

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-216**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Alternative Default Energy Service Rate**

**Order Conditionally Approving Alternative Default Energy Service Rate Pilot Program**

**ORDER NO. 25,488**

**April 8, 2013**

**APPEARANCES:** Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; James T. Rodier, Esq. on behalf of Freedom Logistics, LLC, Halifax-American Energy Company, LLC and PNE Energy Supply LLC d/b/a Power New England; Robinson & Cole, LLP by Joey Lee Miranda, Esq. on behalf of Retail Energy Supply Association; Office of Consumer Advocate by Susan W. Chamberlin, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

**I. PROCEDURAL HISTORY**

On April 27, 2012, Public Service Company of New Hampshire (PSNH or the Company) filed testimony and related exhibits, including illustrative tariffs, describing its proposed alternative default energy service rate (Rate ADE). PSNH designed Rate ADE as a new energy service rate for customers who return to PSNH for energy service after taking energy service from a competitive supplier. PSNH made the filing pursuant to Order No. 25,320 (January 26, 2012) in the instant docket.<sup>1</sup>

In Order No. 25,320, the Commission denied PSNH's petition for Rate ADE as filed on September 23, 2011 and directed PSNH to redesign Rate ADE to address: (1) the absence of a mechanism to reflect market price impacts on the rate; (2) the potential for gaming inherent in the proposal; and (3) the lack of an objective basis for the calculation of the proposed "adder" of

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<sup>1</sup> See Order No. 25,320 for the procedural history for Docket No. DE 11-216 through January 2012.

one cent per kilowatt-hour (kWh). On April 27, 2012, PSNH filed a revised Rate ADE that, according to the Company, addressed the concerns identified in Order No. 25,320.

In the earlier phase of this docket, the Office of Consumer Advocate (OCA) filed a letter of participation pursuant to RSA 363:28 and the Commission granted a motion to intervene by Freedom Logistics, LLC d/b/a Freedom Energy Logistics (FEL) and Halifax-American Energy Company, LLC (HAEC).

On May 4, 2012, FEL filed a motion to dismiss PSNH's request for approval of its proposed Rate ADE. PSNH filed an objection to the FEL motion on May 14, 2012, to which FEL filed a reply on May 15, 2012. On June 8, 2012, the Commission issued Order No. 25,372 denying FEL's motion to dismiss. On May 24, 2012, the Commission issued Order No. 25,368 suspending PSNH's tariffs and scheduling a hearing.

The Retail Energy Supply Association (RESA) and PNE Energy Supply LLC d/b/a Power New England (PNE) filed motions to intervene on May 25 and May 30, respectively. The Commission granted both motions on June 19, 2012.<sup>2</sup>

Staff filed a proposed procedural schedule on June 20, 2012. FEL and PNE filed a letter on June 20 asking that post-hearing briefs be added to the schedule. The Commission approved the procedural schedule by secretarial letter on June 29, 2012 and stated that post-hearing briefs were not necessary. The parties engaged in discovery and, pursuant to the procedural schedule, Staff and the OCA filed testimony on August 24, 2012. PNE filed testimony on August 27, 2012 and PSNH filed rebuttal testimony on September 21, 2012.

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<sup>2</sup> The Motion to Dismiss was filed by FEL alone, despite the joint intervention with HAEC. Neither FEL nor HAEC participated in the docket after June 20, 2012.

Following discussions among the parties, PSNH, the OCA and Staff entered into a partial settlement agreement which was filed on October 12, 2012. A hearing on the merits of the partial settlement agreement was held on October 18 and November 26, 2012.

On December 24, 2012, by a letter dated December 20, 2102, North American Power and Gas, LLC (NAPG) filed a petition for late intervention. Also on December 24, 2012, PSNH filed an objection to NAPG's petition to intervene.

## **II. SUMMARY OF PSNH'S REDESIGNED RATE ADE**

PSNH stated that the proposed redesigned Rate ADE builds on its prior proposal with additional enhancements that address the Commission's concerns. Consistent with its initial filing, Rate ADE would initially be available only to its largest customers, those taking delivery service under Primary General Service Rate GV, Large General Service Rate LG, or Backup Service Rate B. To address the OCA's concern about residential customer eligibility for the rate under the initial proposal, PSNH stated it would extend Rate ADE to residential and small commercial customers within nine months from the rate's effective date. PSNH explained that changes needed to bill Rate ADE must be done manually but given the limited number of larger customers it could be done relatively quickly. Due to the high number of smaller customers, however, manual billing is not possible and, according to PSNH, it would need nine months to fully implement automated billing for Rate ADE for all customers.

Consistent with PSNH's initial proposal<sup>3</sup>, the redesigned Rate ADE would be available to a customer who returns to PSNH for service following at least twelve consecutive months of taking service from a competitive supplier. Once a customer is eligible to take service under Rate ADE, that customer would receive service under Rate ADE rather than PSNH's regular default energy service rate (Rate DE) for a term of 24 months (the "term of service"). The

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<sup>3</sup> References to PSNH's "initial proposal" are to the proposed Rate ADE that was addressed in Order No. 25,320.

Company said that it proposed a term of service of 24 months to (1) ensure that customers do not receive an extended period of discounted rates when marginal costs are below PSNH's average energy service costs (resulting in Rate ADE being lower than Rate DE), (2) to avoid having customers paying a higher rate for an extended period when marginal costs exceed PSNH's average costs, and (3) to extend the length of time that the benefits of Rate ADE are provided to all other default service customers.

