

1 **Q. Please state your names, business address, titles, and experiences.**

2 A. My name is Kenneth E. Traum. I am the Assistant Consumer Advocate for the Office of
3 Consumer Advocate (OCA), which is located at 21 S. Fruit Street, Suite 18, Concord,
4 New Hampshire 03301. I have been employed by the OCA for approximately 20 years.
5 I include my resumé as Attachment A.

6 My name is Stephen R. Eckberg and I am a Utility Analyst with the Office of Consumer
7 Advocate. I previously filed testimony in this docket on November 6, 2009, which
8 included my biographical information.

9

10 **Q. Mr. Traum, have you previously testified before the New Hampshire Public Utilities**
11 **Commission (Commission)?**

12 A. Yes, I have testified before the Commission on behalf of the OCA on many occasions,
13 including cases involving electricity, natural gas, water and telecommunications.

14

15 **Q. In Mr. Eckberg's testimony in this docket filed on November 6, 2009, he reserved**
16 **comment on the NHPUC Staff Audits of the four CORE utilities as the Audit**
17 **reports had only recently been provided to the OCA. Now that the OCA has had**
18 **time to review the Audit Reports and conduct written and oral discovery, are there**
19 **any issues you wish to raise related to the Audits?**

20 A. Yes. First, we note, as Mr. Eckberg did in his direct testimony, that this was the
21 first financial audit of the CORE programs since their inception in 2002. The
22 OCA greatly appreciates the efforts of the Commission's Audit Staff, and we

1 believe that these programs should be audited more frequently, at least every two
2 to three years.

3

4 **Q. What specific items related to the Audits will you cover in your testimony?**

5 A: We will address two items discussed in the Staff Audit: PSNH's violation of RSA 125-
6 O:5, and the Company's failure to consistently accrue interest on ratepayer funds on
7 behalf of customers.

8

9 **Q. Please explain PSNH's violation of RSA 125-O:5.**

10 A. By way of background, RSA 125-O:5, II, part of the Clean Power Act of 2002,
11 allows PSNH to use unspent CORE program funds from a prior year for
12 efficiency projects at its own facilities under certain circumstances. The law
13 states:

14 PSNH may utilize SBC funds equivalent to the unencumbered amount,
15 if any, rolled over from the prior program year for energy efficiency
16 projects at facilities owned and operated by PSNH, provided that the
17 company made a good faith effort in the prior program year to meet
18 the goals approved by the public utilities commission for its core
19 energy efficiency programs, and provided that the SBC funds used by
20 PSNH shall not exceed 2 percent of all SBC funds collected in the
21 prior program year.

22

23 The section goes on to require that PSNH submit a report to the PUC and to DES

24 in any year that the company takes advantage of this provision, "detailing how

25 these funds were utilized." However, as discussed on page 22 of the NHPUC

26 Staff Audit report, which was provided as Appendix A to the November 6, 2009

27 testimony of Staff witness James J. Cunningham, PSNH failed to file these reports

1 as required by RSA 125-O. As discussed in Audit Issue #5, “The statutory
2 requirement to provide reports of the fund utilization to both the PUC and DES
3 has not been met.” The Audit report goes on to explain that the statute provides
4 for penalties of up to \$25,000 for each violation as well as administrative fines of
5 up to \$2,000 for each offense. However, the report does not include any specific
6 penalty recommendation.

7

8 **Q: Does the OCA recommend a specific penalty and fine?**

9 A: Yes. The Audit report also quotes the statutory requirement that: “In any year
10 that PSNH utilizes SBC funds, PSNH shall submit a report to the public utilities
11 commission and the department detailing how these funds were utilized, and will
12 make the report available to interested parties.” The first of these reports was
13 made on September 30, 2009 even though funds were spent as early as 2006.
14 While it may reasonable to consider that the September 2009 report is a late filed
15 report on expenditures that occurred in 2008, additional reports should have been
16 filed for expenditures made in 2006 and 2007. This means PSNH was out of
17 compliance for at least 2 years by failing to file reports. The OCA recommends
18 that the Commission impose fines on PSNH of \$54,000, representing two \$25,000
19 fines, one for each year of violation, and similarly two \$2,000 administrative
20 fines.

