



**Public Service
of New Hampshire**

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A Northeast Utilities Company

Stephen R. Hall
Manager, NH Revenue Requirements

February 15, 2013

By Electronic Mail Only

Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

**Re: IR 13-038; Public Service Company of New Hampshire
Stakeholder Review of Assessment Practices**

Dear Ms. Howland:

I enclose Public Service Company of New Hampshire's Responses to the first set of information requests from Staff in the above captioned proceeding. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Stephen R. Hall
Manager, NH Revenue Requirements

Enclosures

Witness:

Request from: New Hampshire Public Utilities Commission Staff

Question:

The current allocation method is based on a utility's revenues as a percent of the total revenues of all New Hampshire utilities.

- (a) Do you believe that the allocation method currently specified in statute is fair and reasonable?
- (b) Why or why not?
- (c) If not, what different method(s) of allocation would you propose and why is that method(s) more fair and reasonable?
- (d) What statutory and/or rule changes would be required to utilize the method you propose?

Response:

(a)&(b). No, PSNH does not believe the current allocation method is fair and reasonable nor is the current statute legal and constitutional. At present, RSA 363-A:2 requires that "The assessment shall be calculated by using the gross utility revenue of all public utilities and 33 percent of the gross utility revenue of rural electric cooperatives for which a certificate of deregulation is on file with the commission and allocating the expenses of the commission to each utility in direct proportion as the revenues relate to the total utility revenues as a whole. Each such expense allocation shall be assessed against each public utility and rural electric cooperative with a certificate of deregulation on file with the commission in an amount equal to its proportionate share." "Gross utility revenue" is not defined in the statute, but the Commission has traditionally included all of PSNH's revenues as reported on PSNH's FERC Form 1. This method is, at the same time, under-inclusive and over-inclusive and raises questions of equal protection under the New Hampshire and federal constitutions.

The current method is under-inclusive because it does not include all entities that should be subject to the Commission's assessments and because, although revenue from the provision of default energy service provided by the state's electric utilities is included, the current assessment process does not include revenues for the provision of electric energy by other market participants. The Commission's assessment process should include all entities and revenues that are regulated by the Commission.

RSA 374-F:7, I, provides that the Commission has authority to establish requirements on such competitive "electricity suppliers" (RSA 374-F:2, II) "including registration, registration fees, customer information, disclosure, standards of conduct, and consumer protection and assistance requirements." In other words, for all but price, the Commission regulates these entities. Moreover, these electricity suppliers routinely require the use of the Commission's resources, not only in the registration process, but as Petitioners and Intervenor in myriad proceedings. Their frequent use of and involvement in Commission proceedings ultimately increases the Commission's costs; those that benefit from such services should participate equally in the payment of those costs. As the Commission is the regulatory authority responsible for overseeing these entities and enforcing the requirements for them to operate in New Hampshire, those entities should be required to reimburse the Commission for its expenses.

PSNH notes that requiring electricity suppliers to pay assessments would be consistent with existing law, and would place them on a level competitive footing in two respects: 1) competitive telecommunications providers already pay assessments; in that the work of competitive energy providers and competitive telecommunications providers is in concept and execution little different, there is no reason to treat them differently under the law with respect to assessments; and, 2) RSA 374-F:3, VII requires that, "The rules that govern market activity should apply to *all* buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market." (Emphasis added.)

In determining PSNH's "gross utility revenue" the Commission includes PSNH's default service sales. Thus, PSNH's assessment is based, in part, on providing electricity to retail end users, which is precisely what electricity suppliers do. To include PSNH's default service sales in calculating an assessment, while not including any sales by any competitive electric supplier, when the products and services are identical is not fair, and is contrary to requirements of both statute and equal protection. See *Verizon New England v. City of Rochester*, 151 N.H. 263, 270 (2004) (New Hampshire's "equal protection guarantee is essentially a direction that all persons similarly situated should be treated alike."); RSA 374-F:3, VII. To the extent that incumbent and competitive companies are providing equal services in equal ways, the different entities should be treated "in a fair and consistent manner" for purposes of assessments.

