

**BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

INVESTIGATION OF ENERGY :  
COMMODITY PROCUREMENT :  
(RENEWABLE PORTFOLIO STANDARD; : DOCKET NO. IR 22-053  
DEFAULT SERVICE ELECTRIC POWER; :  
COST OF GAS) METHODOLOGY AND :  
PROCESS :

**JOINT COMMENTS OF  
THE NRG RETAIL COMPANIES AND  
RETAIL ENERGY SUPPLY ASSOCIATION**

Direct Energy Services, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Reliant Energy Northeast LLC; and XOOM Energy New Hampshire, LLC (collectively, the “NRG Retail Companies”) and the Retail Energy Supply Association (“RESA”) and, together with the NRG Retail Companies, the “Suppliers”<sup>1</sup> hereby file comments in response to the New Hampshire Public Utilities Commission’s (“Commission”) January 9, 2023 Procedural Order<sup>2</sup> in the above-captioned proceeding.

**BACKGROUND**

On September 6, 2022, the Commission opened “this investigatory proceeding to examine all pertinent aspects of RPS [Renewable Portfolio Standard], Default Service, and COG [Cost of Gas] procurements in New Hampshire, and related Commission processes.”<sup>3</sup> Subsequently, the Commission issued a Procedural Order indicating its intent to engage in

---

<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, the Suppliers is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. the Suppliers members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on the Suppliers can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Procedural Order re Pending Matters (Jan. 9, 2023) (“January Order”).

<sup>3</sup> Order of Notice (Sep. 6, 2022) (“Notice”), at 2.

separate lines of inquiry regarding electric and natural gas procurements.<sup>4</sup> In the October Order, the Commission also directed the electric and gas utilities to prepare technical statements providing answers to specific inquiries.<sup>5</sup>

On November 18, 2022, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty”), Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), and Unitil Energy Systems, Inc. (“Unitil”) (collectively, the “Electric Utilities”) each filed a response to the October Order.<sup>6</sup> Subsequently, the Commission issued the January Order offering participants an opportunity to comment on those responses.<sup>7</sup> The Suppliers hereby provide these comments in response to the Electric Utilities’ Technical Statements.<sup>8</sup>

## COMMENTS

The Commission opened this investigation based on concerns “regarding the potential impact . . . cost escalations have and may continue to have on New Hampshire residents, businesses, and institutions.”<sup>9</sup> The Suppliers acknowledge that significant price increases can have a substantial effect on customers and appreciate the Commission’s desire to mitigate those impacts. While the Commission may be able to make some changes to the current default service and RPS procurement processes that could potentially reduce risk premiums included in default

---

<sup>4</sup> Procedural Order Re: Eversource Technical Statement, Data Requests for Utilities; Separation of Electric and Gas Issues (Oct. 11, 2022) (“October Order”).

<sup>5</sup> *Id.* at 1-3.

<sup>6</sup> Eversource Energy Responses to Procedural Order Requests (Nov. 18, 2022) (“Eversource Technical Statement”); Technical Statement of Liberty Utilities (Granite State Electric) Corp. (Nov. 18, 2022) (“Liberty Technical Statement”); Unitil Energy Systems, Inc. Technical Statement (Electric Default Service and RPS) (Nov. 18, 2022) (“Unitil Technical Statement”).

<sup>7</sup> *See* January Order, at 2.

<sup>8</sup> The gas utilities (i.e., Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty and Northern Utilities, Inc.) also filed technical statements. These comments only address the Electric Utilities’ Technical Statements.

<sup>9</sup> Notice, at 1.

service rates, those changes will not resolve the underlying causes of the current price spikes.<sup>10</sup>

Thus, the Suppliers urge the Commission to refrain from making policy decisions that could lead to sustained higher prices over the long term based on transitory, global and regional events largely beyond the Commission's control.<sup>11</sup>

Further, to the extent the Commission determines that market changes warrant changes to the procurement process, it should ensure that whatever changes are made are designed to maximize market participation, provide accurate price signals to customers, and avoid passing unnecessary risk onto ratepayers. Thus, rather than making wholesale changes to procurement strategies in response to market changes, the Commission should approve modifications to the timing, frequency, and duration of procurements that will allow consumers to receive the benefits of positive market changes without the need for increased risks to ratepayers and adverse effects on the competitive market.

## **I. FULL REQUIREMENTS SERVICE CONTINUES TO BE THE BEST MEANS FOR PROCURING DEFAULT SERVICE**

The Suppliers agree with the Electric Utilities that full requirements service ("FRS") continues to be the best option for providing default service in New Hampshire.<sup>12</sup> The Suppliers also agree with Eversource that FRS should include all aspects of default service, including the

---

<sup>10</sup> Cf. Eversource Technical Statement, Data Request No. PUC 1-007, at 1 ("Unfortunately, changes to the default energy procurement process in New Hampshire cannot overcome market conditions, and New Hampshire is likely to face persistent high energy prices for the near future.").

<sup>11</sup> See Eversource Technical Statement, Data Request No. PUC 1-007, at 1 ("Eversource would like to highlight that high energy prices have resulted from global political events, New England's reliance on natural gas for electric generation, and New England's position at the end of the natural gas distribution pipeline, that are all beyond the control of New Hampshire's regulatory and legislative authorities."); cf. Liberty Technical Statement, at 1-2 ("In other words, the structure of the wholesale gas and electric markets causes them to vary widely for issues entirely unrelated to actions of a utility including weather and, in recent months, global shifts in fuel demands. As purchasers operating within those wider commodity markets, New Hampshire's utilities have limited ability to affect or influence those markets or the resulting prices paid by end-use customers of the utilities.").

<sup>12</sup> See, e.g., Unital Technical Statement, at 2 ("In other words, Electric Utilities are limited in their ability to influence or direct commodity pricing through their procurement practices, UES believes that its current method of procuring default service is generally sound and produces appropriate and market-reflective rates consistent with New Hampshire law and policy.")

RPS obligations associated with default service load,<sup>13</sup> because wholesale suppliers are better positioned to manage those obligations.<sup>14</sup> Moreover, the RPS obligations are included in the FRS procured in Connecticut<sup>15</sup> and this has not resulted in a significant difference in the default service rates from those charged in New Hampshire.<sup>16</sup> In addition, in the Suppliers' experience, there is no inherent advantage as between an auction run by a government authority (as is done in Maine)<sup>17</sup> or by an Electric Utility with regulatory oversight. Thus, the Suppliers recommend that the Commission allow each Electric Utility to continue to solicit FRS requests for proposals ("RFPs") to provide default service and that it require FRS bids to include the RPS obligation associated with the default service load.

Generally, consumers realize the best results possible by having all their default service load procured through competitive, fully transparent FRS RFPs in the wholesale market because this procurement mechanism maximizes the opportunity for market participation, provides the

---

<sup>13</sup> See, e.g., Eversource Technical Statement, Data Request No. PUC 1-006, at 1 ("Eversource recommends that RPS compliance be shifted to the competitive supply market. As previously stated in its initial comments filed to this docket, Eversource proposes that RPS obligations be included with the bids submitted during the procurement process for Default Energy Service.").