21

1 **Q: Does the OCA have any other recommendations regarding PSNH's use of**
2 **this provision in RSA 125-O?**

3 A: Yes. Generally, we believe that the way PSNH has been holding 2% of the
4 funding for its own uses even in years when it overspends the CORE budget is
5 contrary to the law. The OCA understands from prior CORE program dockets
6 that in some years funding for programs like EnergyStar Homes and some C&I
7 programs are oversubscribed. We believe that PSNH should be taking much
8 more proactive steps to fund customer efficiency project prior to retaining any of
9 those funds for projects at its own facilities. We do understand that projects at
10 PSNH's facilities benefit ratepayers, but PSNH has access to much greater
11 resources to fund energy efficiency projects, and ratepayers often rely on the
12 CORE funding in order to invest in projects. It is our view that PSNH must
13 change its approach to the use of these funds accordingly.

14

15 **Q: Did Audit Issue #5 also indicate that as of December 31, 2008 PSNH had**
16 **retained \$1,824,320 of the 2% funds deducted from the SBC and held an**
17 **unspent balance of \$764,938?**

18 A: Yes. While that unspent balance in itself is troubling, what is more problematic is
19 that PSNH has not accrued interest to the benefit of ratepayers on these unspent
20 balances that are funds held on behalf of ratepayers. According to PSNH's
21 response to Audit-TS-01, Q-Audit-TS-004 (Attachment B), had interest been
22 booked monthly on the balances of these funds at the same Commission-approved

1 interest rate that is used on the other SBC funds, an additional \$319,676 would
2 have been available as of October 31, 2009 for CORE programs.

3

4 **Q. Should PSNH customers receive interest on the unused month end balances**
5 **held by the Company?**

6 A. Yes, and our position seems to be consistent with PSNH's policy on SBC funds.
7 PSNH's comment on Audit Issue #1 (page 15 of Audit report) states: "Since
8 inception of the CORE programs, PSNH has paid interest on any collected but
9 unspent System Benefits Charge funds. This is based on the principle that the
10 interest pays back customers for the use of their funds, not unlike paying interest
11 on customer deposits." The 2% funds are part of the SBC funds supplied by the
12 customers. Therefore, the same rationale should apply.

13

14 **Q. What is your understanding of what PSNH would have done with the**
15 **balance, which amounted to \$764,938 as of December 31, 2008?**

16 A. This balance would have been used to reduce PSNH's borrowings from the NU
17 money pool or increase its positive balance in the fund. This means that PSNH
18 would have either avoided interest costs or experienced additional interest
19 revenues from SBC funds.

20

21 **Q. What should PSNH do regarding the calculated amount of \$319,676?**

1 A. The amount of \$319,676 for interest should be credited to the CORE programs to
2 the benefit of ratepayers.

3

4 Q. **In the future, should PSNH and the other CORE utilities accrue interest on**
5 **all unspent SBC funds?**

6 A. Yes.

7

8 Q. **Are there any related issues regarding interest on unspent balances?**

9 A. Yes. According to PSNH Audit Issue #1 (See PSNH Audit Report pages 15-16)
10 there is a similar issue related to Forward Capacity Market revenues and costs.
11 As these FCM revenues were realized as a result of ratepayer funded CORE/SBC
12 activities, all of the revenues as well as costs related to these programs should be
13 booked monthly into the CORE fund balances, and should therefore accrue
14 interest. According to the Audit Report, the Company properly included the
15 expense portion of the monthly calculation, but the revenue portion was not
16 included. The result is that monthly interest was not calculated on the revenue
17 portion of the FCM activities. The unaccrued interest in 2008 was \$13,572. The
18 OCA's position is that this amount is should also be credited to the CORE
19 programs to benefit ratepayers.

20

21 Q. **Should this approach apply only to 2008 and only to PSNH?**

1 A. No. This should be the ongoing approach and should apply to all of the CORE
2 utilities who participate in the FCM and have associated costs and revenues.

3
4 **Q. Do you have any additional Audit related issues to raise at this time?**

5 A. No.

6

7 **Q. Mr. Eckberg, do you have any issues that you would like to address on**
8 **rebuttal?**

9 A. Yes, I have several. They include: 1) Staff's proposed formula and methodology
10 for determining the Low Income HEA Budget; and 2) Staff's position regarding
11 the proposed Home Performance with EnergyStar program for PSNH and UES.
12 However, I unfortunately must note that the OCA received discovery responses
13 on several issues as late as the day before this testimony was due. As a result, we
14 have not had sufficient time to review and analyze those responses. Therefore, I
15 must continue to reserve my rights to raise additional issues related to this
16 information at the hearing.