Further, in recent years competitive suppliers of gas and electricity have used a significant portion of the Commission's resources. In 2012, there were eighty-five separate dockets relating to registration/re-registration of such suppliers. In addition there were other dockets where such suppliers appealed to the Commission for the redress of various grievances and for rulings relating to their businesses to further their interests in the competitive marketplace. See *generally*, Docket Nos. DM 12-075, DE 12-093, DE 12-097, DE 12-295. Also, such companies have fully participated in other Commission proceedings, not merely as interested customers or members of the public, but as regulated businesses claiming that they may be substantially affected by the work of the Commission. See, e.g., Docket Nos. DE 11-250. Assuming that the Commission's assessments are essentially license fees, see *Appeal of Association of New Hampshire Utilities*, 122 N.H. 770, 772-73 (1982) and *Laconia v. Gordon*, 107 N.H. 209, 211 (1996), such fees are to be incidental to the regulation. In that these entities avail themselves of the protections and processes of the Commission, their regulatory authority, and that they do so in essentially the same manner as public utilities, these entities should be required to fund the Commission's expenses.

Lastly, PSNH notes that under RSA 358-A:3, trade and commerce subject to the jurisdiction of the Commission is exempt from the consumer protection law. However, as noted, under RSA 374-F:7, I, the Commission has authority to establish consumer protection requirements for competitive electric suppliers. If the grant of authority to the Commission under RSA 374-F:7 exempts the competitive electric suppliers from consumer protection laws applicable to other businesses, the Commission has a heightened responsibility to monitor these entities and enforce appropriate business practices. Therefore, it is clear that these entities are regulated by the Commission and should be subject to its assessments. Their absence in light of the Commission's regulation of them makes clear that the current assessment method is under-inclusive.

The Commission's current assessment scheme may also be over-inclusive in that it is based upon revenues outside the Commission's jurisdiction. Again, presuming that the Commission's assessments are not a tax, but are instead more akin to license fees, the fee must be incidental to the regulation. In other words, the assessment should be related to the Commission's work in regulating New Hampshire utilities. The current assessment is not.

As was raised by FairPoint in its original filing in DM 12-276, and as was raised by GSGT in the past, see *Re Granite State Gas Transmission, Inc.*, Order No. 17,788, 70 NH PUC 693 (1985) and *Re Granite State Gas Transmission, Inc.*, Order No. 16,165, 69 NH PUC 28 (1983), there are certain revenues included for assessment purposes that are not incidental to regulation by this Commission. PSNH, for example, earns revenue from the provision of transmission service which is regulated by FERC.

In previous orders, the Commission has noted that it is vested with authority to participate in interstate matters that affect New Hampshire. On that basis, the Commission has concluded that including federally regulated revenues in New Hampshire assessments is appropriate. *Re Granite State Gas Transmission, Inc.*, 70 NH PUC at 695. The Commission further stated in those orders that to the extent any federally regulated entities with a presence in New Hampshire were not assessed the Commission would assess those entities. *Id.* The Commission specifically stated that it would assess the Tennessee Gas Pipeline. *Id.* As far as PSNH is able to discern from the most recent assessment report, Fiscal Year 2013, List of Utility Assessments, available at: http://www.puc.state.nh.us/Home/AboutUs/Assessment_Booklets.htm, various entities fitting the definition of public utilities under RSA 362:2 are not assessed. The Tennessee Gas Pipeline owned by Kinder Morgan is not presently assessed and neither are the Maritimes and Northeast Pipeline owned by Spectra Energy, or the Portland Natural Gas Transmission System. Accordingly, it is far from clear that the Commission's regulation bears a relationship to federally-related activities, or that it provides a basis for assessments based upon the Commission's state statutory authority to intervene at federal proceedings. To the extent the Commission determines that it should continue to include revenue of various companies which is derived from federally-regulated sources in its assessments, all such companies and all such revenue must be included.