Under PSNH's proposal, a customer eligible for Rate ADE may continue to take service under Rate ADE or move back to a competitive supplier during the 24 month term of service, with no restrictions for transferring from Rate ADE to the competitive market, or *vice versa*. Once a customer is eligible to take service under Rate ADE, that customer would be ineligible to take service under PSNH's standard Rate DE for the 24 month period. It would, however, be able to move back and forth between Rate ADE and competitive suppliers. The Company said appropriate changes would be made to the Rate DE tariff to clarify that Rate DE is not available to customers who are eligible for Rate ADE.

As proposed by PSNH, the Company would determine the pricing under Rate ADE on an annual basis, and that rate would remain in effect for a full year unless there is a significant shift in the market. Consistent with its initial proposal, PSNH's revised Rate ADE would be calculated based on two cost components: (1) PSNH's marginal costs of additional energy requirements necessary to serve the customers who are taking service under Rate ADE; and (2) an adder that is based on the non-operating costs of the wet flue gas desulfurization system (Scrubber) installed at PSNH's Merrimack Station.

Pursuant to RSA 125-O:18, PSNH must recover costs of the Scrubber through the Company's default energy service. In its initial filing, PSNH had proposed a Scrubber cost-

recovery adder of 1.0 cents per kWh but the Commission expressed concern that there was no objective basis for the adder. *See* Order No. 25,230. In the revised filing, PSNH testified that the non-operating costs are now known and, consequently, there is sufficient cost basis to calculate the adder.

According to its pre-filed testimony, the Company would stay current with market prices by monitoring its forecasted marginal costs on a monthly basis and comparing those prices to the prices used to calculate the annual rate. To address the Commission's concern about the importance of reflecting changes in market prices, the Rate ADE proposal now includes a process to adjust the rate. Under the proposal, if new projections of average marginal costs for the remaining months of the annual period have increased by at least 75% of the adder, as compared with the marginal costs for those same months that were used to determine the annual rate, PSNH would seek Commission approval to increase Rate ADE for the remaining six months of the annual period.

With respect to the Commission's concern about the potential for "gaming" under its initial proposal, PSNH proposed that if the marginal costs increased by more than 75% of the adder, then Rate ADE would be closed to new customers until the next adjustment of the rate. Closing of the rate would minimize the risk of any Rate ADE under-recovery occurring and being recovered from standard Rate DE customers. While PSNH said it could design rates that would mitigate risks of such under-recoveries, the resulting rate would be so restrictive that few, if any, migrated customers would actually take service under Rate ADE, resulting in reduced benefits for all other customers. PSNH said its rate design was intended to balance the need to reduce the risk for all other customers with the need to make Rate ADE attractive to migrated customers, thereby producing benefits for all other customers.

In its April 27, 2012 filing, PSNH calculated a proposed Rate ADE for effect July 1, 2012 of 6.40 cents per kWh, and an adder of 1.03 cents per kWh to recover the non-operating costs of the Scrubber.

### **III. PARTIAL SETTLEMENT AGREEMENT**

#### **A. Pilot Program**

The Partial Settlement Agreement<sup>4</sup> (Settlement) executed by PSNH, the OCA and Staff (Settling Parties) proposes the availability of Rate ADE on a pilot basis for a period of 36 months (pilot period) beginning upon the implementation of Rate ADE as ordered by the Commission. Pursuant to the Settlement, the Commission would evaluate the pilot upon conclusion of the pilot period or prior to any change to or extension of the pilot program. The Settling Parties agreed that nothing in the Settlement would limit the authority of the Commission to terminate Rate ADE prior to the end of the pilot.

#### **B. Term of Service**

The Settling Parties agreed that a customer would be eligible to receive service under Rate ADE following at least 12 consecutive months of taking service from competitive supplier for a “term of service” (i.e., the period of time under which the terms and conditions of Rate ADE would be applicable to Rate ADE customers) to be set by the Commission. The term of service would begin when a customer is first served under Rate ADE and would end once the term of service period has passed. During the term of service, the customer could return to competitive supply at any time without re-setting the term of service, with one exception—if the customer takes competitive supply for twelve consecutive months, the term of service would reset upon the customer electing to take service from PSNH under Rate ADE. For example, assume a customer has been taking service from a competitive supplier for 14 consecutive

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<sup>4</sup> The signatories to the Settlement did not agree on the length of the term of service.

months. If that customer wishes to return to take supply service from PSNH, that customer would be served under Rate ADE rather than Rate DE. If, four months into the Rate ADE term of service, that customer returns to competitive supply for a period of less than 12 consecutive months and subsequently returns to PSNH before the Rate ADE term of service ends, the “clock” on the Rate ADE term of service would continue to run uninterrupted. If, however, the customer returned to competitive supply for more than 12 consecutive months, then the term of service would rest upon a future election to return to service under PSNH’s Rate ADE.

### **C. Eligible Customer Classes**

PSNH would first make Rate ADE available to customers taking delivery service under Primary General Service Rate GV, Large General Service Rate LG, or Backup Service Rate B. PSNH would make Rate ADE available to all customer classes within nine months of implementation or, if necessary, notify the Commission of any change to the expected date that Rate ADE would be available to all classes.

### **D. Pricing of Rate ADE**

The Settling Parties agreed that the price under Rate ADE would be set on an annual basis at the same time PSNH sets the price for Rate DE, and that PSNH could adjust the rate after six months if there is a significant shift in the market. The ADE price would be based upon PSNH’s forecast of the marginal cost to provide full requirements service to the New Hampshire load zone plus an adder that would be set equal to the non-operating costs of the Scrubber. Pursuant to the Settlement, the forecast of marginal costs would include forward energy market prices, forward capacity market prices, forecasted ancillary service costs, forecasted Independent Service Operator-New England market administration costs and forecasted renewable portfolio

standard compliance costs, all of which would be determined in a manner consistent with its periodic rate filings for Rate DE.

