

Before the
STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 11-184

In the Matter of:
Public Service Company of New Hampshire; Bridgewater Power Company; L.P., Pinetree
Power, Inc; Pinetree Power-Tamworth, Inc.; Springfield Power, LLC; DG Whitefield, LLC d/b/a
Whitefield Power & Light Company, and Indeck-Alexandria, LLC, the New Hampshire
Department of Resources and Economic Development and certain Staff of the New Hampshire
Public Utilities Commission
Joint Petition for Approval of Power Purchase and Sale Agreements and Settlement Agreement

Direct Testimony
of
Steven E. Mullen
Assistant Director – Electric Division

October 14, 2011

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Public Service Company of New Hampshire, et al.
DE 11-184

I. Introduction and Summary

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

A. My name is Steven E. Mullen. I am employed by the New Hampshire Public Utilities Commission as Assistant Director of the Electric Division. My business address is 21 South Fruit Street, Suite 10, Concord, New Hampshire.

Q. Please summarize your educational background and work experience.

In 1989, I graduated *magna cum laude* from Plymouth State College with a Bachelor of Science degree in Accounting. I attended the NARUC Annual Regulatory Studies Program at Michigan State University in 1997. In 1999, I attended the Eastern Utility Rate School sponsored by Florida State University. I am a Certified Public Accountant and have obtained numerous continuing education credits in accounting, auditing, tax, finance and utility related courses.

From 1989 through 1996, I was employed as an accountant with Chester C. Raymond, Public Accountant in Manchester, New Hampshire. My duties involved preparation of financial statements and tax returns as well as participation in year-end engagements. In 1996, I joined the Commission as a PUC Examiner in the Finance Department. In that capacity I participated in field audits of regulated utilities' books and records in the electric, telecommunications, water, sewer and gas industries. I also performed rate of return analysis, participated in financing dockets and presented oral testimony before the Commission. In 1998, I was promoted to the position of Utility Analyst III and

1 continued to work in all of the regulated industry fields, although the largest part of my
2 time was concentrated on electric and water issues. As part of an internal reorganization
3 of the Commission's Staff in 2001, I became a member of the Electric Division. I was
4 promoted to Utility Analyst IV in 2007 and then Assistant Director of the Electric
5 Division in 2008. Working with the Director of the Electric Division, I am responsible
6 for the day-to-day management of the Electric Division including decisions on matters of
7 policy. In addition, I evaluate and make recommendations concerning rate, financing,
8 accounting and other general industry filings. I represent Staff in meetings with company
9 officials, outside attorneys, accountants and consultants relative to the Commission's
10 policies, procedures, Uniform System of Accounts, rate case, financing and other
11 industry and regulatory matters.

12 **Q. Have you previously testified before this Commission?**

13 A. Yes. I have testified before the Commission on numerous occasions.

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

15 A. The purpose of my testimony is to provide comments and recommendations regarding the
16 filing made jointly on August 23, 2011 by Public Service Company of New Hampshire
17 (PSNH); Bridgewater Power Company; L.P. (Bridgewater), Pinetree Power, Inc.
18 (Bethlehem); Pinetree Power-Tamworth, Inc. (Tamworth); Springfield Power, LLC
19 (Springfield); DG Whitefield, LLC d/b/a Whitefield Power & Light Company
20 (Whitefield), and Indeck-Alexandria, LLC (Alexandria) (collectively, the Wood IPPs),
21 the New Hampshire Department of Resources and Economic Development (DRED) and
22 certain Staff of the New Hampshire Public Utilities Commission (Advocate Staff)¹

¹ Hereinafter, "Joint Petitioners" will be used to refer to all of the petitioners.

1 seeking approval of certain Power Purchase and Sale Agreements (PPAs), a Settlement,
2 Release and Support Agreement (Settlement Agreement), and a proposed ratemaking
3 methodology to recover the costs of the PPAs.