<sup>14</sup> Eversource Technical Statement, Data Request No. PUC 1-006, at 2 ("Competitive suppliers can more closely and consistently monitor markets in New Hampshire as well as markets throughout the region, and therefore better seize market opportunities for lower-priced RECs [renewable energy credits]. This flexibility and access to regional market participation also makes it easier for competitive suppliers to adapt and account for the annual legislative changes to the ACP price and regulatory changes to the quantity of required REC purchases.").

<sup>15</sup> Eversource Technical Statement, Data Request No. PUC 1-006, at 1.

<sup>16</sup> See Connecticut Docket No. 17-12-03RE10, *PURA Investigation into Distribution System Planning of the Electric Distribution Companies – Building Blocks of Resource Adequacy and Clean Electric Supply*, Eversource Technical Meeting Presentation (Jan. 3, 2023) (available at: [https://www.dpuc.state.ct.us/2nddockcurr.nsf/8e6fc37a54110e3e852576190052b64d/7ba340b80f497abc85258928006ea14e/\\$FILE/Eversource%201-3-23%20Presentation%20\(Filed%2012-30-22\).pdf](https://www.dpuc.state.ct.us/2nddockcurr.nsf/8e6fc37a54110e3e852576190052b64d/7ba340b80f497abc85258928006ea14e/$FILE/Eversource%201-3-23%20Presentation%20(Filed%2012-30-22).pdf)) (last visited Jan. 23, 2023) ("Eversource CT Presentation"), Slide 10 (reflecting the default service rates in Connecticut, Massachusetts and New Hampshire since 2004).

<sup>17</sup> Cf. Unitol Technical Statement, at 4 ("A state- or agency-administered approach does not mean each utility would have the same resulting energy service rates. Rather, each utility would have different rates as a result of differences in customer class characteristics as mentioned above.").

most accurate price signals<sup>18</sup> and avoids forcing New Hampshire ratepayers to shoulder risks that are better managed by the competitive market.

At the direction of the Rhode Island Public Utilities Commission (“RI PUC”), National Grid performed an empirical study comparing default service procurement approaches for mass market customers.<sup>19</sup> Because the NorthBridge Study is based on actual market data, it represents a sound empirical foundation on which to evaluate the benefits of different procurement approaches. The analysis also involves a comparison of procurement approaches against several metrics that pertain to various objectives with respect to default service and, therefore, allows for an assessment of the tradeoffs with respect to key objectives, such as rate stability and rate minimization. Based on these evaluations and looking at a wealth of actual data, the NorthBridge Study found that, in comparison to other approaches, an FRS Structure: results in lower risks allocated to customers, lower supply cost surprises and minimal deferral account balances; reduces the potential effects of additional costs and risks; and requires fewer Electric Utility internal resources.<sup>20</sup>

In addition, as FRS products and their pricing evolved and the adverse risks to ratepayers of not using FRS products have been better understood, most jurisdictions have concluded that the risks of unanticipated market prices and loads warrant FRS procurements.<sup>21</sup> “In fact, the

---

<sup>18</sup> Eversource CT Presentation, at Slide 10 (reflecting that FRS procurements generally track market prices).

<sup>19</sup> See generally, *Analysis of Standard Offer Service Approaches for Mass Market Customers*, prepared for National Grid re: RI PUC Order #19839, dated January 2010 (“NorthBridge Study”).

<sup>20</sup> NorthBridge Study, at 13

<sup>21</sup> See *Merits of Incorporating Fixed-Price Full Requirements Products in the Illinois Power Agency Plan* (Sep. 16, 2013) (available at: <https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/icea-appendix-a-northbridge-report-fpfr-products-ipa-plan.pdf>) (last visited Jan. 23, 2023), at 20-21 (quoting public utilities commissions in Rhode Island, New Hampshire and Pennsylvania selecting FRS procurement due to its ability to satisfy the commissions’ responsibilities to ratepayers).

[FRS] product approach has become by far the most prevalent and favored form of default service supply procurement for smaller customers in restructured jurisdictions.”<sup>22</sup>

FRS products relieve the Electric Utilities from active load, weather and market volatility management responsibility and, in turn, relieve those utilities and their customers from risk management exposure. FRS products more effectively eliminate the uncertainty associated with fuel, availability, volumetric and spot price risks that are inherent in managing load supply. FRS contracts shift price and quantity risk to the wholesale suppliers;<sup>23</sup> thus, providing consumers with price insurance for the duration of the contract. Because they have bid a fixed price, wholesale suppliers cannot seek to increase rates to default service customers when market conditions change and the effects of customer migration impact their total cost of supply. Under the FRS procurement model, the FRS provider assumes one hundred percent (100%) of the risk should the all-in price be too low and/or customers decide to switch to a competitive energy supplier. As a consequence, consumers are protected against the cost of over- or under-hedging that results from changes to market prices over time.

In addition, under the FRS model, a customer has an all-in fixed price rate against which it can compare offers from competitive energy suppliers. This sort of certainty is a valuable tool to a customer in making an informed and accurate determination of its energy options. Thus, rather than making drastic changes in the current default service procurement process, the Suppliers recommend that the Commission take more measured steps, including those outlined

---

<sup>22</sup> *Id.* at 2.

<sup>23</sup> Massachusetts D.P.U. 15-40, *Investigation by the Commission of Public Utilities on its Own Motion into the Provision of Default service*, Initial Comments of Eversource Energy (Jul. 27, 2015) (available at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9222311>) (last visited Jan. 23, 2023) (“Eversource MA Comments”), at 3 (“‘All-requirements’ or load following service includes, by definition, a margin for pricing and migration risks that are currently the responsibility of the supplier. A change from an ‘all-requirements’ model *would shift these risks* to [default] service customers, because the products to supply [default] service supply would be procured separately and as such would expose customers to greater market variations and price volatility.”) (emphasis added).

below, that can reduce risk premiums included in wholesale bids and ensure customers receive accurate price signals.

## **II. STAGGERED, SHORTER PROCUREMENT PERIODS CLOSE IN TIME TO THE SERVICE PERIOD REDUCE RISK PREMIUMS AND PROVIDE MORE ACCURATE PRICE SIGNALS**

In order to increase potential bidder participation and the likelihood of lower pricing, the Suppliers recommend that the Commission require the Electric Utilities to stagger the dates on which they each issue solicitations and accept bids to provide default service. In addition, in order to reduce risk premiums associated with bids to supply default service and provide customers with more accurate price signals, the Suppliers also recommend that the Commission: (a) continue to require the Electric Utilities to procure default service for residential and small commercial customers<sup>24</sup> every six months; (b) increase the frequency of solicitations for large commercial customers<sup>25</sup> to every three months; and (c) ensure the period between final contract execution and Commission approval is minimized while still providing oversight of the procurement and evaluation process.

### **A. Staggered Procurements Could Reduce Default Service Rates And Will Reduce The Risk Of Failed Procurements**

In its Technical Statement, Eversource asserts that “[h]aving the utilities put RFPs into the market at more or less the same time will lead to comparable pricing of bids received across utilities, even when market conditions are as volatile as they have been recently.”<sup>26</sup> While this may be true, uniform rates across the Electric Utilities does not translate to lower rates. In fact,

---

<sup>24</sup> Small commercial customer is defined as “any non-residential customer that meets the availability criteria to take service under a non-residential utility tariff, and has a normal maximum demand threshold of less than 20 kilowatts. The term does not include any customer eligible to take service under a utility’s small customer tariff for an individually metered account, but whose aggregated accounts in New Hampshire exceed the combined demand threshold of 20 kilowatts.” Puc 2002.22.

