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The Northeast Utilities System

Robert A. Bersak
Assistant Secretary and
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July 23, 2007

Ms. Debra Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

**Re: *Motion for Rehearing of Order No. 24,763*
Investigation into Implementation of the Energy Policy Act of 2005
Docket No. DE 06-061**



Dear Ms. Howland:

Enclosed for filing in the above-referenced docket is a Motion for Rehearing submitted by Public Service Company of New Hampshire ("PSNH"). This filing is being made in order to provide the Commission with additional factual background concerning the matters addressed in Order No. 24,763 while at the same time allowing PSNH to meet the statutory requirements of RSA Chapter 541 and Rule Puc 203.33.

PSNH was surprised by the unexpected issuance of Order No. 24,763. It was issued without the benefit of a hearing or completion of evidentiary review. As noted in the Motion for Rehearing, such an evidentiary hearing is a requirement of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). In addition, the Commission has long-recognized that the establishment of a generic standard as set forth in Order No. 24,763 further requires compliance with the rulemaking requirements of RSA Chapter 541-A.

While PSNH is appreciative of the Commission's intention and hard work in reviewing these policies, PSNH is concerned that the Commission issued this Order calling for a dramatic change in the state's electric energy policies before it had a full understanding of the impacts, costs, and time requirements of such a policy change. PSNH anticipated having further discussions among interested parties with the intention of reaching a settlement, followed by an opportunity to present evidence regarding each of these subjects at the hearing - - which was never held. Such a sweeping policy change, as set forth in the Order, is deserving of a greater understanding of its implications and feasibility.

The Order also contains several contradictions and/or lacks clarity on several points, thus making implementation of the Order problematic. A list of such points is attached to this letter.

As noted in the Motion for Rehearing, there are materially significant procedural and substantive gaps in the Order. The filing of the Motion for Rehearing is necessary to preserve our ability to contest facets of the Order which have been insufficiently vetted in order to protect against adverse impacts to our customers.

The procedural schedule agreed to by the parties, and adopted by the Commission, originally contemplated a collaborative process leading to a settlement acceptable to all parties, and a hearing to describe the benefits of that settlement. Neither the settlement nor hearing processes were given an opportunity to work. Granted, a settlement acceptable to all parties is not a guarantee; but, collaboration would likely allow for a minimization of issues and a greater success in implementing Commission and State policies. A hearing will always be required, for the statutory reasons discussed in the Motion.

PSNH fundamentally agrees with the Commission's desire to implement mechanisms that will lower the cost of electric energy to consumers caused by peak loads and improve electrical reliability. Due to the substantial lack of evidence concerning the costs and benefits of mandated time-of-day pricing across all hours of the year and for all customers, we are not convinced that the decision contained in the Order is an effective way of dealing with the peak load issue.

As noted in the accompanying Motion, the Company's innovative "Peaksmart" rate offering, which was recently made more financially attractive to customers, is an indication of a peak load management tool that PSNH has voluntarily implemented, and which customers have the choice to accept. This approach has been successful and PSNH believes that key parties need to aggressively pursue additional peak load period management programs, as it is these peak hours that create the greatest opportunity and need for action. Such an approach needs to be part of an integrated solution that involves cost-effective peak generating units to supplement customer focused peak load programs and energy efficiency programs.

We stand ready and willing to assist the Commission. The issues addressed in Order No. 24,763 require a comprehensive development of the underlying facts. Then, the parties should be given the opportunity to collaborate to develop a consensus recommendation to the Commission on how to move forward. PSNH would be a major participant in such an effort, and is willing to take the lead and provide the resources necessary to foster a successful collaborative effort.

The Commission should grant the Motion for Rehearing, and provide the time necessary to allow parties an opportunity to identify the issues, to discuss potential solutions, to understand the costs and benefits each solution would impose on electric prices in the state, and to allow a consensus recommendation of the parties to be provided for Commission consideration. After that effort, the Commission must implement the procedures required for compliance with both PURPA and RSA Chapter 541-A.

Ms. Debra Howand
July 23, 2007
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Thank you in advance for the Commission's consideration of this filing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Bersak". The signature is fluid and cursive, with a prominent initial "R" and "B".