- (c). PSNH believes that the current method of assessment would be appropriate if it properly included all companies and revenues that should rightly be considered when determining the amount of the assessments. However, if the Commission decided that "electricity suppliers" should not be included in assessment process, then, in order to comply with RSA 374-F:3, VII, it should similarly exclude revenues attributable to the provision of default energy service. Similarly, if the Commission were to exclude revenues subject to the jurisdiction of the FCC for telecom companies, or if it failed to include all federally-regulated sources in its assessments, then revenues regulated by the FERC for the state's electric utilities should similarly be excluded from the assessment process.
- (d). To ensure that the Commission's assessments are appropriately assigned to the entities subject to its jurisdiction various statutory amendments could be made. RSA chapter 363-A could be amended to avoid references to "public utilities" as that term is defined in RSA 362:2 so that different entities and revenues could be included. A new definitions section could be added to RSA chapter 363-A to describe the appropriate entities. In addition, or alternatively, RSA 374-F:7 could be amended to define competitive electric providers as utilities for purposes of assessments. A similar amendment could be made to RSA 365:8-a regarding competitive natural gas suppliers.

Currently, there are no rules specifically dedicated to assessments. To the extent the Commission may adopt rules, any such rules should be incorporated in, or be made in concert with other changes to, sections of the Puc 300, 400, 500, 600, 700, 1100, 1400, 2000, and 3000 rules. PSNH would recommend that in contemplating any rule amendments the Commission consider requiring companies to report revenues in a uniform manner to permit accurate assessment by the Commission across industries and companies.

An example of amendments to RSA Chapter 363-A necessary to implement PSNH's recommendations is attached hereto.

Section 363-A:1

363-A:1 Ascertainment of Expenses. – The public utilities commission shall annually, after the close of the fiscal year, ascertain the total of its expenses during such year incurred in the performance of its duties ~~relating to public utilities as defined in RSA 362:2~~ and relating to the office of the consumer advocate and the allowable expenses for the council on energy. In the determination of such expenses there shall be excluded the expenses which have been or may be charged and recovered under the provisions of RSA 365:37 and RSA 365:38.

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Source. 1955, 203:1 par. 1. 1959, 242:1. 1971, 557:62. 1981, 568:118. 1987, 136:4, eff. May 7, 1987.

Section 363-A:2

363-A:2 Assessment. – I. The expenses thus ascertained shall be assessed against ~~the public utilities described as defined in RSA 363-A:1 362:2, electricity suppliers as defined in RSA 374-F:2, II, and natural gas suppliers and aggregators, as those terms are referred to in RSA 365:8-a, collectively, the “assessed entities,”~~ in the manner provided in this chapter. The assessment shall be calculated by using the gross utility revenue of all ~~public utilities assessed entities~~ and 33 percent of the gross utility revenue of rural electric cooperatives for which a certificate of deregulation is on file with the commission and allocating the expenses of the commission to each ~~utility assessed entity~~ in direct proportion as the revenues relate to the total ~~utility assessed~~ revenues as a whole. Each such expense allocation shall be assessed against each ~~public utility assessed entity~~ and rural electric cooperative with a certificate of deregulation on file with the commission in an amount equal to its proportionate share. ~~The Subject to RSA 363-A:5, a minimum fee of \$1,000 (one thousand dollars) shall be assessed to utilities assessed entities having minimal revenues, in such proportion as the public utility commission shall determine to be fair and equitable.~~

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II. Notwithstanding the provisions of subsection I, revenues attributable to matters that are subject to the jurisdiction of the Federal Communications Commission or the Federal Energy Regulatory Commission shall be excluded from the gross utility revenue of any assessed entity.

Source. 1955, 203:1, par. 2. 1959, 242:2. 1963, 322:1. 1971, 557:62. 1987, 136:5. 1997, 229:7, eff. Aug. 17, 1998.

Section 363-A:3

363-A:3 Certification of Assessment. – It shall be the duty of the public utilities commission to calculate the amount to be assessed against each such ~~public utility assessed entity~~ in accordance with RSA 363-A:1 and RSA 363-A:2. At the beginning of each fiscal year, the public utilities commission shall estimate its total expenses for the fiscal year, and then, based on such estimate, shall calculate the amount to be assessed quarterly on August 10, October 15, January 15, and April 15 of that fiscal year, against each ~~such public utility assessed entity~~ in accordance with RSA 363-A:1 and RSA 363-A:2. The public utilities commission shall then make a list showing the amount due on August 10, October 15, January 15, and April 15 of that fiscal year from each of the ~~several public utilities entities~~ assessed under the provisions hereof.

