STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Investigation into Effect of Customer Migration on Energy Service Rates	))	Docket No. DE 10-160

INITIAL BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION, CONSTELLATION ENERGY COMMODITIES GROUP, INC. AND CONSTELLATION NEWENERGY, INC.

Introduction and Summary of Argument

It has now been more than a decade since New Hampshire moved to restructure its electric power industry, with the General Court (hereinafter "Legislature") finding that "[t]he restructuring of electric utilities to allow retail competition and less costly regulation is in the public interest." RSA 369-B:1, I.[1] To that end, New Hampshire law envisions an end state in which "[t]he divestiture of electric generation by New Hampshire electric utilities will facilitate the competitive market in generation service." RSA 369-B:1, II. Along the way to this end state vision, however, lawmakers also sought to end the State's ongoing stranded cost litigation with Public Service Company of New Hampshire ("PSNH") and to obtain near term rate relief for customers through the implementation of a "transition service" and the postponement (until at least April 2006) of divestiture of PSNH's then low-cost, non-nuclear generation facilities. At no time, however, has the Legislature ever repealed the statutory scheme that provides for generation asset divestiture, retail choice or a fully restructured power industry.

The New Hampshire Public Utilities Commission ("PUC" or the "Commission") initiated this proceeding to investigate the effects of customer migration from PSNH

[1] For purposes of this Brief, Chapters 369-B and 374-F of the New Hampshire Revised Statutes Annotated will be generally referred to as the "Restructuring Statutes."

default Energy Supply ("ES") service to competitive supply. This investigation has confirmed, among other things, the following:

- PSNH manages a portfolio of power sources including owned generation, unit entitlements, independent power producer generation, bilateral contracts and spot market purchases. See Exhibit Number ("Exh") 1 (Initial Testimony of Robert A. Baumann in this proceeding), p. 3;
- The costs associated with the PSNH portfolio are used to determine the default ES service rate for generation services. See Prepared Testimony of Robert A. Baumann, Docket DE 09-180, pp. 7-8 (Sep. 24, 2009) ("ES Rate Testimony"); and
- Most importantly, the ES rates are presently above rates available in the competitive market, leading to substantial migration of customers away from ES service and leaving a dwindling ES customer base from which PSNH may recover its supply costs. See generally Exh. 1, pp. 3-4.

In short, the record in these proceedings now makes plain that whatever near term rate relief benefits may have been obtainable through the continued role of PSNH as an owner of generation and an active manager of supply are now gone. New Hampshire is not so much at a crossroad now as it is at the end of a transition, a pause along the way, to an envisioned end state which has remained firmly embedded in the Restructuring Statutes since 2000. The recommendations laid out in the RESA/Constellation testimony and summarized below are the concrete steps that this Commission can and should take to complete that restructuring of PSNH that New Hampshire has delayed but never abandoned.

Those concrete steps include the following:

- Deny the imposition of the proposed nonbypassable charge for recovery of PSNH's excess supply costs. Neither New Hampshire law nor good policy permit such a charge;
- Initiate a docket to implement the legal processes needed to accomplish divestiture and/or retirement of PSNH generation assets or, alternatively at a minimum, direct PSNH to show cause why the divestiture or retirement of its generation assets is not in the economic interest of its customers at this time in light of the record evidence produced in this investigation;
- Direct PSNH to adopt the use of a competitive solicitation process for the procurement of full requirements service for its ES customers on a going forward basis;
- Decline to adopt interim measures, such as stay out provisions or separate rates for returning ES customers to address the short term consequences of customer migration. These interim measures will discourage or impede customer choice and will not resolve the fundamental need to advance restructuring; and
- Open immediately a new proceeding to investigate steps to improve access to competitive alternatives employed in other states and by other utilities including, notably, PSNH's affiliates in Connecticut and Massachusetts. Initiatives employed to improve such access include purchase of receivables ("POR") programs, customer referral programs, and robust electronic interfaces for customer switching transactions.

Argument

I. NO LAW OR POLICY ALLOWS USE OF A NONBYPASSABLE CHARGE TO COLLECT EXCESS SUPPLY COSTS, AS SUCH CHARGES MAY BE USED ONLY TO RECOVER COSTS OF DIVESTITURE/RETIREMENT OF GENERATION INVESTMENTS.