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: Service List

Attachment 1

List of Issues/Concerns Making Implementation of Order 24,763 Problematic

- The Order requires utilities to file tariffs providing for time-based pricing of default service for all metered classes, yet it also requires the parties to consider whether time-of-use pricing should apply only to customers above some threshold annual usage amount.
- The Order states that consideration should be given to the technical requirements to enable customers to have real time pricing at intervals as frequent as every five minutes, yet it ignores the fact that real time prices are settled and determined on an hourly basis.
- There is no discussion in the Order on the role of marginal cost price signals and how marginal cost pricing is to be used to recover embedded cost revenue requirements. The reconciliation of marginal costs with embedded costs is extremely complex and needs to be fully discussed through technical discussions prior to performing rate design.
- The Order does not address how fixed costs should be allocated to time periods.
- The Order does not address how to deal with errors in forecasting time-differentiated costs vs. actual average costs in specific time periods.
- The Order does not specify the time periods to be used for designing on-peak, off-peak or shoulder hours rates, other than to state that such periods should be based on an analysis of hourly market price variations in ISO-New England's day-ahead and real-time markets.
- It is unclear whether the Commission's objective is to enable customers to reduce costs or whether there should be a specified price signal to customers even if it would result in higher costs to customers or even if the customer's load is not elastic.
- The Order does not address the level of customer charges that are acceptable to recover the additional costs of metering, communications, processing and billing.
- The Order does not consider how capacity costs associated with default service should get recovered under a time-of-day rate structure.
- The Order does not address the issue of customers being able to bypass the Commission's policy objectives through the selection of a competitive supplier.

- The Order does not discuss how to address the economic impact on individual customers of a mandatory and radical rate design change, and whether there should be any limitation on the amount of “winners” and “losers”.
- The Order does not contemplate or address the customer confusion that will result from a significantly more complicated rate design and bill structure.
- The Order does not consider whether the Commission’s objectives could be achieved through more ambitious, targeted peak load management programs.
- The Order questions the use of long-term fixed-price contracts for power procurement. PSNH is troubled with the mixed and conflicting signals being presented. At the same time the Commission is signaling its potential disfavor of longer term arrangements, the state has enacted new laws establishing procedures for the authorization of long-term purchased power agreements from renewable sources (RSA 362-F:9).
- The Order questions whether price based demand response would be more effective if PSNH purchased more of its power in the real time market and/or under short-term contracts. Such a policy would conflict with prior and on-going cases where the Commission encouraged PSNH to hedge its energy supply and fuel procurement requirements in order to shield customers from the effects of variations in real-time or spot commodity markets.

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 06-061

**INVESTIGATION INTO
IMPLEMENTATION OF THE ENERGY POLICY ACT OF 2005**

July 23, 2007

**MOTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
FOR
REHEARING OF ORDER NO. 24,763,
“ORDER REGARDING THE ADOPTION OF STANDARDS FOR
TIME-BASED METERING AND INTERCONNECTION”**

Pursuant to RSA 365:21, RSA 541:3 and Rule Puc 203.15, Public Service Company of New Hampshire (“PSNH” or the “Company”) respectfully requests rehearing of the “Order Regarding the Adoption of Standards for Time-Based Metering and Interconnection”, Order No. 24,763 (the “Order”) dated June 22, 2007. PSNH asserts that the Order was issued without proper procedural and substantive bases. As a result, the Order mandates binding actions which will have an unknown effect on consumers, which cannot be implemented within the time periods set forth therein, which may allow certain consumers to shift significant energy costs to other consumers, and which may have a disproportionate effect on smaller (i.e., residential and small commercial) consumers of electricity. As such, PSNH asserts that the Order is incorrect, unlawful, unreasonable, and arbitrary.

In support of this Motion for Rehearing, PSNH sets forth the following good reasons for such rehearing (RSA 541:3):

FACTUAL BACKGROUND

1. This proceeding concerns certain electricity-related responsibilities allocated by Congress to the states by the Energy Policy Act of 2005, Public Law No. 109-58, 119 Stat. 594 (2005) (“EPAAct 2005”). EPAAct 2005 was signed into law on August 8, 2005. Of note here, EPAAct 2005 requires the appropriate state regulatory authority to make specific determinations as to whether to implement certain standards, including, *inter alia*, time-based (“smart”) metering (including the time schedule for the applicable rates) and rules for interconnecting generation facilities located on customer premises with the grid. (EPAAct 2005 §§1252 and 1254, respectively). The law required such determinations to be completed not later than 18 months after the date of enactment of EPAAct 2005 for the time-based metering standard (i.e., February 8, 2007) (16 U.S.C. §2621(d)(14)(F), as amended by EPAAct 2005 §1252), and two years after the date of enactment of EPAAct 2005 for the interconnection standard (i.e., August 8, 2007). The Order comprises the Commission’s determinations with respect to these two standards.

2. The Order correctly summarizes the procedural history leading up to the issuance of that Order. As noted therein, this proceeding was initiated by the issuance of an Order of Notice on April 24, 2006, scheduling a prehearing conference in this proceeding for May 16, 2006, to be followed by a technical session. The prehearing conference and ensuing technical session took place as scheduled.

