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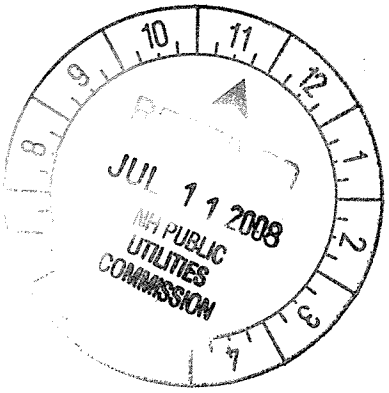

Debra A. Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Re: DE 07-045 Briar Hydro Associates
Responses to Questions Posed at May 20, 2008 Oral Argument

Dear Ms. Howland:

This letter responds to two questions left open in the record at the close of oral argument in the above-captioned matter on May 20, 2008:

(1) Chairman Getz asked the parties to look for a December 21, 1981 letter from John Lyons of PSNH to Richard Norman of New Hampshire Hydro Associates, to which reference was made in another exhibit (see Transcript, p. 16, line 23 through p. 18, line 4).

(2) Commissioner Below asked if a New Hampshire generator could sell its entire energy output to a purchaser outside New England under a bilateral contract and still qualify to sell its capacity separately in the New England Forward Capacity Market ("FCM") (Transcript, p. 65, line 15 through p. 66, line 1).

1. December 21, 1981 Letter from Lyons to Norman. A copy of the December 21, 1981 letter from PSNH's John Lyons to Richard Norman is attached, with its enclosures. Both the cover letter and the enclosures were included with the documents PSNH found in its files and circulated to all parties under cover of Attorney Eaton's June 8, 2007 letter to Attorney Ross. Briar Hydro submitted the three handwritten worksheet enclosures (RVP-1, RVP-2, and RVP-3) for the record at the oral argument on May 20, but we inadvertently neglected to include the original cover letter from Mr. Lyons. Since the three handwritten worksheets were marked as

Exhibit A, it may be appropriate to include the December 21, 1981 cover letter from Mr. Lyons as a new first page of Exhibit A, which would thus become a self-explanatory 4-page exhibit.

2. Sale of Capacity Separate from Sale of Entire Energy Output. In his question at p. 65, lines 15-20 of the Transcript of the May 20 oral argument, Commissioner Below asked whether the capacity of a New Hampshire generating facility could "count as capacity for New England" (i.e., qualify for sale in the FCM) if its entire [energy] output was obligated for sale to a load-serving entity outside the New England Control Area? In the parlance of the ISO-NE FCM Rule (Market Rule 1, Section III-13), the question would be whether a New England generating facility can be a "listed generating capacity resource" under the FCM Rule if it has a pre-existing bilateral contract to export its entire energy output to a purchaser outside New England.

At the oral argument, we responded to Commissioner Below's question to the effect that we would need to review the FCM rule, but we thought it did speak to the question and that we would be able to get an answer. We have reviewed the FCM Rule, and have consulted both with knowledgeable parties who participated in the 2006 FERC FCM settlement proceedings and with the ISO-NE general counsel's office (without reference to the terms of the Briar-PSNH contract). Although there is no question that a New England generator selling its entire energy output within New England under a bilateral contract may sell its capacity separately in the FCM (Section 2.A below), the answer to the energy export hypothetical has proven to be more elusive than we expected (Section 2.B below).

A. Energy Output Sale Within New England. There was no question among the parties we consulted that a New England generator with a bilateral contract to sell its entire energy output to a load-serving entity or other purchaser within New England could still qualify to sell its listed capacity separately in the FCM. In order to explain why and how, it is necessary to describe the financial and administrative operation of ISO-NE with respect to the FCM settlement procedure. Attached as Exhibit 1 is a flow chart that describes how ISO-NE records the flow of costs and revenues between Loads, Generation and Transmission Owners in the ISO-NE region. Each generator must either be a member of ISO-NE or be represented by an ISO-NE member who is designated as the generator's "Lead Market Participant" ("LMP"), i.e., the entity authorized to submit Supply Offers and Demand bids for a Resource (generator) and to whom Energy Transaction Units are assessed. The LMP is designated for each resource during the Asset Registration Process of ISO-NE. For ISO-NE administrative and financial purposes each generator must also have a designated "Asset Owner," who must also be a member of ISO-NE. The Generator's Asset Owner is the entity that receives energy and capacity (FCM) payments from ISO-NE.