<sup>25</sup> Large commercial customer is defined as: “any non-residential customer that meets the availability criteria to take service under a non-residential utility tariff and is not a small commercial customer.” Puc 2002.18

<sup>26</sup> Eversource Technical Statement, Data Request No. PUC 1-001, at 1.

requiring each of the Electric Utilities to issue solicitations and accept bids on or about the same day will result in increased demand in the market on one or two days per year. Under basic economic principles, increased demand for supply at those times will lead to increased prices. These price increases could be particularly acute if electric utilities in other states are also in the market seeking default service bids on those same days. Ultimately, customers will bear these added costs as they are incorporated into default service rates. Moreover, even if the Electric Utilities receive comparable bids, as Liberty points out, “[e]ach utility would still have differing Energy Service rates to account for the different adjustments each is required to include in its rates.”<sup>27</sup> Thus, requiring that the Electric Utilities issue solicitations on or about the same day is not likely to decrease default service rates or increase uniformity of those rates across service territories.

Liberty also asserts that uniform default service solicitation dates across Electric Utilities “may result in greater bidder participation and lower costs due to the increased volume and value of the consolidated obligations.”<sup>28</sup> The Suppliers disagree. In fact, as Eversource points out, “[t]here is . . . some likelihood that consolidating procurement statewide would discourage bidders because the larger the Default Energy Service load served, the higher the risk for suppliers, due to uncertainty.”<sup>29</sup> This will create a higher risk of a failed RFP. If there is “a higher chance of a failed RFP, the greater the likelihood that all utilities would have to resort to direct Market-Based Procurement, which would expose default service customers to greater risk and greater volatility, and defeat the purpose of statewide procurement to stabilize prices or

---

<sup>27</sup> Liberty Technical Statement, at 3.

<sup>28</sup> Liberty Technical Statement, at 3.

<sup>29</sup> Eversource Technical Statement, Data Request No. PUC 1-001, at 2.



make them consistent across utility service territories.”<sup>30</sup> Thus, the Suppliers recommend that the Commission require the Electric Utilities to stagger the dates on which they each issue solicitations and accept bids to provide default service.

**B. Solicitations Closer In Time To Service Periods Reduce Risk Premiums And Provide More Accurate Price Signals**

As Liberty notes, “[e]xtending the service period to twelve months will introduce additional risk premiums that suppliers would need to include in their bids, which can be expected to result in higher prices for customers.”<sup>31</sup> The Suppliers agree. A procurement system comprised of more frequent solicitations for FRS reduce risk premiums and generate more market reflective default service rates because it minimizes the time over which the default service rate can diverge from actual market prices.<sup>32</sup>

Generally, the differential between default service bid prices and the forward energy prices for the corresponding delivery term decreases as the time between bid date and the commencement of delivery decreases. The decrease in this differential reflects a change in at least two components of the full-requirements price as the delivery date approaches: (1) the diminishing cost of collateral associated with forward energy contracts; and (2) the decrease in real or implied cost of options to hedge against load uncertainty. Thus, the closer in time the bid

---

<sup>30</sup> Eversource Technical Statement, Data Request No. PUC 1-001, at 2.

<sup>31</sup> Liberty Technical Statement, at 5.

<sup>32</sup> Order 24,420 (Jan. 7, 2005), at 10-11 (“Until asks that the solicitation process for the one-year extension be structured to allow for two separate RFPs for six-month periods. It contends that the separate RFPs will serve to balance the desire to provide G1 customers with information concerning their energy prices with a need to minimize the market premium which may be added to secure supply for G1 customers for a longer period. We find that the solicitation process generally is consistent with processes that the Commission has approved in the past and we find also that the specific proposal to employ two RFPs for the extension reasonably addresses the goals of sending useful price signals to customers while seeking to avoid locking in rates that may include too high a premium.”) (internal quotations and citations omitted); *see also* Massachusetts Docket No. 02-04, *In re Default Service Procurement*, Order D.T.E. 02-40-B (April 24, 2003), at 45 (“With respect to procurement, shortening the procurement term would ensure that default service prices would more accurately reflect market prices. However, a shortened term would increase the volatility of default service prices. Conversely, lengthening the procurement term would provide for more price stability, but would weaken the connection to market prices. . . .”).

date is to the commencement of delivery, the lower the risk premium that default service providers will build into their bids. The lower the risk premium, the more accurate the price signals that customers receive. Thus, the Suppliers encourage the Commission to undertake default service procurements as close in time to the start of delivery as is administratively possible.

Currently, the Electric Utilities issue solicitations to supply 100% percent of their default energy service supply requirements for all customer groups every six (6) months.<sup>33</sup> The Commission adopted this procurement schedule to reduce rate volatility, especially for residential and small commercial customers, because, at that time, the Commission determined that “small customers are unlikely to receive as much attention from competitive suppliers and therefore products that protect against price volatility will not likely be available.”<sup>34</sup> However, today, all customers have competitive product offerings available that provide long-term price stability.<sup>35</sup> Nevertheless, given that the majority of residential and small commercial customers still receive default service<sup>36</sup> and the current volatility of the wholesale energy markets, the Suppliers recognize that the Commission may still desire to have the Electric Utilities procure default service for residential and small commercial customers in a way that provides those

---

<sup>33</sup> See Docket No. DE 22-021 *Public Service Company of New Hampshire d/b/a Eversource Energy 2022 Energy Service Solicitation*, Commencement of Adjudicative Proceeding and Notice of Hearing (Apr. 12, 2022), at 1-2; Docket No. DE 22-024, *Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty 2022 Default Service Solicitations*, Commencement of Adjudicative Proceeding and Notice of Hearing (Apr. 21, 2022), at 1; Docket No. DE 22-017 *Unitil Energy Systems, Inc. 2022 Default Service*, Commencement of Adjudicative Proceeding and Notice of Hearing (Mar. 25, 2022), at 1-2.

<sup>34</sup> *Accord Order 24,577* (Jan. 13, 2006), at 12 (“Granite State’s proposal to provide DS service to customers in the Small Customer Group based on a six-month supply contract and at a fixed rate protects these customers by mitigating price volatility.”).

<sup>35</sup> New Hampshire Competitive Energy Supply Website (available at: <https://www.energy.nh.gov/engyapps/ceps/ResidentialCompare.aspx?choice=Eversource>) (last visited Jan. 23, 2023) (reflecting residential offers in the Eversource service territory for fixed price products that extend for up to 34 months).

<sup>36</sup> See, e.g., Eversource 2<sup>nd</sup> Quarter Migration Report (Jun. 15, 2022) (reflecting that less than 50% of residential and small commercial customers have chosen competitive supply).

customers that remain on default service with some protection against price volatility. Thus, at this time, the Suppliers recommend that the Commission continue to solicit FRS default service for residential and small commercial customers every six (6) months.