4 **Q. Please summarize your testimony.**

5 A. This case can be viewed as involving two main decisions: 1) should the PPAs be
6 approved and, if so, 2) how should the costs be recovered by PSNH. There is a third
7 issue as to whether the Settlement Agreement should be approved. In deciding the first
8 issue, if the analysis was simply one of whether or not the energy prices in the PPAs are
9 above-market, then my answer would be “no.” However, as further discussed below,
10 there are many other factors involved in the public interest determination. Once those
11 other factors are taken into account, and given the relatively short-term nature of the
12 PPAs, I conclude that there is a sufficient basis on which these PPAs may be approved.
13 My conclusion is limited to the particular facts and circumstances of this one case. As to
14 cost recovery by PSNH, I am not in favor of the recovery methodology put forth by the
15 Joint Petitioners. Being mindful, however, that the proposed recovery methodology is
16 one of the stated conditions for PSNH to begin purchasing energy pursuant to the PPAs, I
17 offer some alternatives for consideration that I believe would achieve similar results to
18 those sought by PSNH. Regarding approval of the Settlement Agreement, I do not offer
19 a recommendation as it is my position that the Commission has not been provided with
20 sufficient information to make an informed decision.

21 **Q. How have you organized your testimony?**

22 A. I begin with a discussion of the Settlement Agreement. Next, I describe the PPAs and
23 provide testimony regarding the public interest determination to be made by the

Commission as well as method of cost recovery proposed by the Joint Petitioners.

Finally, I provide some comments regarding the proceeding in general.

II. Settlement Agreement

Q. Who are the parties to the Settlement Agreement?

A. The signatories to the Settlement Agreement are the Wood IPPs, PSNH and Cate Street Capital, Inc. (Cate Street), the developer of the Berlin Station biomass power plant that was the subject of another Commission docket, DE 10-195.

Q. What is the nature of the Settlement Agreement?

A. The Settlement Agreement serves to resolve outstanding issues emanating from DE 10-195, with the most notable issue being the Wood IPPs' New Hampshire Supreme Court appeals of the Commission's orders in that docket. As part of the Settlement Agreement, the parties to that document have agreed to support the PPAs filed in this proceeding. In addition, the Wood IPPs agreed to withdraw their pending appeals which allowed construction of the Berlin Station project to proceed. More specifically, the Settlement Agreement provided a procedure for the Wood IPPs withdrawal of their New Hampshire Supreme Court appeals set forth in Exhibit B related to the closing of the financing on the Berlin Station biomass power plant. The Settlement Agreement also provides for the parties' mutual release of any and all claims associated with:

- Docket No. DE 10-195;
- the then pending appeals to the New Hampshire Supreme Court;²
- the amended PPA associated between PSNH and Berlin Station (except for any

² The New Hampshire Supreme Court granted the Wood IPPs' notice of withdrawal of their appeals on September 2, 2011.

1 contractual obligations between the parties arising thereunder) ; and

- 2 • the PPAs with the Wood IPPs (except for any contractual obligations between the
- 3 parties to the PPAs arising thereunder).

4 Any claims related to the above subject include "...their negotiation, execution and
5 delivery, and any conduct, communications, negotiations, meetings, course of dealing or
6 other actions."³ According to Mr. Labrecque, "[t]he Settlement, Release and Support
7 Agreement was intended as part of the comprehensive settlement of all claims."⁴

8 **Q. Are any of the released claims specified?**

9 A. No. Section 3 of the Settlement Agreement contains many general words and phrases
10 such as "...of any kind or nature, whether at law or in equity, whether asserted or
11 unasserted, whether known or unknown, and whether now or hereafter existing..." Thus
12 it is not known what claims, if any, are actually being released and by what parties.
13 PSNH and the Wood IPPs have both indicated that they are "unaware of any specific
14 cause of action" that would be covered by the Settlement Agreement.⁵ In the mutual
15 release section of the Settlement Agreement, section 3, PSNH represents that it does not
16 know of any claims against or with respect to any other party to the agreement.

17 **Q. Given the nature of the Settlement Agreement, why is Commission approval of it**
18 **necessary?**

19 A. In response to a question on this subject, PSNH stated:

20 As indicated in the response to Question Staff 2-3, PSNH is unaware of
21 any specific cause of action that would be covered by the settlement
22 agreement. However, as PSNH shareholders make no return whatsoever

³ Settlement, Release and Support Agreement, Section 3.