Each Existing Generating Facility ("EGF") in the New England Control Area is presumptively qualified by default as a listed "Generating Capacity Resource" ("GCR" or "Resource") under FCM Rule III.13.1.2.3, unless it submits a Static or Permanent De-list Bid or an Export or Administrative Export De-list Bid. ISO-NE has also created a

separate sub-class of EGFs called "Intermittent Power Resources" (hereafter "intermittent generators"), generally renewable resources that are not dispatchable. At least 20 days before the Existing Capacity Qualification Deadline, ISO-NE will notify the Resource's LMP of the summer and winter capacity which it believes the Resource can produce, and unless the LMP takes issue with ISO-NE's estimates (or after any such disagreement has been resolved by ISO-NE), then the capacity rating of the GCR is automatically entered in the next Forward Capacity Auction ("FCA"). Intermittent generators do not actually participate in the FCA. They are classified as price takers and automatically receive FCM payments based on the clearing price set in the FCA, although an individual intermittent generator may take the initiative to submit a de-list bid, thereby opting out of the FCM market. The LMP has the responsibility under ISO-NE rules to participate in the bidding on behalf of the generator. In the case of intermittent generators, the LMP has no practical responsibility for its generator during the FCA.

Prior to ISO-NE's establishment in 1997, the energy and capacity values of the Penacook Lower Falls Project ("the PLF Project") were governed by existing regulations of NEPOOL. ISO-NE introduced the concepts of "LMP" and "Asset Owner", and PSNH took on those roles at that time. Because PSNH was purchasing the entire energy output of Briar's PLF Project under the 1982 contract at issue in this docket (and because Briar was not a member of ISO-NE), PSNH assumed the role of both LMP and Asset Owner for the PLF Project – and in that role it has received market-based energy payments for the energy produced by the PLF Project, while paying Briar for that energy at the 1982 contract rate. The PLF Project, because it is a run-of-river hydroelectric generator, is categorized as an intermittent resource. This means that the PLF Project self-dispatches (it generates if and when water is available) and is given a capacity rating based upon existing ISO-NE criteria. As an intermittent resource, the PLF Project is a price taker in the FCM. Since the PLF project is a price taker, PSNH's role as the LMP is limited. When ISO-NE began making monthly transition payments to capacity resources in December 2006, the payments attributable to the PLF Project were made by default to PSNH since it was listed as the Project's "Asset Owner." Briar did not designate PSNH as the Asset Owner. PSNH has retained these capacity transition payments rather than passing them on to Briar, thus giving rise to the instant dispute.

Once a Generating Capacity Resource is listed in the FCM and participates in an FCA, its only substantive obligation is to continue to offer to sell the energy that can be produced by its listed capacity into both the Day-Ahead and Real-Time Energy Markets for the duration of the applicable Capacity Commitment Period "whenever and to the extent it is physically available to generate energy (e.g. not on a forced or scheduled outage)." FCM Rule III.13.6.1.1.1. In other words, it has to offer to produce the energy that could be produced by its listed capacity, and if the offer is accepted in the day-ahead or real-time energy market, it has to generate under standard ISO-NE dispatch procedures. (Under FCM Rule III.13.6.1.3.1, an intermittent generator is required to

offer only into the real-time energy market, though it may elect to offer into the day-ahead market.) Intermittent generators, as price takers, do not bid in day-ahead or daily markets, but generate energy as and when available. A bilateral contract to sell the entire energy output of a facility to a party within (or, in theory, outside) the New England Control Area can include or exclude the capacity value of the facility and is not inconsistent with the facility's obligation to offer the energy attributable to its listed capacity to the ISO-NE system.