However, given the sophistication and significant number of medium and large commercial and industrial (“C&I”) customers that have transitioned to competitive supply,<sup>37</sup> in order to reduce risk premiums and provide more accurate price signals, the Suppliers recommend that the Commission solicit default service for these customers every three (3) months. As Eversource noted “[l]arge C&I customers in Connecticut and Massachusetts are procured on a quarterly basis, where New Hampshire is only bid semi-annually. Given the greater uncertainty surrounding C&I load due to possible drop offs of customers to competitive suppliers, shorter quarterly periods create greater load certainty, which increases the likelihood of competitive bids and lower prices.”<sup>38</sup> The Suppliers agree.

Moreover, shorter term procurements for medium and large C&I customers will further the State’s Restructuring Policy Principles. As the Commission has recognized:

RSA 374-F:3, IV(c), Restructuring Policy Principles, sets forth the elements to consider whether a default energy service proposal is in the public interest. Certain principles are key, such as customer choice (RSA 374-F:3, II); universal service (RSA 374-F:3, V), which includes access to service, an option of stable and predictable rates for customers, recovery of the costs of competitively procured power through energy service rates, and no undue harm to the development of the competitive markets; benefits to all ratepayers (RSA 374-F:3, VI); and appropriate recovery of stranded costs (RSA 374-F:3, XII).<sup>39</sup>

Shorter term default service procurements further customer choice by providing greater opportunities for competitive suppliers to offer price certainty against an unpredictable default

---

<sup>37</sup> See, e.g., Eversource 2<sup>nd</sup> Quarter Migration Report (Jun. 15, 2022) (reflecting that more than 80% of medium and large C&I customers have chosen competitive supply).

<sup>38</sup> Eversource Technical Statement, Data Request No. PUC 1-005, at 2.

<sup>39</sup> Order 26,092 (Dec. 29, 2017), at 15.

service rate.<sup>40</sup> They also prevent undue harm to the competitive markets by avoiding a situation where wholesale prices rise and retail supplier are effectively shut out of the opportunity to offer savings for a prolonged period of time. If such a freeze out is long enough, some suppliers may permanently exit the market; thereby, reducing competition overall and leaving customers harmed in the long term. Thus, the Suppliers agree with Eversource's recommendation that the Commission implement three-month procurements for medium and large C&I customers.

Procurements close in time to the service period and a corresponding reduction in risk premiums, in turn, also ensure that customers receive more accurate price signals. One of the purposes of restructuring was to “provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.”<sup>41</sup> Market reflective pricing signals provide customers with the information they need to understand the value of competitive, retail electric market offerings and to encourage load shifting, conservation and energy efficiency. In fact, the Commission has recognized that “[p]rices serve as signals when they provide consumers with the information and motivation to respond to changes in scarcity. Prices signal changes in scarcity and needed changes in behavior as well as provide incentives for customers to alter their consumption. Ideally, current prices should reflect their underlying costs.”<sup>42</sup> When default service rates accurately reflect underlying costs, customers are better positioned to make decisions about their competitive supply options and about their energy usage, including load shifting, conservation and energy efficiency.

---

<sup>40</sup> *Accord* Order 24,511 (Sep. 9, 2005), at 14 (“Exposing Small G1 customers to monthly rather than quarterly prices should encourage them to seek out suppliers that offer lower prices and greater price stability.”).

<sup>41</sup> RSA 374 F:1(II).

<sup>42</sup> Order 24,188 (Jul. 2, 2003), at 24.

The ability of customers to respond to these price signals is increased when customers are provided with access to information about their energy usage. The combined effect of more accurate market pricing and real-time information usage can have a significant impact on the development of competitive options and innovative products available to consumers. Indeed, in jurisdictions with well-designed market structures and smart meters, competitive providers have been able to offer customers high value products, including dynamic pricing products that encourage conservation, energy efficiency and renewable energy solutions. For instance, in Texas and Pennsylvania, competitive providers are now offering a plethora of competitive supply products enabled by smart meters that encourage customers to move their consumption away from peak price periods, such as free power during the evenings or on the weekends.<sup>43</sup> Similarly, the combination of smart meters and more accurate pricing resulting from shorter default service procurement terms will allow suppliers in New Hampshire the ability to offer price response demand (“PRD”) products to their customers that will encourage load shifting, conservation, and energy efficiency; resulting in real cost savings for customers.

**C. Shorter Review Periods Result In Lower Risk Premiums And, Consequently, Lower Prices**

The Electric Utilities should also be required to file their applications for approval of default service procurements as quickly as administratively possible after the procurements are approved, and the Commission should approve such procurements as quickly as possible thereafter. As Unitil notes, “[a]bbreviating the period between final contract execution and Commission approval could result in reduced risk premiums.”<sup>44</sup>

---

<sup>43</sup> See, e.g., <https://justenergy.com/get-offer/free-nights-or-weekends-electricity-plan/> (last visited Jan. 23, 2023).

<sup>44</sup> Unitil Technical Statement, at 8.

Because forward prices in wholesale markets are constantly moving there is a risk for any bidder that between the time a bid is submitted and the time a contract is approved that the market will have moved and the cost of hedging will have increased. To deal with this risk, the bidder will have an incentive to include a risk premium in the bid. By minimizing the time between submission of the bid and final approval, the risk can be reduced to the benefit of default service customers. In many states, the approval time is reduced by limiting the post-bid approval to a review of whether the auction was conducted properly and whether there was adequate participation to produce a competitive result. In Maine, this is generally the same day and, in Connecticut, it is within 24 to 48 hours.

In addition, the Electric Utilities should also be required to file their applications for approval of the resulting default service rates as quickly as administratively possible after the procurements are approved, and the Commission should approve such rates as quickly as possible thereafter. Reducing the default service rate approval period gives competitive suppliers more opportunity to develop their pricing offers and consumers more time to review the competitive offers available to them and make an informed decision about the source of their energy supply before being subjected to new default service rates.

### **III. THE COMMISSION SHOULD NOT PERMIT THE ELECTRIC UTILITIES TO DETERMINE WHAT CONSTITUTES MARKET REFLECTIVE PRICING**

The Commission previously determined that FRS procurements result in rates that are market based and just and reasonable<sup>45</sup> and promote customer choice.<sup>46</sup> Thus, the Suppliers agree

---

<sup>45</sup> Order 25,806 (Sep. 2, 2015), at 7 (“Because the solicitations will elicit offers from the competitive market, and because Liberty intends to calculate the rates resulting from solicitations according to the terms approved by Order No. 24,577, the resulting rates should be market based. As such, the rates will be just and reasonable, and consistent with the requirements of RSA 378:5 and 7.”).

<sup>46</sup> Order 26,092 (Dec. 29, 2017), at 15 (“The process set out by Eversource in its initial filing as amended by the Settlement meets the requirements of RSA 374-F:3, II and V. The process is expected to result in market prices, and thus will promote choice for customers who can select an electric service product from a competitive supplier, or default energy service offered by Eversource.”).

with Eversource that “that all competitively-priced bids should be accepted to minimize volatility, with the utility deploying a Market-Based Procurement Process only to be used as a last resort . . . .”<sup>47</sup> However, when multiple bidders submit proposals to provide default service, the Electric Utilities should not be able to reject all of the bids based on the Electric Utilities’ judgement that the bids are not market reflective.<sup>48</sup>

Predicting the future costs of energy, even over a brief period, is an exercise fraught with uncertainty. Hence, it is impossible for the Electric Utilities to forecast the cost of all components needed to provide commodity supply to customers. This uncertainty is increased significantly when predictions are based on information that does not account for current market conditions on the days that bids are submitted. As a consequence, any analysis by the Electric Utilities of what constitutes market prices is likely to be incorrect. Moreover, there is no evidence that allowing the Electric Utilities to self-supply default service load will actually result in lower default service rates for consumers than acceptance of prices submitted by multiple wholesale suppliers who have more knowledge about the wholesale energy supply markets and are better able to spread risk across their portfolios.<sup>49</sup> Thus, rather than permitting the Electric Utilities to substitute their judgment for that of the market, the Suppliers request that, consistent

---

<sup>47</sup> Eversource Technical Statement, Data Request No. PUC 1-003, at 1.