In its May 4, 2010 Petition in its 2009-10 ES rate docket, PSNH asserted that increased customer migration to third party suppliers led to higher ES rates for its remaining customers – a problem it proposed to address by taking a substantial portion of its ES costs out of rates and recovering them as a nonbypassable charge from all distribution customers. See generally ES Rate Testimony; see also May 28, 2010 Order of Notice, Docket DE 09-180, p. 2. The Commission suspended the proposal and opened the instant investigation.

Numerous parties intervened, including the Office of Consumer Advocate ("OCA"); Retail Energy Supply Association ("RESA");[2] Constellation Energy Commodities Group, Inc. ("CECG") and Constellation NewEnergy, Inc. ("CNE") (together, "Constellation"); TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (collectively "TransCanada"); New England Power Generators Association, Inc. ("NEPGA"); Conservation Law Foundation ("CLF"); Business and Industry Association of New Hampshire ("BIA"); Clean Power Development, LLC ("CPD"); and Freedom Logistics, LLC d/b/a Freedom Energy Logistics ("FEL"), and Halifax-American Energy Company, LLC ("HAEC") (together, "Freedom Energy"). Initial Testimony was filed by Robert A. Baumann for PSNH (Exh. 1), Kenneth E. Traum

[2] RESA's members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. 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.

for OCA (Exh. 13), Daniel W. Allegretti for both RESA and Constellation (Exh. 16), Michael E. Hachey for TransCanada (Exh. 13), and Sandi M. Hennequin for NEPGA (Exh. 12). Rebuttal Testimony was filed by Mr. Baumann and Stephen R. Hall for PSNH (Exh. 2). Evidentiary hearings were held on November 30 and December 1, 2010. On January 21, 2011, the Commission issued a Secretarial Letter that identified certain legal issues it asked the parties to address on brief ("January 21 Letter"). Every one of these parties, save PSNH itself, opposes the proposed nonbypassable charge.

A. PSNH Lacks Legal Authority to Impose a Nonbypassable Migration Charge.

PSNH's proposed nonbypassable charge to recover its excess and out-of-market portfolio costs from all retail customers, including those who have left the ES rate for competitive supply, suffers from significant legal and policy flaws.

As a threshold legal matter, the proposed nonbypassable charge is contrary to state law in at least three respects. First, in RSA 374-F:2, stranded costs are defined as any cost, liability or investment that would be recovered through the usual ratemaking process, a category that includes the above-market generation assets associated with default ES service that PSNH now seeks to recover through the proposed nonbypassable charge. Thus, the proposed nonbypassable charge represents an unauthorized stranded cost charge that fails to comply with the strict statutory requirements for recovery of such a charge. RSA 374-F:3,V(c) requires that "costs of administering default service [] be borne by the customers of default service" not through stranded costs. RESA and Constellation may consider supporting a reasonable stranded cost recovery as part of an approved retirement/divestiture plan, but strongly oppose any effort to impose such a charge while PSNH retains its own generation assets and supplies above-market generation. PSNH has "an obligation to take all reasonable measures to mitigate stranded costs[,] . . . [including undertaking a] reasonable amount of retirement, sale, or write-off of uneconomic or surplus assets." RSA 374-F:3, XII(c)(4).

Second, Mr. Baumann unsuccessfully attempts to muddy the waters by referring to specific and irrelevant Connecticut legislation that created certain nonbypassable charges in the late 1990s for all distribution customers. See November 30, 2010 Transcript, pp. 147-49 (hereinafter "Tr. 1, pp. 147-49").[3] He ignores, however, that New Hampshire has not enacted similar specific authority to impose these types of nonbypassable charges. Furthermore, Mr. Baumann ignores that the Connecticut nonbypassable charges involved post-Restructuring (i.e., post-divestiture) reliability must-run obligations rather than, as here, above-market utility-owned generation assets that have not been subject to divestiture. See id. Accordingly, under New Hampshire law, the proposed nonbypassable charge may only be imposed in conjunction with an approved divestiture plan.

Third, the proposed nonbypassable charge amounts to an exit fee, the use of which the New Hampshire legislature expressly has discouraged as a form of recovery mechanism. See RSA 374-F:3, XII(d); see also RSA 369-B:4, VI and VII (defining exit fee and also precluding all "similar" charges). A fee charged to competitive supply customers for a substantial portion of the costs associated with PSNH generation assets, even though the customers have chosen to no longer take such service, operates as an exit or similar fee and, as such, is disfavored as a matter of law. As PSNH witnesses reluctantly acknowledged under cross-examination, a nonbypassable stranded cost fee will harm competition by diminishing incentives for customers to depart for competitive

[3] The December 1, 2010 hearing transcript hereinafter will be abbreviated as "Tr. 2."

offerings. See Tr. 1, p. 169; see also id., pp. 227-29. It would also contravene the letter and purpose of the prohibition on exit fees and similar charges.