The Settlement provides that the non-operating costs of the Scrubber shall include depreciation, property taxes and return on rate base. Further, PSNH would be required to monitor its forecasted marginal costs on a monthly basis and compare those forecasts to the prices used to calculate the annual rate for Rate ADE and provide reports of the forecasts to the Commission on the 15<sup>th</sup> day of each month.

#### **E. Mid-Term Adjustments to Rate**

Pursuant to the Settlement, if PSNH's projected marginal costs for the remaining months of an annual period have increased by at least 75% of the amount of the adder, Rate ADE would be closed temporarily to all returning customers. If this situation exists at the time of the monthly filing made on or about May 15 of any year, PSNH would file a request for Commission authorization to increase Rate ADE effective July 1. In the event Rate ADE is temporarily closed, customers taking service under Rate ADE at the time of closure would be allowed to remain on the rate; but if a customer were to leave Rate ADE to take service from a competitive supplier, the customer would not be allowed to return to service under Rate ADE until the rate is re-opened. Any customers returning to PSNH during the closure of Rate ADE would be served under Rate DE. In the event Rate ADE is re-opened, those customers taking service under Rate DE who qualify to receive service under Rate ADE would be transferred to Rate ADE. PSNH agreed to work with Staff and the OCA to establish one or more methods to notify customers when Rate ADE is closed and provide a report to the Commission on that notification process.

The Settling Parties agreed that, if the projections of marginal costs for the remaining months of an annual period decrease by at least 75% of the amount of the adder, PSNH would

file a request to decrease Rate ADE. The filing would be made at roughly the same time that PSNH files its request for a July 1 modification of Rate DE.

#### **F. Term and Reporting**

Pursuant to the Settlement, PSNH would file a report on or before the 25<sup>th</sup> of each month depicting the number of kWhs delivered under Rate ADE, and the difference between the revenue received and the marginal cost of serving the load under Rate ADE for the most recently completed month and for the annual period to date.

PSNH would also, on or before December 1 of each year, file a report for the purpose of assessing the value of Rate ADE to customers served under Rate DE. The annual report would contain data, by customer class, on the number of customers served under Rate ADE, the number of kWhs delivered and the annual impact of Rate ADE on costs recovered through Rate DE. The Settlement provides that, in the event the Commission approves implementation of Rate ADE on a date other than January 1, 2013, the Settling Parties would discuss whether to amend the date by which the annual report shall be filed and report back to the Commission. The Settling Parties also agreed to work cooperatively in the development of any recommended changes to the design of Rate ADE as needed to ensure that Rate DE customers benefit from the implementation of Rate ADE.

Finally, the Settlement provided that at least 3 months prior to the end of the pilot period, PSNH would file a request to extend, modify or terminate Rate ADE and describe the historical performance of Rate ADE and support for the requested relief.

#### **IV. POSITIONS OF THE PARTIES**

##### **A. Public Service Company of New Hampshire**

PSNH opined that the Settlement presents a fair and reasonable means to implement a new rate and that the Settlement should be affirmed. PSNH said that the one issue not resolved by the Settlement is the length of the term that a customer would be served under Rate ADE. PSNH claimed that a 24-month term of service is an appropriate choice because it effectively provides benefits to customers remaining on Rate DE without having customers served under Rate ADE for an indefinite amount of time. According to PSNH, the 12-month term of service proposed by Staff is simply too short to fully recognize the full benefits of Rate ADE.

Regarding the arguments advanced by PNE that Rate ADE is inconsistent with the restructuring statute, RSA 374-F, and Electric Rate Reduction Financing, RSA 369-B, PSNH noted that the Commission previously denied a motion to dismiss based on the same arguments. *See*, Order No. 25,372 (June 8, 2012). Repeating an argument contained in its objection to the motion to dismiss, PSNH said that Rate ADE was proposed pursuant to multiple Commission orders produced over more than a year, none of which has been the subject of a motion for rehearing or appeal by opponents to Rate ADE. PSNH stated that the Commission consistently reaffirmed that PSNH should establish this rate and thus should not entertain arguments that the rate is unlawful on its face.

PSNH also averred that the adoption and implementation of Rate ADE is actually supported by the restructuring statute, RSA 374-F. PSNH stated that one of the principles of restructuring is to reduce costs to customers and, to the extent that customers avail themselves of Rate ADE, they will do so because they perceive it as beneficial to reducing their costs. RSA 374-F:1. PSNH said that Rate ADE is another choice for customers and that customers are not

required to take or remain on the rate and may choose to take service from a competitive supplier. Because Rate ADE is another option for customers for the procurement of electric supply, PSNH argued that Rate ADE does not “unduly harm the development of competitive markets” consistent with RSA 374-F:3, V(e). PSNH claimed that if customers perceive the rate is beneficial and migrate to it, that migration may incent other suppliers to find a way of reducing costs to their customers.

Based on the foregoing arguments, PSNH requested that the Commission accept and approve the Settlement, set the term of service at 24 months, and permit PSNH to implement the rate as soon as possible.

**B. Office of Consumer Advocate**

The OCA stated that it signed the Settlement and opined that residential customers would be better off with the Settlement than without it. The OCA expressed support for the 24-month term of service because the longer term of service would make Rate ADE more attractive to customers and result in more benefits flowing to all other customers under Rate DE.