17

18 **Q. Please discuss your first issue regarding the proposed formula and**
19 **methodology proposed by Staff for determining the Low Income HEA**
20 **Budget.**

21 A. Based on amended data responses, Mr. Cunningham has recommended a
22 downward revision to the HEA Budget from the level he proposed in his direct

1 testimony. His current recommendation appears to be \$2,253,371 for 2010, or
2 approximately 11.7% of SBC revenues collected for Energy Efficiency. *See* Staff
3 Response to OCA Question 1-9, Attachment C.
4

5 **Q. Is this an increase or a decrease from the current 2009 HEA Budget?**

6 A. This represents a significant decrease from both the current 2009 HEA budget and
7 the utilities' 2010 proposal. The current 2009 Program Year HEA Energy
8 Efficiency budget is \$2,641,742. *See* page 80 of Appendix A to Settlement filed
9 in DE 08-120 on 12/10/08. The 2010 proposal made by the utilities includes an
10 HEA budget of \$2,870,141.
11

12 **Q. What is the basis that Mr. Cunningham cites as his recommendation for this**
13 **budget recommendation?**

14 A. In his Direct Testimony at page 14, Mr. Cunningham states that the utilities'
15 proposed 14% budget level "is not supported based on any formula approach; but,
16 rather is based on a negotiated approach among the parties and hence is not
17 transparent."
18

19 **Q. Do you agree with Mr. Cunningham's statement?**

20 A. No. I do agree that the current program year budget level and the proposed 14%
21 level for 2010 are the result of a negotiated approach, similar to the general
22 approach used since the inception of the CORE programs. However, I do not

1 agree that this number is “not transparent.” The Low Income Needs Assessment
2 Group, consisting of members of CORE utilities, Staff, OCA, NHLA, last year
3 expended considerable effort to research available New Hampshire-specific
4 poverty and household data to determine the level of need for the HEA program
5 services. As discussed in my Direct Prefiled Testimony in this docket beginning
6 on page 5, that group presented its research and findings to the CORE
7 Management Team so that an informed budget decision could be made that
8 balances the needs of the HEA program with other programs serving other
9 sectors. In addition, it is not my understanding that the budgets for any other
10 CORE Energy Efficiency programs – either residential or commercial – are the
11 result of applying any more “transparent” budget formulas which apply specific
12 data or methodology to developing a budget. In addition, all budgets for the
13 CORE programs, including the HEA budget, are developed through a public
14 process that allows any interested party to participate. Those budgets are then
15 presented to the Commission in open, public hearings, and are approved if the
16 Commission finds that they are in the public interest. I believe that this is a
17 transparent approach in which the parties strive to make the best possible
18 decisions in light of very limited funding.

19
20 **Q. Do you have any concerns about Staff’s proposed approach?**

21 A. Yes. In response to data requests, Mr. Cunningham has stated that “Staff’s
22 formula approach does not address *participation* numbers; rather, Staff’s formula

1 approach addresses the HEA budget allocation *percentage* and HEA budget
2 *amount.*” [Emphasis in original] See Staff Responses to 12-01-09 Technical
3 Session Questions from The Way Home TS-3, Attachment D.

4

5 **Q. Why does this concern you?**

6 A. Over the course of many years of discussion about the Low Income HEA budget,
7 parties have been mindful when developing low income budgets of more than just
8 the total dollar amount of the budget. There has also been concern about
9 addressing the average cost per job and the total number of “weatherization” jobs
10 that can be performed within the confines of the budget. It is troubling that Mr.
11 Cunningham’s proposal appears to give no consideration to these aspects of the
12 HEA Budget process. It is also not clear from Mr. Cunningham’s statement as
13 quoted above whether Staff is also proposing a change to the way the Low
14 Income Budget would be funded from the total SBC budget.