PSNH has tried to avoid this statutory limitation on exit fees by seeking to justify the nonbypassable charge as the equivalent of a fee associated with maintenance of a stable last resort rate to which a customer can return in the event market prices increase. See Exh. 1, p. 8. Nevertheless, as cross examination of PSNH witnesses from Commissioner Ignatius pointed out, customers in Unitil and Granite State territories do not pay any fee for the availability of backstop ES, as PSNH seeks to impose on all distribution customers in this proceeding. See Tr. 1, pp. 172-73. Furthermore, PSNH has not justified that the value of such backup service would equal the substantial costs of the proposed nonbypassable charge. See Exh. 14, pp. 10-11 (testimony by Mr. Hachey that if PSNH sees a value for this service, it should be priced and made available as a service). Absent proof -- not in the record -- that the nonbypassable charge will not operate as a competition-dampening exit or similar fee, the Commission should reject it as inconsistent with the letter and underlying policy of RSA 374-F:3, XII(d) and RSA 369-B:4, VI and VII.

B. Migration will Continue to Place Upward Pressure on ES Prices so Long as They Remain Tied to PSNH's Portfolio Costs.

Evidence offered in pre-filed testimony, discovery responses and at the hearings makes clear the circumstances that have led PSNH to seek relief from the Commission. Using its own generation portfolio to supply ES service to its customers posed few difficulties for PSNH in the years following restructuring. During that time and for many years thereafter, ES was priced lower than available competitive options and the associated portfolio cost could be spread over all or virtually all PSNH customers due to the lack of migration. See Exh. 1, p. 3 (Baumann Initial Testimony).

This changed nearly three years ago, when ES prices began to exceed market prices. See id., p. 7. This price differential has triggered an outflow of PSNH customers from ES to competitive supply and, at the same time, a smaller pool of remaining ES customers from which to recover costs associated with the PSNH generation portfolio. See id., pp. 3-4, 6-7. The end result is upward pressure on the ES rates, additional migration, and an even smaller ES customer pool to pay portfolio costs, which, in turn, results in additional upward pressure on ES rates. See id., pp. 4-5; see also Exh. 16, p. 4. To the extent the remaining ES customers are disproportionately small customers, then small customers experience an increased cost burden.

Absent future changes in market prices or PSNH costs that are not established on the record (as discussed in Section I.E below), this upward pressure will continue so long as ES prices are tied to PSNH portfolio costs.

C. Imposing a Nonbypassable Charge Will Harm Consumers and Competition Without Addressing PSNH'S Underlying Problems.

The PSNH proposal has significant disadvantages that warrant its rejection. Among other things, as Mr. Allegretti concludes, it would inappropriately impose a substantial new charge on all PSNH distribution customers.

> Stranded cost recovery is a transitional feature of electric restructuring designed to facilitate migration to competitive supply in a manner that is fair to the former monopoly utility. . . [and] to recover those costs to serve customers that were incurred prior to the amendment of the regulatory compact through the introduction of customer choice. What PSNH is proposing is an ability' to keep all of its distribution customers captive to its ongoing and future commodity purchase and investment decisions. This is not

> the imposition of charges that are necessary to make the transition to customer choice, but rather is the re-imposition of new and ongoing commodity costs upon customers who neither request nor purchase their power from PSNH.

Exh. 16, pp. 19-20.

Second, as noted above and detailed below, those customers that have switched to an alternative supplier will have to pay twice for commodity costs – once by its supplier and again by PSNH for ES costs even though those customers have expressly elected not to use PSNH's above-market generation. See Section I.D below. Finally, imposing a nonbypassable charge would remove or minimize incentives for PSNH to reform or entirely change PSNH's process for acquiring and managing the generation assets in its ES portfolio. Based on these many legal and policy defects, the Commission should reject the PSNH proposal to impose the requested nonbypassable charge. Customers that have chosen to leave PSNH generation service should not be held captive, through use of a nonbypassable charge, to help fund PSNH's questionable and overly-costly commodity investment decisions. See Exh. 16, pp. 19-20.

