

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire - Proposed Default Energy Service Rates)	Docket Nos. 06-125 & DE 07-096
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COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. Introduction

The Retail Energy Supply Association (“RESA”) is a nonprofit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions. RESA’s members include providers of competitive supply products to electricity and gas consumers in the five New England states – including New Hampshire – that have restructured their retail electric markets.¹

RESA submits these comments in opposition to the Joint Proposal filed on September 14, 2007 in the above-referenced dockets by the Public Service Company of New Hampshire (“PSNH”), Commission Staff (“Staff”) and the Office of Consumer Advocate (“OCA”) (hereinafter “the Proposal”). **The Proposal, if adopted, would compel Competitive Energy Providers (“CEPs”) to provide both highly competitively sensitive and speculative electric load projections to the Commission and, more egregiously, PSNH. The latter disclosure will provide PSNH with a substantially unfair competitive advantage that will unduly harm CEPs and significantly undermine the function of the retail market within the PSNH service territory.**

¹ RESA’s members include Commerce Energy, Inc; Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Gexa Energy; Hess Corporation; Integrys Energy Services, Inc.; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc.; and US Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Due to the competitive sensitivity and speculative nature of the requested data, RESA requests that the Commission reject the Proposal. If, however, the Commission determines that CEP load forecast data would prove to be truly necessary to evaluating default service needs and therefore should be provided, then it should implement the following pro-competition safeguards: (1) the individualized data should be submitted to Commission Staff on a confidential basis; (2) such data should be released to an independent third party hired to conduct analysis by PSNH only in aggregated form; and (3) PSNH should be required to engage in a request for proposals (“RFP”) process for the portion of power it obtains from the wholesale electric markets to eliminate the unfair competitive advantage it would hold should it receive access to CEP forecasted load data, even in aggregated form.

II. Procedural History

In connection with a PSNH Petition to establish Default Service rates commencing on January 1, 2007, Docket No. DE 06-125, PSNH requested load information from the two retail suppliers that had intervened in that docket, Constellation NewEnergy, Inc. (“Constellation”) and Freedom Partners, LLC (“Freedom”). In support of its request, PSNH asserted that “the information was necessary to provide PSNH with the best possible data to calculate a [default energy service] rate.”²

After an unsuccessful initial working group session where Constellation could not agree with the other parties on the reporting requirements, PSNH advised that it would work with Staff and the OCA to develop recommendations that would require supply estimates to be provided to the Commission and to PSNH.³ On June 23, 2007, Constellation filed a letter opposing the

² Order (Dec. 15, 2007), p. 5, Docket No. DE 06-125.

³ *Id.* at p. 5-6.

development of any such proposal.⁴ PSNH and Staff thereafter filed the Proposal on September 14, 2007 which, inter alia:

request[s] that the Commission direct any registered competitive supplier to provide the following information to the Commission on a quarterly basis. [(1)] Monthly combined peak load for all customers connected to the PSNH system and [(2) the] total megawatt hours expected to be sold each month to those customers for the coming six, twelve and twenty-four month periods.⁵

The Proposal would require CEPs to provide their forecasted electric load for periods of up to two years on a confidential basis to the Director of the Electric Division of the Commission, who would aggregate this information and provide it to PSNH.⁶ The Proposal also requires PSNH to treat the information on a strictly confidential basis, but provides no details as to how PSNH's compliance would be monitored or the penalties that PSNH would suffer if it were to violate this provision.⁷ Even one small leak of information could provide insight into a CEPs modeling and business approach exposing its entire business in New Hampshire to harm. In addition, the proponents of the Proposal recommended that the Commission circulate the Proposal to all registered CEPs, giving each CEP the opportunity to comment on the Proposal in PSNH's current default service proceeding for periods commencing on January 1, 2008 (Docket No. DE 07-096).⁸

For the reasons set forth below, RESA strongly opposes the Proposal and requests that it be rejected by the Commission.

⁴ Letter from Constellation to the Commission (July 23, 2007), Docket No. DE 06-125.

⁵ Joint Proposal for Supplying Competitive Market Data (Sep. 14, 2007), p. 1, Docket No. DE 06-125.