The OCA asserted that Rate ADE is a stopgap measure to address the current situation where residential customers are the last to migrate to competitive supply. According to the OCA, the policy arguments made during the proceeding assume full information, a sophisticated customer and market analysis and, while these assumptions may hold for large industrial customers, and possibly for small commercial customers, they are not true for residential customers. The OCA predicted that other actions will overtake Rate ADE and that a resolution will occur outside of this docket, but that Rate ADE will provide an additional option for residential customers during the transition.

### **C. Commission Staff**

Staff stated that it had participated in the development of the Settlement and believes it is a just and reasonable resolution and is in the public interest. Staff asserted that the Settlement is consistent with the Commission's authority to approve an alternate means of providing default service pursuant to RSA 374-F:3, V(e).

Staff said that it supported a 12-month term of service for the following reasons. First, a 12-month term of service is a better match both to the eligibility criteria, where a customer would have to be either served by a competitive supplier or on self-supply for at least 12 consecutive months, and the Settlement's provision for an annual review of the program. Second, a shorter 12-month term of service would mitigate potential concerns that the rate is somehow anti-competitive or will otherwise disrupt the competitive market. Third, assuming that the pilot continues for the full 36 months, at its end there still may be a number of customers who haven't gone through their entire term of service and, presumably, the administration of the rate would have to continue for those customers at some cost. A shorter term of service lessens the number of months customers would continue on Rate ADE beyond the pilot period, in the event the rate is not extended beyond the pilot period. Finally, a shorter term of service would provide more choices for customers. For example, Staff said, if it became more advantageous for customers to receive service under Rate DE than under Rate ADE, which presumably would be due to a change in market conditions, those customers would not be limited from exercising that option for an extended period of time.

Staff recommended that the Commission approve the Settlement and adopt Staff's recommendation to limit the term of service to 12 months.

**D. Power New England, LLC**

PNE said that the proposed Rate ADE was not required by statute. PNE argued that the purpose of the rate was to lure customers back to PSNH, and not to offer a safety net as contemplated by the restructuring statute. PNE also suggested that a three-year pilot program might encourage long-term use of Rate ADE, which would be inconsistent with the restructuring principle that discourages the long-term use of default service.

PNE claimed that the adder was not correctly designed. PNE pointed out that RSA 125-O:18 states that the costs of the Scrubber must be recovered through the default service rate. Because Rate ADE is a default service rate, PNE argued that the adder should recover all costs associated with the Scrubber, not only the non-operating costs.

PNE disagreed with PSNH's assertion that there are no other incremental costs associated with implementing Rate ADE. PNE claimed that PSNH would incur costs associated with the implementations of Rate ADE even if implementation was undertaken by current employees, and those costs should be added to the rate.

PNE further argued that PSNH's proposal to purchase additional power for Rate ADE customers from the market was inconsistent with RSA 369-B:3, IV, which PNE interpreted as requiring PSNH to provide all transition and default service from PSNH's owned generation.

Finally, PNE recognized that the restructuring statute authorized the Commission to approve alternative means of providing default service, so long as those means minimize customer risk, not unduly harm the competitive market, and mitigate price volatility.<sup>5</sup> But, according to PNE, the authorization did not constitute an "open-ended loophole."

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<sup>5</sup> See RSA 374-F:3, V(e).

### **E. Retail Energy Supply Association**

RESA asserted that PSNH's proposed Rate ADE is inconsistent with Commission Order No. 25,320 and restructuring principles. RESA claimed that in Order No. 25,320, the Commission held that Rate ADE should be cost-based, non-discriminatory and avoid an adverse effect on competition, but that PSNH failed to meet those requirements.

RESA argued that the proposed calculation of the rate is not cost-based because PSNH includes in Rate ADE an adder for the non-operating costs of the Scrubber, a cost that PSNH incurs whether it has Rate ADE customers or not. Further, PSNH failed to include in the rate the costs associated with (1) marketing Rate ADE, (2) necessary modifications to the billing system, and (3) customer tracking. Although PSNH said it would use its existing employees to perform functions associated with implementation of Rate ADE, RESA claimed that there are costs associated with allocating employees to provide the services associated with Rate ADE but not included in the calculation of Rate ADE, and that those incremental costs should be included in the calculation of the rate.

RESA also expressed concern about PSNH's proposed use of an average forecasted annual price because forecast prices distort price signals to customers. In addition, because PSNH said that the Company would make purchases for power on the spot market, the forecast will not be reliable. RESA also pointed out that the reconciliation process proposed by PSNH, whereby the Company would reconcile over- or under-recoveries through Rate DE, violates the cost causation principles and further distorts the price that customers on Rate ADE will pay. RESA opined that inaccurate price signals also distort customer behavior because, if customers don't receive an appropriate price signal, they can't make accurate energy conservation and energy efficiency choices.

RESA argued that the proposed Rate ADE design is discriminatory because it will result in similarly situated customers paying different rates. According to RESA, the discriminatory effects are not mitigated by use of a pilot program.

RESA also claimed that the proposed Rate ADE design would have negative effects on competition. According to RESA, PSNH posited that the benefit of Rate ADE is to mitigate migration, and in effect to reverse migration from competitive supply to PSNH. RESA argued that reverse migration, by its very nature, has a negative effect on customer choice.

RESA argued that the proposed Rate ADE design is unnecessarily complex and difficult for customers to understand, contrary to the restructuring statute's requirement that customers received "clear price information." RSA 374-F:3, III. In addition, RESA pointed out that RSA 374-F:3, II states that "customers should be responsible for the consequences of their choices." RESA argued that allowing Rate DE customers to benefit from over-recoveries incurred by Rate ADE customers and to pay for under-recoveries incurred by Rate ADE customers violates the principle that customers should bear the consequences of their choices.