On June 6, 2006, PSNH filed a scoping document on behalf of the utility parties. The participants and Staff conducted a technical session on June 15, 2006, with Staff thereafter submitting an agreed-upon final version of the scoping document, which the Commission adopted by secretarial letter dated August 4, 2006. The scoping document included 19 issues or questions relating to the smart metering standard and eight questions relating to the interconnection standard.

On September 7, 2006, Staff submitted a proposed procedural schedule consented to by all the parties that included a discovery process, a settlement process, and a hearing regarding the anticipated settlement on February 6, 2007. On September 14, 2006, the Commission issued a secretarial letter that established a procedural schedule which

included the filing of initial and reply comments, and a discovery process. However, the Commission's schedule deleted the proposed settlement conference, and the September 14, 2006, secretarial letter also noted that the proposed hearing date of February 6, 2007, was no longer available, and sought an alternative hearing date proposal for either late January or early February. Ultimately, no settlement was offered in this matter, no testimony was ever received, and no hearing was ever scheduled for this proceeding. The June 22, 2007, Order was issued without the benefit of testimony, cross-examination, or a hearing.

PROCEDURAL DEFICIENCIES

I. The Order Does Not Comply with the Express Procedural Requirements Set Forth in the Public Utility Regulatory Policies Act of 1978 which Mandate an Evidentiary Hearing.

3. As noted above, this proceeding was initiated to comply with requirements set forth in EAct 2005. Sections 1252 and 1254 of EAct 2005 amended Section 111 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621) ("PURPA"), which is captioned "Consideration and Determination Respecting Certain Ratemaking Standards." In particular, these two sections added two new Federal standards to subsection (d) of PURPA §111: 14. Time-Based Metering and Communications, and 15. Interconnection. EAct 2005 requires that each State regulatory authority (in New Hampshire, the Public Utilities Commission) make a determination regarding whether these new standards should be implemented in their particular state. (*Ibid.*).

4. Subsection (a) of Section 111 of PURPA (16 U.S.C. 2621(a)) provides the overall requirement that each State regulatory authority must consider each of the standards set forth in Subsection (d) and determine whether or not to adopt each standard. Subsection (b) of Section 111 of PURPA (16 U.S.C. 2621(b)) sets forth the overall

procedural requirements that each State regulatory authority must follow in their consideration and determination. Subsection (b) reads:

(b) Procedural requirements for consideration and determination

(1) The consideration referred to in subsection (a) of this section shall be made after public notice and hearing. The determination referred to in subsection (a) of this section shall be -

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 2622(a) of this title, and in sections 2631 and 2632 of this title, the procedures for the consideration and determination referred to in subsection (a) of this section shall be those established by the State regulatory authority or the nonregulated electric utility.

5. Subsection (b)(1) of PURPA section 111 expressly requires that the State regulatory agency's consideration and determination whether or not to adopt any of the standards listed in Subsection (d) "shall be made after public notice *and hearing*." (Emphasis added.) Furthermore, Subsection (b)(1)(B) states that the determination "shall be based upon findings included in such determination and *upon the evidence presented at the hearing*." (Emphasis added.) PURPA section 3(6)(A) (16 U.S.C. §2602(6)(A)) provides a definition of such an evidentiary hearing:

(6) The term "evidentiary hearing" means -

(A) in the case of a State agency, a proceeding which (i) is open to the public, (ii) includes notice to participants and an opportunity for such participants to present direct and rebuttal evidence and to cross-examine witnesses, (iii) includes a written decision, based upon evidence appearing in a written record of the proceeding, and (iv) is subject to judicial review;

During the May 16, 2006, prehearing conference held in this proceeding, counsel for the New Hampshire Electric Cooperative, when discussing the Coop's jurisdictional situation and how the Coop would comply with these new PURPA requirements, correctly noted this hearing requirement: "And, the statute - - the PURPA statute requires that that

involve hearings, notice, a written decision, *etcetera.*” Transcript, Prehearing Conference, May 16, 2006, p. 18.

6. The Commission never held the required hearing in this matter. Although Staff’s September 7, 2006, proposed procedural schedule called for a hearing, and despite the September 14, 2006, Secretarial letter requesting an alternative hearing date, the Commission never scheduled a hearing, and as a result, none was ever held. There was no opportunity for parties to present direct and rebuttal evidence, nor was there an opportunity to cross-examine witnesses. Since there was no hearing, no “written record of the proceeding” exists, as required by PURPA. The Commission did not comply with the express procedural requirements of PURPA when it issued the Order comprising its consideration and determinations of these new PURPA standards without holding a hearing during which parties could present evidence and conduct cross-examination concerning the two new PURPA standards under consideration.

