

THE STATE OF NEW HAMPSHIRE

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June 28, 2007

Deborah Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
21 S. Fruit Street  
Concord, NH 03301



Re: DE 07-045 Petition of Briar Hydro Associates for Declaratory Judgment

Dear Ms. Howland:

I am writing to provide comments of the OCA pursuant to the procedural schedule in the above-referenced docket. After reviewing the filings of Briar Hydro and PSNH, the OCA supports the position of PSNH.

As the parties are aware, this docket arose from a filing by Briar Hydro Associates for a declaratory ruling that would enable Briar Hydro, rather than PSNH's customers, to receive the financial benefits of the heightened value of capacity due to the Forward Capacity Market (FCM) arising from the June 16, 2006 approval by the Federal Energy Regulatory Commission of a Settlement Agreement creating the FCM and interim transition payments. On June 15, 2007 PSNH filed a Memorandum in opposition to Briar Hydro Associates' petition.

Based on the OCA's analysis of the filings by Briar and PSNH as well as all of the additional information provided by those Parties, the OCA believes that the Commission should deny Briar Hydro's petition. We discuss our reasoning below.

First, the contract between PSNH and Briar Hydro (originally between PSNH and NH Hydro Associates, or "NHHA") called for the sale of the "Entire Generation Output" of the plant to PSNH. This language was used at a time when the Parties were fully aware that Energy and Capacity were separate products; despite this, in the contract they treated and priced them together. In fact, during the 1982 contract negotiations, NHHA raised the issue of separate payments for capacity when it provided value to PSNH. This



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proposal is included as Attachment C to PSNH's memorandum of June 15. The fact that the proposal was not included in final contract indicates that while the value of capacity was discussed during the negotiations, and was a determining factor in arriving at the final rate per kWh, it was not treated separately from energy.

Second, PSNH has made a compelling argument that under PURPA, Briar Hydro could not separate sales of energy from capacity, as detailed in Section III of June 15<sup>th</sup> Memorandum.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Hatfield', with a stylized flourish at the end.

Meredith A. Hatfield