alexandra M. Dannis and James G. Dannis; William Hopwood, Janet Ward, George Chase, and Amy Matheson. Each of the foregoing individuals has authorized CLF to represent that he/she is joining in this Motion as an individual ratepayer.<sup>1</sup> Collectively, CLF and the PSNH Ratepayers are referred to herein as "Petitioners." In support of this Motion, Petitioners state as follows:

1. The rights, privileges and immunities of each of the Petitioners are affected by the Order and/or the rates established by the Commission therein as set forth below.
2. A non-profit environmental membership organization, CLF's mission is to protect New England's environment for the benefit of all people by using the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Consistent with its mission, CLF is dedicated to the protection and responsible use of resources affected by the generation, transmission and distribution of electric

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<sup>1</sup> CLF prepared this Motion which is being filed on behalf of itself, and by each PSNH Ratepayer. CLF is *not* acting in the capacity of legal counsel for, nor otherwise representing the PSNH Ratepayers, and each is a separate party to the instant motion.



power, and to advancing solutions that strengthen New England's – and New Hampshire's – economic vitality. CLF represents the interests of its members in ensuring that environmental impacts resulting from electric utility operation in New Hampshire and the region are minimized, and in avoiding adverse economic impacts associated with continued use and reliance on uneconomic, environmentally unsustainable electricity generation such as coal-fired generation at PSNH's Merrimack and Schiller Stations. In order to achieve its organizational objectives, CLF's focus includes advocacy regarding the design and operation of the region's energy markets, including those regulated by state Public Utility Commissions like the retail market in New Hampshire in which PSNH participates, and the wholesale electricity market in New England, as regulated by the Federal Energy Regulatory Commission. In this regard, CLF has been a voting member and participant in the New England Power Pool ("NEPOOL") since 2004 because we believe that vibrant competitive energy markets facilitate competition and innovation which attenuates environmental impacts.

3. CLF has over 3,300 members, including 435 members residing in New Hampshire and more than 300 members who reside in PSNH's service territory, many of whom are default energy service customers of PSNH, including but not limited to some of the PSNH Ratepayers joining this Motion. CLF joins in this Motion on behalf of itself and its members, whose rights and interests are directly affected by the 34% rate increase, constituting massive above market costs granted to PSNH by the Order in this proceeding.<sup>2</sup> CLF has regularly been granted intervention by the Commission in PSNH ratemaking proceedings including most

---

<sup>2</sup> In addition to its stand alone rate impacts, the impacts of Order No. 25,448 are also far broader causing more fundamental market and policy effects. Within days of issuing the Order, the Commission opened "an investigation pursuant to RSA 365:5 and RSA 374:4 to examine the circumstances of PSNH's default service rates and the degree to which those circumstances affect the ability of PSNH to provide safe and reliable service at just and reasonable rates to its default service customers." DE 13-020 Order of Notice ("OON"). In the OON, the Commission expressly connected "long- and short-term environmental, economic and energy price and supply impact on the State" within PSNH's least cost planning to recent developments with PSNH's default energy service rates.

recently DE 10-121 (Energy Service Rate Reconciliation) and DE 11-215 (Proposed Energy Service Rate). In addition, CLF was granted intervention in DE 10-160 (PSNH Customer Migration) and pending DE 10-261 (PSNH Least Cost Integrated Resource Plan) and DE 11-250 (Scrubber Cost Recovery).

4. PSNH Ratepayers, as ratepayers directly bearing the cost of the increased above-market rates charged by PSNH, experience a direct economic injury from the rate increase in the Order. *Appeal of Richards*, 134 N.H. 148 (1991).

5. Although the Petitioners are not parties in the instant proceeding, they are empowered by law to protect their respective rights. *See* RSA 541:3 (stating that in addition to any party to a proceeding before the commission, “any person directly affected thereby . . . may apply for a rehearing. . . .”); *Appeal of Richards* at 154 (“A party or any person directly affected by the PUC’s decision or order may apply for a rehearing with respect to “any matter determined in the action or proceeding, or covered or included in the order.”) (emphasis added).

6. The Commission may grant rehearing when the motion states “good reason for the rehearing.” RSA 541:3. Good reason may be shown by identifying specific matters that were either “overlooked or mistakenly conceived in the original decision and thus invite[] a reconsideration upon the record upon which that decision rested.” *Lambert Const. Co. v. State*, 115 N.H. 516, 519 (1975) (citations omitted).

7. This Motion arises out of PSNH’s request for approval of its proposed default energy service rate for 2013. PSNH initially requested an 8.97 cents/kwh default energy service rate on September 28, 2012, but increased the requested rate to 9.54 cents/kwh on December 12, 2012. The requested 9.54 cents/kwh rate, which the Commission approved in the Order, represents a 34% increase over the 2012 default energy service rate of 7.11 cents/kwh.

8. CLF submitted comments to the Commission in this proceeding on December 24, 2012 ("Comment Letter") attached hereto as Exhibit 1 and which, in order to avoid duplication, we hereby incorporate by reference. The Comment Letter was filed in response to information provided by PSNH in the affidavit of Terrance J. Large ("PSNH Affidavit" attached hereto as Exhibit 2), which was filed on December 19, 2012 as part of PSNH's response to a Commission record request in this proceeding. The Comment Letter asserted that the Commission lacked the statutory authority to approve the default energy service rate change sought in this proceeding because PSNH's rate change request does not meet the requirements of RSA 378:40.

9. On December 28, 2012, the Commission approved PSNH's default energy service rate increase of 34% in the Order. The Order noted that CLF had filed comments in response to the PSNH Affidavit on December 24. Order at 2. The Order did not otherwise acknowledge or discuss the content of CLF's Comment Letter. Petitioners now move for rehearing of the Order in light of the legal arguments raised in the Comment Letter.

10. Specifically, Petitioners request that the Commission rehear the Order and disapprove PSNH's 2013 default energy service rate increase on the basis of PSNH's failure to comply with the requirements of RSA 378:38 & 378:40. As is further described in the Comment Letter, the Commission lacks the statutory authority to approve a rate change when the requesting utility has failed to file plans required under RSA 378:38, which includes least cost integrated resource plans ("LCIRP") filed at least biennially. RSA 378:38, 378:40. PSNH's most recent LCIRP was filed on September 20, 2010. See PSNH Affidavit. For these reasons, Petitioners request that the Commission rehear the Order in response to the legal arguments presented by CLF in the Comment Letter and above.

11. The Office of Consumer Advocate has authorized Petitioners to represent that it does not object to the relief requested herein.

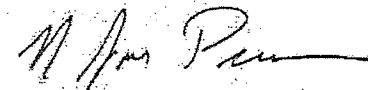
WHEREFORE, Petitioners respectfully requests that the Commission:

- A. Grant this Motion for Rehearing of Order No. 25,448; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

**CONSERVATION LAW FOUNDATION**

By:



N. Jonathan Peress  
New Hampshire Advocacy Center  
Conservation Law Foundation  
27 North Main Street  
Concord, New Hampshire 03301-4930  
Tel.: (603) 225-3060  
Fax: (603) 225-3059  
[njperess@clf.org](mailto:njperess@clf.org)

Dated: January 28, 2013

**PSNH RATEPAYERS**

/s/ Alexandra Dannis; /s/ James Dannis  
Alexandra M. Dannis and James G. Dannis  
117 McGinty Road  
Dalton, New Hampshire 03598

/s/ William Hopwood  
William Hopwood  
706 Bunker Road  
Elkins, New Hampshire 03233

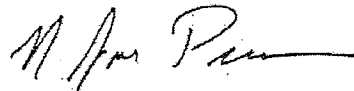
/s/ Janet Ward  
Janet Ward  
82 Watchtower Road  
Contoocook, New Hampshire 03229

/s/ Amy Matheson  
Amy D. Matheson  
105 Exeter Road, Apt. 2  
North Hampton, New Hampshire 03862

/s/ George Chase  
George Chase  
497 Putney Hill Road  
Hopkinton, New Hampshire 03229

CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of January 2013, a copy of the foregoing Motion for Rehearing Order No. 25,448 was sent electronically or by First Class Mail to the service list.



N. Jonathan Peress  
New Hampshire Advocacy Center  
Conservation Law Foundation  
27 North Main Street  
Concord, New Hampshire 03301-4930  
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njperess@clf.org

Dated: January 28, 2013

**EXHIBIT 1**



For a thriving New England

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December 21, 2012

Via Electronic Mail; Original and Six Copies by Overnight Mail

Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

Re: Docket No. DE 12-292, Public Service Company of New Hampshire  
2013 Energy Service Rate

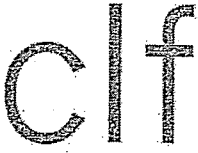
Dear Ms. Howland,

This letter is submitted in accordance with Puc 203.18, on behalf of the Conservation Law Foundation and its members, and addresses a response to a record request from the Commission provided by Public Service Company of New Hampshire ("PSNH") on December 19, 2012 in the above-referenced proceeding. PSNH's response includes the affidavit of Terrance J. Large, (the "PSNH Affidavit") which was, upon information and belief, provided to demonstrate that PSNH's pending rate change request in the instant docket would, if approved by the Commission, meet the requirements of statute, including, without limitation, RSA 378:40 and RSA 378:41. CLF hereby asserts that the rate change requested by PSNH<sup>1</sup> does not meet the requirements of RSA 378:40 and the Commission is thus devoid of statutory enabling authority to approve the rate change sought in this proceeding.

RSA 378:40, entitled "Plans Required," explicitly and directly imposes an affirmative requirement on utilities seeking approval for a rate change to file a least cost integrated resource plan at least biennially. It states that "[n]o rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39." RSA 378:40. Under RSA 378:38, "each electric utility shall file a least cost integrated resource plan (LCIRP) with the commission at least biennially" (emphasis added). Accordingly, PSNH "shall" (i.e., is required)<sup>2</sup> to file a least cost integrated resource plan ("LCIRP") "at least" every two years, and in addition, must have timely filed an LCIRP in order for the Commission to approve a rate change. In this instance, PSNH has failed to do so.

<sup>1</sup> The instant proceeding was brought by PSNH to request approval of a change in its default energy service rate from 7.11 cents/kwh to 9.54 cents/kwh, amounting to an approximately 34% rate increase.

<sup>2</sup> The use of the term "shall" in the statute emphasizes that PSNH is *directed* to file an LCIRP at least every two years. *State v. Johanson*, 156 N.H. 148, 151 (2007); *City of Rochester v. Corpening*, 153 N.H. 571, 574 (2006).



conservation law foundation

According to the PSNH Affidavit, the company last filed an LCIRP on September 30, 2010. As of today's date it has been more than two years plus eighty-one days since PSNH last filed an LCIRP. Clearly, PSNH did not comply with the requirement to file an LCIRP biennially and is therefore in violation of RSA 378:38.

The regulation of public utilities and the establishment of rates to be charged by a public utility are, in the first instance, legislative functions which, in New Hampshire, have been delegated to the Commission. *Legislative Utility Consumers' Council v. Public Service Company Of New Hampshire*, 119 N.H. 332, 340 (1979). Under RSA 378:40, the Commission lacks the statutory enabling authority to approve PSNH's request for an increase in the default energy services rate in this proceeding. PSNH's failure to undertake the statutorily mandated duty to file an LCIRP vitiated the Commission's authority to approve PSNH's proposed massive rate increase and any attempt by the Commission to grant such increase would be *ultra vires* and void *ab initio* as a matter of law. *In Re Town of Nottingham*, 153 N.H. 539, 555 (2006) ("An agency 'must also comply with the governing statute, in both letter and spirit,') (quoting, *Appeal of Morin*, 140 N.H. 515, 519, 669 A.2d 207 (1995)). Cf. *In re Campaign for Ratepayers' Rights*, 162 N.H. 245, 256 (2011) ("Absent subject matter jurisdiction, a tribunal's order is void.") (quoting *Gordon v. Town of Rye*, 162 N.H. 144, 149 (2011)). See also, *In re Alexis O.*, 157 N.H. 781, 790 (2008) ("Administrative regulations that contradict the terms of a governing statute exceed the agency's authority, and are void.").

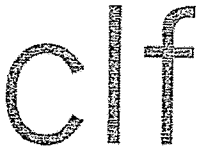
The PSNH Affidavit (at par. 1) notes that the September 20, 2010 LCIRP is currently pending before the Commission. The statutory exception in RSA 378:40 for LCIRPs undergoing Commission review does not apply, however, where the utility has failed to timely make the required LCIRP filing (i.e., within two years). That a timely filing is first required is unequivocal in the text of the statute. The relevant text states,

[h]owever, nothing contained in this subdivision shall prevent the commission from approving a [rate] change, [ ] where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

RSA 378:40. The condition precedent for the statutory exemption contains two elements: 1) "the utility has made the required plan filing in compliance with RSA 378:38"; and, 2) "the process of review is proceeding in the ordinary course but has not been completed." It is indisputable that PSNH did not make the required plan filing in compliance with RSA 378:38 because the statute directs PSNH to make the filing biennially and more than two years have passed. Accordingly, PSNH failed to meet the statutory condition precedent for the exception.