7. The procedural infirmity caused by the lack of hearing, and lack of an evidentiary record, is compounded in the Order. The Order references and relies upon responses to discovery questions which are not part of the record until properly introduced and admitted at a hearing and subjected to direct and cross examination. On page 11 of the Order, a response to Staff Data Request 1-10 by National Grid is referred to. Later on that page, a discovery response from Unitil is similarly referenced. On page 13, another National Grid discovery response is referenced. Unless offered and admitted into evidence, a data request response or other matters disclosed during discovery are not part of the evidentiary record of a Commission proceeding. *See*, Rule Puc 203.23 (i). Use of such discovery request responses in the Order without the benefit of a hearing is entirely inconsistent with Commission precedent and with the right granted to parties by PURPA to present direct and rebuttal evidence and to cross-examine witnesses.

8. The Commission must grant rehearing of Order 24,763 in order to schedule an evidentiary hearing in accordance with the requirements of PURPA where

parties may present evidence upon which the Commission may then make its findings and determinations.

II. The Order Implements a New Administrative Rule but Did Not Follow the Requirements of RSA Chapter 541-A for the Establishment of Rules.

9. Order No. 24,763 is titled “Order Regarding the Adoption of Standards for Time-Based Metering and Interconnection.” In this Order, per the statutory dictates of EAct 2005, the Commission has considered and mandated the adoption of a standard requiring implementation of time-based rates for all retail consumers of default energy service served by the state’s regulated electric distribution companies - - a group comprising over 85% of all electric consumers in the state. The implementation of a “standard, or other statement of general applicability adopted by an agency to...implement, interpret, or make specific a statute enforced or administered by such agency” is a “rule” under the Administrative Procedures Act, RSA 541-A:1, XV. *Bel Air Association v. New Hampshire Dept. of Health and Human Services*, 154 N.H. 228 (2006). The Commission’s new policy mandating time-based rates for virtually all electric consumers served by the state’s regulated electric companies is a policy which will have a profound impact on private rights. It is founded upon a desire to have consumers of electricity “reduce or shift their usage” or be subject to higher electric costs.

10. RSA Chapter 541-A sets forth statutory requirements for the adoption of rules. RSA 541-A:2, *et seq.* In the Order, the Commission has effectively adopted new administrative rules, but it did not adhere to the statutory rulemaking requirements. Amongst other requisites, the Commission did not file the proposed rule with the director of legislative services; it did not issue a Notice of Proposed Rulemaking; it did not give 20 days’ notice of its intent to hold a public hearing; it did not hold any such hearing; it did not list the people, enterprises and government agencies that would be affected by the

rule; it was not the subject of a fiscal impact statement.

11. Not only did the Commission not comply with the statutory requirements for the adoption of standard of general applicability, it also did not comply with its own properly adopted rules. Part Puc 205 of the New Hampshire Code of Administrative Rules encompasses the Commission's regulations regarding "Rulemaking." Rule Puc 205.01(a) requires that "A rule of the commission or any amendment or repeal thereof shall be adopted by the commission after notice and opportunity for hearing in accordance with this part." There was no notice. There was no hearing. Rule Puc 205.02 requires adherence to RSA Chapter 541-A rulemaking requirements. Rule 205.05 sets forth requirements for the mandatory public hearing, which was not held.

12. EAct 2005 does not provide any basis for the Commission to ignore the statutory requirements set forth in RSA Chapter 541-A. To the contrary, PURPA Section 111(b)(2) (16 U.S.C. 2621(b)(2)) specifically states that except as otherwise provided in paragraph 1 (which calls for the State regulatory authority's determination to be made in writing, based upon findings included in such determination and upon evidence presented at the hearing, and available to the public), "the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority...." State statutes and the Commission's own regulations have established procedures for adopting standards of general applicability – *i.e.*, the rulemaking requirements of RSA Chapter 541-A and Part 205 of the PUC rules.

13. By not adhering to the rulemaking requirements of both RSA Chapter 541-A and Part 205 of the PUC rules, the Commission has eliminated the legislative oversight required in the rulemaking process. The mandate that virtually all electric consumers in the state must be billed under time-based rates including peak, shoulder, and off-peak pricing will require the installation of electronic interval meters and related communications, data, and billing infrastructure, and has materially significant, and potentially adverse, consequences upon these consumers and the state as a whole. Yet, there has not been notice to the public of this significant sea-change in energy policy, nor

has there been a fiscal impact statement performed to determine how this sea-change will affect consumers (including potentially adverse economic impacts on state and local governmental agencies). For example, will schools have any significant ability to shift their consumption of electricity in order to avoid higher energy rates? If not, what impact will the mandate for use of time-based rates have on education funding costs in the state?