RESA concluded by asking that the Commission deny PSNH's request for approval of Rate ADE, deny approval of the Settlement and send PSNH back to the drawing board to develop an alternative rate that is not counter to the restructuring act principles and satisfies the requirements of Order No. 25,320.

## **V. COMMISSION ANALYSIS**

First, we address NAPG's late-filed petition to intervene, understanding that RSA 541-A:32, II, allows the Commission to grant a motion to intervene at its discretion. That NAPG was seven months late in filing its petition to intervene is undisputed. In its petition, NAPG asserts that it shares the views of the competitive suppliers who participated in the docket and opposes

the implementation of Rate ADE. Although NAPG as a competitive supplier stated a right, duty or substantial interest in this proceeding, those concerns by its own admission have been addressed by PNE and RESA. Further, to grant intervention at this very late date, after the close of the evidentiary record, would disrupt the orderly conduct of the proceeding, one of the criteria to be considered when a party files a petition to intervene after the statutory time limit. RSA 541-A:32, II. Based on the foregoing, we deny NAPG's petition to intervene.

Pursuant to N.H. Code Admin Rules Puc 203.20(b), the Commission shall approve disposition of a contested case by settlement "if it determines that the result is just and reasonable and serves the public interest." *See also* RSA 541-A:31, V(a). In determining the public interest, the Commission serves as an arbiter between the interests of customers and those of the regulated utilities. *See* RSA 363:17-a; *see also Public Service Co. of N.H.*, Order No. 24,919 (December 5, 2008) at 7-8.

Even when all parties join a settlement agreement, however, the Commission must independently determine that the result comports with applicable standards. We must review the issues and judge them according to standards that provide the public with assurance that a just and reasonable result has been reached. *Concord Electric Company*, 87 NH PUC 694, 708, Order No. 24,072 (2002).

In this instance, our task is to determine whether, pursuant to RSA 369-B:3, IV(b)(1)(A), RSA Chapter 374-F and RSA 378:7, Rate ADE as now proposed is reasonable and serves the public interest, whether the filing satisfies our direction in Order No. 25,256 (July 26, 2011) in Docket No. DE 10-160, *Public Service Co. of N.H. Investigation into Effects of Customer Migration*, requiring PSNH to develop an alternative rate in an attempt to mitigate the effects of

large commercial and industrial migration on small commercial and residential customers; and whether the Settlement meets the requirements of Order No. 25,320 (January 26, 2012).

After review of the Settlement and the testimony of parties to this docket, we find that the Settlement is just and reasonable and in the public interest, as conditioned herein. It is also consistent with prior orders and the relevant statutes. RSA 369-B:3, IV(b)(1)(A) requires PSNH to set the price of default service to be its “actual, prudent, and reasonable costs of providing such power, as approved by the commission.” PSNH proposes to calculate Rate ADE at its marginal cost of providing power to the customers who take service under the rate, plus an adder that reflects the non-operating costs of the Scrubber, the latter of which is now known. We find that the rates as now proposed by PSNH and as set forth in the Settlement addresses concerns reflected in our earlier orders in this proceeding. The calculation reflects PSNH’s incremental or marginal cost of providing service to those customers taking Rate ADE, as required by RSA 369-B:3, IV(b)(1)(A), plus an adder that is designed to provide benefits to Rate DE customers. As customers take service under Rate ADE, the adder would provide a source of additional revenue that will flow through to the Rate DE reconciliation, thereby resulting in a reduction to Rate DE, all else being equal. Under those circumstances, we find that the rates are just and reasonable as required by RSA 378:7.

As noted by the parties, Rate ADE must also comport with the requirements of the electric utility restructuring statute, RSA 374-F, including the mandate that any alternative rate design minimize impacts to the competitive market. We agree with PSNH that Rate ADE is simply another alternative for customers. While we appreciate RESA’s concern about Rate ADE potentially sending the wrong price signal as customers look for alternatives in the competitive market, we note that, as now proposed, the Rate ADE calculation results in a per kWh rate that is

higher than the market cost of power, and presumably an informed customer would opt for the lowest cost energy supply. Further, by establishing Rate ADE as a pilot program pursuant to the Settlement and by closely monitoring the number of customers enrolled and other aspects of the program through annual reports and reviewing the benefits that are expected to be derived from the adder, the Commission will be able to determine if the rate is causing undue harm to the competitive market. RSA 374-F:3, V(e) also provides that any alternative means of providing default service must minimize customer risk and mitigate against price volatility. We find that the structure of Rate ADE meets both of those criteria. As Rate ADE would be calculated initially on an annual basis—subject to an adjustment after six months—customers would have the benefit of known pricing. In addition, if market prices decline after a customer begins taking service under Rate ADE, the customer would be free to return to the competitive market. If market prices increase after a customer begins service under Rate ADE, the customer has the benefit of the known pricing of Rate ADE.

Further, we agree with Staff's recommendation to limit to 12 months the period under which a customer could take service under Rate ADE. As Staff noted, the shorter term more appropriately aligns with the term of the pilot and annual review and its limited duration mitigates any potential harm to the competitive market that may arise.

The availability of competitive electric supply for residential ratepayers is a relatively new and growing market development. Until very recently, competitive suppliers were focused on the commercial and industrial sectors and showed little interest in residential customers. We are now entering a period of robust competition for the residential sector, and both the suppliers and customers are learning the complexities of that new market.