⁴ Testimony of Richard Labrecque at 6, lines 18-19.

⁵ See Attachments SEM-1 and SEM-2, PSNH's response to Staff 2-3 and the Wood IPPs' response to Staff 1-3, respectively.

1 from these agreements, those shareholders cannot be asked to take on the
2 risk that the Company's entry into the Settlement, Release and Support
3 Agreement, and the mutual releases contained therein, were imprudent.⁶
4

5 While I can understand PSNH's concern regarding prudence of its decision to enter into
6 the Settlement Agreement, given the possibility that Commission approval of the releases
7 set forth in the Settlement Agreement, including the release of claims by PSNH to the
8 Wood IPPs mentioned in the joint petition, could have regulatory consequences affecting
9 PSNH's customers, without more specificity provided in relation to released claims, it is
10 unclear to me how an informed decision can be made regarding approval of the
11 Settlement Agreement. In addition, PSNH states that the Commission has authority to
12 approve the Settlement Agreement under its ratemaking authority.⁷ The connection
13 between approval of the Settlement Agreement and the Commission's ratemaking
14 authority is also unclear to me.
15

16 **III. Power Purchase Agreements**

17 **Q. Please briefly describe the PPAs.**

18 A. As set forth in the joint petition, PSNH has entered into five similarly structured
19 "Transaction Confirmations" to purchase unit contingent energy from Bridgewater,
20 Bethlehem, Tamworth, Springfield and Alexandria. PSNH considers purchases to be
21 made under the PPAs as "supplemental power purchases" pursuant to RSA 369-
22 B:3,IV(b)(1)(A).⁸ The PPAs do not involve the purchase of capacity or renewable energy
23 certificates (RECs). As the PPAs are similarly structured and have their own confidential

⁶ See Attachment SEM-3, PSNH response to Staff 2-5.

⁷ See Attachment SEM-4, PSNH response to Staff 1-4.

⁸ Joint Petition at 3.

pricing terms, my testimony will, for the most part, discuss all of them generically.

Q. What are the durations of the PPAs?

A. Although they vary, they are relatively short-term contracts that all have durations of less than two years. The durations are all based on the purchase by PSNH of a certain level of output, but they are further limited either by the passage of a specified amount of time or by prescribed sunset dates particular to individual PPAs.

Q. Did the Joint Petitioners provide any explanation as to how the durations were determined?

A. Yes, but in a general sense. As described in the testimony of Staff Advocate Thomas Frantz, a participant in the negotiation of the PPAs:

The term length is long enough to give the plants some stability while longer term solutions can be evaluated which may aid their long-term viability, perhaps through potential changes in the Renewable Portfolio Standard, RSA 362-F, or for market conditions to change that would allow them to compete successfully in the regional electricity market. At the same time, the term is short enough that the benefits realized by the settlement are not outweighed by the pressure of above-market costs.⁹

Mr. Frantz went on to state that Advocate Staff also had a concern of not wanting to have to readdress the same issues in another six or twelve months.

Q. How is pricing determined for the PPAs?

A. Each PPA has an established base energy price per megawatt-hour (MWh) that stays constant for any portion of a calendar year encompassed by the PPA. In addition, each PPA includes a fuel price adjustment mechanism that requires separate quarterly payments to or from the Wood IPPs depending on the extent to which delivered wood prices are either above or below what is identified in each PPA as the Initial Wood Price.

⁹ Testimony of Thomas Frantz at 5-6.

1 **Q. Do the fuel price adjustment payments have any effect on the energy price paid per**
2 **MWh?**

3 A. Not directly. What I mean by that is the fuel price adjustment payments do not directly
4 alter the energy price paid. However, since those payments are part of the total net
5 amount paid by PSNH to the Wood IPPs, then the payments can be viewed as having an
6 implicit impact on the price paid per MWh. Therefore, to the extent delivered wood
7 prices exceed the Initial Wood Price specified in a PPA, one could view the energy price
8 paid as an increase over the stated energy prices of the contract. Similarly, to the extent
9 delivered wood prices are lower than the Initial Wood Price specified in a PPA, one could
10 view the energy price paid as a decrease from the stated energy prices of the contract.