14. The Order also amends existing Commission rules without following the mandates of RSA Chapter 541-A and Part 205 of the PUC's own rules. The Order mandates the implementation of fixed, time-based pricing of default energy service for all customer classes. The Order notes that, by and large, existing metering would not be sufficient to implement either time-based or real-time pricing. (*See*, Order, p. 2., "Time-of-day pricing, however, requires an electronic interval meter.") The mandate to implement time-based rates will therefore require a mass conversion of existing meters. However, all existing meters comply with the requirements set forth in Rule Puc 303.03(a). This Rule provides:

Puc 303.03 Meter Reading.

(a) The customer shall be provided metering equipment for each service location which measures or provides information to determine the following:

- (1) The number of kilowatt-hours (kWh) registered; and
- (2) If applicable, the following:
 - a. Kilowatt (kW) demand;
 - b. Kilovolt amperes (kVA) demand; and
 - c. Kilovolt-ampere reactive (kVAr) demand.

This existing rule specifying required metering equipment does not specify that meters must include the ability to measure kWh, kW, kVA, or kVAr on a time-based methodology. To implement time-based rates, every meter would have to include the ability to record electric consumption each day during specified time periods, *i.e.*, electronic interval meters. Rule Puc 303.03 does not require such metering - - but Order 24,763 does. By Order alone, the Commission has effectively amended an existing administrative rule without following the appropriate rulemaking procedures. Even the

Commission's own rules note that amendment of an existing rule may only be adopted by the Commission after notice and opportunity for hearing in accordance with Part 205 of the PUC's rules and with RSA Chapter 541-A. Rule Puc 205.01, *et seq.*

15. There is precedent for the requirement to use the rulemaking process when determining the appropriateness of implementing PURPA standards. This is not the first time that the Commission has had to make considerations and determinations of Federal standards under PURPA. When PURPA was initially enacted in 1978, Congress first enacted such Federal public utility regulatory policy standards for state consideration. PURPA §§111 and 113 (16 U.S.C. §§2621, 2623). The Commission diligently complied with the statutory requirement to consider each such standard and to determine whether or not to adopt each standard. In 1978, due to the limitations set forth in PURPA §102 (16 U.S.C. §2612), PSNH was the only utility in New Hampshire affected by the Federal standards included in Title I of PURPA. (The Commission acknowledged this fact in Order No. 13,547, "Re: Utility Advertising," 64 NH PUC 55 (1979).) As a result, many of the initial PURPA standards included in §§ 111 and 113 were examined in PSNH-specific rate proceedings, as allowed by PURPA §112 (16 U.S.C. 2122) ("Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority)...may undertake the consideration and make the determination referred to in section 2621 of this title with respect to any standard established by section 2621(d) of this title in any proceeding respecting the rates of the electric utility." PURPA §112(a).)

Today, both National Grid (Granite State Electric Co.) and Unitil Energy Systems are also included within the coverage of Title I of PURPA. (The New Hampshire Electric Cooperative is also now subject to PURPA coverage; however, as the Coop is not subject to the Commission's ratemaking authority, the Coop is a nonregulated utility under PURPA and is responsible for making its own determination whether or not it will implement the PURPA standards.) Hence, National Grid and Unitil were included in this generic proceeding. It is important to note that this proceeding to consider the new PURPA standards was generic, and not part of a utility-specific rate proceeding.

16. Even during the initial PURPA proceedings of the late-1970s, on more than one occasion the Commission opted to review Federal standards contained in PURPA on a more generic basis, as it has done in this docket.

PURPA §113(b)(5) included restrictions on recovery of advertising costs as one of the Federal standards. Notwithstanding the fact that only PSNH was included within the coverage of PURPA at that time, the Commission opened a generic utility-wide proceeding to determine whether or not to adopt the Federal restriction on recovery of advertising costs. Order No. 13,547, “Re: Utility Advertising” 64 NH PUC 55 (1979). In that proceeding, the Commission correctly recognized that its consideration and determination of that Federal PURPA standard was indeed a rulemaking subject to the provisions of RSA Chapter 541-A. “Re: Utility Advertising” 65 NH PUC 499 (1980); Supplemental Order No. 14,620, “Re: Utility Advertising” 65 NH PUC 633 (1980). *See*, N.H. Code Admin. Rules Puc Part 310, “Rules Relative to Utility Advertising.”

17. Similarly, the Commission opened a rulemaking proceeding to consider the “Information to Consumers” standard contained in PURPA §115(f). Second Supplemental Order No. 14,545, “Re: Information to Consumers,” 65 NH PUC 517 (1980). The Commission also opened a follow-on rulemaking docket for additional considerations surrounding this PURPA standard. Second Supplemental Order No. 15,933, “Re: Information to Consumers,” 67 NH PUC 714 (1982). *See*, N.H. Code Admin. Rules Puc §1203.02, “Information to Customers”

18. In 1979-1980, the Commission correctly conducted its generic “Re: Utility Advertising” PURPA investigation as a rulemaking proceeding. In 1980 and 1982, the Commission correctly conducted its generic “Re: Information to Consumers” PURPA investigation as rulemaking proceedings. This same rulemaking process was required for the Commission’s generic investigation into the new PURPA standards created by EAct 2005. The Commission’s lack of adherence to the rulemaking requirements of RSA Chapter 541-A and Part 205 of the PUC’s rules nullifies the validity of Order No. 24,763. “No agency rule is valid or effective against any person or party, nor may it be enforced by the state for any purpose, until it has been filed as required in this chapter.” RSA 541-

A:22, I. *Bel Air Association v. New Hampshire Dept. of Health and Human Services*, 154 N.H. 228 (2006).