15

16 **Q. Would you please elaborate on that issue related to how the HEA budget is**
17 **derived from the total CORE budget?**

18 A. Yes. Until now, the Low Income budget has always been taken “off the top” of
19 the CORE budget. That is, once the Low Income budget percentage level was
20 established and approved, both sectors (Residential and C&I) contributed equally
21 to that budget before the budgets for the programs in those sectors were
22 developed. This has a history going back to the original Energy Efficiency

1 Working Group, as discussed in detail in Mr. Colton's Direct and Rebuttal
2 testimony on behalf of The Way Home. Despite this, Mr. Cunningham's
3 testimony and subsequent data responses show that his proposed formula
4 approach develops an HEA budget that changes this long-standing Commission-
5 approved approach. However, I am not clear as to what Mr. Cunningham
6 proposes as the next step in funding the HEA budget. Will the low income
7 program continue to be funded as it has up until now – equally from both sectors
8 – or is Mr. Cunningham is also proposing a change in that part of the funding
9 formula? I have not been able to determine that yet. It appears that Mr.
10 Cunningham proposes funding the HEA budget by taking 62% of his proposed
11 HEA budget from Residential, and 38% from C&I. *See* Attachment C, Staff
12 Response to OCA 1-9.

13

14 **Q. Why does this important issue remain unclear at this late point in the**
15 **Docket?**

16 A. The extremely short timeline of this docket, combined that significant number of
17 extra steps that parties have worked hard to fit into the compressed schedule –
18 testimony, review of Audits, review of PSNH's RSA 125:O report, rebuttal – has
19 made it very difficult to engage in as fully a productive manner as the OCA would
20 like, and which the parties would do in a typical CORE docket.

21

1 **Q: What do you recommend that the Commission do with respect to the HEA**
2 **budget?**

3 A: I respectfully request that the Commission approve the budget as proposed by the
4 utilities. It is my understand that all parties to the Docket, other than Staff,
5 support the 14% as a fair compromise in light of the high level of need for the
6 HEA program and the overall funding limitations for all CORE programs. I also
7 urge the Commission not to change the long-standing approach developed
8 through nearly ten years of work on these programs as Staff suggests, I believe
9 without basis.

10

11 **Q. Please address your concerns regarding Staff's position on the Home**
12 **Performance with EnergyStar program.**

13 A. I am concerned that Mr. Cunningham's testimony suggests that the HPwES
14 program is not as cost effective as other programs on a kWh basis. In doing so,
15 he fails to consider information provided regarding the non-kWh savings
16 predictions. *See* Cunningham Direct page 13 lines 15-18. Clearly, PSNH and
17 UES, the two utilities proposing to continue the HPwES program, are including
18 energy savings from heating fuels – not just electric related kWh savings. This
19 must be taken into consideration when evaluating the HPwES program, but Mr.
20 Cunningham fails to do that.

21

1 **Q. Earlier you reserved your rights to cover additional issues at the hearing as a**
2 **result of receiving information the day before this testimony was due. Can**
3 **you provide a description of some of those issues at this time?**

4 A: Yes, I can briefly describe a few issues that are of concern. First, in discovery it
5 came to light that the utilities have been significantly underspending their
6 marketing budgets. This is disappointing at best, and at worst calls into question
7 basic issues about their management of the programs. For example, in response
8 to Data Response USES-01-Q-USES-005 (Attachment E), PSNH provided a table
9 showing that in every year of the CORE programs, the company has significantly
10 underspent its marketing budget for the programs, in one year by a factor of
11 twenty (see the data for 2006). Despite this ongoing significant underspending,
12 PSNH proposes a marketing budget for 2010 of over \$330,000 (see p. 88 of 2010
13 filing). The OCA certainly believes that it is preferable to spend CORE funds on
14 programs rather than marketing, but this is an unreasonable pattern that again
15 calls into question the utilities' overall strategic management of the CORE
16 programs. As a result, we have sought additional information from the other
17 utilities, as well as a marketing plan for 2010. It is our belief that this area
18 warrants much more attention from the Commission and from the parties.
19 Another issue relates to whether the utilities are meeting their goals in the overall
20 CORE program budgets. We would like to investigate this further to ensure that,
21 in light of the significant need for funding for energy efficiency, the funds are
22 being fully expended to benefit ratepayers.

1

2 **Q: Does that conclude your testimony?**

3 **A:** At this time, yes.

4