RSA 378:38 is explicit that the deadline for filing an LCIRP occurs two years from the filing of its last LCIRP. The language in RSA 378:38 is clear. There is no ambiguity in the statute. Ascribing the "plain and ordinary meaning to the words used" leaves no uncertainty: the





conservation law foundation

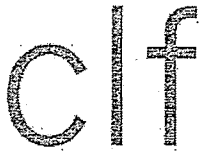
General Court mandated that PSNH was required to make the filing biennially and PSNH did not. See, *State v. Hynes*, 159 N.H. 187, 193 (The intent of the statute is discerned by examining the language of the statute, and, where possible, applying “the plain and ordinary meaning to the words used.”).

Although the Commission is empowered to waive certain requirements to file an LCIRP, such authority is not relevant here because PSNH did not request one nor has a waiver been granted. RSA 378:38-a. In fact, on a prior occasion in 2004, PSNH requested such a waiver under RSA 378:38-a as it related to the generation elements of least cost integrated resource planning. See *re Public Service of New Hampshire, Order on Request for RSA 378:38-a Waiver*, Order 24,435 (Feb. 25, 2005). Evidently PSNH is aware of its right to petition for a waiver, and chose not to seek a waiver in this instance.

Even a cursory review of prior Commission orders and precedent make it abundantly plain that in the absence of a waiver (i.e., extension) granted by the Commission, PSNH was required to file an LCIRP by September 30, 2012, within two years of its last filed plan. See, *Re Public Service Company of New Hampshire*, 91 NH PUC 527 (2006) (PSNH LCIRP filed June 30, 2005; Commission approval order November 8, 2006 which extended filing date for next plan to September 30, 2007); *Re Public Service Company of New Hampshire*, 94 NH PUC 103 (2009) (PSNH LCIRP filed September 28, 2007; Commission approval order February 27, 2009 which extended filing date for next plan until February 28, 2010; subsequently extended to September 30, 2010 in *Re Public Service of New Hampshire*, 97 NH PUC 760 (2009)). Most notable about PSNH’s prior LCIRP filings is that there was never a single day in which the date in which it filed an LCIRP extended beyond two years from the prior LCIRP submittal without first obtaining an extension by order from the Commission. Indeed, CLF did not find a single instance prior to the instant proceeding in which a utility missed the biennial LCIRP filing deadline without first obtaining an extension by order from the Commission and complying with such extension.<sup>3</sup>

In fact, in at least one prior instance a utility filed an LCIRP while its prior plan was still under review by the Commission in order to comply with the two-year requirement in RSA 378:38. See, *Re Granite State Electric Company dba National Grid*, 93 NH PUC 96 (2008) (LCIRP filed May 19, 2005 and then May 1, 2007; Commission order approving both LCIRPs Feb. 29, 2008). The most glaring characteristic of the instant proceeding is that PSNH is seeking Commission approval for one of the largest rate hikes in the state’s history, without first complying with its statutory obligation to file a plan under RSA 378:38 and thus is also in violation of RSA 378:40.

<sup>3</sup> The extent to which the Commission is empowered to waive the “biennially” requirement *sua sponte* without a utility first petitioning for a waiver is beyond the scope of this comment and CLF hereby reserves any and all rights with respect to same.



conservation law foundation

It is important to recognize that the failure of PSNH to adequately plan, or for that matter, to take seriously the General Court's policy mandating least cost integrated resources planning is the cause for PSNH seeking massively above market rates in the first instance. The Commission is undoubtedly aware of PSNH's witness Terrence Large's brazen comments during the hearing in DE 10-261, that the LCIRP planning process "sadly has very limited value" Transcript ("Tr.") Day 1 PM, p. 115, lines 14-15); that the LCIRP drives decision-making "[t]o a very limited degree." Tr. Day 1 PM, p. 116, lines 3-4; and suggesting that the only purpose of the planning process is to "satisfy the requirements of the law". Tr. Day 1 PM, p. 120, line 14. This was after PSNH made clear in testimony that its least cost planning does not consider forward price curves for natural gas, does not project energy margins or clearing prices, does not consider forecasts of customer migration, and does not meaningfully consider future environmental costs for PSNH's generation fleet. See, CLF Post-Hearing Brief, DE 10-261 (June 13, 2012).

PSNH has now acted on its dismissive beliefs, and taken its haughtiness to a new unprecedented level. It decided to disregard the statutory deadline for filing an LCIRP while at the same time seeking a 34% rate increase to impose above-market costs upon New Hampshire's captive, most vulnerable ratepayers. PSNH's failure to file a timely LCIRP as required by statute has the effect of negating the Commission's authority to approve its requested rate increase and the Commission may not do so in compliance with the law.<sup>4</sup>

We appreciate the opportunity to provide our comments and respectfully request that the Commission consider these comments in rendering its decision in the above referenced docket.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'N. Jonathan Peress', written over a horizontal line.

N. Jonathan Peress  
Conservation Law Foundation  
(603) 225-3060  
njperess@clf.org

cc: Service List in DE12-292

<sup>4</sup> Although CLF is not a party to the instant proceeding, it is empowered by law to protect its rights and those of its members. See, RSA 541:3 (stating that in addition to any party to a proceeding before the commission, "any person directly affected thereby . . . may apply for a rehearing. . ."); RSA 541:6 (applicant for rehearing may appeal by petition to the supreme court). See also *Appeal of Richards*, 134 N.H. 148, 154 (1991) ("A party or any person directly affected by the PUC's decision or order may apply for a rehearing with respect to 'any matter determined in the action or proceeding, or covered or included in the order.' RSA 541:3. If the motion for rehearing is denied, the party may then appeal by petition to this court. RSA 541:6.") (first emphasis added; second emphasis in original) (holding that Campaign for Ratepayer Rights, which was not a party to the proceeding, had standing to appeal denial of motion for rehearing).

**EXHIBIT 2**

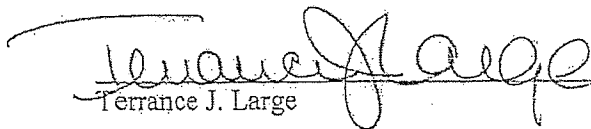
AFFIDAVIT

I, Terrance J. Large, being duly sworn, depose and say as follows:

1. My name is Terrance J. Large, and I am employed by Public Service Company of New Hampshire ("PSNH") in Manchester, New Hampshire, as the Director of Business Planning and Customer Support Services. My duties include overseeing the development of PSNH's Least Cost Integrated Resource Plan ("LCIRP"). The most recently filed LCIRP found adequate by the Commission is PSNH's 2007 LCIRP, which I filed with the Commission on September 28, 2007. On September 30, 2010 PSNH filed an LCIRP that was docketed as Docket No. DE 10-261. That docket is currently pending before the Commission.

2. PSNH has requested that the Commission permit PSNH to amend its Stranded Cost Recovery Charge ("SCRC") and its Energy Service ("ES") Rate. Those requests are docketed as DE 12-291 and DE 12-292, respectively. The Company's "energy service" and "default service" were discussed throughout PSNH's 2007 LCIRP. Based upon my personal knowledge of PSNH's LCIRP, a decision by the Commission to implement the SCRC and ES Rate as proposed by PSNH will be in conformity with the LCIRP most recently filed and found adequate by the Commission.

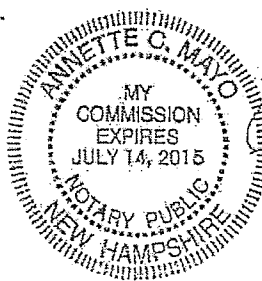
3. Further the affiant sayeth not.

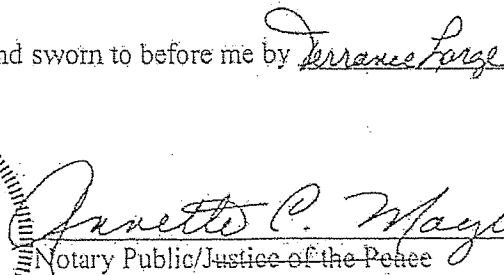
  
Terrance J. Large

State of New Hampshire  
County of Hillsborough

The foregoing Affidavit was subscribed and sworn to before me by Terrance Large this 18th day of December, 2012.

Commission expires:



  
Notary Public/Justice of the Peace

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 12-292

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Proposed Default Energy Service Rate for 2013

Order Granting Confidential Treatment and  
Denying Motion for Rehearing

ORDER NO. 25.485

April 5, 2013

**APPEARANCES:** Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; the Office of Consumer Advocate by Susan W. Chamberlain, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

**I. PROCEDURAL HISTORY**

On December 28, 2012 the Commission issued Order No. 25,448 (Order) approving the 2013 default energy service rate filed by Public Service Company of New Hampshire (PSNH). In that order the Commission deferred ruling on PSNH's motion requesting that the entire contents of its Generation Report, filed in this docket, be kept confidential. PSNH's Generation Report was prepared pursuant to Order No. 25,380 (June 27, 2012) in Docket DE 11-215 dealing with PSNH's petition for interim adjustment to 2012 default energy service rate, and included a report of its generation costs, including operation, materials and capital costs. The report excluded costs related to the wet flue gas desulphurization system (Scrubber) at Merrimack Station. PSNH's motion for confidential treatment of the Generation Report was filed on December 12, 2012 and, on December 24, 2012, Conservation Law Foundation (CLF) filed an objection to PSNH's motion. On December 26, 2012, PSNH filed a motion to strike CLF's objection.

Pursuant to Order No. 25,448, on January 11, 2013 PSNH filed a revised motion for protective order and a revised Generation Report redacting only certain text related to operation and maintenance expenses for PSNH's generation facilities. On January 28, 2013, CLF and six PSNH ratepayers<sup>1</sup> filed a motion for rehearing of Order No. 25,488. PSNH filed an objection to the motion for rehearing on January 30, 2013.

## II. POSITIONS OF THE PARTIES AND STAFF

### A. Motion for Confidential Treatment and Motion to Strike CLF Objection

#### 1. PSNH

In its initial motion for confidential treatment PSNH argued that its Generation Report was comprehensive and contained information related to operations and expenses of PSNH's generating stations that has not been provided to any person outside of the company. PSNH claimed that it had a privacy interest in the information which related to costs, budgets, staffing levels, and internal management assessments relating to PSNH generating units. PSNH argued that release of the information would put it at a competitive disadvantage in the electric energy supply market and that, due to information about the use of contractors, release would also make it difficult for PSNH to negotiate with potential contractors in the future. PSNH asserted that the report revealed information about proposed work at its generating stations which, if disclosed, would allow competitors to know when PSNH would be seeking replacement power which ultimately could result in higher costs to PSNH ratepayers.

Although PSNH acknowledged that the public has some minimal interest in disclosure of the costs which form a basis for its default service rates, in this case PSNH's privacy interest must outweigh any public interest in disclosure. PSNH further pointed to other Commission

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<sup>1</sup> The named ratepayers were; Alexandra M. Dannis and James G. Dannis of Dalton, William Hopwood of Elkins, Janet Ward of Contoocook, Amy Matheson of North Hampton, and George Chase of Hopkinton.

decisions where information relating to PSNH's generation units was kept confidential in order to help produce lower rates.

PSNH moved to strike CLF's Objection to its motion for protective order, arguing that CLF was not a party to the docket and, therefore, N.H. Code of Admin. R. Puc 203.02(a) and 203.07(a) did not allow CLF to file pleadings.

PSNH filed a revised Generation Report on January 11, 2013, after discussions with Commission Staff (Staff) and the Office of Consumer Advocate (OCA). The revised report contained limited redactions of specific plant operations and maintenance (O&M) costs for 2011, 2012 and 2013, but nonetheless disclosed annual O&M costs aggregated for all generation plants. Further, the revised report did not redact any of the capital expenditure amounts, either in the aggregate, or for specific plants for the years 2011, 2012 and 2013.

PSNH accompanied its revised report with a more limited motion for protective order which argued that O&M information for specific generating plants remained competitively sensitive and would disadvantage PSNH as it sought to procure power for its customers in the competitive market. In addition, PSNH argued that the limited information redacted in the revised report was not particularly helpful in determining energy service rates, or in assisting the public in understanding the conduct of Commission proceedings.

## 2. CLF

CLF objected to PSNH's initial motion and the fully redacted report which accompanied the motion. CLF argued that the information contained in PSNH's Generation Report was critical information to both the market and ratepayers. CLF noted increasing customer migration from PSNH default service and the shrinking customer base paying for the cost of PSNH's owned generation. CLF posited that customers in particular, and the public in general, have a

compelling need to determine whether it will be economic going forward for PSNH to continue to own generation facilities. CLF pointed out that PSNH has provided generation related cost information in numerous filings with the Commission, including E-22 filings on capital expenditures, as well as forecasted capital addition costs in its annual energy service dockets.