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and, together with a statement of the full name and mailing address of each such ~~public utility~~ assessed entity, shall certify the same. After the close of each fiscal year, the public utilities commission shall ascertain its actual total expenses in accordance with RSA 363-A:1 and RSA 363-A:2, and then shall adjust the assessment for the first quarterly payment of the new fiscal year for each such ~~public utility~~ assessed entity for any underpayment or overpayment by each such ~~public utility~~ assessed entity for the prior fiscal year.

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Source. 1955, 203:1, par. 3. 1971, 557:62. 1995, 29:1. 1997, 208:14, eff. July 1, 1997.

Section 363-A:4

363-A:4 Collection. – Forthwith upon the completion of each such list, on or before August 10, October 10, January 10, and April 10 of each fiscal year, the public utilities commission shall bill each ~~public utility~~ assessed entity for the quarterly amount assessed against it within 10 working days. Such bill shall be sent registered mail, and shall constitute notice of assessment and demand for payment. Payment shall be made to the public utilities commission within 30 days after the receipt of the bill. After the expiration of 30 days from the receipt of an original bill, the public utilities commission may add to the assessment a late penalty fee and may commence an action at law for the recovery of the assessment. Within 30 days of the assessment for the first quarterly payment, each ~~public utility~~ assessed entity which has any objection to the amount assessed against it for the prior fiscal year shall file with the commission its objection in writing, setting out in detail the grounds upon which it is claimed that said assessment is excessive, erroneous, unlawful, or invalid. If such objections are filed, the commission, after reasonable notice to the objecting ~~public utility~~ assessed entity, shall hold a hearing on such objections, and if the commission finds that said assessment or any part thereof is excessive, erroneous, unlawful, or invalid, the commission shall reassess the amount to be paid by such ~~public utility~~ assessed entity, and shall order that an amended bill be sent to such ~~public utility~~ assessed entity in accordance with such reassessment. The public utilities commission shall not commence an action at law for recovery of any assessment for the first quarterly payment until any such objection has been resolved.

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Source. 1955, 203:1, par. 4. 1971, 557:62. 1995, 29:2. 1997, 208:14. 2004, 148:1, eff. Jan. 1, 2005.

Section 363-A:5

363-A:5 Exemption From Assessment. – Any ~~utility~~ assessed entity that earned less than \$10,000 in gross revenue that is subject to the assessment process during the preceding fiscal year shall not be liable for any assessment.

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Source. 1995, 29:3, eff. Jan. 1, 1996.

Witness:

Request from: New Hampshire Public Utilities Commission Staff

Question:

Do you believe that the allocation method currently specified in statute is legal and constitutional?

- (a) Why or why not?
- (b) If not, what different method(s) of allocation would you propose?
- (c) What statutory and/or rule changes would be required to utilize the method(s) you propose?

Response:

- (a). See response to 1.(a) and (b).
- (b). See response to 1.(c)
- (c). See repose to 1.(d)

Witness:

Request from: New Hampshire Public Utilities Commission Staff

Question:

Do you believe that entities that are not public utilities under RSA 362:2 should be required to fund the Commission's expenses in some way? If so:

- (a) What non-public utilities should be required to fund the expenses and why?
- (b) What amount of the expenses should non-utilities be required to fund?
- (c) By what mechanism(s) should the monies be collected?
- (d) What is the legal basis for imposing the obligation?
- (e) What statutory and/or rule changes would be required to implement your proposals?

Response:

- (a). See response to 1.(a) and (b).
- (b). Consistent with PSNH's position articulated in response to question 1(a) and (b), all "assessed entities" as defined in the attached example amendments to RSA Chapter 363-A should be required to pay an equal proportionate share of assessments. That is, a measure equating to "gross utility revenue" or "gross receipts" should be used to assess all "assessed entities".