<sup>48</sup> *Cf.* Order 24,675 (Sep. 29, 2006), at 9 (“We are likewise satisfied that the participation of multiple bidders in the process is indicative of a competitive bid and, consequently, that the result is consistent with the requirement of RSA 374-F:3, V(c) that Default Service be procured through the competitive market.”) (internal quotations omitted).

<sup>49</sup> *Cf.* Eversource Technical Statement, Data Request No. PUC 1-006, at 2 (“Competitive suppliers can more closely and consistently monitor markets in New Hampshire as well as markets throughout the region, and therefore better seize market opportunities . . . .”); *Id.* (“Competitive suppliers can be constantly engaged in multiple REC markets, as energy supply and its requisite requirements are their sole line of business.”).

with its precedent,<sup>50</sup> the Commission only permit the Electric Utilities to classify an RFP as failed if less than two bids are received.

Moreover, in the event that a failed RFP results in the Electric Utilities self-supplying default service load, the Commission should ensure that default service rates are as a market-reflective as possible by reducing potential reconciliations. Under a self-supply approach, the Electric Utilities' customers pay default service rates that are based on a forecast and estimate of the Electric Utilities' expected costs.<sup>51</sup> The difference between the forecasted costs and actual costs, once known, are charged or credited to all customers after the period for which those costs were incurred.<sup>52</sup> This reconciliation process means that default service rates, at any point in time, are higher or lower than the actual cost for that period.<sup>53</sup> As a result, although customers are told that they are purchasing energy at a fixed price, that is not really the case. Default service customers are actually charged a rate that appears fixed but has a hidden variable component that is added to default service rates during the subsequent reconciliation period. This reconciliation occurs in addition to the need to adjust rates for changes in their actual costs for the coming period.

In addition, because it is impossible for the Electric Utilities to accurately estimate the cost to self-supply, the chances that an over- or under-recovery will occur is exponentially

---

<sup>50</sup> Order 25,763 (Feb. 18, 2015), at 6 (accepting Unutil's definition of a failed solicitation "as an event where *no* suppliers responded to an RFP or where the *only* response offered a price that exceeded Unutil's forecast of market prices.") (emphasis added); *see also id.* at 3 (acknowledging definition of a failed solicitation to be "if the Company received *no* final bids for a specific block, or if the solicitation resulted in a *single* bid where the price was significantly above Liberty's estimated forecast market price.") (emphasis added); *cf.* Order 26,733 (Nov. 22, 2022), at 5 ("We interpret the terms of RSA Chapter 374-F to already enable the Company to go to the ISO-New England market to directly purchase energy to serve its ES customers if conditions warrant. However, we strongly encourage Eversource to engage in a second lightning RFP round in the event of a failed first RFP process, as consistent with past practice.") (internal quotations and citations omitted).

<sup>51</sup> Liberty Technical Statement, at 5.

<sup>52</sup> Liberty Technical Statement, at 5.

<sup>53</sup> Eversource MA Comments, at 3 ("If Eversource were to become a load serving entity ('LSE') for [Massachusetts default] service, then customers would no longer be paying a premium for risk management, but they would potentially be subject to greater over- and under-recoveries due to market variations and price volatility.").



greater when Electric Utilities engage in self-supply. Recognizing that “there may be substantial differences between the actual ISO [New England] LMP [Locational Marginal Price] prices paid relative to the futures pricing at the time the rate was set,”<sup>54</sup> the Commission authorized Unital “to seek an adjustment of the fixed retail rate if the projected wholesale power supply costs for the balance of the period vary by more than twenty percent (20%) from the wholesale power supply costs projected over the same period at the time retail rates were set.”<sup>55</sup> The Suppliers recommend that, to the extent the Electric Utilities are permitted to engage in self-supply in the event of a failed default service solicitation, the Commission require all Electric Utilities to seek to adjust their default service rates when the potential over- or under-recovery will be more than twenty percent (20%). “This approach preserves rate stability for customers while providing for price adjustment in the event of large changes (greater than 20%) in futures pricing over the balance of the service period as the service period unfolds, which serves to promote market-based pricing and mitigate the potential for over/under collections.”<sup>56</sup>

#### **IV. ALTERNATIVE DEFAULT SERVICE PROCUREMENT APPROACHES INCREASE RISKS AND COSTS**

In its technical statement, Liberty discusses alternative procurement approaches for the Commission’s consideration.<sup>57</sup> These alternative methods, however, will not result in better outcomes for customers and are inconsistent with New Hampshire’s electric restructuring policy

---

<sup>54</sup> Unital Technical Statement, at 7.

<sup>55</sup> Unital Technical Statement, at 7.

<sup>56</sup> Unital Technical Statement, at 7-8.

<sup>57</sup> See Liberty Technical Statement, at 5-6.

principles<sup>58</sup> and other state policy goals seeking to encourage energy efficiency, demand response, and distributed generation.<sup>59</sup>

#### **A. Laddering Will Not Reduce Prices and Distorts Price Signals**

One alternative that Liberty explores is the use of laddering.<sup>60</sup> However, as Liberty points out, laddered solicitations “do not result in any less price volatility.”<sup>61</sup> Moreover, even though both Connecticut and Massachusetts engage in laddering,<sup>62</sup> their default service rates have generally been consistent with those in New Hampshire.<sup>63</sup> Thus, there is no evidence that laddering decreases prices. In fact, as Liberty,<sup>64</sup> Unitil,<sup>65</sup> and Eversource<sup>66</sup> all noted, the opposite is true: “Contract laddering can . . . result in higher bid prices in that suppliers may add a premium to address additional risk over the longer terms.”<sup>67</sup>

---

<sup>58</sup> See RSA 374:F-3.

<sup>59</sup> See, e.g., Docket No. IR 15-296, *Investigation into Grid Modernization*, Staff Recommendation on Grid Modernization (Jan. 31, 2019), at 48 (“As electric utilities look to make their systems more efficient and meet public policy goals, efforts to send price signals that both reflect the true cost of energy and reduce stress on the grid are becoming increasingly important.”).

<sup>60</sup> Liberty Technical Statement, at 4.

<sup>61</sup> Liberty Technical Statement, at 4 (“Implementation of a laddered solicitation process may reduce price volatility by taking advantage of dollar cost averaging when soliciting supply on more than a single date, and thus reducing the volatility of Energy Service rates. This is the process National Grid, Eversource, and other utilities use in Massachusetts and other states. Schedule 1 provides a chart of the default service rates for Liberty in New Hampshire and National Grid and Eversource in Massachusetts for the period January 1, 2017, to the most recently approved rates. As shown, the National Grid/Eversource portfolio processes do not result in any less price volatility when compared to Liberty’ process.”)