CLF argued that because PSNH is a regulated utility with cost recovery provided for by ratepayers it is important to keep cost information transparent to the public. CLF alleged that the harm of disclosure described by PSNH was not persuasive because PSNH is not a competitive supplier and instead recovers its costs through rates. According to CLF, competitive suppliers are able to sell power at market prices well below PSNH's costs of operating its aging generation fleet. Further, CLF argued that given the importance of information on the costs of PSNH retaining its generation plants and the cost of those plants to ratepayers, the interest in disclosure should outweigh any interest in keeping such information confidential. Finally, CLF pointed out that PSNH has the burden of demonstrating that protective treatment is necessary.

CLF took no position on PSNH's revised Generation Report and did not object to PSNH's revised motion for protective order.

## **B. Motion for Rehearing**

### **1. CLF and PSNH Ratepayers**

CLF and the PSNH Ratepayers each argue that their rights, privileges and immunities are affected by the Order. CLF, a non-profit environmental membership organization with 435 members residing in New Hampshire, claims that its mission is to protect natural resources that may be impacted by the production, transmission and distribution of power, and to minimize environmental impacts and adverse economic impacts of coal-fired electric generation. CLF claims that it has been a voting member of the New England Power Pool (NEPOOL) since 2004



and that competitive energy markets facilitate innovation and thereby attenuate environmental impacts. Finally, CLF argues that its 300 members who are PSNH customers are directly affected by the 34% rate increase allowed by the Order. The PSNH Ratepayers claim that they are directly bearing the cost of the rate increase allowed by the Order. Thus, they claim a direct economic injury resulting from the recent rate increase and that RSA 541:3 allows them to apply for rehearing because they are directly affected by the Order.

CLF and the PSNH Ratepayers incorporate by reference arguments CLF made in a comment letter filed in this docket on December 24, 2012. In its comments, CLF argued that the affidavit of Terrance J. Large of PSNH did not give the Commission statutory authority to approve PSNH's requested rate change pursuant to RSA 378:40. According to CLF and the PSNH Ratepayers, PSNH has failed to file an integrated resource plan biennially, as required by RSA 378:38, because it last filed a plan on September 30, 2010 and as of December 21, 2012 it had not filed a subsequent plan. The 2010 plan is currently under review by the Commission, however, CLF and the PSNH Ratepayers argue that the exception in RSA 378:40 for plans under Commission review does not apply where the utility has failed to file a new plan every two years pursuant to RSA 378:38. CLF and the PSNH Ratepayers further point out that PSNH has not requested a waiver of its filing requirement as it had done in the past. *See RSA 378:38-a and Public Service Company of New Hampshire, Order on Request for RSA 378:38-a Waiver*, Order No. 24,435 (Feb. 25, 2005).

## 2. PSNH

In response to CLF's and the PSNH Ratepayers' motion for rehearing, PSNH incorporates by reference and attaches a copy of arguments it made in Docket DE 10-261, its ongoing Least Cost Integrated Resource Plan docket. In a Motion to Strike and Objection filed

on December 19, 2012 in that docket, PSNH argued that RSA 378:38 required biennial filings, but did not address when the two year period begins. PSNH asserted that the Commission had required filings later than two years after filing of the prior least cost integrated plan in several instances in order to allow for review and analysis of the prior plan filing before requiring a new filing. *See Public Service Co. of New Hampshire*, 91 NH PUC 527 (2006), *Public Service Co. of New Hampshire*, 94 NH PUC 103 (2009) and *Public Service Co. of New Hampshire*, 94 NH PUC 760 (2009).

In Docket DE 10-261 PSNH argued that CLF and the PSNH Ratepayers' interpretation of the least cost integrated resource plan filing requirement would result in a pancaking of the filings, and posited that such a process would be inefficient and wasteful of both time and money. PSNH claimed that the Commission has developed a long-standing administrative construction of RSA 378:38 by consistently requiring a filing of a new least cost integrated resource plan within two years of its decision on the prior plan. In further support of its argument, PSNH noted that RSA 378:38-a provided the Commission with broad waiver authority regarding least cost integrated resource plans.

In its current objection, PSNH concludes that the CLF and PSNH Ratepayers motion for rehearing does not raise any new arguments or evidence that has not been considered by the Commission in Order No. 25,448.

### III. COMMISSION ANALYSIS

#### A. Motion for Confidential Treatment and Motion to Strike CLF Objection

In this case before reaching the merits of PSNH's motion for confidential treatment, we must address PSNH's arguments regarding CLF's standing to object to its motion. Although PSNH correctly cites Commission rules limiting pleadings filed in adjudicative dockets to those

who are parties<sup>2</sup>, in matters of the public's right to access to information, we must defer to RSA 91-A regarding standing to request such information. While under RSA 91-A:4, IV CLF could have requested access to the Generation Report filed with the Commission simply by letter, email or other communication outside of the docket, the fact that CLF chose to present its request as a pleading in this docket should not negate CLF's right to the information pursuant to RSA 91-A:4, IV. To refuse CLF access based upon the Commission's pleading rules would elevate form over substance and frustrate the purpose of RSA 91-A. Thus, we find that CLF had standing to request access to the Generation Report pursuant to RSA 91-A:4, IV.

In considering PSNH's request for confidential treatment, we are guided by RSA 91-A:5, IV and the cases interpreting it. *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005). In its revised report and motion PSNH has reduced the scope of information it seeks to protect to a limited subset of data concerning O&M costs for each of its generating facilities and has released aggregated annual O&M costs for all generating units for 2011, 2012 and 2013. These revisions were arrived at through discussions with Staff and OCA. The data concerning O&M costs of each generating unit would reveal competitively sensitive data to other competitive generators and suppliers. We find that PSNH has a privacy interest in that information. Because PSNH recovers the cost of its generating plants through its default service rates which are regulated by the Commission, we find that the public has an interest in disclosure of the costs of operating PSNH's generating units in order to understand the manner in which the Commission determines default service rates. When balancing these two interests, we find that providing the aggregated O&M data will give the public sufficient information concerning the Commission's ratemaking process; protecting unit specific data will protect PSNH's legitimate privacy interest. Therefore

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<sup>2</sup> Puc 203.02(a) and 203.07(a)

we will grant PSNH's revised motion for protective order, which we note was not objected to by any party, nor by CLF. Further, we note the right of others to request reconsideration of the treatment of this information in the future, as well as our ability to do so on our own motion. Puc 203.98(k).

### **B. Motion for Rehearing**

Pursuant to RSA 541:3 the Commission may grant rehearing or reconsideration when a party shows good reason for such relief. Good reason may be shown by identifying new evidence that could not have been produced in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 (June 23, 2011) at 8.

CLF and the PSNH Ratepayers raise issues concerning whether PSNH has complied with RSA 378:38 and whether the Commission may raise PSNH's default service rates in this docket consistent with RSA 378:40. In the Order we found that PSNH's calculation of its default service rate in this proceeding is consistent with its most recent least cost integrated resource plan found adequate by the Commission. Order at 10. We did not address CLF's arguments concerning the biennial filing requirements under RSA 378:38 in the Order. As a result, we will discuss those arguments here.

The biennial filing requirement under RSA 378:38 does not expressly state what event triggers the two year time frame. CLF and the PSNH Ratepayers interpret the statute to require the two years to run from filing date to filing date, whereas PSNH interprets the statute to require

a filing within two years of a Commission decision on the prior filing. PSNH correctly notes that the Commission has interpreted the statute to require a filing two years from the date the prior filing is found adequate by the Commission.

We continue to find that an interpretation of the filing requirement to run from the date of a Commission decision to be the best approach from a practical and regulatory standpoint. Commission decisions on LCIRPs often contain guidance on processes and information required in future filings. The time for a utility to prepare a thorough LCIRP and for the Commission to review and analyze a utility LCIRP makes it impractical to require filings two years from the utility filing date. Such a filing schedule could cause wasteful expenditure of utility resources in instances where Commission guidance on future filings did not arrive early enough in the utility's LCIRP process. We will continue to interpret RSA 378:38 to require a utility filing within two years of a Commission decision on the prior filing and will deny CLF's and the PSNH Ratepayers' motion for rehearing.

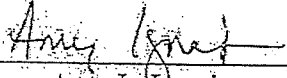
**Based upon the foregoing, it is hereby**

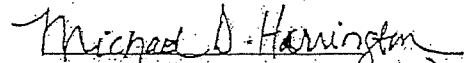
**ORDERED**, PSNH's second motion for confidential treatment filed by Public Service Company of New Hampshire is **GRANTED**; and it is

**FURTHER ORDERED**, that the motion for rehearing filed by Conservation Law Foundation and the PSNH Ratepayers is **DENIED**.

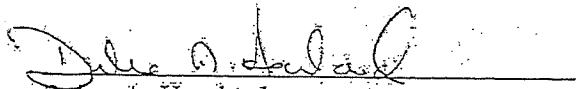
By order of the Public Utilities Commission of New Hampshire this fifth day of April,

2013.

  
\_\_\_\_\_  
Amy L. Ignatius  
Chairman

  
\_\_\_\_\_  
Michael D. Harrington (pres)  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director



# STATUTES





# CHAPTER 374-F

## ELECTRIC UTILITY RESTRUCTURING

### Section 374-F:2

**374-F:2 Definitions.** – In this chapter:

I. "Commission" means the public utilities commission.

I-a. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier and are ineligible for transition service.

II. "Electricity suppliers" means suppliers of electricity generation services and includes actual electricity generators and brokers, aggregators, and pools that arrange for the supply of electricity generation to meet retail customer demand, which may be municipal or county entities.

III. "FERC" means the Federal Energy Regulatory Commission.

IV. "Stranded costs" means costs, liabilities, and investments, such as uneconomic assets, that electric utilities would reasonably expect to recover if the existing regulatory structure with retail rates for the bundled provision of electric service continued and that will not be recovered as a result of restructured industry regulation that allows retail choice of electricity suppliers, unless a specific mechanism for such cost recovery is provided. Stranded costs may only include costs of:

(a) Existing commitments or obligations incurred prior to the effective date of this chapter;

(b) Renegotiated commitments approved by the commission; and

(c) New mandated commitments approved by the commission, including any specific expenditures authorized for stranded cost recovery pursuant to any commission-approved plan to implement electric utility restructuring in the territory previously serviced by Connecticut Valley Electric Company, Inc.

V. "Transition service" means electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive electricity supplier and to others, as deemed appropriate by the commission.

**Source.** 1996, 129:2. 1998, 191:3, 4. 2003, 56:2, eff. July 20, 2003.

# Least Cost Energy Planning

## Section 378:37

**378:37 New Hampshire Energy Policy.** – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities.

**Source.** 1990, 226:1, eff. Jan. 1, 1991.

## Section 378:38

**378:38 Submission of Plans to the Commission.** – Pursuant to the policy established under RSA 378:37, each electric utility shall file a least cost integrated resource plan with the commission at least biennially. Each such plan shall include, but not be limited to, the following:

- I. A forecast of future electrical demand for the utility's service area.
- II. An assessment of demand-side energy management programs, including conservation, efficiency improvement, and load management programs.
- III. An assessment of supply options.
- IV. An assessment of transmission requirements.
- V. Provision for diversity of supply sources.
- VI. Integration of demand-side and supply-side options.
- VII. An assessment of plan integration and impact on state compliance with the Clean Air Act Amendments of 1990.
- VIII. An assessment of plan integration and impact on state compliance with the National Energy Policy Act of 1992.
- IX. An assessment of the plan's long- and short-term environmental, economic and energy price and supply impact on the state.

**Source.** 1990, 226:1. 1994, 362:4, eff. June 8, 1994.

## Section 378:38-a

**378:38-a Waiver by Commission.** – The commission may waive any requirement to file least cost integrated resource plans by an electric utility under RSA 378:38, except for plans relating to transmission and distribution.

**Source.** 1997, 298:14, eff. June 20, 1997.

### **Section 378:39**

**378:39 Commission Evaluation of Plans.** – The commission shall review proposals for integrated least-cost resource plans in order to evaluate the adequacy of each utility's planning process. In deciding whether or not the utility's planning process is adequate the commission shall consider potential environmental, economic and health-related impacts of each proposed option. The commission is encouraged to consult with appropriate state and federal agencies, alternative and renewable fuel industries, and other organizations in evaluating such impacts. Where the commission determines the options have equivalent financial costs, equivalent reliability, and equivalent environmental, economic and health-related impacts, the following order of priorities shall guide the commission's evaluation:

- I. Demand-side management;
- II. Renewable energy sources;
- III. All other energy sources.

**Source.** 1990, 226:1. 1994, 362:5, eff. June 8, 1994.

### **Section 378:40**

**378:40 Plans Required.** – No rate change shall be approved or ordered with respect to any utility that does not have on file with the commission a plan that has been filed and reviewed in accordance with the provisions of RSA 378:38 and RSA 378:39. However, nothing contained in this subdivision shall prevent the commission from approving a change, otherwise permitted by statute or agreement, where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed.