D. "Fairness" Arguments Do Not Justify a Nonbypassable Charge.

PSNH seeks to justify its proposal for a nonbypassable charge on distribution customers based on the alleged "fairness" issue of having its remaining ES customers bear sole responsibility for the increasing costs associated with its generation portfolio, whereby customers seeking competitive alternatives can escape these costs. See Exh. 1, p. 2. PSNH also identifies a fairness issue in the fact that nearly all competition has occurred in larger customer segments, with only limited successes in the residential and small business segments. See id., pp. 5-6. These arguments do not stand up to scrutiny.

As Mr. Allegretti observed both in his pre-filed and hearing testimony, claims of fairness cut both ways. See Exh. 16, p. 9; see also Tr. 2, pp. 101-02. While PSNH points to alleged unfairness in making ES customers pay all the substantial costs associated with PSNH's above-market generation portfolio, it is also fundamentally unfair for the Commission to take customers who have chosen to depart from PSNH for the competitive market and make them pay costs associated with costs of generation that they have expressly elected not to use. Such customers would have to pay twice for generation under the PSNH proposal, once from the competitive supplier with whom they signed up and once from PSNH for the supply they have elected to no longer use. Similarly, with respect to the "unfairness" that few smaller customers have signed up for competitive offerings, it is unfair to impose such charges when New Hampshire has not yet investigated or adopted measures that have successfully facilitated large-scale competitive access among smaller customer segments in states such as New York and Connecticut.[4] Reduced to its essence, it is fundamentally unfair for PSNH to create a significant cost problem due to its above-market generation portfolio and then avoid the consequences of its decision-making by recovering its above-market costs via a nonbypassable charge imposed on all customers in its service territory.

E. If Implemented, the Proposed Nonbypassable Charge Likely Will Be Permanent Absent Divestiture.

PSNH argues that the current situation supporting its claim for relief, in which market prices are below its ES prices, will be a short term problem that will subside when market prices increase above current levels. See Exh. 1, pp. 7-8; see also Tr. 1, pp. 131,

[4] As discussed in Section IV below, the Commission should investigate and implement measures to improve competitive access for New Hampshire customers irrespective of the results of the instant investigation into what to do about PSNH's above-market generation assets.

157-58. PSNH has failed to provide evidentiary support for this claim. Consequently, the Commission should reject it *ab initio*. So long as the market prices remain stable, the nonbypassable charge, if adopted, would remain a fixture on all retail customers' bills absent divestiture or retirement of the underlying PSNH supply portfolio that is causing the cost disparity.

Specifically, Mr. Baumann for PSNH claims that the current above-market status of its generation portfolio is a short term anomaly. See Exh. 1, pp. 7-8; see also Tr. 1, p. 150. PSNH provided no substantiating evidence or analyses in Mr. Baumann's direct testimony, PSNH discovery responses, the rebuttal testimony filed by Mr. Baumann and Mr. Hall or the Baumann and Hall testimony under cross-examination at hearing. E.g., Tr. 1, pp. 38-39 (acknowledging that PSNH has no long term projections of natural gas pricing reflecting substantial increases in the future). In contrast to the lack of evidentiary support for PSNH's opinion, the Commission should note that the evidence of record strongly supports relatively stable market prices and increasing costs for PSNH supply, each of which exacerbates the upward pressure on PSNH ES prices. Such record evidence includes the following:

- Several intervenor witnesses observed that they have reviewed analyses of market prices and were not aware of any that reflected significant short term price increases (see Tr. 2, pp. 79-80, 103-04, 149); and
- During hearings, intervenor witnesses, as well as PSNH witnesses, acknowledged the recent significant findings of large scale natural gas supplies (see Tr. 1, pp. 202-03; see also Tr. 2, pp. 56-57, 103-04) that

should have a dampening impact on prices in New Hampshire and other Northeastern states that rely heavily on natural gas; and

- The record reflects substantial PSNH planned expenditures to upgrade pollution control equipment at the Merrimack Station facility. See, e.g., Tr. 1, p. 43 (PSNH admission that Merrimack Station costs will increase ES rates in the future).

In sum, no persuasive record evidence supports that the PSNH above-market generation portfolio represents a short-term problem that will go away on its own.

F. Recommendations Relative to the PSNH Nonbypassable Charge.

As discussed above, the proposed PSNH nonbypassable charge applicable to all distribution customers suffers from significant legal and policy defects. PSNH avers it is different from other utilities because it owns the generation it uses to serve its ES load, but that is a red herring. If the cost of supply for the PSNH portfolio is above market, then the only basis on which to allow PSNH to recover those costs from *all* customers is to treat those costs as stranded costs. The *quid pro quo* for stranded cost recovery, however, should be for PSNH to exit the merchant function so that customers do not remain at risk for future supply decisions. This is, in fact, the structure the Legislature contemplated when restructuring the market over a decade ago. See RSA 369-B:1.II ("The divestiture of electric generation by New Hampshire electric utilities will facilitate the competitive market in generation service. Further, the proceeds of generation divestitures may decrease rates for the customers of transmission and distribution utilities.").