As recent wholesale activity has shown, there can be substantial and unanticipated price volatility negatively impacting competitive electric power suppliers. If competitive suppliers are unable to meet their obligations, customers are automatically switched to the default energy service rate of their distribution utility so that there is no break in their power supply. When there is a difference between the competitive electric power supplier rate and the default energy service rate, however, customers put back to default service can experience rate impacts. An alternative energy service rate that is lower than the default energy service rate, available for a limited period of time, provides customers an option during the transition to the fully competitive electricity market envisioned in RSA 374-F:3. More specifically, RSA 374-F:3,V(e) states that “as competitive markets develop, the commission may approve alternative means of providing transition or default services which are designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility without creating new deferred costs, if the commission determines such means to be in the public interest.”

There may be some customers who through no action of their own find themselves returned to default service because their competitive supplier has defaulted. For this group of customers we believe it would be appropriate for PSNH to enroll them on the lower of standard Rate DE or the alternative Rate ADE, once enrollment of residential customers on Rate ADE can be implemented.<sup>6</sup> Should the signatories to the Settlement accept this condition, we find that the creation of Rate ADE on a pilot basis to be in the public interest.

In closing, we acknowledge that the proposed Rate ADE, as compared with current market rates, may not prove to be an attractive alternative to customers who migrate from PSNH, especially given PSNH’s testimony that, as customer migration increases and results in lower

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<sup>6</sup> PSNH stated it would require up to nine months to enable its computer systems to accommodate residential customers on Rate ADE. We urge PSNH to make the necessary changes as quickly as practicable, lessening the time frame for residential enrollment.

Rate DE sales, so does the per kWh amount of the adder which uses Rate DE sales in the denominator of the calculation. Under the current circumstances, if the migration trend continues, Rate ADE would increase and, therefore, many customers who would be eligible to take service under Rate ADE may opt not to do so. In such an event, the benefits that are expected for other customers taking service under standard Rate DE would not materialize. Rate ADE also does not provide an immediate alternative for residential customers, as they would have to wait up to nine months to be able to take service under the rate. Nonetheless, given the current pressures on Rate DE that the Company is facing with customer migration, there is value in instituting Rate ADE on a pilot basis to attempt to provide a measure of benefit to Rate DE customers as well as providing potential relief to customers of competitive suppliers who default. Therefore, we will approve the Settlement as conditioned herein and closely monitor the pilot program.

**Based upon the foregoing, it is hereby**

**ORDERED**, the Partial Settlement Agreement entered into by Public Service Company of New Hampshire, the Office of Consumer Advocate and Staff is hereby **APPROVED**, as conditioned herein, upon notification no later than 30 days from the date of this order that the Settling Parties accept our condition regarding customers whose competitive supplier has defaulted; and it is

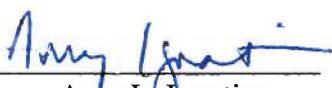
**FURTHER ORDERED**, that the Rate ADE pilot program shall commence 30 days after such notification by the Settling Parties; and it is

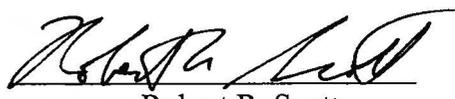
**FURTHER ORDERED**, that Public Service Company of New Hampshire shall file a compliance tariff within 20 days of such notification; and it is

**FURTHER ORDERED**, that the term of service for Rate ADE shall be 12 months; and  
it is

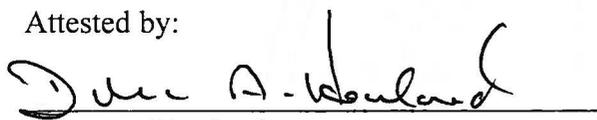
**FURTHER ORDERED**, that the late-filed petition to intervene by North American  
Power & Gas is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this eighth day of April,  
2013.

  
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Amy L. Ignatius  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

### **Dissenting Opinion of Commissioner Harrington**

The proposed ADE rate simply does not make good policy, regulatory, legal or business sense. The fact that PSNH has come up with an arguably rational basis for a new rate does not alone warrant a finding that the proposed rate is just and reasonable. The ADE rate appears to violate a number of statutory provisions as well as policy principles and thus should be rejected.

The proposed rate is designed primarily for the purpose of attracting customers away from competitive suppliers and back to PSNH to address the problem of customer migration and the consequent increased cost to existing PSNH default service customers. The real driving force behind the “need” for an ADE rate is an ever-increasing DE rate that is generally higher than rates offered by competitive suppliers<sup>7</sup> and the resulting tendency for customers to seek and stay with competitive suppliers. At the same time, the ADE rate could encourage more customers to leave default service and sign up with a competitive supplier, as this would be the only way they could ever be eligible for the lower ADE rate. As long as the competitive rate is lower than the PSNH DE rate, customers will tend to stay with a competitive supplier – thereby making the situation of the DE ratepayers that much worse in terms of bearing a greater share of PSNH’s costs.

In the event the competitive rate becomes higher than the ADE rate - and a customer is otherwise qualified, that customer would tend to opt to return to PSNH for the ADE rate. After 12 months on the ADE (the term limit approved by the majority opinion), the customer will have to make a choice again: to stay with PSNH at the DE rate or go back to a competitive supplier. Since the DE rate likely will always be higher than the competitive supplier’s rate, the cost

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<sup>7</sup> If average wholesale electric prices increased dramatically and PSNH’s DE rate remained stable, it could become more competitive but neither is likely to occur over the next few years. Berlin Bio-Mass which is scheduled to come on line later this year has a Purchased Power Agreement with PSNH that will be paid for through DE rates. This most likely will put additional upward pressure on these rates. Also, Docket No. 11-250 “Investigation of Scrubber Costs and Cost Recovery” could result in additional non market-based increases in PSNH’s DE rates.

conscious customer will tend to go back to a competitive supplier from the ADE discounted rate. This will not only save them money but start the process for them again becoming eligible for ADE rates.