**Source.** 1994, 362:6, eff. June 8, 1994.

### **Section 378:41**

**378:41 Conformity of Plans.** – Any proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission.

**Source.** 1994, 362:6, eff. June 8, 1994.

## **CHAPTER 541**

### **REHEARINGS AND APPEALS IN CERTAIN CASES**

#### **Section 541:5**

**541:5 Action on Motion.** – Upon the filing of such motion for rehearing, the commission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.

**Source.** 1913, 145:18. PL 239:3. 1937, 107:16; 133:77. RL 414:5.

#### **Section 541:6**

**541:6 Appeal.** – Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

**Source.** 1913, 145:18. PL 239:4. 1937, 107:17; 133:78. RL 414:6.

OTHER NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION ORDERS



76 with Harry and G. Ruth Pine and Gilda H. Quinzani, effective March 17, 1988, for electric service at property in the Town of Orange, New Hampshire at the applicable rates as authorized; and

WHEREAS, this electric service is being rendered under the provisions of a "Special Contract" agreement originally negotiated with the original applicant, Mr. George D. Kopperal, for electric service at this property under the terms of Special Contract 19 in Docket I-R 14,255, Order No. 11,480, issued June 27, 1974 (59 NH PUC 233); and

WHEREAS, upon investigation and consideration, this commission is of the opinion that special circumstances exist relative thereto, which render the terms and conditions thereof just and consistent with the public interest; it is

ORDERED, that said contract become effective as of March 17, 1988.

By order of the Public Utilities Commission of New Hampshire this sixth day of April, 1988.

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NH.PUC\*04/07/88\*[51965]\*73 NH PUC 117\*Public Service Company of New Hampshire

[Go to End of 51965]

73 NH PUC 117

**Re Public Service Company  
of New Hampshire**

DR 86-41

Order No. 19,052

Re UNITIL Service Company

DR 86-69

Order No. 19,052

Re New Hampshire Electric Cooperative, Inc.

DR 86-70

Order No. 19,052

Re Granite State Electric Company, Inc.

DR 86-71

Order No. 19,052

Re Connecticut Valley Electric Company

DR 86-72

Order No. 19,052

New Hampshire Public Utilities Commission

April 7, 1988

ORDER resolving policy issues surrounding the translation of previously adopted avoided cost



methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities.

1. COGENERATION, § 25 — Rates — Avoided costs — Legal standards — LEEPA — PURPA.

[N.H.] The New Hampshire Limited Electric Energy Producers Act, RSA 362-A (LEEPA) and the Public Utility Regulatory Policies Act, 16 U.S.C. § 824a-3 *et. seq.* (PURPA) require the commission to establish rates for the sale of electric power to utilities that are (1) based on the utility's incremental cost of alternative electric energy and capacity, (2) nondiscriminatory, (3) just and reasonable to the consumers of the electric utility, and (4) in the public interest; both LEEPA and PURPA allow, but do not require, the commission to establish long term rates. p. 122.

2. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities, the commission accepted the recommendation that it should establish a more flexible (negotiation based) system for establishing rates paid to QFs than that represented by standard utility-specific long term rate offers; however, the commission concluded that a flexible, negotiation-based system could not be effectively implemented absent the development of a process whereby the commission could evaluate utility long term resource needs. p. 123.

3. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that the QF industry in New Hampshire over the last ten years had developed to the extent that the commission no longer needs to offer standard long term levelized rates in order to secure needed QF

capacity. p. 125.

4. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Project maturity.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that the high degree of speculation in the QF industry requires that criteria of project maturity be established to assure that projects obtaining rates and contracts will be able to provide capacity when it is needed. p. 125.

5. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Capacity limits.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that inasmuch as the supply of QFs is highly elastic at certain price levels there is a need to limit the amount of capacity eligible for any particular energy or capacity rate. p. 125.

6. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Diversity of resources.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that it must establish guidelines to ensure that the diversity of resource goals of the New Hampshire Limited Electrical Energy Producers Act are met. p. 125.

7. COGENERATION, § 11 — Interconnection — Coordination of location decisions with system needs.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities (QFs), the commission concluded that it must assure that utilities provide sufficient information regarding load centers and transmission lines to make it possible for QFs to better coordinate their location decisions with the needs of the utility system. p. 126.

8. COGENERATION, § 25 — Rates — Avoided costs — Eligibility for rates — Compatibility with integrated least cost resource plans.

[N.H.] Consistent with its determination that the development of the qualifying cogeneration and small power production facility (QF) industry should be encouraged within the context of overall utility long term resource planning, the commission directed that each utility file an integrated least cost resource plan in conjunction with an updated forecast of avoided costs; the plans, which must be updated on a biennial basis, must provide a comprehensive and detailed assessment of all reasonably available demand-side and supply-side utility investment options to satisfy ratepayers' energy resource needs at the lowest overall cost consistent with the reliable supply of electricity; the information developed through biennial updates to the plans will serve as a framework for QF long term rates and private negotiations. p. 126.

9. COGENERATION, § 25 — Rates — Avoided costs — Establishment of rates — Resource planning — Forecasts.

[N.H.] As a means of assuring that the criteria and assumptions applied by electric utilities in their negotiations with qualifying cogeneration and small power production facilities (QFs) are the same as those used in judging their own resource options, and to ensure that

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QFs have access to the information they need to compete effectively with other resource

options, the commission directed each utility to update its long term least cost resource plan with biennial filings containing reports and analyses concerning (1) forecast of future demands, (2) assessment of demand-side resource options, (3) assessment of supply-side resource options, (4) assessment of transmission constraints and requirements, (5) integration of demand-side and supply-side options, (6) two-year implementation plan and forecast designed to detail how its long term integrated least cost resource plan will develop, and (7) an updated forecast of avoided costs developed in a manner consistent with the above reports and analyses, which will provide the maximum price for all QF power purchase arrangements. p. 126.

10. COGENERATION, § 25 — Rates — Avoided costs — Establishment of rates — Resource planning — Forecasts.

[N.H.] In determining the appropriate utility resource additions that can be potentially avoided by cogeneration and small power production facilities (QFs) and the megawatt amount of QF purchase power arrangements each utility should be seeking, the commission will review the adequacy and reasonableness of each utility's integrated least cost plan reports, as well its calculation of avoided costs. p. 126.

11. COGENERATION, § 25 — Rates — Avoided costs — Establishment of rates — Resource planning.

[N.H.] If the commission determines that qualifying cogeneration and small power production facilities (QFs) cannot allow a generating utility to avoid any resources during the first eight years of its long term least cost integrated resource planning period, then that utility will be required to offer the QFs an as-available short-term energy and capacity rate. p. 130.

12. COGENERATION, § 14 — Wheeling — Non-generating utilities.

[N.H.] In a proceeding to resolve policy issues surrounding the translation of previously adopted avoided cost methodologies into purchased power relationships between electric utilities and qualifying cogeneration and small power production facilities, the commission decided to continue the existing arrangement whereby non-generating utilities have the option of either purchasing power from QFs or wheeling it at no charge to their requirements supplier. p. 131.

13. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] If the commission determines that qualifying cogeneration and small power production facilities (QFs) have the potential to allow a generating utility to avoid investment in additional resources during the first eight years of the utility's long term least cost integrated resource planning period, then the commission will require long term commitments between the utility and QFs; specifically, the utility would be required to make a standard offer to smaller renewable resource QFs and to individually negotiate with large and/or non-renewable resource based projects. p. 131.

14. COGENERATION, § 24 — Rates — Eligibility for long term standard offer.

[N.H.] If the commission determines that purchases from qualifying cogeneration and small power production facilities (QFs) can displace a utility resource option, then the utility must make available long term standard offers for those QFs that have an installed capacity of 100 to 1000 kilowatts *and* are based on renewable resources; in order to be eligible to apply for the standard offer, the QF must demonstrate the following indications of project maturity: site

control, Federal Energy Regulatory Commission license or exemption, approved necessary state environmental and local permits, a detailed plan of the proposed financing for the project, a plan of construction including a timetable, and plans or agreements for the reliable

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operation of the project during the term of the standard offer. p. 131.

15. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates — Standard offers.

[N.H.] Long term standard offers made available to qualifying cogeneration and small power production facilities by utilities must incorporate the following characteristics: (1) the rate must be equal to the projected cost of the avoidable resource identified in the generating utility's long run integrated resource plan; (2) the term of the rate should be the lesser of 15 years or 3 years beyond the term of the QF's financing; and (3) the offer must permit QFs to apply for rates whose initial years are the first three years of the stream of the adopted avoided costs. p. 131.

16. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates — Negotiations.

[N.H.] Electric utilities were directed to establish a private contracting and negotiation procedure for all qualifying cogeneration and small power production facilities (QFs) that are larger than 1000 kilowatts and/or based on fossil fuel: specifically, utilities must (1) identify the megawatt amount of utility resources in its integrated resource plan than can be displaced or delayed following a projection of QF capacity available under the as-available short term rates and its long term standard offer, and (2) develop and implement a procedure for negotiating with QFs offering to provide energy and capacity. p. 132.

i. COGENERATION, § 25 — Rates — Avoided costs — Methodology for establishing rates.

[N.H.] Discussion, by the commission, of how the evolution of the commission's rate-setting policy concerning utility purchases from qualifying cogeneration and small power production facilities (QFs) and the development of the QF industry have led to the need to translate previously adopted avoided cost methodologies for setting rates into purchased power relationships between electric utilities and QFs. p. 123.

APPEARANCES: As previously noted.

By the COMMISSION:

#### I. PROCEDURAL HISTORY

On February 7, 1986 Public Service Company of New Hampshire (PSNH) petitioned for a comprehensive avoided cost rate proceeding. PSNH's petition requested, *inter alia*, that the commission: 1) open a proceeding to review the terms, conditions and rates established in *Re Small Energy Producers and Cogenerators*, Docket No. DE 83-62, 69 NH PUC 352, 61 PUR4th 132 (1984)(DE 83-62); 2) establish consistent terms, conditions and avoided cost methodologies

for sales by qualifying small power producers and qualifying cogenerators (qualified facilities or QFs) to all New Hampshire electric utilities; 3) update the rate determined in *Re Small Energy Producers and Cogenerators*, Docket No. DR 85-215, 70 NH PUC 753, 69 PUR4th 365 (1985)(DR 85-215); and 4) decline to accept long term rate filings submitted after February 7, 1986 until the issues raised in the petition were adjudicated.

By Order of Notice dated February 26, 1986, the commission opened Docket No. DR 86-41, *Re Public Service Co. of New Hampshire Avoided Costs* for the purpose of investigating the terms, conditions and denied the following PSNH requests:

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- 1) that the commission consider terms, conditions and avoided cost methodologies for electricity sales by QFs to all New Hampshire electric utilities in the context of a single docket;
- 2) that the long term rates determined in DR 85-215, be updated in the context of this docket rather than following the previously determined annual update time frame; and
- 3) that the commission decline to accept long term rate filings submitted after February 7, 1986 pending resolution of the matters to be adjudicated in this proceeding.

Rather, also on February 26, 1986, the commission opened a series of separate dockets to examine the terms conditions and avoided cost methodology for the remaining electric utilities: Docket Nos. DR 86-69, the UNITIL Companies (UNITIL); DR 86-70, the New Hampshire Electric Cooperative (NHEC); DR 86-71, Granite State Electric Company (GSE); and DR 86-72, Connecticut Valley Electric Company (CVEC). On September 23, 1986, by report and order no. 18,407 (71 NH PUC 547), the commission consolidated the cases for purposes of hearing and subsequently adopted the proposal by the parties presented at the January 19, 1987 procedural hearing for a three phase hearing schedule. In Phase I, the parties to the settlement agreement concerning the technical development of avoided cost presented and defended their stipulated methodology while PSNH presented contrary evidence and argument. Phase II would have occurred only if the commission rejected the settlement agreement. Phase III of the proceeding dealt with the policy issues surrounding the translation of the avoided cost methodology adopted in Phase I into a commission rate and/or alternative policies for establishing the purchased power relationships between the utility companies and the QFs.

On September 14, 1987 the commission issued report and order no. 18,829 (72 NH PUC 396), which set out the detailed procedural history of the dockets, adopted the stipulated avoided cost methodology both for the utilities that had signed the settlement agreement and for PSNH, ordered PSNH to file avoided costs consistent with the findings in the commission report, and deferred consideration of specific aspects of NHEC's avoided costs to Phase III.

The commission held hearings on Phase III of this proceeding on August 3-6, 17, 19 and 21, 1987. The parties filed initial briefs on October 14, 15 and 16, 1987, and GSEC filed a reply brief on October 30, 1987.

## II. POSITIONS OF THE PARTIES

The utility companies generally emphasized the need to create a system that encourages

direct negotiations between utilities and QFs, private contracting, flexibility and the use of avoided cost as a reference for negotiated contracts rather than the formula for a commission-set standard rate offer. While CVEC gave moderate support to the establishment of a formal bidding system, most companies argue that such a system lacks the flexibility of private negotiation, particularly once the bids have been formally accepted, and is cumbersome, especially in light of the small amount of additional capacity needed by each individual company. UNITIL, although not supporting a formal bidding system, did recommend that the commission adopt a specific framework for

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negotiations, observing that “QFs require a well defined process so that they can efficiently structure their own planning and proposals on a competitive basis” and that “QFs may be concerned that an unstructured private negotiation system also provides insufficient mechanisms and safeguards to discourage unfair dealing.” UNITIL Brief at 12.