<sup>62</sup> Eversource Technical Statement, Data Request No. PUC 1-005, at 2.

<sup>63</sup> Eversource CT Presentation, at Slide 10 (reflecting the default service rates in Connecticut, Massachusetts and New Hampshire since 2004).

<sup>64</sup> Liberty Technical Statement, at 4 (“Liberty is concerned that if the laddered solicitation is required, it will result in higher rates for its customers.”).

<sup>65</sup> Unitil Technical Statement, at 5 (“While such a framework with blending of prices obtained at different times has the effect of moderating the impacts of market volatility, it also creates some disconnect between such blended pricing and market-based pricing.”).

<sup>66</sup> Eversource Technical Statement, Data Request No. PUC 1-002, at 1 (recognizing that “while laddering purchases reduces the volatility of prices from one service period to the next, it does not necessarily reduce overall customer costs, or even lower those costs over time.”).

<sup>67</sup> Unitil Technical Statement, at 6.

Moreover, laddering “inherently fails to correlate to current market pricing.”<sup>68</sup> Laddering creates a disconnect between retail prices and the wholesale market, sending inaccurate pricing signals regarding the value of competitive, retail offerings<sup>69</sup> and the cost-effectiveness of demand-side management strategies. The boom and bust inherent to the laddered procurement approach, where customers pay artificially low or high prices for electricity based on longer term, laddered contracts, distort the market in years when the default service pricing is artificially above or below market prices.<sup>70</sup> As a result, energy customers in New Hampshire lose out on the myriad of value-added products and services that are available to customers in the competitive market, including cost savings, price stability, electricity from renewable energy sources, or other attributes of value.<sup>71</sup>

#### **B. A Managed Portfolio Approach Will Increase Risks**

One of the other alternatives that Liberty briefly examines is an Electric Utility hedging program whereby the Electric Utilities would enter into transactions to cover a portion of default service load (“Managed Portfolio”).<sup>72</sup> However, as Liberty points out, this Managed Portfolio approach has significant short comings.<sup>73</sup> The Suppliers agree. In fact, under a Managed Portfolio approach, the following risks and costs will all be *higher*: (a) risks of mistakes/bad market outcomes; (b) risk of supply cost surprises (a/k/a rate shock); (c) deferral account

---

<sup>68</sup> Eversource Technical Statement, Data Request No. PUC 1-002, at 1.

<sup>69</sup> Order 24,511 (Sep. 9, 2005), at 13 (recognizing that “one disadvantage of the portfolio approach is that the aggregation of several long-term contracts with different start dates and terms could widen the gap between DS prices and market prices, consequently slowing the development of a competitive retail market . . .”).

<sup>70</sup> Eversource Technical Statement, Data Request No. PUC 1-002, at 2 (“In an upward price environment, laddering purchases typically results in a blended price that is below the market price. However, the inverse is true in a downward price environment: laddering purchases results in a blended price above market prices.”).

<sup>71</sup> New Hampshire Competitive Energy Supply Website (available at: <https://www.energy.nh.gov/engyapps/ceps/ResidentialCompare.aspx?choice=Eversource>) (last visited Jan. 23, 2023) (reflecting residential offers in the Eversource service territory for lower priced products, longer term fixed price products, and renewable electricity products).

<sup>72</sup> Liberty Technical Statement, at 6.

<sup>73</sup> *Id.* (recognizing that there is no guarantee that a managed portfolio approach will result in lower rates and that it could result in higher risk premiums for the portion of load purchased through FRS procurements).

balances; (d) costs and risks associated with uncertainty regarding capacity and ancillary services; and (e) internal Electric Utility resource costs.<sup>74</sup>

Under a Managed Portfolio procurement model, the Electric Utilities piece together a portfolio from a range of different physical and financial products. These products could and often do include short, medium, and long-term physical contracts, financial swaps, financial collars, and transmission rights, combined with purchases from the day-ahead and real-time markets. There is no evidence that the Electric Utilities are able to disaggregate the elements of all requirements, load following service, acquire those elements separately, and reassemble the elements into a deliverable load following service more efficiently than the wholesale suppliers currently performing that function. Additionally, under the Managed Portfolio model, the Electric Utilities must actively monitor the market and attempt to time procurement to achieve the lowest possible cost while maintaining the desired level of hedging to protect against market volatility. There is also no evidence to support a finding that the Electric Utilities can perform this function any better than wholesale suppliers.

Indeed, in order to procure power in the wholesale market, the Electric Utilities would be required to employ staff to monitor energy markets and then make decisions as to when to enter into contracts, the amount of power to be purchased, the terms of such contracts, whether to enter into hedges, what type of hedges to purchase, and how much power to purchase or sell on a spot basis. The Electric Utilities would be required to balance numerous considerations to arrive at the best strategy for purchasing power on the wholesale market. These considerations include significant factors such as the hour by hour requirements of customers and forecasts for market prices. The Electric Utilities would also enter into derivative transactions, fuel hedges and other

---

<sup>74</sup> See NorthBridge Study, at 13.

financial swaps or hedging agreements, as well as spot purchases as necessary, to meet their actual requirements. The Electric Utilities' staff would need to monitor the markets and make decisions about the increments of power to purchase and when to make such purchases in addition to deciding what other power market products such as hedges, derivatives and the like to enter. These are high risk, complex decisions, the costs of which are ultimately borne by customers.

The most significant risk from putting the Electric Utilities into the active portfolio management role is the possibility that they will assemble a portfolio that becomes "above market" or "out of the money." That is, the average cost to supply customers from the portfolio is higher than the cost to serve those customers at the prevailing wholesale market price. In any given hour, if the power from any contracts the Electric Utilities enter into is less than their customers' requirements, the Electric Utilities will have to make "spot" purchases of power from the market and will have to pay the hourly clearing (spot) price for these additional last-minute purchases. If the Electric Utilities enter into contracts for more power than they need at any point in time, the excess power can be sold into the market at the hourly clearing price. However, there is no guarantee that price will cover the contract price for that power. To the extent that the Electric Utilities incur additional costs because they buy additional power at the spot price or because they are unable to recover the full cost of any excess power they have under contract, those costs would be passed onto customers.

Prior to restructuring, the Electric Utilities' customers bore the risk of uneconomic decisions, which resulted in billions of dollars in stranded costs.<sup>75</sup> As a consequence, one of the primary rationales for the restructuring of the electric industry was to remove the risk of

---

<sup>75</sup> See, e.g., Order 22,514 (Feb. 28, 1997).

uneconomic investment from ratepayers and place it on the shareholders of market players.<sup>76</sup> Under the Managed Portfolio approach, the results of the Electric Utilities' power purchase decisions, good or bad, are placed back on ratepayers. The Managed Portfolio approach would leave the Electric Utilities with the risk that, as power prices fall and customers leave default service, the Electric Utilities (and, ultimately, default service customers) will be left holding purchased power supply in excess of default service load requirements; thereby, unnecessarily increasing the cost of supply to those customers that remain on default service. The oversupply can be resold in the market, but if prices have fallen, it will have to be sold at a loss. Conversely, under an FRS Structure, the wholesale supplier bears any such loss.