In that most competitive companies do not file a form equivalent to a FERC Form 1, any measure of assessments should be based upon a verifiable number, such as in filings with the Securities and Exchange Commission or required tax filings. The Commission's rules already utilize "gross receipts" of competitive electric suppliers to assess the security required by Puc 2003.01(d)(4). See Puc 2003.03, "Reporting and Financial Requirements of Competitive Electric Suppliers."

- (c). The money should be collected through an assessment levied upon the entity responsible. Should an entity fail to pay the assessed amount, in addition to the remedies available in RSA 363-A:4, that entity's authorization to conduct business in New Hampshire should be revoked.
- (d). See response to 1.(a) and (b).
- (e). See response to 1.(d).

Witness:

Request from: New Hampshire Public Utilities Commission Staff

Question:

The Commission has historically implemented the calculation of "gross utility revenue" under RSA 363-A:2 to include all of a utility's revenues associated with operations within the State of New Hampshire, whether or not the revenues are derived from an activity that is directly regulated by the Commission. For example, Public Service Company of New Hampshire reports revenue from transmission facilities located in New Hampshire that transmit electricity generated in and/or consumed in New Hampshire, even though the rates, terms of service and safety of transmission facilities are regulated by the Federal Energy Regulatory Commission. Telephone utilities must include revenue from interstate telephone calls that originate, or are placed to a location, in New Hampshire and travel over wires in New Hampshire, even though interstate telephone calls are regulated by the Federal Communications Commission.

Please provide:

- (a) Your company's total revenues associated with operations within New Hampshire for your fiscal years 2010, 2011, and, as soon as available, 2012. Please also state where this information may be found in publicly available sources other than reports filed with the Commission (e.g., SEC filings, FERC filings, FCC filings, publicly available annual reports, etc.).
- (b) Your company's total revenues associated with interstate operations within New Hampshire for your fiscal years 2010, 2011 and 2012, as soon as available. Please also state where this information may be found in publicly available sources (e.g., SEC filings, FERC filings, FCC filings, annual reports, etc.).
- (c) Your company's total revenues associated with operations regulated by the Commission for fiscal years 2010, 2011 and 2012.
- (d) Your company's total revenues for fiscal years 2010, 2011 and 2012 associated with operations within the State of New Hampshire that are regulated wholly by a federal agency and upon which the Commission is preempted from taking any regulatory action, including without limitation, an investigation or participation in regional or federal proceedings.
- (e) If your answer to subsection (d) is anything greater than \$0, please describe the operations upon which you base your answer, and briefly summarize your legal analysis.
- (f) Your company's total revenues for fiscal years 2010, 2011 and 2012 collected on behalf of, and paid to, another entity. Please describe the related service(s) and amount of revenue related to each service. Are those revenues reflected in gross revenues as reported to the Commission?

Response:

- (a) 2010: \$1,070,265,000; 2011: \$1,033,065,000 Source: FERC Form 1 - 2012 figures will be provided when available.
- (b) Revenue includes FERC account 447 (Sales For Resale) and FERC account 456.1 (Revenues for Transmission of Electricity of Others) 2010: \$69,266,000; 2011: \$48,767,000 Source: FERC Form 1 - 2012 figures will be provided when available.
- (c) Answer 4. (a) less 4. (b) 2010: \$1,001,019,000; 2011: \$984,298,000 Source: FERC Form 1 - 2012 figures will be provided when available.
- (d) 2010 and 2011: 0

(e) N/A

(f) Competitive Supply Revenues: 2010: \$40,668,953.54; 2011: \$63,959,984.17; 2012: \$90,401,713.45. These are revenues collected, and redistributed to, competitive third party suppliers for the provision of energy service. These revenues are not reflected in gross revenues as reported to the Commission.

System Benefits Charge Revenue: 2010: \$25,941,000; 2011: \$25,819,000; 2012: \$25,877,000. System Benefits Charge (SBC) revenues are collected "to fund public benefits" pursuant to RSA 374-F:3, VI. SBC revenues are reflected in gross revenues reported to the Commission.