11 **Q. Is the energy pricing for the PPAs expected to be above-market?**

12 A. Yes. Mr. Frantz estimated that above-market costs over the life of the PPAs would be
13 approximately \$20 million.¹⁰ Similarly, Mr. Labrecque estimated the above-market costs
14 of the PPAs to be approximately \$24 million.¹¹ The major difference between the two
15 estimates was that Mr. Labrecque's included an assumed \$2 per ton fuel price adjustment
16 over the terms of the PPAs while Mr. Frantz's estimate was based solely on the energy
17 price and its relation to then-current futures prices for energy.

18 **Q. Are those estimates reasonable?**

19 A. Yes. At the time of the filing, I calculated similar estimates. Above-market estimates
20 will vary based on assumptions regarding future energy prices, wood prices and inflation.
21 Futures prices for energy as of October 11th as compared to when the filing was made
22 have actually declined slightly, which would increase the over-market calculation.

¹⁰ Testimony of Thomas Frantz at 7, line 5.

¹¹ Testimony of Richard Labrecque at 6, line 6.

1 However, due to the passage of time since the filing, the durations of the some of the
2 PPAs may actually be shorter than originally assumed by the Joint Petitioners due to the
3 prescribed sunset dates. The interaction of those two factors have essentially offset one
4 another, resulting in above-market estimates that are virtually unchanged.

5 **Q. How were the Initial Wood Prices for each of the PPAs determined?**

6 A. As explained in the Advocate Staff's response to Staff 2-8, the Initial Wood Price was
7 based on an examination of the actual wood prices paid at the respective wood plant over
8 the prior six- to twelve-month period.¹²

9 **Q. Each PPA states that the Initial Wood Price was "subject to verification, review and**
10 **approval by the NH PUC." Could you explain how such verification was to take**
11 **place?**

12 A. Certainly. Although the verification process was not detailed in the initial filing, through
13 discovery the Joint Petitioners described the process as one that involved review and
14 audit of wood fuel price information that

15 would include both summary data regarding wood fuel purchases during
16 the period used to determine the "Initial Wood Price" and copies of
17 supporting data documenting the purchase transactions completed during
18 the relevant period.¹³

19
20 The purpose of the review was to verify that the Initial Wood Prices fairly and reasonably
21 reflected wood prices actually paid by the Wood IPPs at a time near to the
22 commencement of the PPAs. In that same discovery response, the Joint Petitioners stated
23 that it was envisioned that following verification of the Initial Wood Prices, a verification
24 report and/or supplemental testimony would be filed summarizing the verification

¹² See Attachment SEM-5.

¹³ See Attachment SEM-6, Advocate Staff response to Staff 1-15.

1 process and would include conclusions and recommendations. I offer my testimony as
2 the verification report.

3 **Q. Has verification of the Initial Wood Prices taken place?**

4 A. Yes, with respect to all of the PPAs except one. On September 20, 2011, Thomas Frantz
5 representing Staff Advocates, Stephen Eckberg representing the Office of the Consumer
6 Advocate and I reviewed historic wood price information at the law offices of Olson &
7 Gould, PC for four of the IPPs. For each plant, supporting information was provided that
8 detailed wood deliveries by date, supplier, tonnage, cost per ton and total amount paid.
9 The information was well organized and found to support the Initial Wood Prices stated
10 in the PPAs. I did not have any concerns that information supplied was inadequate, nor
11 am I aware of any such concerns from Messrs. Frantz and Eckberg. Therefore, in the
12 event the Commission approves the PPAs, I recommend that the Initial Wood Prices
13 contained in those four contracts be included in the approval.

14 **Q. Why weren't the Initial Wood Prices for all of PPAs verified at the same time?**

15 A. One of the Wood IPPs has a PPA that commences in mid-2012. In order to establish the
16 Initial Wood Price for that PPA, wood fuel price information for that plant for the six
17 months prior to inception of the PPA will have to be provided for review. Once that
18 happens, a similar verification process will take place.¹⁴

19 **i. Public Interest Considerations**

20 **Q. Please discuss the public interest considerations.**

21 A. According to the petition, the Joint Petitioners seek Commission approval of the PPAs
22 pursuant to RSA 374:57 and the Public Utility Regulatory Policies Act (PURPA), 16

¹⁴ Id.