⁶ *See id.*

⁷ *Id.*

⁸ *See id.*

III. Comments

A. CEP Electric Load Forecast Data Is Proprietary And Competitively Sensitive Information That Should Not Under Any Circumstances Be Disclosed To A Competitor Such As PSNH.

The Proposal seeks to require competitive suppliers in the PSNH service territory to submit to the Commission and PSNH the electricity load that they expect to serve at six, twelve and twenty-four month intervals in the future. RESA joins Constellation in strongly opposing the Proposal on several grounds, most importantly relating to the proprietary competitively sensitive nature of the data it would require to be produced to the Commission and PSNH.

Forward-looking electric load data projections of any kind are highly proprietary and commercially sensitive to CEPs. It can reveal or, at minimum, allow others to discern, information regarding a CEP's current electricity load and the CEP's internal expectations as to how its load will change over a given time period. Thus, just like peeking into a player's cards in a Blackjack game, receipt of the CEP's forecasts will enable a recipient, such as PSNH, to gain an understanding of the CEP's likely plans for the service territory. These CEP plans include a broad range of activities such as the potential for new marketing initiatives, additions or reductions in sales and support personnel, expansions or contractions of targeted customer classes, and CEP expectations regarding the conduct of the underlying distribution utility and other CEPs.

In light of the competitively sensitive nature of the information and limited utility of such information when provided to a distribution company (as discussed below), no state public utility commission within the ISO New England ("ISO-NE") region requires CEPs to file such information with the relevant commission. Similarly, no New England public utility commission requires CEPs to disclose such information, even in aggregated form, to any distribution

company. For these reasons, and the others outlined below, the Commission should not require CEPs to compile and report this data and, in particular, not require that the data be furnished in any form to PSNH or any other distribution utility.

RESA is especially hesitant to provide this form of confidential information to PSNH, even if access is aggregated and limited to the PSNH wholesale group. Unlike most New England utilities in restructured states, PSNH was not required to divest its electric generation assets and thus competes head-to-head for customers with CEPs registered in New Hampshire. PSNH manages its own wholesale supply, either through its own generation or via contracts entered into with wholesale suppliers. Even if it is assumed that sensitive information will not be disclosed to PSNH management or its retail operations, granting access to PSNH with respect to such forecasts, information which is not equally available to CEPs, would have a significant unfair competitive informational advantage in serving wholesale load. This, in turn, will significantly harm the competitive market for retail customers. For example, PSNH may respond to data showing the potential for a long term dip in retail activity in its service territory by aggressively seeking new fixed commitments to meet its customers' energy supply needs. The more PSNH locks in wholesale commitments, the more economic incentive PSNH management will have to retain its retail load in order to ensure that PSNH can recover the costs associated with those commitments through its rates. The more retail load that PSNH is able to retain, the less competition there will be in New Hampshire. PSNH should not have this Commission-ordered window into the short, medium and long term business plans of its competitors.

B. The Proposal Will Impose Undue Burdens On CEPs And Will Not Produce Useful Information Because Of The Highly Speculative Nature Of The Data.

In addition to the significant risk that the Proposal will lead to disclosure of commercially sensitive data that will harm CEPs by providing PSNH with an unfair competitive advantage, the Proposal will require CEPs to provide information that will be highly burdensome to produce and will provide the Commission with highly speculative information regarding the diverse plans of individual CEPs that will be of little practical use. These factors provide additional independent grounds for rejection of the Proposal by the Commission.

First, the production of forecasted electric load data for the proposed interval periods will be unduly burdensome for CEPs to produce. While CEPs do certainly forecast ahead for their internal business and budgeting purposes, they do not prepare information in the specific intervals or format sought by the Proposal and, indeed, no New England public utility commission requires such forecasting data to be produced by CEPs. Under the Proposal, CEPs operating in the PSNH service territory will be required to collect, analyze, calculate and produce specialized data exclusively for the PSNH service territory. Such an undertaking, which requires the production of extremely granular information among the functions required in each CEP's day-to-day operation of its business, would be highly burdensome as well as competitively precarious. Furthermore, compliance with the Proposal would increase the general administrative burden on CEPs participating, or trying to participate, in the New Hampshire competitive market. An increase in the administrative hoops that CEPs must jump through to participate in New Hampshire's competitive market will only serve to hinder its development, rather than encourage it. CEPs, particularly smaller CEPs, will shy away from participating in an over-burdensome market, especially when compared to less burdensome markets, available in the same geographic region. All things being equal, they will devote resources and capital into

markets where they are not subject to unreasonable business restraints and will have a greater opportunity to compete and succeed.