In addition, requiring the Electric Utilities to expend resources to actively manage an energy portfolio is an inefficient way to achieve competitive default service prices for consumers. Because the Electric Utilities' load must always be met with full requirements products whether under a Managed Portfolio approach or an FRS structure in order to actively manage their load obligations, the Electric Utilities must have the expertise to understand and follow not only electric energy and other commodity markets, but also fuel, ancillary services, and capacity markets. A diverse pool of wholesale suppliers rather than a small group of Electric Utility employees provides the most cost-effective method of default service supply management. Wholesale suppliers have invested and will continue to invest significantly in acquiring experts and developing risk management tools in each specific type of market that make up full requirements default service supply. As a consequence, wholesale suppliers are experts in portfolio management, and have greater resources, expertise, and ability to appropriately manage portfolios of supply at the least possible cost by allocating the costs for

---

<sup>76</sup> See RSA 374:F-1(I) ("The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.").

their operations over much larger load obligations throughout the country.<sup>77</sup> These wholesale suppliers pass on the savings they achieve due to their sophisticated risk management skills in the form of more competitive bids for full requirements default service products in the requests for proposals.<sup>78</sup>

Under a Managed Portfolio model, the Electric Utilities must also forecast their retail customers' load on an hourly basis and factor in the extent to which retail customers may switch to competitive retail suppliers or back to default service from competitive suppliers throughout the year based on changes in market prices, the default service rate and other factors. Obviously, it is impossible for the Electric Utilities to correctly forecast all of the factors that go into determining the quantity and cost of their purchased power requirements. Moreover, under a Managed Portfolio approach, when customers migrate to competitive energy suppliers, a smaller number of default service customers are left to pay the stranded costs associated with the Electric Utilities' procurement and hedging activities.

In addition, supplementing FRS procurement with a Managed Portfolio could create a problem with load shaping that could increase the costs associated with procuring the balance of default service load that continues to be procured through FRS. To the extent the Electric Utilities supply default service customers directly, the residual quantity to be served by full requirements suppliers could be more uncertain and would be reduced and, likely, have a lower

---

<sup>77</sup> Cf. Eversource Technical Statement, Data Request No. PUC 1-006, at 2 (“Competitive suppliers can more closely and consistently monitor markets in New Hampshire as well as markets throughout the region, and therefore better seize market opportunities for lower-priced RECs. This flexibility and access to regional market participation also makes it easier for competitive suppliers to adapt and account for the annual legislative changes to the ACP price and regulatory changes to the quantity of required REC purchases.”).

<sup>78</sup> Cf. Eversource Technical Statement, Data Request No. PUC 1-006, at 2 (“Competitive suppliers can be constantly engaged in multiple REC markets, as energy supply and its requisite requirements are their sole line of business. This puts suppliers in a more advantageous position to leverage the various REC markets and be more aggressive in buying cheaper RECs despite the persistent regulatory and legislative uncertainties that limit the utilities' ability to participate in the market.”).

load factor because some of the base demand is now supplied by Electric Utility purchases. A lower load factor will generally translate to higher prices in the competitive FRS solicitation.

Lastly, with the Managed Portfolio model, customers do not receive accurate price signals because the true cost of serving a customer for a certain period of time is not reflected in rates until a later date when the Electric Utilities true-up their rates against their actual costs to serve.<sup>79</sup> Instead, as noted above, under a Managed Portfolio approach, the Electric Utilities' customers pay default service rates that are based on a forecast of the Electric Utilities' expected costs.<sup>80</sup> The difference between the forecasted costs and actual costs, once known, are charged or credited to all customers after the period for which those costs were incurred.<sup>81</sup> This reconciliation process means that default service rates, at any point in time, are higher or lower than the actual cost for that period.<sup>82</sup> As a consequence, although customers are told that they are purchasing energy at a fixed price, that is not really the case. If customers stay on default service, they are actually charged a rate that appears fixed but has a hidden variable component that is added to the true cost of providing service during the subsequent reconciliation period.<sup>83</sup>

---

<sup>79</sup> Liberty Technical Statement, at 5 (“Liberty could serve its default service load from spot purchases in the New England real-time or day-ahead markets. Initial retail pricing for the period could be developed based on market futures at the time of the failed solicitation, but there is a risk that such retail prices would not reflect the actual cost of meeting the default service supply. Those additional costs (or savings if the market prices were lower than projected) would have to be collected (or returned) through a subsequent reconciliation.”).

<sup>80</sup> Liberty Technical Statement, at 5.

<sup>81</sup> Liberty Technical Statement, at 5.

<sup>82</sup> Eversource MA Comments, at 3 (“If Eversource were to become a load serving entity (‘LSE’) for [Massachusetts default] service, then customers would no longer be paying a premium for risk management, but they would potentially be subject to greater over- and under-recoveries due to market variations and price volatility.”).

<sup>83</sup> Liberty Technical Statement, at 5 (“Liberty could serve its default service load from spot purchases in the New England real-time or day-ahead markets. Initial retail pricing for the period could be developed based on market futures at the time of the failed solicitation, but there is a risk that such retail prices would not reflect the actual cost of meeting the default service supply. Those additional costs (or savings if the market prices were lower than projected) would have to be collected (or returned) through a subsequent reconciliation.”).



Reconciliations present a constant threat to, and undermine, the State’s conservation and energy efficiency goals. Only when customers know the true cost of their power supply can they make appropriate decisions regarding demand response and energy efficiency modifications to better manage their electricity consumption and costs.<sup>84</sup> In contrast, if customers do not know the true cost of their power supply, they are discouraged from adopting new solutions to meet their energy needs.

Reconciliations are also harmful to the continued development of a competitive retail market because they distort the relationship between the Electric Utilities’ actual cost of providing power during a particular period and the market price of power. As a result, customers cannot accurately evaluate the value of competitive supply offers. Reconciliations also create some “intergenerational” issues by passing back credits or implementing charges on customers who were not responsible for generating those credits or creating those charges in the first place.

### **C. Long-Term Contracts Will Increase Risks**

In its technical statement, Liberty also discusses a procurement approach that “would require distribution utilities to enter into fixed-price, long-term contracts for conventional and renewable energy for a specified portion of its Energy Service requirements.”<sup>85</sup> However, as Liberty itself recognizes, this procurement model “suffers from many of the same shortcomings” as the Managed Portfolio model.<sup>86</sup>

Prior to restructuring, when a regulated utility was the monopoly supplier to retail customers, it did not face a migration risk if it entered into long term commitments and then

---

<sup>84</sup> Cf. Docket No. IR 15-296, *Investigation into Grid Modernization*, Staff Recommendation on Grid Modernization (Jan. 31, 2019), at 48 (“As electric utilities look to make their systems more efficient and meet public policy goals, efforts to send price signals that both reflect the true cost of energy and reduce stress on the grid are becoming increasingly important.”).

<sup>85</sup> Liberty Technical Statement, at 6.