1 U.S.C. 824a-3 and the FERC implementing regulations, 18 C.F.R. 292.301(b) and 18
2 C.F.R. 292.304(a)(1)(i). I am not an attorney but on information and belief, RSA 374:57
3 authorizes the Commission to disallow amounts paid by an electric utility under energy
4 purchase agreements if it finds that the utility's decision to enter into the transaction was
5 "unreasonable and not in the public interest." Similarly, 18 C.F.R. 292.304(a)(1)(i) states
6 that the rates for purchases by an electric utility from a "qualifying facility" as defined in
7 PURPA shall be "just and reasonable to the electric consumers of the electric utility and
8 in the public interest." The petition also states that the energy purchases under the PPAs
9 are "supplemental power purchases" under RSA 369-B:3,IV(b)(1)(a). This statute
10 provides that until the completion of the sale of PSNH's ownership interests in its New
11 Hampshire fossil and hydro generation assets, PSNH must supply default service from its
12 generation assets and "if necessary, through supplemental power purchases in a manner
13 approved by the Commission," and specifies that the price of default service must be
14 PSNH's "actual, prudent and reasonable" costs of providing such power, as approved by
15 the Commission. To me, the references to "public interest" in the laws indicate that the
16 PPA energy prices to be paid relative to the market and rate impacts are not the only
17 factors that may be considered in determining whether the PPAs should be approved and
18 that factors based on other public interests and public policies, such as the impacts to the
19 state and local economies and the wood industry as well as the effect on the jobs of those
20 employed both directly and indirectly by the plants are also relevant. I am also aware of
21 RSA 362-A:8,II(b), which provides that the commission "*shall, in all* decisions affecting
22 qualifying small power producers . . . consider the following factors in its decisions:

- 23 (1) The economic impact upon the state, including, but not limited to, job loss or
24 creation through the utilization of indigenous fuels for electric generation.

1
2 (2) The community impact including, but not limited to, property tax payments and
3 job creation.

4
5 (3) Enhanced energy security by utilizing mixed energy sources, including
6 indigenous and renewable electrical energy production.

7
8 (4) Potential environmental and health-related impacts.

9
10 (5) The impact on electric rates.” (italics added)

11
12 In addition to the policy interests described in the pre-filed testimony of Commissioner
13 Bald and Staff Advocate Thomas Frantz, Commissioner Bald provided additional
14 information in response to non-Advocate Staff’s data requests 1-5, 1-6 and 2-1, which are
15 attached as SEM-7. Commissioner Bald provided further information regarding the
16 evidence supporting the imminent closure of the Wood IPPs’ facilities in response to
17 non-Advocate Staff’s data request 2-2 (attached as SEM-8) Moreover, some of the
18 comment letters, including those from Governor Lynch, the five Executive Councilors
19 and certain State Senators refer to public policy considerations supporting their
20 recommendations to approve the PPAs.

21 **ii. PPA Conditions**

22 **Q. Do the PPAs contain any conditions?**

23 A. Yes. All of the PPAs contain the following conditions:

- 24
- Receipt of “NH PUC Approval;”
 - Closing on the construction debt financing associated with the Berlin Station biomass plant must occur on or prior to August 30, 2011; and
 - Each of the Wood IPP must maintain its “qualifying facility” (QF) status pursuant to federal regulations prior to and throughout the term of the PPA.
- 25
26
27
28
29
30

1 **Q. Skipping the first condition for the moment, what is the status of the other two**
2 **conditions?**

3 A. On September 8, 2011, PSNH filed notification that Cate Street Capital, the developer of
4 the Berlin Station biomass power plant, closed the construction debt financing on
5 September 2, 2011.¹⁵ As for the IPPs maintaining their QF status, I am not aware that
6 any of the Wood IPPs has not maintained its QF status and, considering the financial
7 implications, would expect them to remain diligent in doing so throughout the terms of
8 their respective agreements.