Effectively, what the ADE rate offers customers is the ability to obtain rates from PSNH that are lower than DE rates. By approving the proposed ADE rate, we will be creating a mechanism to enable customers to jump back and forth from the competitive rate to the ADE rate, whichever is lower. Overall, such a result does not help anyone but the customers who have chosen the competitive supplier or ADE options, although a small percentage of revenue will flow from the “adder” element of the proposed ADE rate to partially defray PSNH’s costs and thereby slightly lower the costs charged to DE customers. The proposed ADE rate will establish a new, “intermediate” rate that could encourage even more gaming of the system than the current situation permits.

There are further concerns about the ADE rate that persuade me to dissent from the majority opinion in this case. Our statutes provide that the costs of administering default service should be borne by the customers of such service. RSA 374-F:3, V(c) (“***The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission.***”). Here, however, it appears that the costs of administering the alternative rate, or ADE, will not be borne by ADE customers at all, but will ultimately be charged to PSNH’s distribution customers, some of whom will be neither ADE nor DE customers – thus in direct conflict with the statute.

By statute, PSNH is obligated to supply default service at actual, prudent and reasonable costs of providing such power, as approved by the commission. RSA 369-B:3, IV(b)(1)(A) (“***The price of such default service shall be PSNH's actual, prudent, and reasonable costs of***

*providing such power, as approved by the commission...*). In this case, PSNH proposes to offer two separate rates for the same default service: the regular rate for existing customers, and a discounted rate to former customers who come back to PSNH. The provision of two different rates for the same energy default service cannot reflect in both instances the “actual, prudent, and reasonable costs of providing such power”, and therefore should not be deemed reasonable.

In a similar vein, the statute requires that restructuring of the electric industry be implemented in a manner that benefits all consumers equitably without shifting costs unfairly among customers. RSA 374-F:3, VI (“***Restructuring of the electric utility industry should be implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another. Costs should not be shifted unfairly among customers***”).

Again, a rate structure that charges different rates for the same product to the same type of customer cannot be found to “benefit all consumers equitably”. Any under collection of ADE rates that exceed the amount of the adder will be shifted to DE customers. Such an outcome strongly suggests an unfair shifting of costs among customers where DE customers can pay extra so that ADE customers can pay less under PSNH’s discounted rate offer.

The Commission should not be in the business of favoring one energy supplier over others by authorizing discriminatory pricing as a substitute for prudent business planning and management, especially where the cost will be borne by ratepayers. As noted above, the initial justification for developing an ADE rate was to address the increasing number of DE customers leaving PSNH for the competitive market. A rule that provides special treatment to one supplier - in this case PSNH - and attempts to minimize that supplier’s loss of energy service customers to other suppliers is in direct conflict with the statute and contrary to the principles of

restructuring. RSA 374-F:3, VII (“Choice for retail customers cannot exist without a range of viable suppliers. ***The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.***”).

The development of customer migration away from PSNH in a market experiencing record low natural gas prices, where regular default service prices are based on PSNH’s cost to generate at their existing facilities plus the cost to purchase power in the market or through purchase power agreements, should not have been a surprise element in PSNH’s business planning efforts – and certainly not one that warrants the introduction of a discounted price to entice customers back from competitive suppliers.

To step in as regulators and authorize an inequitable administrative rate for the same service to similarly situated customers for the purpose of attracting customers away from market competitors is simply contrary to our statutory mandate. As the electric utility restructuring statute states, our goal is to promote a more efficient industry and productive economy – not to develop a multi-tiered administrative pricing scheme that favors certain customers and suppliers over others. RSA 374-F:1 (***The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy*** by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.).

The restructuring statute explicitly states that customers should expect to be responsible for the consequences of their choices in the competitive energy supplier market:

Allowing customers to choose among electricity suppliers will help ensure fully competitive and innovative markets. Customers should be able to choose among options such as levels of service reliability, real time pricing, and generation sources, including interconnected self generation. ***Customers should expect to be responsible for the consequences of their choices.*** RSA 374-F:3, II.

Existing customers who remain with PSNH and pay a higher rate than that offered in the competitive market are responsible for the consequences of their choice. They should not, however, bear responsibility for those who choose a competitive supplier and then want to return to PSNH. There is nothing in the statute that suggests that customers who opt for a competitive supplier should benefit from a discounted price subsidized by existing customers who choose not to enter the competitive market. Even where a customer returns to PSNH due to a supplier default, that risk is borne by the customer as an element of free choice in a competitive market. And, as noted above, any potential under collection of the marginal costs on which the ADE is based that exceeds the adder is reconciled to the detriment of existing customers – that is, the consequences of choosing an ADE rate are borne not by the ADE customers themselves, but by the customers who choose not to participate in the competitive market.

The statute envisions alternative means of providing default services that are designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility. RSA 374-F:3, V(e) (“...the commission may approve alternative means of providing transition or default services which are designed to minimize customer risk, not unduly harm the development of competitive markets, ***and mitigate against price volatility*** without creating new deferred costs, if the commission determines such means to be in the public interest...”).