Second, the CEP-forecasted load information will be of little practical use to the Commission. At best, it represents highly speculative information of the future interval periods that may or may not come to pass. The Commission also is requesting information from CEPs which will not be based on a single model or format. This information is projected by each CEP based on its *individual* internal models and plans for *potential* future business. As such, some CEPs may report the load they actually have under contract, others may use their marketing projections, and others may even take a guess at what their load may look like in the future. Furthermore, these same models and business plans can change without notice based on numerous factors or events throughout each CEP's business territories. This makes the information not only competitively sensitive but inconsistent and often quickly inaccurate in today's changing environment.

Third, the up-to-two-years projections of forecasted load information will be of little legitimate use to PSNH in determining how much default service to procure. PSNH has access to far more reliable data. As designated meter reader for all CEPs in its service territory, PSNH already should have in its possession a record of the aggregated number of existing customers currently taking service from a CEP and the associated aggregated load. PSNH can – and no doubt already does – perform its own load forecasting based on this aggregated actual data. PSNH has the ability to use this data already for a single controlled and consistent forecasting model without the need for information from several CEPs based on varying business models. Thus, PSNH cannot claim a compelling need for the data sought in the Proposal as it already has access to the aggregated data it needs to perform its own load forecasting.

Thus, given that the competitive electric load data sought in the Proposal will be highly burdensome for CEPs to produce and will be of little practical use to the Commission and PSNH due to the highly speculative nature of the data, the Proposal should be rejected by the Commission.

C. Data Should Be Provided Pursuant To The Proposal Only If The Commission Enacts Pro-Competition Safeguards.

If the Commission plans to require CEPs to produce data required by the Proposal to PSNH's wholesale group for purposes of default service, then it should first require PSNH to alter the method in which it secures wholesale supply from the market to serve the portion of the market not met through PSNH's existing generation resources. Specifically, PSNH should be required to engage in an independent third party RFP process for that portion of power that it obtains from the wholesale energy market. If PSNH is required to seek bids to serve that portion of its load that it is unable to supply from its own generation facilities, it will provide the Commission with a point of comparison between PSNH's cost to supply service from the competitive wholesale market and its cost to supply service from its own generation facilities. In addition, the RFP approach would give PSNH the flexibility to procure power in accordance with short term load projections rather than procuring power through firm contracts and hedging which could be based on longer term and possibly inaccurate load forecasts. The RFP approach is more competitively neutral by keeping competitively sensitive information out of the hands of competitors and, at the same time, more beneficial to PSNH's customers than PSNH's current approach. It would ensure that PSNH is procuring power in accordance with its load at prices reflective of the current market.

IV. Conclusion

RESA does not believe that the Proposal is a necessary or competitively neutral mechanism for assisting PSNH's resource procurement planning process. Requiring CEPs that use varying models based on potential future business approaches to provide proprietary and highly commercially sensitive competitive market data is of little or no use due to the highly speculative nature of the data. It also is highly burdensome for CEPs to produce and threatens to create a skewed competitive playing field in which PSNH will have a competitive advantage over CEPs in the PSNH service territory's retail electric market. Therefore, the Commission should not approve the Proposal. At minimum, if the Commission is going to seriously consider adoption of the Proposal, then it should first prohibit dissemination of the CEP electric forecast data to anyone outside of Staff; second, require PSNH to hire an independent third party to analyze the information; and third, require PSNH to alter its wholesale procurement process to employ an RFP process to ensure a continuing level competitive playing field.

Respectfully submitted,

RETAIL ENERGY SUPPLY
ASSOCIATION

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