19. More recently, both the Commission and Commission Staff have taken the position that issues to be decided generically should be done in a rulemaking proceeding. “Re Kearsarge Telephone Co.,” 89 NH PUC 109 (2004). (“Our denial of OCA's request for modification of certain reporting requirements is without prejudice, since that subject is better addressed in a rulemaking or generic proceeding.” *Ibid.* at 130.) “Re: Granite State Electric Co.,” 89 NH PUC 253 (2004). (“Both Staff and Granite State opposed Freedom Energy's disclosure request on the ground that it is an issue that should be decided generically in a rulemaking....” *Ibid.* at 255.)

20. The Commission must grant rehearing of Order 24,763 in order to initiate a rulemaking in accordance with the requirements of RSA Chapter 541-A. Observing the procedural standards of PURPA and RSA 541-A will ensure that a determination whether to implement a new mandatory time-based method of designing electric rates that will be binding on the substantial majority of citizens, businesses, and governmental agencies within New Hampshire is comprehensively examined and vetted in the manner demanded by the law. Consumers will be informed of the proposed change via the public notice requirements; a hearing will take place where affected consumers can voice their positions; a fiscal impact statement would be developed to state the costs and benefits to the citizens of the state and to the political subdivisions of the intended action. Failure to grant a rehearing to initiate a rulemaking will result in the Order being invalid and ineffective against any person or party, nor may it be enforced by the state for any purpose. RSA 541-A:22.

SUBSTANTIVE ISSUES – TIME-BASED RATES

21. Due to the lack of a hearing prior to the issuance of the Order, the parties did not have an opportunity to present detailed substantive information concerning the

new PURPA standards, did not have the ability to present direct and rebuttal evidence and to cross-examine witnesses, and the Commission did not have the benefit of considering such information. As noted earlier, the procedural schedule developed by the parties and Staff always contemplated that there would be a settlement in this proceeding and a hearing regarding that settlement. The procedure utilized by the Commission leading up to the Order does not meet the requirements of either PURPA or RSA Chapter 541-A, and has resulted in adoption of a new standard without an adequate evidentiary basis.

22. PSNH is concerned that the Commission issued the Order without fully understanding the impact that mandatory use of time-based rates would have on consumers, including the costs to consumers and the time that would be necessary to implement the Order. Indeed, the Order itself recognizes that the Commission is unaware of the costs and obstacles to implementation of its Order – in the third ordering paragraph on page 29 of the Order, the Commission orders, *inter alia*, “that Staff and the parties file a report with the Commission no later than November 30, 2007 that details the current metering and billing capabilities of the utilities; [and] the time and cost to upgrade those systems in ways that are consistent with this Order....” In addition, Staff’s Reply Comments dated November 3, 2006, are telling with respect to this information gap: “*Given the complete lack of hard data on the costs and benefits of time-based rates structures in the comments, Staff recommends opening a proceeding to fill that information gap.*” Staff Reply Comments, p. 24. It is troublesome that “[g]iven the complete lack of hard data on the costs and benefits of time-based rates...” the Commission would mandate a new standard without first knowing whether that standard would provide any benefits to consumers; whether it is capable of being implemented on the schedule contemplated; if not, how long it would take to do so; and what the costs to consumers would be as a result of that mandate.

While the Order requires the parties and Staff to meet in technical sessions and file a report to address these issues, it also requires the utilities to file tariffs for time-based rates and requires PSNH to file a detailed description of the cost-based methodology it intends to use to calculate time-of-use rates by November 30th of this

year. Prior to requiring such detailed filings from the utilities, the Commission should determine whether the benefits are outweighed by the costs and amount of time required to implement time-of-use rates. Otherwise, the effort to draft tariffs and design rates could be fruitless.