The utilities recommended annual updates of avoided cost and reports to, and review by, the commission on each utility's progress in contracting with QFs. The companies recommend that only if the commission finds that the progress of negotiations by individual utilities is unsatisfactory should it establish long term purchase power rates or “employ its powers under RSA 362-A to persuade, even compel them to join the parade.” GSE Brief at 14.

If the commission establishes rates, the utilities advocate limitations on the size of each QF and the aggregate capacity to be added in each year, restrictions on the amount of front-end loading related to each project's capital costs or equity investment, and the adoption of specific provisions for security. Additionally, NHEC recommends that the length of the rate term be limited to ten years, that the commission specify the minimum terms and conditions that should be contained in most negotiated agreements and that the commission retain the option that distribution companies may wheel QF power to their wholesale supplier at no charge.

Pinetree argues that the methodology of DE 83-62 should not be completely disregarded but should be modified. It recommends a methodology that combines the calculation of avoided costs at various increments and the queuing of applicants. It also suggests that the commission retain and expand its requirements for QF eligibility for long term rates and adopt a system of milestones with respect to project development.

Pinetree agrees, however, that “private contracting is a viable alternative provided appropriate guidelines and safeguards are developed and made applicable for the process.” Brief at 10. Pinetree requests that the commission establish “a schedule of avoided costs, encourage the implementation of private negotiated contracts between SPP and utilities, and hold that the terms and conditions established in DE 83-62, with certain modifications ... are presumptively reasonable.” Brief at 17. Its suggested modifications relate to the adoption of milestones with respect to project development.

The Consumer Advocate did not submit a Brief, but endorsed a bidding system in the proceedings through a witness who presented the frameworks for bidding as adopted by other New England commissions and particularly commended the Massachusetts system.

### III. COMMISSION ANALYSIS

[1] The purpose of Phase III of the instant proceeding is to resolve the policy issues surrounding the translation of the avoided cost methodology adopted in Phase I into purchased power relationships between utility companies and QFs. Such policy will continue to fulfill the commission's responsibilities under the New Hampshire Limited Electrical Energy Producers Act, RSA Chapter 362-A as amended (LEEPA), and the Federal Public Utility Regulatory Policies Act, 16 U.S.C. §824a-3 *et. seq.* (PURPA). These acts require the commission to establish rates for the sales of electric power to public utilities that are (2) based on the utility's incremental cost of alternative electric

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energy and capacity, (2) non-discriminatory, (3) just and reasonable to the consumers of the electric utility, and (4) in the public interest. Both allow, but do not require, the commission to establish long term rates.

[2] In reviewing the record before us, we note that there is broad consensus among the parties that the policy established by the commission emphasize flexibility and encourage direct negotiation between the utilities and the QFs. The utilities suggest that the commission review the progress of negotiations and impose long term purchase power rates only if it finds that progress unsatisfactory. The commission accepts the recommendations of the parties that, at least initially, it institute a more flexible system than that represented by standard utility-specific long term rates offers.

However, we do not believe that such a system can be effectively implemented absent a commission approved framework for those flexible negotiations. We find that the proper goal for the commission policy regarding short term and long term utility purchases of energy and capacity from QFs is the integration of QFs into the utility's own long term resource planning in an efficient and equitable manner. Therefore, the necessary framework for utility negotiations with QFs must be that utility long term resource planning. One necessary outcome of these proceedings is the need to develop and implement a process in which the commission can evaluate all demand-side and supply-side resource additions, including QFs, to the utilities, systems.

The following analysis will first briefly review the evolution of commission policy and the QF industry in New Hampshire that resulted in the contextual setting for the instant order. Next we will specify the reports and analysis of the resource plan that the commission will require each utility to file and support in order that a utility-specific, commission approved framework for utility-QF negotiations can be formulated. Last, we will delineate the process and rates, terms and conditions of purchase power arrangements available within that framework.

*A. Evolution of commission policy and the QF industry*

[i] Following the passage of the LEOPA and PURPA legislation in 1978, the commission set rates and established interconnection standards, first for PSNH as the state's only generating utility and subsequently for the state's non-generating utilities. These early orders determined short term buy back rates for energy and capacity for all utilities, and offered non-generating utilities the option of either paying their generating suppliers' avoided cost or wheeling to their

suppliers at no charge. Although the commission also encouraged utilities to negotiate long term purchase power agreements with developers, only PSNH responded, signing long term contracts primarily with small hydro-electric facilities. Between 1978 and 1983, 57 facilities achieved commercial operation; they were predominantly run of the river hydro-electric (41), but also residential wind (1), wood/cogeneration (4) and photovoltaic (1).

In the spring of 1983, the New Hampshire Legislature amended LEEPA to redefine qualifying facilities to cover all technologies that qualify under PURPA (including fossil fuel based cogeneration, which had not previously qualified under LEEPA) and specifically grant the commission the authority to establish a long term purchase power rate. Pursuant to the

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amended statute, the commission opened DE 83-62 to reconsider the methodology for setting PSNH's short term rates and formulate its long term rates for the first time. Following extensive settlement discussions among staff, PSNH and QF developers, in June 1984 the commission adopted the new methodology and procedures for both the short term and permanent long term rates. Under the DE 83-62 rates, the commission approved 105.786 MWs of capacity, some of which reflects the shift by a few facilities previously receiving short term rates to a long term commitment for sale of energy and capacity to PSNH.

In September 1985, in DR 85-215 the commission revised the long term rates and the short term capacity rate by inserting updated data into the methodology established in DE 83-62. However, the growing disparity between the DR 85-215 rates and the cost of developing projects based on lower interest rates and, for cogenerators, declining fossil fuel rates of late 1985 and early 1986, enhanced the economic feasibility of projects that could develop on DR 85-215 rates. In the first four months of 1986, facilities representing the following amounts of capacity petitioned the commission for a long term rate pursuant to DR 85-215:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

|          |           |   |
|----------|-----------|---|
| January  | 41.60 MW  |   |
| February | 124.96 MW | (plus a 49.5 MW rejected filing)  |
| March    | 166.50 MW | (plus a 55 MW rejected filing and 20 MW filing that was subsequently withdrawn) |
| April    | 204.98 MW |   |
| May      | 45.82 MW  |   |
| Total    | 583.86 MW |   |

Partially as a result of the magnitude of the capacity offered by QFs, PSNH petitioned in February 1986 that the commission open the instant dockets. In addition to these generic dockets regarding rates, terms and conditions of the utility/QF power purchase arrangements, throughout 1986 the commission held hearings on the petitions by individual QF developers. Issues addressed in these hearings included project maturity required at the time of filing for a long term rate, the eligibility of third party fossil fuel cogenerators for long term rates especially if levelized, the extent of New Hampshire's wood resource and the financial and managerial ability of the sponsors of wood-electric projects to develop multiple sites within the schedules for which



they had petitioned. The commission eventually approved 140.465 MW of capacity pursuant to the DR 85-215 rates:

[Graphic(s) below may extend beyond size of screen or contain distortions.]

| <i>Technology</i> | <i>No. Facilities</i> | <i>Gross Capacity</i> |
|-------------------|-----------------------|-----------------------|
| <i>Hydro</i>      | 23                    | 16.665                |
| <i>Wind</i>       | 0                     | 0                     |
| <i>Wood/Cogen</i> | 5                     | 66.2                  |
| <i>MSW</i>        | 4                     | 37.6                  |
| <i>Multi-Fuel</i> | 1                     | 20.0                  |
| <i>Total</i>      |                       | <u>140.465</u>        |

Of these, one MSW project subsequently withdrew its petition in order to sign a private contract (PRS — Derry at 10.3 MW) and the rate for a second project was rescinded for failure to meet the milestones that were a condition of its rate (Vicon at 13 MW).

The DR 85-215 rates were updated in DR 86-134 in July 1986. However, one result of the on-going settlement discussions in the avoided cost methodology dockets, was the realization that the DE 83-62 methodology was inadequate to deal

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with the then existing QF environment. The methodology of the rate calculation assumed PSNH load forecasts, identified an hourly margin of generating units and calculated rates based on the savings achieved when PSNH could avoid operating those units. The methodology did not anticipate the changes in the margin that resulted from the lower load forecast due to the loss of the UNITIL companies as wholesale customers and the addition of significant amounts of QF capacity to the generating mix. Concerned that additional filings under DR 86-134 would only exacerbate the methodological problem and interfere with the investigation into the methodology, the commission suspended DR 86-134 in September 1986.

An outgrowth of the consideration of the petitions filed under DR 85-215, was the adoption of a ranking of categories of QF projects based on their contribution to the public good. The commission accepted the guidance in LEEPA in regard to the state's emphasis on renewable resources and in PURPA on the need to foster a decreased dependence on fossil fuels, and especially on foreign oil, and found that “[n]either [LEEPA nor PURPA] was intended to increase the dependence, particularly of New England, on fossil fueled electrical generation, however efficient that increased generation may be.” The commission further noted that “wood and MSW projects have positive externalities that are also in the public interest.” Report and Order No. 18,530 at 9 (72 NH PUC 8, 10, 11).

[3] This ten year evolution of the QF industry and commission policy in New Hampshire has resulted in a context for the instant order that bears several distinct characteristics. First, the QF industry in New Hampshire is no longer a fledgling industry that needs to be specially encouraged. The number and size of projects proposed and/or approved clearly reflects that New Hampshire possesses a diversified and well-established QF industry with a strong entrepreneurial spirit that will make available new capacity whenever it is economic to do so. One specific implication of the maturity of the QF industry is that the commission does not need

to continue to offer standard long term levelized rates in order to secure capacity needed sometime in the future but not in the present.

[4] Second, based on the projects that have come before us, it is clear that there is a high degree of speculation in the QF industry. Criteria of project maturity must be established to assure that the projects obtaining rates and contracts will be able to provide capacity when it is needed. Only by establishing criteria for maturity at the time of application and monitoring milestones of development can the commission, utilities and ratepayers reasonably rely upon QF project proposals materializing into operating units that will meet the state's long term energy and capacity needs.

[5] Third, the methodology as adopted in DE 83-62 must be modified at least to the extent of providing a better congruence between the amount of capacity measured when the value of capacity is being calculated, and the amount of capacity eligible for the rate based on that calculated value. Since the supply of QFs is highly elastic at certain price levels there is a need to limit the amount of capacity eligible for any particular energy and capacity rate.

[6] Fourth, the QF industry, in terms of technology, size and location, will not automatically maximize the potential benefits to New Hampshire's electric utilities and ratepayers. The original

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Declaration of Purpose in LEEPA states:

It is found to be in the public interest to provide for small scale and diversified sources of supplemental electric power to lessen the state's dependence upon other sources which may, from time to time, be uncertain.

At any point in time, cost relations may favor a particular technology and economics of scale may encourage an increase in size of individual facilities. If the commission is to ensure that the goals of the LEEPA legislation will be realized, and that the QFs that enter into purchase power arrangements are in fact "small scale and diversified" in relation to each utility's generation mix, the commission must establish guidelines for the categories of facilities it believes best satisfies those goals.

[7] Finally, developers do not choose to locate their facilities based on a coordinated decision to maximize the utilities' highly integrated generation/transmission systems. While some projects are limited to very specific locations (*e.g.* low head hydroelectric), other projects have available greater choice of location. The commission must assure that utilities provide sufficient information regarding load centers and transmission lines that will make it possible for the QFs to better coordinate their location decisions with the needs of the utility system.

*B. Reports of the resource plan and analysis required to establish the framework for QF rates and negotiations*

[8-10] Given the goal that further encouragement of the QF industry be in the context of overall utility long term resource planning, it is necessary to institute a consistent process to enable the commission to evaluate all utility resource investment options including purchases of QF power. Therefore, each utility will be required to file an integrated least cost resource plan in conjunction with updated forecast of avoided costs in order that the commission may reasonably

review each utility's planning process, resultant plans, and avoided cost forecast. The objective of the integrated least cost resource plan is to satisfy future demand with the optimal combination of supply-side resources and demand-side programs. Thus, the plan must provide a comprehensive and detailed assessment of all reasonably available demand-side and supply-side utility investment options to satisfy ratepayer's energy service needs at the lowest overall cost consistent with the reliable supply of electricity. Overall cost in this context includes compliance with public policies in regard to environmental and social concerns as well as financial considerations.