To accomplish this restructured market envisioned in the Restructuring Statutes, it is time to consider retirement and/or divestiture of PSNH's generation, which would be the optimal means to transition PSNH to use of a Full Requirements Service Structure ("FRS Structure"), as discussed below. RESA and Constellation therefore recommend to the Commission the following actions.

First, the Commission should reject the proposed nonbypassable charge. It is unlawful, unsound and unfair to New Hampshire consumers.

Second, insofar as the above-market nature of the PSNH generation portfolio is unlikely to change for many years, the Commission should either immediately initiate a new docket to complete the statutory processes needed to accomplish divestiture and/or retirement of PSNH generation assets or, at a minimum, direct PSNH to show cause why the divestiture or retirement of its generation assets is not in the economic interest of its customers at this time in light of the record evidence produced in this investigation.

Third and finally, the Commission should take the additional steps outlined in the following sections relating to full requirements service and implementation of measures to jump start competition, especially in the hard to reach mass market customer classes.

II. THE COMMISSION SHOULD ADDRESS PSNH'S HIGH ES SERVICE RATES THOUGH DIVESTITURE AND A NEW PROCUREMENT MODEL.

The optimal means of addressing the problem of allocating increased (and in this case, above-market) costs over a shrinking ES customer base is to move away from the Managed Portfolio approach that PSNH currently utilizes and towards a market-based procurement using a FRS Structure. The record shows that the use of a FRS Structure has worked well for National Grid and Unitil here in New Hampshire for some time, and also that other utilities across the New England region (including PSNH's affiliated utilities in Connecticut and Massachusetts) have successfully utilized the FRS Structure. The FRS Structure provides protections from PSNH's inflated supply costs, enhances the competitive policies set forth in the RSA, promotes customer choice of suppliers and products, ensures a fully competitive market and avoids cost shifting. Accordingly, as outlined below, retirement and/or divestiture, coupled with the adoption of a FRS Structure for default ES load obligations and the recommendations to enhance retail competition found in Mr. Allegretti's testimony (Exh. 16) as discussed in Section IV below, are all appropriate and effective tools to use in moving New Hampshire into a fully restructured State as contemplated in the Restructuring Statutes.

A. PSNH's Reliance on a Managed Portfolio Approach has Resulted in Increased Generation Costs Being Imposed on Fewer ES Customers.

PSNH manages a portfolio of power sources including owned generation, financial swaps, financial collars, unit entitlements, independent power producer generation, bilateral contracts and spot market purchases in order to meet its ES load obligations. See Exh. 16, p. 4; Exh. 1 (Baumann Initial Testimony), p. 3. This is referred to as a "Managed Portfolio" model. Under the Managed Portfolio model, PSNH must actively monitor the market and attempt to time procurement to achieve the lowest possible cost while maintaining the desired level of hedging to protect against market volatility. See id. Prior to the development of competitive electricity markets, the Managed Portfolio procurement model was the most common among utilities.

The record indicates that PSNH has not operated its Managed Portfolio in a cost-efficient manner. In fact, it is undisputed in the record that, from 2006 through July

2010, PSNH's Managed Portfolio approach to procurement resulted in an above-market return of 28 percent – that is, PSNH's commodity costs were 28 percent higher than the cost of the commodity on the open market. See Exh. 16, p. 8; see PSNH Response to Staff First Set, Request 002 (attached to Exh. 13 (Hachey Pre-filed Testimony)) (showing above market costs of approximately $230 million from 2006 through July 2010 and an estimated additional $10 million in above market costs from August through December 2010). Clearly, PSNH has failed to match, let alone beat, the market in using its Managed Portfolio approach.

Fortunately, the record also provides a solution for this problem: implementation of a FRS Structure. Through a FRS Structure, ES customers will receive an equitable, market-based portion of PSNH's costs incurred to serve the default load. The FRS Structure will also protect those customers that do not take their commodity from PSNH and do not benefit from PSNH's portfolio from bearing the cost of PSNH's decisions to supply the ES load with its own generation.

It is time for this Commission to adopt a FRS Structure for PSNH's ES load procurement.