23. As noted earlier, PSNH cannot implement the new mandatory standard for time-based rates utilizing the meters that are currently installed (except those serving less than 1/3 of 1% of the largest customers.) The new standard would require PSNH to remove and dispose of all its existing meters (which have an approximate book value in excess of \$35 million that must continue to be recovered through rates) and install new meters. Each new meter that has the capabilities necessary to meet the time-based rate requirements of the Order (but *not* real-time pricing) would cost approximately \$200. Considering PSNH has over 475,000 retail customers, direct metering costs alone result in an additional investment of almost \$100 million. To gather, store and transmit the data these new meters will be recording, additional infrastructure investments will be necessary with costs in the range of \$50 million to \$100 million. Additional billing and administrative costs would also be incurred, as well as on-going O&M costs of approximately \$4 million per year. While these costs estimates are highly preliminary, they do indicate the enormity of the cost of compliance for a policy with no computed direct benefits, nor an estimate of probable consumer load or behavior response.

24. Further, PSNH's present billing system is incapable of preparing bills utilizing the time-based rate structure mandated by the Order. A new billing system is currently under development as part of NU's Customer Services Integration (CSI) project, with an initial implementation scheduled for 2008. As with any large project, control of changes is a critical success factor. In order to effectively manage changes for the duration of the CSI project, a formal change control process (called "degrees of freeze") was developed and instituted. Billing system modifications at this time would be very problematic for PSNH and the CSI project during the integrated acceptance test, system certification, production implementation and post-implementation support phases of the project. Although the new billing system will have the foundation to adapt to

handle time-based rates, that enhancement will not occur until the core systems are installed. Realistically, the ability to bill time-based rates as described in the Order must await the initial roll-out of the new billing system, and would require significant additional programming to include substantial system interfaces to accommodate data communicated from the new meters at an estimated and very preliminary estimated cost of \$12 to \$24 million, and would not be available until 2010 at best.

25. The Order has made time-based rates mandatory because

If customers are given a the choice to take default service under either a non-time differentiated rate or a time-based rate, it is logical to expect that those who stand to benefit from the time-based rate will select that option while those who do not stand to benefit will select the non-time differentiated option. Such choices could lead to a higher peak demand and higher overall default service costs than would otherwise occur. Since this is contrary to the goals of controlling peak demand and reducing costs to customers, absent a showing that certain customers will face unacceptable and unavoidable rate impacts, we find a mandatory approach to time-based rates to be superior to a voluntary approach.

However, the Order only applies to customers of PSNH, Unitil and National Grid who utilize default energy service. As noted earlier, the New Hampshire Electric Cooperative will make its own determination whether or not to adopt PURPA standards. The state's municipal electric providers also need not comply with this mandate. From the start, approximately 13% of the state's consumers of electricity may not be subject to this mandate.

Of even greater concern is the fact that notwithstanding the "mandatory approach to time based rates" adopted by the Commission in order to prevent overall higher costs, the "mandate" only applies to consumers who utilize default energy service. As a result of the restructuring of the state's electric industry, in theory all of the customers of PSNH, Unitil, and National Grid have the ability to opt-out of this "mandatory" scheme simply by selecting a competitive energy supplier for their energy needs rather than using their utility's default energy service. At this time, competitive suppliers have chosen to market almost exclusively to the state's larger consumers of electricity - - but those large customers use much more electricity per capita than a smaller customer. Therefore, their migrating to or from default energy service would

have a significantly more dramatic impact on the success of time-based rates. Large customers having access to competitive alternatives would do exactly what the Commission's mandate is trying to avoid - - those adversely affected by the mandatory time-based rates will choose an unregulated supplier while those who benefit from the mandated rate will choose to be served under default energy service.

If as the Order states, "Such choices could lead to a higher peak demand and higher overall default service costs than would otherwise occur," a thorough analysis of the costs and benefits of mandatory time-based pricing is in order before a final decision is made, instead of one based upon "the complete lack of hard data on the costs and benefits of time-based rates structures" as noted by Staff.

Such an analysis might reveal that competitive energy suppliers must also have time-based energy rates in order to ensure success of this new policy. Moreover, unless competitive suppliers are also required to implement mandatory time-based pricing, customer migration to competitive supply would contravene the Commission's finding that "time-based pricing that enables demand response can be a cost-effective alternative to building new generation, adding to transmission and/or distribution capacity, or increasing electric usage, provided that consumers reduce or shift their usage in response to changes in retail prices." Simply put, if customers can escape mandatory time-based pricing by selecting a competitive supplier, there will be no demand response alternative to new generation, transmission or distribution facilities.

26. The Order also requires PSNH to file "draft tariffs to provide for fixed, time-based pricing of default service for all customer classes as detailed in this Order no later than November 30, 2007." The designing of new rates to implement the time-based rate mandate including peak, shoulder, and off-peak periods requires data that PSNH does not have. Before new time-based rates can be designed that fairly allocate costs and which would not create unfair costs or subsidies between various customers or customer classes, it is necessary to know what and when the peak, shoulder and off peak periods are. Presumably, these periods should be the same for all utilities, yet they are not spelled out.