We will require the utilities to provide the reports and analyses of the integrated least cost resource plan to the commission by April 15th, biennially in even numbered years. Based on these reports and information developed through testimony, the commission will establish a framework for QF long term rates and private negotiations. As further discussed herein, this framework contemplates a much expanded role for private negotiation between QFs and utilities, based on utilities' long term resource planning. Our endeavor is to create a public forum in which the utilities explain their planning criteria and assumptions. This forum will both ensure regulatory oversight of the resource plans and make available information needed by QFs to compete effectively with the utilities' other resource options. It will also ensure

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that the criteria and assumptions applied by the utility in negotiations are the same that it uses to judge its own resource options.

In the biennial filing each utility shall develop and support the following seven areas of major reports and analysis and such additional areas as the commission may notice.

- 1) Forecast of future demands
- 2) Assessment of demand-side options
- 3) Assessment of supply-side options
- 4) Assessment of transmission constraints and requirements
- 5) Integration of demand-side and supply-side options
- 6) Two-year implementation plan and forecast
- 7) Avoided cost forecast

These seven areas of analysis require assumptions and forecasts of the future. The utility must forecast the demand for electricity, the various utility supply-side and demand-side resource options available to meet this demand, and the prices and rate inputs associated with plausible planning scenarios. Additionally, the utility should assess, and explicitly treat in the analysis, the risk and uncertainty of the forecast scenarios and their sensitivity to various assumptions. These reports should be consistent with the Annual Report filed with the Bulk Power Supply Facilities Committee and other reports and analysis used by the utilities for ratemaking and investment decisions. Finally, each utility will derive an updated forecast of avoided costs consistent with the other reports and analysis contained in the filing.

### 1) Forecasts of Future Demands

Each utility will file a 15 year forecast of capacity and energy, at the parent and/or full requirements supplier level of aggregation as well as at the subsidiary and/or distribution level. The utilities should file a minimum of three forecasts representing a plausible range — high, low, and “probable” — with the probable to represent the utility's most likely set of future events. The various forecasts should be utilized to show the sensitivity of resource option scenarios to varying levels of demand in the treatment of risk and uncertainty. While we will not prescribe a forecasting methodology at this time, we will require that the methodology employed by each utility be able to evaluate the effect of price and demand-side resource planning decisions (*i.e.* conservation, load management) on the forecast of future demands. Further, the forecasting methods employed by each utility should be consistent with methods used by the utility for other corporate planning and investment decision making.

### 2) Assessment of Demand-Side Options

The integrated least cost resource plan should demonstrate that the utility and/or its power requirements supplier has adequately assessed all reasonably available utility sponsored demand-side resource options to satisfy ratepayers' energy service needs. Each utility should develop and implement costs and benefits tests for evaluating and ranking potential new utility sponsored conservation and load management programs. The demand-side option assessment should include an explicit accounting of price induced demand reductions, and reductions in demand from the continuation of existing utility and government sponsored demand-side programs. The commission expects that each utility will make use of the plethora of

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demand-side program information and data available in the electric utility industry. The objective of the assessment is to identify all cost-effective demand-side options.

### 3) Assessment of Supply Options

Each utility should assess the wide range of utility supply-side resources available to meet ratepayers future energy service needs, including plant re-powering or life extension, bulk power purchases, non-traditional utility generation sources, and conventional plant construction. The utility may include an assessment of the expected amount of QF capacity to be provided under existing arrangements and/or power on an as-available basis; however, incremental firm QFs should be excluded from the supply assessment and the utility's resource plan. The utility should employ a variety of models or methods to assess these supply options, including production costing and reliability models as well as risk analysis models or methods. We will require that the minimization of the present worth of future revenue requirement form a basic criterion used to select and prioritize these supply options.

### 4) Assessment of Transmission Requirements, Limitations and Constraints

Each utility should provide a detailed assessment of the forecasted transmission requirements, limitations and constraints over the planning period. This assessment should include a map indicating load center concentrations, transmission limitations and constraints, and planned and proposed changes to the transmission system within the franchise area during the

forecast period. The utility should provide an evaluation of how new generation, regardless of ownership, will be incorporated into the transmission grid and the consequences of additional generating sources for the transmission system.

#### 5) Integration of Demand-Side and Supply-Side Resource Options

Each utility should develop a formal process for the integration of cost effective utility sponsored demand-side programs and supply-side resource options and demonstrate that the utility has considered all aspects of its resource needs. Under this process demand-side programs and supply-side resource options should be evaluated in a dynamic iterative process that considers risk, sensitivity, and uncertainty factors. The objective of this analysis is to determine the optimal mix of resources that will provide ratepayers' energy service needs at the least cost consistent with the reliable supply of electricity.

#### 6) Two-Year Implementation

The commission requires that each utility submit a consistent two-year "action" plan designed to detail how the long term integrated least cost resource plan will be developed and implemented in the first two years. This action plan should include a short-term forecast (2-year) of capacity and energy requirements at the parent and/or full requirement supplier level as well as at the subsidiary and/or distribution utility level of aggregation. The utility should demonstrate how the optimal "mix" of utility sponsored demand-side programs and supply-side resources will be developed and implemented during the forthcoming two year planning period. The plan should specify all new and existing models, data, equipment, personnel, and

facilities that the utility intends to utilize and/or require in the implementation of the plan.

#### 7). Avoided Cost Forecasts

In conjunction with biennial filing of the reports and analysis discussed above each utility will file a 15 year forecast of avoided cost and all supporting data. This forecast should be based on the utility's most likely scenario as identified in these reports and analysis. Further, the methodology for forecasting avoided costs should be consistent with the methodology adopted by this commission in Phase I. However, unlike the Phase I settlement process, the calculation of avoided costs will derive from the respective utility's integrated least cost resource plan as reviewed by the commission in a biennial update proceeding that will follow the filing of the reports and analyses. Those avoided costs will provide the maximum price for all QF purchase power arrangements. As further discussed below, QF purchase power rates under this policy will vary according to whether or not a utility will potentially be able to defer or cancel some future utility resource because of QF power.

By deriving each utility's avoided costs from an integrated least cost resource plan we ensure that the Phase I methodology will identify the most cost-effective way that the utility could generate power to meet its system requirements in the absence of QFs. Such cost-effective resource additions will constitute the costs that are potentially avoidable by QFs. In the alternative, if the integrated least cost resource plan does not identify any future utility resources that the QF can displace, the avoided costs would be based on the properly calculated short-run

avoided costs of the utility.

Under the Phase I methodology, the short-run avoided cost of the utility would be determined by using the decrement method in the production costing modeling of the utility. This method requires two production costing runs. The first run is a simulation of production costs without incremental QF as a "base case"; the second run, involves the reduction of load in the amount of the decrement adopted for each utility in Phase I. As discussed in our report in Phase I of this docket the decrement method is analogous to the definition of avoided costs in that it calculates the difference in cost with and without a specified block of QF power.

In the alternative, if the utility were able to defer or cancel some future resource addition because of the availability of QF power, then the avoided costs would be based on the capital and operating costs of those avoidable utility resources. The Phase I methodology incorporated the operating cost and capitalized energy saving of a new base load Integrated Gasified Combined Cycle (IGCC) proxy or reference unit as the avoidable resource that QFs could allow all the utilities to avoid. The crux of the integrated least cost planning derivation of avoided costs that we envision herein is the identification by each utility of the proxy or reference unit(s) that would be cost effective when added to the utility's system and would be potentially avoidable by purchases of QF power. That is, such an avoidable proxy or reference unit should be incorporated by each utility into its avoided cost estimate at the point that it is the least cost resource option as identified in the utility's biennial filing.

*C. Commission Hearing and Review*

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The commission will hold hearings and will review, *inter alia*, the adequacy and reasonableness of each utility's integrated least cost plan reports and analysis as well as the calculation of avoided costs. If the utility does not anticipate the need for additional utility resources that the QF can displace within the first 8 years of the planning horizon, it will file the following information:

1. Testimony to demonstrate that assessment.
2. Testimony documenting the company's integrated least cost resource plan for providing all aspects of its energy resource needs.

If following our review of the utility's integrated least cost resource plan the commission finds that no utility resources can be potentially avoided by QFs in the first 8 years of the forecast period, the commission will not require the utilities to develop and implement a long term purchase power negotiation procedure.

If the utility's integrated resource plan identifies additional utility resources that are potentially avoidable by purchases from QFs within the first 8 years of the planning horizon, the utility will file the information required above plus:

3. Testimony documenting a private contracting and negotiation procedure for securing purchase power arrangements with QFs.

Based on our review of the various reports, analyses and testimony, the commission will

determine the appropriate utility resource additions that can be potentially avoided by QFs, and, if any, the MW amount of QF purchase power arrangements each utility should be seeking.

*D. Process and Rates, Terms and Conditions of Purchase Power Arrangement*

[11] 1). Pricing when the commission determines that QF purchases cannot displace a utility resource option

If the commission's determination is that QFs cannot allow the utility to avoid any resources during the first eight years of the planning period the utility will only be required to offer QF's an as-available short-term energy and capacity rate. Thus, if the utility does not require long term capacity and the only benefit of new QF power is fuel savings/source diversity and the sale of capacity into NEPOOL, the utility will only be required to offer QF's the as-available short term energy and capacity rate.

Therefore all utilities are required to file short term rates in conjunction with their Fuel Adjustment Clause/Purchase Power Cost Adjustment or Energy Cost Recovery Mechanism proceedings (presently once a year for ConVal, every six months for all other utilities). The short term energy and capacity rates should be calculated consistent with the methodology adopted in Phase I. Therefore, the energy rate should be calculated using the production costing decrement method adopted in Phase I, so that each utility's biennial short term avoided cost forecast report will provide the utility's "most likely" projection of short term avoided costs rates. The short term capacity rate should be based on the utility's best estimate of the market value of peaking capacity in NEPOOL. QF capacity eligible for capacity payments will be determined by the commission according to standards set forth in Dockets

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DE 78-232, DE 78-233, and DE 79-208.

[12] The commission will continue the existing arrangements established in *Re Purchases for Non-generating Utilities*, 67 NH PUC 825 (1982), whereby non-generating utilities have the option of either purchasing the power or wheeling it at no charge to their requirements supplier. However, we will monitor purchases by utilities on the short term rate. Of particular interest will be each utility's choice of purchases at the subsidiary versus parent, distribution company versus generating supplier levels, especially in relation to the wholesale rate. The commission acknowledges the potential problems of system reliability stability and transmission when very large QFs are added to the smaller systems or load centers. However, we put the utilities on notice that we do not intend our wheeling policy to relieve the distribution companies of their obligation to obtain the least cost supply consonant with system reliability for the benefit of their ratepayers.

2). Pricing when the commission determines that QF purchases can displace a utility resource option

[13] If following review of the utility's biennial integrated least cost resource filing the commission finds that additional utility resources in the first 8 years of the forecast period are potentially avoidable by QFs, the commission will require long term commitments between QF's and utilities. The commission will hereby require the companies to establish a two-tiered

program, and distinguish between the small renewable projects that were the original focus of LEEPA and that add to the diversity of the New Hampshire supply mix, and the projects that are larger and/or based on non-renewable fuel sources. We also note that the transaction costs for individual negotiations can overwhelm any benefits of commitments with smaller projects for both the developer and the utility. Therefore we will require utilities to make a standard offer to the smaller projects based on renewable resources while individually negotiating with projects that are larger and/or based on non-renewable fuel sources.

a. *Standard Offer*

"[14, 15]" i. Projects less than 100 KW may be developed only on the standard short term rate.

ii. Utilities will be required to make available long term standard offers for those projects that have an installed capacity of 100-1000 KW *and* are based on renewable resources. In order to be eligible to apply for the standard offer, the QF must demonstrate the following indications of project maturity: site control, FERC license or exemption (hydroelectric), approved necessary state environmental and local permits, a detailed plan of the proposed financing for the project, a plan of construction including a timetable, and plans or agreements for the reliable operation of the project during the term of the standard offer. While projects are eligible for full avoided costs, any front end loading must be negotiated with the utility. In no case will the project's total front end loading exceed the project's capital cost. Further, the QF must provide a cash or cash equivalent security equal to 10% of the expected total front end loading.

Each utility will file with the commission a standard contract format including the terms and conditions of the interconnection and the power purchase. The standard agreement will specify the timing of payments by the QF for the

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interconnection study and the interconnection.

The standard offer must incorporate the following characteristics. The rate will be equal to the projected cost of the avoidable resource(s) identified in the generating utility's long run integrated resource plan. The term of the rate should be the lesser of 15 years or 3 years beyond the term of the QF's financing. QF's may apply for rates whose initial years are the first three years of the stream of the adopted avoided costs.

b. *Private Contracting and Negotiation*

[16] The utilities will establish a private contracting and negotiation procedure for all other QF's larger than 1000 KW and/or based on fossil fuel.

The utilities will identify the MW amount of utility resources in its integrated resource plan that can be potentially displaced or delayed following a projection of QF capacity available under the as-available short term rates and its long term standard offer. Based on the guidelines established by the commission following the hearing on the utility's biennial integrated least cost resource filing, the utilities will develop and implement a procedure for negotiating with QF's offering to provide energy and capacity. The negotiations will use as a benchmark the projected cost of the avoidable resource(s) identified in the generating utility's resource plan, but are not



required to contract at full avoided cost nor adhere to the specific terms and conditions of the standard contract. Negotiable terms may include *inter alia*, price, front end loading, security arrangements, dispatchability, and timing of the QF capacity addition. The utilities will file the negotiated contracts with the commission. They will also provide an annual report on the status of negotiations with QF's including both the committed capacity and rejected proposals.