B. The FRS Structure Offers Significant and Unique Benefits Including a ES Product that Best Meets the Competitive Policy Goals Provided in the RSA 374-F and Valuable Market Risk Protection.

Under the FRS Structure, the competitive wholesale providers utilize a fixed price full requirements contract, relieving the utility and its customers from the inherent risks and costs of market volatility. Utilities and regulators are able to then choose the wholesale provider that provides the lowest and best all-in price for default service customers such as those taking ES from PSNH. A FRS Structure utilizing fixed-price full requirements contracts is the preferred procurement approach for ES and it complies with the letter and policy of the Restructuring Act. It gives ES customers the benefits of competition - and avoids shifting risks to such customers - while still protecting the choices other customers made to obtain their supply from an alternative supplier due, in part, to PSNH's rate structure.

1. The FRS Structure will provide PSNH's ES customers with an appropriate default service while facilitating retail shopping, consistent with RSA 374-F.

ES service is a default service designed to provide a safety net for those customers that have not utilized an alternative supplier. The policy in New Hampshire is for all default services, including ES, to "be procured through the competitive market" and that all "costs of administering default service [] be borne by the customers of default service in a manner approved by the commission." RSA 374-F:3,V. The FRS Strùcture best meets the State's goal of utilizing the competitive markets for default services and encouraging competitive choices for commodity supply based on market-based offers.

The Restructuring Statutes are clear in their promotion of electric market competition both for wholesale procurement as well as retail customer choice, stating (with emphasis added):

- *The restructuring of electric utilities to allow retail electric competition and less costly regulation is in the public interest. New Hampshire is implementing such restructuring to create retail customer choice, which will provide retail electric service at lower costs.* RSA 369-B:1, I

- *The divestiture of electric generation by New Hampshire electric utilities will facilitate the competitive market in generation service.* Further, the proceeds of generation divestitures may decrease rates for the customers of transmission and distribution utilities. RSA 369-B:1, II.

- When customer choice is introduced, services and rates should be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges. *Generation services should be subject to market competition and minimal economic regulation and at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future.* RSA 374-F:3, III.

- Default service should be designed to provide a safety net and to assure universal access and system integrity. *Default service should be procured through the competitive market and may be administered by independent third parties. . . . . 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.* If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. . . . RSA 374-F:3, V(c)

- . . . 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. RSA 374-F:3, V(e).

- *The goal of restructuring is to create competitive markets that are expected to produce lower prices for all customers than would have been paid under the current regulatory system.* Given New Hampshire's higher than average regional prices for electricity, utilities, in the near term, should work to reduce rates for all customers. *To the greatest extent practicable, rates should approach competitive regional electric rates. The state should recognize when state policies impose costs that conflict with this principle and should take efforts to mitigate those costs.* The unique New Hampshire issues contributing to the highest prices in New England should be addressed during the transition, wherever possible. RSA 374-F:3, XI.

- The commission should adapt its administrative processes to make regulation more efficient and to enable competitors to adapt to changes in the market in a timely manner. *The market framework for competitive electric service should, to the extent possible, reduce reliance on administrative process. New Hampshire should move deliberately to replace traditional planning mechanisms with market driven choice as the means of supplying resource needs.* RSA 374-F:3, XIV.

- *The commission should seek to implement full customer choice among electricity suppliers in the most expeditious manner possible*, but may delay such implementation in the service territory of any electric utility when implementation would be inconsistent with the goal of near-term

> rate relief, or would otherwise not be in the public interest. RSA 374-F:3, XV.

The above statutory provisions mandate the transition to a fully competitive electricity market in New Hampshire "in the most expeditious manner possible." RSA 374-F:3, XV. The full restructuring of electric utilities like PSNH "is in the public interest." RSA 369-B:1, I. By utilizing full requirements supply contracts through a FRS Structure, the Commission:

> increases the relative portion of the customer's bill that is subject to competitive forces. This gives the customers more incentive to choose alternate suppliers and, equally important, more ability to take full advantage of alternate products, such as "real time pricing" and "interconnected self generation." The more customers are burdened with commodity-based charges that are nonbypassable, the less ability the customers will have to "be responsible for the consequences of their choices." Moving to a FRS Structure therefore promotes customer choice and customer responsibility and minimizes cost-shifting consistent with [RSA 374-F].[5]

Under a FRS Structure, competition and the incentives for suppliers to drive down costs of managing ES load will highly constrain costs for ES service.[6] Whereas, as Mr. Allegretti notes, a utility such as PSNH utilizing a Managed Portfolio Approach has little economic incentive or duty to minimize costs (as it operates under an incentive to minimize regulatory risks) or to produce a least-cost portfolio through innovation, efficiencies or risk-taking.[7] Indeed, through enactment of the restructuring efforts and the determination that it is in the public interest to move towards competitive markets, the

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[5] Exh. 16, p. 18.