9 **Q. Going back to the first condition, what exactly does “NH PUC Approval” entail?**

10 A. “NH PUC Approval” is defined in the PPAs as follows:

11 “NHPUC Approval” means receipt of a final, nonappealable decision from
12 the New Hampshire Public Utilities Commission, approving the Petition
13 as submitted without alteration, modification or condition, and allowing
14 for full cost recovery of the rates, terms and conditions of this Agreement
15 by the Buyer in a manner not to increase the Buyer’s energy service rate as
16 set forth in the Petition.
17

18 **a. Proposed Cost Recovery for Over-Market Costs of the PPAs**

19 **Q. What was the manner of full cost recovery described in the petition?**

20 A. Paragraph 9 of the petition provides detailed concerning the proposed method of cost
21 recovery. Rather than repeat that section, I will summarize it. The proposed method of
22 recovery basically involves the following steps. First, the costs of the PPAs would be
23 recovered in their entirety through PSNH’s energy service rate. However, recognizing
24 that the energy price in the PPAs is above market, PSNH does not want above-market

¹⁵ The extension of the date of closing on the financing beyond August 30, 2011 was permitted pursuant to a “Modification and Extension Agreement.” See PSNH’s September 8, 2011 letter and related attachments.

costs to put upward pressure on its energy service rate.¹⁶ To offset the over-market portion of the costs of the PPAs, a liquidated amount of \$8.5 million would be shifted from recovery through the energy service rate to PSNH's distribution rate.

Q. What happens if the annual over-market cost of the PPAs exceeds \$8.5 million?

A. If such a situation was to occur, the Joint Petitioners have proposed that any over-market costs in excess of \$8.5 million be deferred for future recovery through PSNH's energy service rate.

Q. For how long would those excess over-market costs be deferred before recovery would begin?

A. There is no set period for deferral. In response to discovery, PSNH stated that it expected any deferral period would be in the range of one to three years, dependent on a number of factors.¹⁷

Q. How was the \$8.5 million amount to be transferred from recovery through energy service rates to distribution rates determined?

A. According to the Joint Petitioners, the \$8.5 million was a liquidated amount determined as part of the negotiation process and "was based on an estimate of the typical annual quantity of uncollectible expenses and regulatory assessment expenses that are allocated to the Energy Service rate reconciliation each year."¹⁸

Q. Did the Joint Petitioners intend for the \$8.5 million transfer to be temporary or permanent?

A. There is no definite answer to that question because we have received opposite answers

¹⁶ Apparently, this is to avoid the potential for increasing customer migration and thereby exacerbating the impact of customer migration on PSNH's energy service rate. This issue was the subject of Docket No. DE 10-160.

¹⁷ See Attachment SEM-9, PSNH response to Staff 1-17.

¹⁸ See Attachment SEM-10, PSNH response to Staff 1-8.

1 from PSNH and Advocate Staff. According to PSNH,

2 These costs are not energy related, i.e. they do not correlate with the
3 quantity of energy service provided, and were considered by the
4 negotiating parties to be candidates for transfer to the distribution rate.
5 The duration of the transfer should be permanent since these expenses are
6 not energy related.¹⁹
7

8 Contrary to that response, Advocate Staff stated that “[t]he duration of the transfer
9 is up to the Commission to decide, but it was not intended to be permanent.”²⁰

10 **Q. Have the Joint Petitioners attempted to reconcile those conflicting responses?**

11 A. Yes, but in my view the proffered explanations do not resolve the difference in
12 position between PSNH and Advocate Staff on this issue.

13 **Q. Referring back to PSNH’s response, what are your comments regarding the**
14 **statement that the allocated costs pertaining to uncollectible expense and the**
15 **Commission’s regulatory assessment do not correlate to the quantity of energy**
16 **service provided?**

17 A. That position is quite simple to discredit. Assume for purposes of this discussion
18 that in a given year PSNH’s energy service load migration to competitive supply
19 increases by 50%. As a result, PSNH has less energy service sales and less
20 energy service revenue. With lower energy service sales, total uncollectible
21 expense directly attributable to the quantity of energy service provided will
22 obviously decrease. Similarly, with lower energy service revenues, PSNH’s gross
23 utility revenue (on which the PUC assessment is based) will also obviously
24 decrease. In short, there is a definite relationship between uncollectible expenses

¹⁹ Id.