The commission notes that the utilities retain their obligations to provide safe and reliable service to their ratepayers. These obligations include the provision by the utility of adequate supplies of capacity as required. Thus, it remains the responsibility of the utility to monitor its supply of capacity, from QFs as well as other sources, to assure that the capacity is available as needed. To this end the utilities should formulate milestones during the development stage as well as performance reviews for QF's that have attained commercial operation. These milestones and performance reviews should apply to all QFs, both those on standard offers as well as those under negotiated contracts.

The commission will schedule a workshop for the parties in the instant docket for the purpose of establishing a timetable and addressing any questions concerning the utility's biennial integrated least cost resource filing. For the year 1988 we are waiving the requirement that the plan must be filed by April 15, 1988.

Our Order will issue accordingly.

#### ORDER

Upon consideration of the foregoing Report on Phase III, which is made a part hereof, it is hereby

ORDERED, that the policy issues surrounding the translation of the PHASE I and II avoided cost methodology into long term purchase power arrangements between the state's electric utilities and QFs shall be as provided for in the foregoing report; and it is

FURTHER ORDERED, that consistent with this policy, each utility shall provide the reports and analysis (including updated long term avoided cost estimates) of the

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integrated least cost resource plan to the commission by April 15th, biennially in even numbered years; and it is

FURTHER ORDERED, that the April 15th, 1988 filing date required by this report and order is hereby waived pending a workshop for the parties to establish timetables and address questions concerning the instant order; and it is

FURTHER ORDERED, that the commission will direct its staff to contact the parties to this proceeding for purposes of scheduling said workshop within one month of the date of this order.

By order of the Public Utilities Commission of New Hampshire this seventh day of April, 1988.

NH.PUC\*04/08/88\*[51966]\*73 NH.PUC 133\*Southern New Hampshire Water Company

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DE 04-072

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**2004 Least Cost Integrated Resource Plan**

**Order on Request for RSA 378:38-a Waiver**

**ORDER NO. 24,435**

**February 25, 2005**

**I. INTRODUCTION**

This proceeding concerns the biennial Least Cost Integrated Resource Plan filed on April 30, 2004, by Public Service Company of New Hampshire (PSNH) with the New Hampshire Public Utilities Commission (Commission) pursuant to RSA 378:38. Following a duly noticed Pre-Hearing Conference conducted on January 5, 2005, the Commission entered Order No. 24,426 (January 28, 2005). In it, the Commission adopted the proposal of the parties and Commission Staff that the Commission address certain threshold issues at the outset, following the receipt of written comments.

Those issues are (1) the extent to which PSNH is obliged to discuss distribution issues in its Least Cost Integrated Resource Plan, and to take the needs of Unitil Energy Systems, Inc. (Unitil) and the New Hampshire Electric Cooperative (NHEC) into account when creating this aspect of the plan, (2) whether PSNH should be granted the requested RSA 378:38-a waiver of the requirement to discuss generation in its plan, and (3) the extent to which PSNH's participation in the Core Energy Efficiency Programs, funded by the system benefits charge paid by New Hampshire's electric customers, satisfies PSNH's obligation under RSA 378:38 and 378:39 to consider demand-side management efforts in connection with its plan.

The Commission established February 8, 2005 as the deadline for submission of written comments. PSNH, Unitil, NHEC, the Office of Consumer Advocate (OCA) and Granite State Electric Company (GSEC) made timely submissions. On February 24, 2005, PSNH submitted a letter, asserted to by Unitil and NHEC, that the parties were working together productively and requested a two month delay in consideration of the PSNH's Least Plan.

## II. POSITIONS OF THE PARTIES

### A. Public Service Company of New Hampshire

PSNH noted that RSA 378:38-a, explicitly authorizing waivers of the requirement to include generation in electric utilities' least cost integrated planning documents, became law in June of 1997, only four months after the Commission issued its final statewide restructuring plan.<sup>1</sup> According to PSNH, given the status of the electric industry in New Hampshire at the time of passage, the legislation probably represents an "interim measure."

Conceding that the standard for granting a waiver under RSA 378:38-a is not clear, PSNH proposes that the Commission determine whether it is just and reasonable for PSNH to undertake least cost resource planning in the context of an electric industry that no longer mirrors the vertically integrated model for which the planning statutes were designed. PSNH notes that its generation, transmission and distribution operations are functionally separated and, therefore, that integrated resource planning may no longer be possible or permissible.

PSNH further notes that transmission planning is now conducted at the regional level via the annual Regional Transmission Expansion Plan (RTEP) created by ISO New

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<sup>1</sup> PSNH was among the electric utilities that immediately challenged the restructuring plan in federal court, obtaining an emergency injunction. PSNH dropped its lawsuit against the Commission as part of the Agreement to Settle PSNH Restructuring, approved by the Commission and the Legislature in 2000.

England. According to PSNH, the adoption of open access transmission tariffs and the code of conduct mandated by the Federal Energy Regulatory Commission (FERC) prohibit discrimination among transmission users and limit PSNH's ability to disclose certain information about its transmission system. In particular, PSNH points out that it cannot plan its transmission system so as to favor its generation facilities over others.

According to PSNH, generation no longer lends itself to Least cost integrated Resource Planning. PSNH contends that electric restructuring turned generation planning over to the market and to the FERC via its regulation of the regional wholesale electricity markets. Conceding that it is unique in New Hampshire by virtue of legislation allowing it to continue to own generation facilities, PSNH points out that its customers are not obliged to purchase energy from PSNH. It describes this reality as the "wild card" in the resource planning process. PSNH Memorandum at 5. Specifically, PSNH points out that it cannot be certain of the amount of load for which it may be required to supply energy on a long-term basis. Indeed, PSNH notes, there is no certainty that PSNH will remain in the generation business after April 30, 2006 in light of RSA 369-B:3-a (allowing asset divestiture after that date, upon Commission approval).

With respect to demand-side management, PSNH points out that the Commission has adopted an industry-wide approach to this issue by implementing the statewide Core Energy Efficiency Programs as recommended by the Commission's Energy Efficiency Working Group. Noting that the success of the Core programs has been measured by overall kilowatt-hour savings, PSNH nevertheless points out that many of the commonly installed efficiency measures also contribute to reducing peak demand. According to PSNH, if it were required to file a least

cost demand-side plan, it would begin by “reaffirming” the Core programs and supplying the assessments already conducted with respect to those programs. PSNH Memorandum at 7.

According to PSNH, in addition to the Core programs, it has retained many of its rate offerings that shift load to off-peak times or reduce on-peak demand. As examples, PSNH refers to its municipal lighting Rate EOL, its load controlled service, its electric space heating option HeatSmart, the Voluntary Interruptible Rate, the Ski Area Interruptible Rate and the Westinghouse special contract. PSNH also refers the Commission to its Retail Energy Service program, which it characterizes as designed to encourage large customers to take service from competitive suppliers in a manner that reduces PSNH’s need to purchase surplus power from the wholesale market.

Finally, PSNH contends that distribution investment does not lend itself to long-term least cost resource planning. According to PSNH, the planning horizon for distribution is shorter than that for other aspects of its operations. PSNH also notes that distribution planning is more localized, responding to near-term changes and customer needs in discrete geographical areas. PSNH points out that its transmission least cost planning document does include those transmission upgrades that were requested by its distribution planners. It also points out that the table listing its transmission and distribution upgrades can be broken out more clearly to reflect which projects are related to the 34.5 kv distribution system and which are solely for transmission. PSNH also reiterates a point it made at the Pre-Hearing Conference: that it has engaged the Stone & Webster consulting firm to conduct a study of PSNH’s distribution reliability and system planning. According to PSNH, it has begun discussions with NHEC and

Unitil to explore “inter-company planning principles so that the mutual expectations of . . . these companies are made clear for each of the companies’ system planners.” *Id.* at 9.

PSNH points out that although distribution is referenced in RSA 378:38-a, authorizing least cost planning waivers, there is no mention of distribution in the statutes that affirmatively require least cost planning. PSNH also contends that if it is required to address distribution in its least cost planning process then the same requirement would apply to the state’s other electric utilities.

#### **B. New Hampshire Electric Cooperative**

NHEC takes the position that PSNH’s least cost integrated transmission plan should address the relationship between its wholesale delivery service customers (i.e., NHEC and Unitil) and PSNH’s transmission planning process. According to NHEC, there is nothing in the PSNH transmission plan that indicates how the load growth, reliability needs or safety concerns of NHEC and Unitil are taken into account in connection with least cost transmission planning, particularly with respect to prioritizing investments in new facilities and upgrades. Though NHEC concedes that electric utilities should not be required to provide a detailed analysis of its distribution system planning, design and operation in connection with the least cost planning document, NHEC contends that PSNH should be required to articulate how the needs of the wholesale customers are incorporated into its planning process.

NHEC supports PSNH’s request for an RSA 378:38-a waiver with respect to generation. It also takes the position that dockets specifically addressing the statewide energy efficiency programs are the appropriate forum for assessing PSNH’s demand-side efforts.

#### **C. Unitil Energy Systems, Inc.**

Unitil contends that PSNH's least cost planning document must include an analysis of the 34.5 kv network and related facilities. In that regard, Unitil invokes the discussion of assessment of transmission options contained in the Commission's 1988 decision in *Public Service Co. of N.H.*, 73 NH PUC 117 (1988) (concerning application of avoided cost methodologies to utilities' relationships with independent power producers). In that order, which antedated the adoption of the least-cost planning statute, the Commission required electric utilities to embark upon least cost planning. With respect to transmission, the Commission required utilities to provide a "detailed assessment of the forecasted transmission requirements, limitations and constraints over the planning period." *Id.* at 128. Specifically, the Commission required "a map indicating load center concentrations, transmission limitations and constraints, and planned and proposed changes to the transmission system within the franchise area during the forecast period." *Id.* The Commission also required "an evaluation of how new generation, regardless of ownership, will be incorporated into the transmission grid and the consequences of additional generating sources for the transmission system." *Id.*

According to Unitil, the Commission should not incorporate distribution planning requirements into the least cost planning process for the transmission grid. However, Unitil contends that there is a "special class" of distribution facilities that is "critical to transmission planning" and therefore "relevant to least cost planning" because these facilities perform both transmission and distribution functions. Unitil Statement of Position at 2.

Unitil notes that all of PSNH's 34.5 kv system is classified as distribution, based on the currently applicable FERC seven-factor test for making such determinations. But, according to Unitil, PSNH's 34.5 kv system comprises dual purpose facilities that perform

transmission as well as distribution functions. Unitil further notes that the reclassification of the 34.5 kv system from transmission to distribution for FERC purposes has not changed the manner in which system planners and operators treat this aspect of PSNH's facilities.

According to Unitil, there are numerous ways in which the 34.5 kv system is distinguished from other PSNH distribution facilities. Specifically, (1) the 34.5 kv system may be operated as a looped, as opposed to radial, system; (2) 34.5 kv lines are used to integrate sources of supply and provide service to distribution substations and circuits throughout the service territories of PSNH, NHEC and Unitil; (3) unlike typical distribution facilities, 34.5 kv lines are often constructed in dedicated rights of way rather than along roads; (4) 34.5 kv lines have few if any customer transformers installed on them to step voltage down to secondary levels; (5) analysis and planning of the 34.5 kv system is routinely performed by using transmission load flow software; (6) the methodologies used to plan and analyze the 34.5 kv system, including the evaluation of contingencies and switching solutions to alleviate thermal and voltage constraints, are most akin to transmission planning methods; (7) unlike other distribution facilities, the 34.5 kv system falls under the authority and jurisdiction of PSNH's Electric System Control Center; (8) the 34.5 kv system provides a parallel path to the transmission system and is used to alleviate transmission constraints; and (9) the PSNH and Unitil systems are often operated as an integrated network. According to Unitil, it is the transmission function of the 34.5 kv system that should be considered in the context of least cost transmission planning.

Unitil contends that RSA 378:37 requires PSNH to include in its least cost plan an analysis of the impacts its proposed system additions will have on costs incurred by, and the



reliability and operations of, the two distribution utilities that are customers of PSNH (i.e., NHEC and Unitil). According to Unitil, PSNH has not considered such factors to date. This omission, according to Unitil, would result in an incomplete evaluation of PSNH's plan unless corrected, from the standpoint of determining the lowest reasonable cost to meet the energy needs of customers.