[6] Thus, FRS Structure will accomplish the objectives of RSA 374-F:3, V(c), which requires that "[d]efault service should be procured through the competitive market..." and the mandate in RSA 374-F:3, III that "[g]eneration services should be subject to market competition and minimal economic regulation..."

[7] See Tr. 2, p. 122 (noting that one of the issues with utilities that utilize Managed Portfolio approach is that "they don't have the same kind of market-imposed incentives, they don't have necessarily the same drive that a for-profit entity does in that business to have to compete with others, and, therefore, have to drive costs down to the very lowest levels. ... it's the natural incentive, for a regulated entity, is to be able to obtain recovery associated with its costs"); see also Exh.16, pp. 12-13.

Legislature has recognized that a vertically integrated utility such as PSNH has little economic incentive or duty to minimize costs.[8]

2. FRS appropriately places market and portfolio management risks on wholesale suppliers while PSNH customers bear all Managed Portfolio risks.

A key difference between the FRS Structure and the Managed Portfolio Approach is that the FRS Structure protects customers from price volatility and the risks and responsibilities of portfolio management, while the latter shifts these risks *directly onto* PSNH's retail customers. Under the Managed Portfolio approach, the results of PSNH's power purchase decisions, good or bad, are passed on to its ES customers through its periodic rate adjustments. As Mr. Allegretti discussed:

> Such is the circumstance PSNH now finds itself facing. Specifically, PSNH provided information in response to Staff Data Request Q-Staff-002 that indicates the annual cost attributable to PSNH power purchases and the above-market portion of the total costs for those purchases. Total purchases from 2006 through July 2010 were $839,128,484 and PSNH estimates the above-market portion at 233,585,606, or around 28 percent. Clearly PSNH has failed over the last several years to match, let alone beat, the market in making its purchasing decisions. As PSNH also notes, over the past 24 months, the ES load obligation has decreased significantly. This has prompted PSNH to seek recovery of its Managed Portfolio costs from both ES and non-ES customers. Poor trading decisions by an FRS supplier may affect its bottom line, but do not affect the customers. With a Managed Portfolio approach, trading losses are passed on to the customers. In this regard, PSNH's performance as a portfolio manager (28% above market) is not encouraging.[9]

Comparatively, under the FRS approach, a wholesale supplier would be *required* to meet its ES obligations at the *fixed price* for which it contracted. The FRS contracts

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8 See RSA 369-B:1, I ("The restructuring of electric utilities to allow retail electric competition and less costly regulation is in the public interest."); RSA 369-B:1, 11 ("[g]eneration services should be subject to market competition and minimal economic regulation..." and RSA 374-F:3, III ("divestiture of electric generation by New Hampshire electric utilities will facilitate the competitive market in generation services").

9 Exh. 16, pp. 8-9.

shift price and quantity risk to the wholesale FRS supplier – thus providing ES customers with price insurance for the duration of the contract. See Exh. 16, p. 8. "Because they bid a fixed price, these suppliers cannot seek to increase rates to default customers when market conditions change and the effects of customer migration impact their total cost of supply. . . . Under a FRS Structure, the supplier bears any such loss; under a Managed Portfolio approach, [PSNH] incurs such a loss …." Id.

Mr. Allegretti also explains in more detail why wholesale suppliers are better able to manage these risks than the utility or its customers, stating that, for wholesale suppliers:

> there are a number of employees involved in the process of providing FRS to utilities and customers around the country, including, but not limited to, portfolio managers, traders, meteorologists, asset operators, power managers, schedulers, dispatchers and related regulatory and legal support.
>
> For instance, Constellation employs a team of seasoned portfolio managers that manages large regional portfolios for serving Constellation's customers' full requirements loads. Constellation must ensure that it properly and fully accounts for any transaction that goes into its portfolio, and that requirements for the entire load are met continuously for every hour of every day of every week. A team of 'strategists' continuously develops and improves computer models to keep track of all of the variable inputs that go into providing full requirements service; these strategists provide and analyze various scenarios that Constellation's portfolio managers may face. In addition, a 'fundamentals' group constantly researches basic supply and demand in fuel and power markets in order to monitor macroeconomic trends that affect the costs of serving load. Full-time meteorologists on Constellation's team continually monitor and predict the weather, so that Constellation's team can plan for weather effects on load requirements, and adjust supply accordingly. A 24-hour power trading desk trades power in the hour ahead, day ahead, and week ahead markets each day of the week, in order to help manage Constellation's supply portfolio. Moreover, power managers and traders monitor and trade in not only ISO-NE's market, but also those in Canada, New York, the PJM Interconnection, L.L.C. region, and other markets throughout the U.S.; fuel managers do the same as fuel markets directly affect power markets. Similar resources focus on fuel oil, currency, emissions and renewable energy markets. The task of meeting full requirements load supply additionally requires controllers, schedulers and dispatchers. Supporting all of