<sup>86</sup> *Id.*

wholesale prices fell, leaving the utility's supply costs above the prices available in wholesale markets. It did, however, face disallowances based on theories that the commitments were imprudent. In fact, these very "above market" costs created by some long-term utility commitments were among the primary drivers behind the initiatives to move from regulation to retail competition.<sup>87</sup>

Although long-term contracts with unregulated generators may seemingly provide a ratepayer hedge against market prices, these long-term contracts carry several significant risks to ratepayers. In particular, long-term contracts: (1) are based on forecasts and may actually lock customers into paying higher rates if the market prices fall; (2) send distorted pricing signals, crushing the development of a competitive market; (3) may result in rate shock at the expiration of the long-term contracts; and (4) provide disincentives for energy efficiency to which customers are otherwise attuned when accurate price signals are sent out.

If the Electric Utilities predict long-term prices when entering into long-term contracts and the market brings lower prices, then ratepayers will be locked in to higher prices for several years. If an Electric Utility makes long-term supply commitments to acquire a large amount of power and then wholesale prices fall, the utility's default service rates will be above prevailing wholesale market prices. In that case, customers will have an incentive to migrate to competitive energy suppliers, leaving the utility to recover the cost of its above-market commitments from its remaining customers. As the utility attempts to collect this amount from a shrinking pool of default service customers, this action will raise the price even further and, in turn, induce further migration away from default service.

---

<sup>87</sup> RSA 374-F:1(I) ("The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets.").

It is also a problem if a utility's long-term supply commitments turn out to be below market prices for an extended period for several reasons. First, customers will migrate back to the utility and retail competition will dry up in direct contravention of New Hampshire's Restructuring Policy Principals.<sup>88</sup> Second, when the utility's below-market supply commitments finally end, there will be the prospect of rate shock. Lastly, creating a disconnect between retail prices and the wholesale market will also send inaccurate pricing signals and provide disincentives for energy efficiency to which customers are otherwise attuned when accurate price signals are sent.

Allowing utilities to take on such long-term contracts within default service will destroy the effectiveness of the price signals that have helped to create the improvements now seen in the New Hampshire market. Creating a disconnect between retail prices and the wholesale market will also send inaccurate pricing signals regarding the cost-effectiveness of demand resources. This would ultimately result in higher prices for New Hampshire's customers.

For retail competition, including competitive demand response and energy efficiency offerings to continue to develop, default service rates must reflect wholesale price signals. Only then can the State's goals of sending accurate pricing signals and encouraging energy efficiency be met. Because long-term contracts obscure market signals and remove market transparency, customers do not receive the information and incentives that they need to make reasoned decisions as to energy efficiency and alternative energy offerings. If customers receive distorted, artificially low, locked-in prices for a long period, they will receive the wrong price signal namely, that power is cheaper than it really is and will not explore demand-side conservation

---

<sup>88</sup> Order 26,092 (Dec. 29, 2017), at 15 ("RSA 374-F:3, IV(c), Restructuring Policy Principles, sets forth the elements to consider whether a default energy service proposal is in the public interest. Certain principles are key, such as *customer choice* (RSA 374-F:3, II); universal service (RSA 374-F:3, V), which includes access to service, an option of stable and predictable rates for customers, recovery of the costs of competitively procured power through energy service rates, and *no undue harm to the development of the competitive markets*; benefits to all ratepayers (RSA 374-F:3, VI); and appropriate recovery of stranded costs (RSA 374-F:3, XII).") (emphasis added).

measures and improvements that they otherwise would. Greater use of demand-side management needs to be encouraged not only because it allows customers to control their electricity bills, but also because it relieves pressure on the already strained electric grid. Moreover, electric suppliers are justifiably very hesitant to enter a market and make the necessary long-term investment where there is regulatory uncertainty in the form of an ever-lingering possibility that an Electric Utility may be permitted to enter into ratepayer-subsidized long-term contracts that could substantially erode or eliminate market incentives for customers to choose competitive supply.

Moreover, the purported benefits that would justify long-term contracts suffer from the disadvantage that they are speculative at best and based on misconceptions. The first misconception is that long-term contracts with generators will reduce prices. This is inaccurate. Generators are no more anxious than any other entity to be the party left holding the risk of accepting contract terms less favorable than they would receive from selling on a shorter term basis in the market. Thus, generators will build these risks into the prices at which they are willing to enter into long-term contracts in the form of risk premiums; thereby, increasing costs to ratepayers. The second misconception is that long-term contracts will smooth price fluctuations. Any fixed position is a hedge that carries with it inherent risks. Even if prices remain low for the duration of the contract periods, after the terms expire, customers may experience jarring rate shocks from the delayed price volatility.

## **V. THE COMMISSION MAY WANT TO CONSIDER ALTERNATIVE MARKET STRUCTURES**

Alternatively, the Commission may determine that the time has come for a transition away from the incumbent utility as the provider of last resort to a paradigm that would allow competitive energy suppliers to fill this role for consumers that can no longer be successfully served through the default service procurement process. The New Hampshire Restructuring

Statute provides that “as competitive markets develop, the commission may approve alternative means of providing transition or default services which are designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility without creating new deferred costs, if the commission determines such means to be in the public interest.”<sup>89</sup> The hallmark of a successful transition to retail competition is a reduced reliance on regulated retail service options, such as the current default service. Thus, over time, the incumbent utilities’ historical obligation to serve load should be converted into an obligation to connect and deliver reliable service.

As the Commission has recognized, “[d]efault service should be designed to provide a safety net and to assure universal access and system integrity.”<sup>90</sup> However, when a state mandates the selection of incumbent utilities for all consumers who fail to make timely supplier elections, it perpetuates the same non-competitive energy services that restructuring was designed to replace. Retaining the utility as the default provider of energy supply services in the long-term in a restructured environment has a negative impact on the development of competitive markets as it distorts and impedes the marketplace as evidenced by the numerous proceedings and rules the Commission has instituted in an effort to reduce and/or eliminate barriers to competition resulting from such a structure. Therefore, while the Electric Utilities will and should continue to provide transmission and distribution services to all customers, it may not be necessary or desirable to continue to maintain the utility as the default provider of energy supply services.

---

<sup>89</sup> RSA 374-F:3(V)(e).

<sup>90</sup> RSA 374-F:3(V)(c).

## CONCLUSION

For all the foregoing reasons, rather than making wholesale changes to procurement strategies in response to market changes beyond its control, the Commission should approve modifications to the timing, frequency, and duration of procurements that will allow consumers to receive the benefits of positive market changes without the need for increased risks to ratepayers and adverse effects on the competitive market.

Dated: January 23, 2023

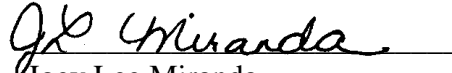
Respectfully submitted,  
DIRECT ENERGY SERVICES, LLC;  
DIRECT ENERGY BUSINESS, LLC;  
DIRECT ENERGY BUSINESS  
MARKETING, LLC; RELIANT ENERGY  
NORTHEAST LLC; AND XOOM  
ENERGY NEW HAMPSHIRE, LLC;  
RETAIL ENERGY SUPPLY  
ASSOCIATION

By:  \_\_\_\_\_  
Joey Lee Miranda  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103-3597  
Tel. No.: (860) 275-8200  
Fax No.: (860) 275-8299  
E-mail: [jmiranda@rc.com](mailto:jmiranda@rc.com)

Its Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has this day been sent via electronic mail or first class mail to all persons on the service list.

  
Joey Lee Miranda

Dated: January 23, 2023