²⁰ See Attachment SEM-11, Advocate Staff response to Staff 1-8.

1 and regulatory assessment expenses on the one hand and the quantity of energy
2 service provided on the other hand. This reality is reflected in the Commission–
3 approved rate settlements described below that included the \$8.5 million as
4 allocable to energy service rather than to distribution service. The argument that
5 those costs should instead be collected through distribution rates on the ground
6 that there is no correlation is a hard one for me to understand.

7 **Q. How did those costs initially come to be included in the determination of energy**
8 **service rates?**

9 A. The costs became included in the energy service rate calculation as part of
10 settlements reached in PSNH's two most recent distribution rate cases, DE 06-028
11 and DE 09-035, whereby the costs were allocated to functional rate components.²¹

12 **Q. What is your impression of the intent of the proposed transfer of the costs back to**
13 **the distribution rate component?**

14 A. I view the transfer as no more than a clawback of items that were previously
15 bargained for, especially as PSNH's position is that the transfer should be
16 permanent.

17 **Q. If the Commission approves the method of cost recovery set forth in the Joint**
18 **Petition, should it be permanent or temporary?**

19 A. Although I do not support that proposal, if the Commission does approve it, then I
20 recommend that the transfer of costs to recovery through the distribution rate only
21 be for as long a period as the PPAs themselves.

²¹ See Attachment SEM-12, PSNH response to Staff 2-6.

1 **b. Potential Alternative Methods of Cost Recovery**

2 **Q. Noting your opposition to the proposed cost recovery methodology, and given that**
3 **in Section 10 of the Joint Petition PSNH has identified the proposed \$8.5 million cost**
4 **transfer as a condition precedent to its obligation to purchase power under the**
5 **Wood IPP PPAs, do you have any suggested alternatives?**

6 A. Yes. If PSNH is concerned that there be no upward pressure on its energy service
7 rate as a result of entering into the PPAs, then the following alternatives – some of
8 which would require legislative action – may provide the same result, but in a
9 different manner:

- 10 • Defer all above-market costs of the PPAs for future recovery through the
11 energy service rate;
- 12 • Recover the above-market costs of the PPAs through the stranded cost
13 recovery charge (SCRC); or
- 14 • Defer all above-market costs of the PPAs for future recovery in a method
15 to be determined by the legislature.

16 Below I will describe each of these potential alternatives in more detail along with
17 describing potential pros and cons of the various approaches. I offer these as
18 ideas for consideration purposes.

19 **Q. Please describe your first proposed alternative.**

20 A. Deferring all the above-market costs for future recovery through the energy
21 service rate would provide a singular method of treating the above-market costs
22 (as opposed to the Joint Petition). Recovery of the deferred amount could
23 commence at any such time when either the energy price in the PPAs becomes
24 below market or PSNH's energy service rate becomes lower than its marginal cost
25 of supplemental power. One drawback to this approach is that, given the

1 uncertainty of future market prices, the deferred amount may not be recovered for
2 quite some time.

3 **Q. Regarding your second alternative, what would be the rationale for treating the**
4 **above-market costs of the PPAs as stranded costs?**

5 A. Such treatment would be consistent with how the above-market costs of IPP
6 contracts that were in existence at the time industry restructuring was
7 implemented in PSNH's service territory have been treated. I realize that the PPA
8 contracts at issue in this proceeding are new rather than preexisting agreements,
9 but an argument could be made that the contracts qualify as "new mandated
10 commitments approved by the commission" pursuant to RSA 374-F:2, IV(c). A
11 question does arise, though, as to whether the PPAs could or should be considered
12 "mandated." One could argue that since there has been significant justification
13 for the PPAs as furthering important state policy goals, that could be considered a
14 form of "mandate." I acknowledge that this issue is not clear cut.