When short term market prices spike, as they did in January and February 2013, the proposed ADE rate could result in under collection from existing ADE customers, in the event those spikes exceed the marginal cost on which the ADE rate is based. At the same time, the DE rates will be reconciled to account for the same short term spikes in market prices, so that DE customers will pay for the actual costs of those spikes in “ordinary” DE rates, but will not be

compensated for any under collection in ADE rates. As a result, the introduction of ADE, in effect, will not eliminate price volatility, even with a biannual ADE rate adjustment to reflect market price changes.

This most recent ADE proposal was developed by PSNH in response to the Commission's Order No. 25,320 (Jan. 26, 2012), which directed PSNH to address the following issues: (1) the failure of the initial Rate ADE design to reflect changes in market prices; (2) the potential for gaming inherent to the design; and (3) the lack of support for the calculation of the proposed Rate ADE "add" at one cent per kilowatt-hour (kWh). The new method for determining the ADE rate proposed here complies with only one of the conditions outlined in the prior order: it reflects changes in market rates, albeit not fully. As discussed above, however, the revised ADE does not address the potential for gaming and does not provide a supportable basis for the calculation of the adder.

ADE rates are based on PSNH's forecast of the marginal cost to provide full requirements service to the New Hampshire load zone plus an adder that, under the latest proposal, will be set equal to the non-operating costs of the Scrubber. There is simply no justification for using the non-operating costs of the Scrubber to calculate the adder component of the ADE rate. As in the prior proposal, the identified basis is simply a random subset of costs that PSNH has chosen as a means to allocate some small portion of operating costs to ADE customers. The non-operating costs of the scrubber will not even be collected through the ADE Rate. Those costs, like the scrubber operating costs and the non-operating and operating costs of all other PSNH generating facilities will be collected through the DE rate. In the previous proposal from PSNH the amount of the adder was almost the same as the current proposal. That adder design was rejected by the Commission as without adequate justification. Simply finding

a “basis” that has no connection to the actual rate, other than it just happens to provide the amount PSNH claims is needed for the adder, is still an inadequate justification.

Few, if any, customers would pick the ADE rate in lieu of competitive supplier rates, which appear to be much lower and are being advertised as guaranteed to hold even after a spike in wholesale prices such as occurred this winter. In effect, given PSNH’s continued high costs of operation, the ADE rate would be used primarily by customers who had signed up for a lower rate from a competitive supplier that subsequently failed. Based on the majority opinion, customers in this category would be assigned the ADE rate provided they otherwise qualify for that rate. Once again we need to look at the clause in RSA 374-F:3, II that states that “[c]ustomers should expect to be responsible for the consequences of their choices.” As in the case of a customer who decides to exit the competitive supply market when prices spike, there is no justification for assigning customers who choose to use a competitive supplier that subsequently fails a lower rate than those who choose to stay with normal default service rates.

Unlike competitive suppliers, PSNH is protected from increases in wholesale energy costs. When prices rise much higher than expected, as happened this winter, PSNH’s prudent costs are reconciled such that they should not lose money as a result of the higher market prices. Competitive suppliers, on the other hand, can lose substantial amounts of money from higher than expected energy prices as they have no such mechanism to reconcile their costs. Thus, because PSNH is a public utility, it is protected from unexpected energy cost increases where competitive suppliers are not.

Establishing the ADE rate would provide PSNH protection from lower wholesale energy prices, as well. The proposed ADE rate theoretically would provide PSNH some protection from customer migration when market energy rates fall below the costs of producing electricity at

PSNH's generating stations. There is no justification for the downside protection which can only stifle competition, other than it may help to stem customer migration away from PSNH and lessen the consequent impact on customers who choose to stay with DE rates.

For PSNH to offer a discounted rate to attract customers back from competitive suppliers is anti-competitive, and the fact that existing default service customers may subsidize those returning customers makes the proposed ADE unlawful, unjust and unreasonable. As the Retail Energy Supply Association pointed out in testimony, PSNH has other, viable options for reassessing and revising its business practices that would be lawful and reasonable and much more in line with the purpose of the restructuring statute. There is nothing in the proposed ADE that is logical, much less persuasive or reasonable, to support its approval. I see nothing in the proposal before us that warrants a decision that differs from the Commission's prior rejections of PSNH's alternative proposals. In fact, the conclusions provided in our earlier orders remain applicable here: as suggested above, the rate proposed here "increases the possibility that PSNH will under-recover costs in Rate ADE, resulting in higher costs for Rate DE customers than currently results from existing customer migration" and "there is enough uncertainty in the rate design to suggest that the one cent per kWh may not collect enough revenue to cover unexpected price spikes in the marginal cost of electricity that would be used to supply Rate ADE load." Order No. 25,320 at 16 – and even more to the point, "such [alternative] rates must be cost-based and non-discriminatory and should not have an adverse effect on competition..." Order No. 25,256 at 32 (July 26, 2011).

To approve the rate proposed here would be to violate our statutory authority:

Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or

practices of such public utility affecting such rates are unjust or unreasonable, *or in any wise in violation of any provision of law*, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. RSA 378:7.

Accordingly, if this Commission finds PSNH's proposal to be in any way in violation of any provision of law, the proposal must be rejected. As pointed out in testimony, the proposed ADE is a mere palliative that does not address the underlying issue, which is PSNH's failure to anticipate a changing energy market and adapt its business plan accordingly.

Based on the above I believe the ADE rate proposed by PSNH is in violation of state law and therefore is not in the best interest of New Hampshire or its electric customers and should again be rejected by the Commission. I therefore respectfully dissent from the majority decision.



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Michael D. Harrington  
Commissioner