According to Unitil, PSNH exercises significant influence over the design and operation of Unitil's own distribution system. Unitil contends that PSNH determines the location and design specification of new substations as well as the delivery points used to provide energy to the Unitil distribution system. Unitil also contends that PSNH may also prescribe how Unitil's internal load is to be allocated between such delivery points. These realities, according to Unitil, constrain the planning, design and operation of the Unitil distribution system. Unitil contends that when it attempts to plan, construct, operate and maintain its own distribution system in a manner that balances least cost and optimal performance for its customers, Unitil is frequently unable to do so because of an inability to influence planning decisions external to the Unitil system.

Unitil further contends that several modifications and additions planned by PSNH in 2006, including the Timber Swamp, Brentwood and Oak Hill substations, will directly impact the long-term design and operation of the Unitil system. According to Unitil, these proposed additions have not been proven to represent an optimum or least cost long-term solution for all customers in these areas. For example, according to Unitil, costs to Unitil potentially in the millions of dollars have not been factored into PSNH's economic evaluation of its Timber Swamp substation. Unitil also contends that other factors, such as reliability and system losses,

have similarly not been considered by PSNH. According to Unitil, once such substations are constructed, the Unitil system may be irreversibly harmed and other alternatives that might have been more desirable from Unitil's standpoint will no longer be feasible or cost-effective.

Unitil proposes that PSNH's least cost integrated planning document be required to consider (1) the total cost of planned additions, including the internal costs of each utility associated with such planned additions; (2) the reliability impact, if any, of planned system additions and modifications for all utility customers; and (3) other operational considerations, including line losses and maintenance costs, for all utility customers. Unitil further contends that in order to meet the "least cost" standard, PSNH should consider its transmission system and underlying 34.5 kv system as a single system for purposes of transmission planning. According to Unitil, the planning process should be jointly undertaken any time PSNH plans or constructs facilities for the benefit of more than one distribution company. Finally, Unitil takes the position that PSNH's planning solutions should not favor PSNH's retail customers over any other utility customers simply due to PSNH's ownership and control of the surrounding transmission and distribution system.

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

The OCA contends that RSA 378:38 allows the Commission to require PSNH to address distribution in its least cost planning document. However, noting that PSNH's recent transmission and distribution rate case resulted in PSNH retaining a consultant to address distribution, the OCA suggests the Commission not require PSNH to duplicate that effort in this proceeding. According to the OCA, PSNH's obligation to conduct least cost integrated planning regarding the 34.5 kv system that provides power to Unitil and NHEC may not be adequately

addressed by the ongoing PSNH distribution analysis. Thus, OCA asks the Commission to require PSNH to address that aspect of its 34.5 kv system in its least cost integrated plan.

OCA believes PSNH should not receive a waiver of the requirement to address generation in its least cost integrated plan, given that PSNH continues to own and operate its fossil/hydro generation assets. According to the OCA, whether one looks at the issue assuming divestiture or retention of those PSNH generation assets, the Commission must discharge its least cost planning duties regarding PSNH's generation. Further, according to the OCA, if one assumes PSNH may divest shortly after April 30, 2006, the Commission needs to determine if divestiture is in the public interest. The OCA believes that information collected in this docket would be extremely valuable in making that determination. Further, in the view of OCA it would be necessary for the Commission to conduct a full review of PSNH's least cost planning should the Legislature adopt a pending proposal to add new generation facilities to its system.

Finally, the OCA contends that the assessment of the Core Energy Efficiency programs adequately covers PSNH's energy efficiency programs, but not PSNH's load management programs. As to the latter, OCA contends that PSNH should provide additional information as part of the least cost integrated planning process.

### **III. COMMISSION ANALYSIS**

#### **A. Distribution**

We begin with the extent to which PSNH is obliged to discuss distribution issues in its Least Cost Integrated Resource Plan. As a general proposition, we agree with PSNH that most issues relating to distribution are not relevant to least cost integrated planning because they relate solely to safety and reliability at a very local level and have little or no relationship to how

PSNH plans other aspects of its business. We also agree with Unitil and NHEC, however, that issues relating to PSNH's 34.5 kv system and, in particular, the use of that system to connect Unitil and NHEC to the transmission grid, are indeed relevant to the process of least cost integrated planning. Unitil's filing lays out in considerable detail, how decisions PSNH makes about its 34.5 kv system can and do affect planning decisions made by distribution companies that depend on PSNH for interconnection.

The written submissions of the parties with an interest in this issue suggest little real disagreement. The parties acknowledge that, as the result of the recent distribution rate case, consultants are evaluating PSNH's distribution planning process and it would make little sense to duplicate any of that effort in the context of this proceeding. We agree. Likewise, it appears that PSNH is cooperating with Unitil and NHEC with respect to distribution planning when that planning will impact Unitil and NHEC.

Accordingly, rather than resolve these issues in the context of PSNH's current Least Cost Integrated Resource Plan, we instruct Staff to work with the parties to address these issues. We will expect PSNH's next Least Cost Integrated Resource Plan to set forth such efforts, and their results, in detail. By leaving the question unresolved here, we do not intend to foreclose the possibility of any party bringing problems to the Commission's attention with respect to the adequacy of PSNH's coordination with Unitil and NHEC with respect to planning the future of the 34.5 kv system.

### **B. Generation**

RSA 378:38-a authorizes the Commission to “waive any requirement to file least cost integrated resource plans by an electric utility under RSA 378:38, except for plans relating to transmission and distribution.” Correctly pointing out that the statute specifies no standard for granting such a waiver, PSNH seeks a blanket determination that it need not address issues related to generation.

We are unable to grant such a blanket waiver in the present circumstances. As an initial matter, we note that RSA 378:38 does not require PSNH to address “generation” per se. Rather, RSA 378:38 requires a Least Cost Integrated Resource Plan that, at a minimum, includes nine elements, among them “supply options,” “[p]rovisions for diversity of supply sources,” the “[i]ntegration of demand-side and supply-side options,” assessment of the plan’s impact on state compliance with two federal statutes (the Clean Air Act Amendments of 1992 and the National Energy Policy Act of 1992) and “[a]n assessment of the plan’s long- and short-term environmental, economic and energy price and supply impact on the state.” The ability of a fully restructured electric utility – i.e., one with an energy business limited to the procurement of Transition and Default Service from wholesalers – will have a different and perhaps an attenuated ability to conduct least cost integrated resource planning in a manner that has a meaningful relationship to these elements. However, restructuring does not necessarily mean a distribution company may completely disregard these subjects for planning purposes.

The general question of a fully restructured electric utility’s least cost integrated resource planning obligations, is one we specifically opt not to resolve here. The appropriate forum for addressing this question is a proceeding in which the plan mandated of such a utility

by RSA 378:38 is under consideration. Here, as we have previously noted, we are confronted with a much different situation: a utility that, while functioning within an industry that has been restructured throughout most of New England, itself continues to function in a manner very similar to that of a traditional, vertically integrated utility.

While PSNH correctly points out that its future as an owner of generation facilities is not certain, nothing in PSNH's memorandum suggests that a company in its position is unable to include generation issues in some form in its least cost integrated resource planning process. Speculating that such planning "*may* no longer be possible or permissible," PSNH Memorandum at 4 (emphasis added), PSNH offers no affirmative reason why such efforts are entirely precluded.<sup>2</sup>

Even before the enactment of RSA 378:38, utilities were required to conduct least cost integrated resource planning in the context of generation options beyond those available to a traditional, vertically integrated utility. *In Public Service Company of New Hampshire*, 73 NH PUC 117 (1988), the Commission conducted a comprehensive review of previously approved avoided cost methodologies that governed the terms of utility purchases of energy from certain independent power producers (referred to as Qualifying Facilities, or QFs) under the New Hampshire Limited Electrical Energy Producers Act (LEEPA), RSA 362-A, and its federal

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<sup>2</sup> Later in its memorandum, PSNH points out that the FERC Code of Conduct precludes transmission owners such as PSNH from disclosing "private information about its transmission operation to any competitive affiliate or any individual entity that has generation, including PSNH's generation group." PSNH Memorandum at 4. It also points out that FERC prohibits PSNH from planning its transmission system in a manner that favors its own generation assets. These realities are obviously relevant to the process of least cost integrated resource planning. But, rather than suggesting that generation is not relevant to the process, these factors would tend to support a waiver of the requirement to discuss *transmission* in the planning document – a waiver that RSA 378:38-a explicitly rules out.

counterpart, the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. § 824a-3 *et seq.* The Commission concluded that “the necessary framework for utility negotiations with QFs” must be “utility long term resource planning.” *Id.* at 123. Accordingly, the Commission required utilities “to file an integrated least cost resource plan” to assure that each company would “satisfy future demand with the optimal combination of supply-side resources and demand-side programs.” *Id.* at 126. The Legislature codified this requirement in RSA 378:38-a two years later.

To be sure, and as PSNH points out, restructuring has since progressed beyond the mere availability of independently produced wholesale power and mandated purchases of such power. It would be inconsistent with present circumstances, however, to suggest that utilities could no longer incorporate generation into their least cost integrated planning process simply because their monopoly on generation ended.

Nor has the existence of uncertainty about a utility’s future justified exemption from least cost integrated resource planning obligations in the past. For example, in 1990 the Commission declined a request from NHEC that it be excused from filing a least cost integrated resource plan on the ground that the cooperative’s financial survival, and the future of its wholesale power supply (in light of the recent PSNH bankruptcy) were then in significant doubt. *See New Hampshire Electric Cooperative*, 75 NH PUC 202 (1990).

When the Commission issued its statewide restructuring plan in 1997, it concluded that the goals underlying least cost integrated planning were “likely to be better served through market forces.” *Statewide Electric Utility Restructuring Plan*, 82 NH PUC 122, 141 (1997). Noting that in a restructured industry it would still be “appropriate for distribution

companies to continue to conduct overall system planning,” the Commission expressed an intention to “work with the Legislature to repeal or modify [RSA 378:38] to better reflect the restructured industry.” *Id.* The enactment of the waiver statute, RSA 378:38-a, followed less than four months later.

This wait-and-see stance about the future of least cost integrated resource planning is still justified in the context of PSNH. We recently rejected an argument that in seeking approval under RSA 369-B:3-a for a plan to replace an existing coal-fired boiler with one capable of burning wood, PSNH was obliged to demonstrate the proposal’s conformity with its most recent least cost integrated resource plan. *See Public Service Co. of N.H.*, Order No. 24,327 (May 14, 2004), slip op. at 20-21. In so concluding, we noted that RSA 369-B:3-a (requiring PSNH to retain its generation portfolio through at least April 30, 2006 and authorizing modification of PSNH generation assets with Commission approval as in the public interest of PSNH’s retail customers) is, “in effect, a specific and legislatively mandated resource plan with respect to PSNH generation assets.” *Id.* at 20. But it is a short-term plan that, by its terms, ends on April 30, 2006. What occurs thereafter remains an unknown and there is at least a significant possibility that PSNH will remain in the generation business beyond that date.

In these circumstances, it would be inconsistent with the public interest either to require PSNH to conduct least cost integrated resource planning as it did prior to restructuring or to allow PSNH to make no effort to conduct such planning in a manner that takes generation into account. The sensible course is to require PSNH to submit a document that delineates its planning in light of its possible continued ownership of generation and the other realities described in PSNH’s memorandum (i.e., the regionalization of transmission planning, the



possibility of customer migration to competitive suppliers, the applicable code of conduct and resulting functional separations within PSNH, etc.) We anticipate that such a planning document will be significantly different from, and likely more abbreviated than, the kind of document a traditional, vertically integrated electric utility would produce. PSNH should describe options available to it for assuring that safe and reliable electricity is available to its customers at the lowest possible cost – which is the overall public policy goal of restructuring. *See* RSA 374-F:1, I.

### **C. Demand-Side Options**

Finally, we address the argument that PSNH should be excused from discussing demand-side management efforts in its least cost integrated resource plan on the ground that it participates in the Core Energy Efficiency Programs as approved by the Commission. We are unable to agree for two reasons. First, the range of possible demand-side management efforts is greater than the energy efficiency initiatives covered by the Core programs, which do not include any load management initiatives. Second, our approval and evaluation of the Core programs is more narrowly focused than the review occasioned by the least cost integrated planning process. When we consider the Core programs, our focus is on whether such programs are cost effective, in the sense of reducing customer purchases of kilowatt-hours by an amount sufficient to justify the expenditure of customer funds paid via the System Benefits Charge. In the context of least cost integrated resource planning, the focus is on the extent to which the Core programs, and other demand-side efforts, are viable least-cost alternatives to transmission upgrades, generation projects and other initiatives that PSNH might undertake. Accordingly, the plan should address both Core and non-Core demand-side efforts. In light of the February 24, 2005 request of PSNH

to delay consideration of the Plan for at least two months, we direct Staff to work with the parties to recommend a procedural schedule for the completion of the docket.

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

**ORDERED**, that the request of Public Service Company of New Hampshire for a waiver pursuant to RSA 378:38-a of certain otherwise applicable requirements to file a least cost integrated resource plan is **DENIED**, and it is further

**ORDERED**, that Public Service Company of New Hampshire submit a revised least cost integrated resource plan, consistent with the determinations made herein.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of February, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Lori A. Normand  
Assistant Secretary