15 **Q. If the above-market costs were to be recovered through PSNH's SCRC, what would**
16 **be the rate impact?**

17 A. As the kilowatt-hour sales base for stranded costs is the same as for the
18 distribution rate, the rate impact would be the same \$0.00111 per kilowatt-hour as
19 included in the testimony of Mr. Frantz. One potential way to mitigate any
20 change to the SCRC pursuant to this alternative would be to begin recovery of the
21 over-market PPA costs after Part 1 of PSNH's SCRC, which is currently
22 approximately \$0.0071 per kilowatt-hour, terminates on April 30, 2013.

23 **Q. Please describe your third proposed alternative.**

1 A. There has been substantial testimony,²² as well as comment letters,²³ filed in this
2 case regarding the important public policy objectives at stake not just with the
3 PPAs, but including the ability of the Berlin Station biomass plant to begin
4 construction. Among the public policy objectives are those found in the
5 following state statutes: RSA 227-G:1 and RSA 227-J:1 (as cited by
6 Commissioner Bald on pages 5-6 of his testimony); RSA 362-A:1 and 362-F:1.²⁴
7 Looking at the stated purpose of RSA 362-A:1, the statute involves support for
8 “diversified sources of supplemental electrical power...that [use] indigenous and
9 renewable fuels.” Similarly, RSA 362-F:1 provides further support for
10 “renewable energy generation technologies...whether at new or existing
11 facilities,” and the statute is generally referred to in Governor Lynch’s letter
12 expressing support for the PPAs and the Settlement Agreement. Other support
13 letters from State Senators included in Attachment SEM-13 mention how
14 approval would allow the State time to develop a thoughtful and vetted long-term
15 sustainable policy. These letters support Commissioner Bald’s and Staff
16 Advocate Thomas Frantz’ testimony that the PPAs will provide some level of
17 certainty and stability as the State works out a more long term sustainable policy
18 solution.²⁵ Considering the wide ranging public policy goals and the widespread
19 economic impact of the operation of all the facilities along with the fact that the
20 PPAs are designed to allow time for potential solutions to be developed at the

²² See, generally, testimony of George Bald and testimony of Thomas Frantz.

²³ Numerous public comments letters have been filed, all urging support of the PPAs. In Attachment SEM-13, I have attached copies of letters from Governor Lynch as well as other State officials that describe certain public policy goals at issue in this proceeding.

²⁴ Copies of the relevant statutes are included as Attachment SEM-14.

²⁵ Pre-filed testimony of Commissioner Bald, page 6 at lines 12-14 and pre-filed testimony of Thomas Frantz , page 5 at lines 24-28.

1 legislature, it makes sense that recovery of the over-market costs should be part of
2 any legislative solution.

3 **Q. Do you have any suggestions as to how such a solution could be crafted?**

4 A. I do, but again I offer these suggestions for purposes of consideration and
5 discussion. One suggestion ties back to my proposed second alternative regarding
6 recovery of the over-market PPA costs through PSNH's SCRC. To the extent the
7 PPAs do not qualify as "new mandated commitments," then the legislature could
8 consider revising RSA 374-F:2, IV to include a provision that specifically allows
9 recovery of the over-market costs of these contracts to be recovered through
10 PSNH's SCRC.

11
12 A second potential legislative solution relates back to RSA 362-F. Considering
13 the support for renewable generation encompassed in that statute, the legislature
14 could consider allowing the over-market energy costs paid by PSNH to the Wood
15 IPPs to be made in lieu of Alternative Compliance Payments that would otherwise
16 be required from PSNH pursuant to RSA 362-F. Under this alternative, the over-
17 market power costs would be recovered through PSNH's energy service rate, but
18 there would be no net rate impact as those costs would substitute for Alternative
19 Compliance Payments which are included in the energy service rate calculations.

20 21 **IV. Conclusion**

22 **Q. Do you have any general thoughts regarding this proceeding as a whole?**

23 A. Yes. I recognize that the joint petition in this proceeding may have been the most

1 expedient way to provide a lifeline to the wood plants and the wood industry, not to
2 mention other businesses located near the plants. I also acknowledge that the durations
3 of the PPAs are relatively short-term to allow for either a change in market economies or
4 provide the opportunity to seek changes in New Hampshire state law. Therefore,
5 considering the specific and unique circumstances of this case, the Commission should
6 clearly state that any determinations made should be considered non-precedential.

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

8 **A.** Yes, it does.