A bilateral contract to sell energy from a listed GCR does not mean that the actual electrons produced by the generator will be delivered to the energy purchaser, but rather simply, 1) that the energy is delivered within (or, in theory, outside) the New England Control Area, and 2) that the buyer pays the contract price, which may be more or less than the market price it would otherwise pay for the energy generated. The capacity resource still has to "offer" its energy in the energy market in order to qualify for capacity payments, but if it does so, the capacity resource will be credited by ISO-NE with capacity payments separate and distinct from energy payments. The recipient of the capacity payments is determined by the terms of the applicable power contract. Hence, in the instant matter, in order to insure that the ISO-NE capacity payments are ultimately being made to the party that is legally entitled to receive them, an interpretation of Briar's bilateral contract with PSNH is necessary since PSNH, as the PLF Project's self-designated "Asset Owner," presently is receiving both energy and capacity payments from ISO-NE.

B. Sale of Energy Output to a Purchaser Outside New England. Unfortunately, the hypothetical energy export question that Commissioner Below asked is far more difficult than the actual question posed by the 1982 Briar contract. As a threshold matter, the FCM Rules do not allow intermittent resources such as the PLF Project to sell capacity outside New England (Market Rule 1, Section III.13.6.2.2), although they clearly qualify for capacity sales to ISO-NE (see Section III.13.1.2.2.2). In addition, the question whether a New Hampshire generator that sells its entire energy output to a buyer outside New England under a bilateral contract may still be a listed Generating Capacity Resource in the ISO-NE FCM may turn on a number of other hypothetical questions, such as whether the energy sales are "firm" or "non-firm", whether they are economy sales subject to curtailment, or whether they are recallable or non-recallable, but none of these questions are clearly addressed by the current FCM Rule. Even if such sales were allowed in theory, the accounting for entire energy output sales outside the New England Control Area would be very difficult in practice, since it would involve not just ISO-NE Market Rules, but the rules of an adjacent RTO, and could involve further limitations imposed by the rules on "intermittent resources".

The net result is that while there is a significant question whether a New Hampshire generating facility with a pre-existing bilateral contract to sell its entire energy output to a purchaser outside New England may also qualify as a listed

Generating Capacity Resource in the FCM, the uncertainty about the result is based more on questions about the mechanics and accounting of the bilateral energy export contract than about whether the generator can sell its capacity in the FCM. In any event, there is no disagreement among those we consulted on the point that a New Hampshire generator (including an intermittent generator) with a pre-existing bilateral contract to sell its entire energy output to a purchaser within New England would still also clearly qualify as a listed Generating Capacity Resource, entitled to transition and capacity payments in the FCM.

3. Additional Clarifications. In addition to the responses to the two questions in the record, we would like to note one instance in which the undersigned counsel misspoke at the May 20 hearing, and one instance where we believe the Reporter missed a transition to a different speaker, in what was otherwise a remarkably accurate transcript.

At page 38, in line 20, where the Transcript reads "...So, when John Lyons took the position that the contract had no value...," counsel actually intended to say, "So, when John Lyons took the position that the capacity had no value..."

And beginning at page 44, line 13, after the words, "Please proceed," we believe (subject to correction by Attorney Eaton) that everything from "And, to follow up on that, ..." through line 19 on page 48 should be attributed to Attorney Eaton, rather than to Commissioner Getz.

Thank you for the opportunity to clarify these points following oral argument.

Sincerely yours,

Howard M. Moffett

Howard M. Moffett

HMM:kjc
With Enclosures

cc: Gerald Eaton, Esq.
Anne Ross, Esq.
Meredith Hatfield, Esq.