Electricity Consumption Tax Charge Revenue: 2010: \$4,324,000; 2011: \$4,303,000; 2012: \$4,313,000. Electricity Consumption Tax (ECT) is a tax is imposed on consumers for the consumption in this state of electrical energy per RSA Chapter 83-E; PSNH collects the tax from consumers on behalf of, and remits the proceeds to, the State of New Hampshire. ECT revenues are not reflected in gross revenues reported to the Commission.

Rate Reduction Bond Charge Revenues: 2010: \$68,939,935; 2011: \$58,224,273; 2012: \$58,247,617. The RRB Charge is collected by PSNH on behalf of a special purpose financing entity as RRB Property pursuant to RSA Chapter 369-B and PUC Order No. 23,550 ("Finance Order"), Docket No. DE 99-099. RRB Charge revenues are reflected in gross revenues reported to the Commission.

PUBLIC SERVICE OF NEW HAMPSHIRE
ELECTRIC OPERATING REVENUES (ACCOUNT 400)

Dollars in Thousands

Page No.	Line No.	Title of the FERC Account	Acct No.	2011	2010
300		OPERATING REVENUES			
300	1 b	Sales of Electricity			
300	2 b	Residential Sales	440	532,813	529,992
300	3 b	Commercial and Industrial Sales	442		
300	4 b	Small (or Comm.) (See Instr. 4)		340,597	360,373
300	5 b	Large (or Ind.) (See Instr. 4)		85,845	90,243
300	6 b	Public Street and Highway Lighting	444	6,218	6,669
300	7 b	Other Sales to Public Authorities	445	0	0
300	8 b	Sales to Railroads and Railways	446	0	0
		Total Public Street, Other Railroad Sales		6,218	6,669
300	9 b	Interdepartmental Sales	448	0	0
300	10 b	TOTAL Sales to Ultimate Consumers		965,473	987,278
300	11 b	Sales for Resale	447	39,056	55,522
300	12 b	TOTAL Sales of Electricity		1,004,529	1,042,800
300	13 b	(Less) Provision for Rate Refunds	449.1	-571	8,500
300	14 b	TOTAL Revenues Net of Provision for Refunds		1,005,100	1,034,300
300	15 b	Other Operating Revenues			
300	16 b	Forfeited Discounts	450	2,485	2,632
300	17 b	Miscellaneous Service Revenues	451	4,214	4,499
300	18 b	Sales of Water & Water Power	453	0	0
300	19 b	Rent from Electricity Property	454	6,984	6,759
300	20 b	Interdepartmental Rents	455	0	0
300	21 b	Other Electric Revenues	456	4,572	8,350
300	22 b	Revenues for Transmission of Electricity of Others	456.1	9,711	13,744
300	23 b	Regional Control Service Revenues	457.1	0	0
300	24 b	Miscellaneous Revenues	457.2	0	0
300	25 b				
300	26 b	TOTAL Other Operating Revenues		27,965	35,985
300	27 b	TOTAL Electric Operating Revenues		1,033,065	1,070,285

Source: FERC Form 1

**Public Service Company of New Hampshire
Docket No. IR 13-038**

**Data Request STAFF-01
Dated: 01/31/2013
Q-STAFF-005
Page 1 of 1**

Witness:

Request from: New Hampshire Public Utilities Commission Staff

Question:

As to any interstate operations of your company within New Hampshire, please state whether such operations rely to any extent on facilities or service providers whose rates, terms of service and/or safety are regulated by the Commission, and if so, identify any and all such facilities and how they relate to such operations.

Response:

In so far as the question relates to PSNH's transmission operations, the Company does not rely to any extent on facilities or service providers whose rates, terms of service and/or safety are regulated by the Commission.

Public Service Company of New Hampshire
Docket No. IR 13-038

Data Request STAFF-01
Dated: 01/31/2013
Q-STAFF-006
Page 1 of 1

Witness:

Request from: New Hampshire Public Utilities Commission Staff

Question:

Please provide any further thoughts that you think may be useful in consideration of the issues raised in Docket no. DM12-276 and Commission Order No. 25,451.

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Response:

The Company has nothing further to add.