27. Furthermore, a rate design cannot be accomplished until it is determined whether all, or only some subset of customers would be required to be served by such rates. The Order indicates that perhaps time-based rates should not apply to certain customers “under some threshold annual usage”.

28. There is no discussion in the Order on the role of marginal cost price signals and how marginal cost pricing is to be used to recover embedded cost revenue requirements. The reconciliation of marginal costs with embedded costs is extremely complex and needs to be fully discussed through technical discussions prior to the designing of rates.

29. The Order does not address such additional rate design matters as: how fixed costs should be allocated to time periods; how to deal with errors in forecasting time-differentiated costs vs. actual average costs in specific time periods; whether the Commission’s objective is to enable customers to reduce costs or whether there should be a specified price signal to customers even if it would result in higher costs to customers or even if the customer’s load is not elastic; the level of customer charges that are acceptable to recover the additional costs of metering, communications, processing and billing; how capacity costs associated with default service should get recovered under a time-of-day rate structure; the economic impact on individual customers of a mandatory and radical rate design change, and whether there should be any limitation on the amount of “winners” and “losers”.

30. The Order mandates the use of time-based rates using an ISO-New England recommended structure that includes a minimum of three periods: peak, shoulder and off-peak. Order, p. 24. ISO-NE was not a party to this proceeding, nor did it supply any written comments, nor were any representatives present at any of the informal sessions held in this docket. ISO-NE’s recommendations in this docket are only found in a brief footnote in Staff’s November 2, 2006, Reply Comments. PSNH has not had the opportunity to examine the proponent of this proposed three period rate structure.

31. Hence, the November 30, 2007 deadline for the filing of a draft tariff is extremely unrealistic and unreasonable. Any tariff proposal that is cobbled together without the necessary data could result in the unintentional shifting of millions of dollars in energy costs between customers, creating the very inter- and intra-class subsidies which the Order seeks to eliminate.

32. These matters illustrate the substantive reasons why the Commission must grant rehearing. The Commission must gather the data necessary to make an informed decision regarding the costs and benefits of its actions before mandating such a radical change to the state's energy policy. The data gathered by the Commission could well lead to different conclusions to those contained in Order No. 24,763.

SUBSTANTIVE ISSUES – INTERCONNECTION

33. The Order does not include any substantive decisions concerning the Interconnection issue. It only directs that further information and consideration is necessary. Therefore, there are no substantive issues requiring rehearing at this time. PSNH will be pleased to meet with Staff and the other utilities and Parties to discuss the interconnection issues.

CONCLUSION

PSNH strongly concurs with the need to address the impacts of peak loads on the cost of electricity for retail consumers. The Company's innovative "Peaksmart" rate offering (Rate VIP), which was recently made more financially attractive to customers, is an indication of a peak load management tool that PSNH has voluntarily implemented, and which customers have the choice to accept. The construction of cost-effective peak generating units may prove to be a less-costly means of addressing peak loads, rather than mandating across-the-board rate changes affecting every customer which will

require hundreds of millions of dollars of infrastructure costs - - with no guarantee that the desired outcome will ever be achieved.

The issues addressed in Order No. 24,763 require a comprehensive development of the underlying facts. Once those facts are developed, the parties should be given the opportunity to work collaboratively to develop a consensus recommendation to the Commission on how to move forward. PSNH would be a major participant in such an effort, and is willing to take the lead and provide the resources necessary to foster a successful collaborative effort.

For the reasons set forth above, PSNH urges the Commission to grant this rehearing request. An evidentiary hearing is required by PURPA - - one was not held. The New Hampshire Administrative Procedures Act (RSA Chapter 541-A) requires this proceeding to comply with the rulemaking requirements of New Hampshire law - - it did not.

“Given the complete lack of hard data on the costs and benefits of time-based rates structures,” the impacts of the mandate to use time-based rates are unknown. The costs of the infrastructure necessary to implement these rates (meters, data gathering, communications, storage, billing) as well as the time required to implement such rates are also unknown. There are enormously significant rate design principles that must be considered before new time-based rates can be designed, and a new tariff prepared. Finally, the Commission has recognized that the ability of large groups of customers to opt-out of this mandate could in fact increase peak demand resulting in higher overall costs for all customers.

The matters set forth herein provide compelling reasons requiring a rehearing of Order No. 24,763.

Respectfully submitted this 23rd day of July, 2007.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE



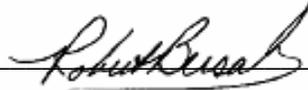
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Certificate of Service

I hereby certify that copies of the Motion have been served this 23rd day of July, 2007, upon parties granted full intervenor status in this docket pursuant to the requirements of Rule Puc 203.11(c).

A handwritten signature in black ink, appearing to read "Robert A. Bersak", is written over a horizontal line.

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