> these operations is a team of regulatory specialists and attorneys that monitor and participate in regulatory and legal activities impacting energy markets.
>
> * * * * *
>
> The expertise of such a team of employees as that assembled at Constellation, and their advanced programs and systems, drive costs down by utilizing a well-developed infrastructure and spreading the overhead for such activities across Constellation's entire portfolio, in this way producing a far better result than a small team of people at a regulated utility company or its consultant. The very competitive nature of this business constrains the costs for providing such service for PSNH's customers; that is, because sophisticated wholesale suppliers throughout the market have operations similar in structure to those of Constellation, they must compete through the RFPs to serve PSNH's ES load at the lowest cost.[10]

Wholesale suppliers have more expertise than PSNH in managing the administrative costs associated with managing a region-wide portfolio. Under the FRS Structure, ES customers get the benefit of the economies of scale and existing administrative capacity that full requirements suppliers possess.

From the record established in the instant proceeding, it is clear that wholesale suppliers, rather than PSNH and its ES customers, are in the best position and are best equipped to bear the risks and responsibilities of portfolio management. In contrast, PSNH's current Managed Portfolio Approach places significant price risk squarely on the backs of ES consumers. The risks of placing such portfolio management decisions directly on consumers (rather than on wholesale FRS suppliers) is made evident through PSNH's current attempt to impose a nonbypassable charge on all retail customers in order to recover the out-of-market costs related to serving just its own ES customer load.

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[10] See Exh. 16, pp. 10-11.

3. Numerous states and utilities have adopted the FRS Structure for default load procurement, including this Commission for Unitil and National Grid.

OCA witness, Mr. Traum, notes in his initial testimony (Exh. 13) that the adoption of a FRS Structure is not a foreign concept in New Hampshire. He notes that this Commission has previously adopted a FRS Structure for both National Grid and Unitil here in New Hampshire, with beneficial results for their customers. See Exh. 13, p. 7; see also Tr. 1, p. 100 (PSNH witness Baumann acknowledging that National Grid and Unitil both utilize the FRS Structure in New Hampshire). Mr. Traum notes that, as a result of National Grid and Unitil using the FRS Structure and fully divesting their generation as part of restructuring:

> migration risks are assumed by the competitive suppliers, and therefore are recognized in the prices that those suppliers bid to provide default ES for those utilities' customers. In addition, because there are separate bids and different rates for the large and small customer classes, the bidders can make their own assumptions about migration for the classes individually and build that risk into their respective bid prices.

Exh. 13, p. 7. Mr. Traum is correct on each of these points. From a policy perspective, adoption of a FRS Structure for PSNH's ES load obligations is consistent with the manner in which the Commission addressed restructuring for National Grid and Unitil.

The record also demonstrates that numerous other state commissions and utilities have adopted a FRS Structure to meet their default service load obligations. Mr. Allegretti testified that FRS is the predominant approach throughout New England and is used in Connecticut, Maine, Massachusetts and Rhode Island. See Exh. 16, p. 14. Mr. Allegretti testified in great length and detail about the Rhode Island Public Utility Commission's ("Rhode Island Commission's") recent investigation into the merits of a FRS Structure (see Section II.B.4 below).

The record is further clear that PSNH's own affiliated utilities that operate in Connecticut and Massachusetts (Connecticut Light & Power ("CL&P") and Western Massachusetts Electric Company ("WMECO") respectively) both currently utilize a FRS Structure to satisfy their default service obligations. PSNH witness Baumann on cross examination confirmed this fact and indicated PSNH's parent company already has in place a group dedicated towards managing the FRS procurements that will likely also manage PSNH's FRS obligations:

> Q. Okay. So both of those entities [CL&P and WMECO] rely upon a full requirements approach?
> A. Yes, they do. There is - - the generation, again, in Connecticut and Massachusetts, CL&P and Western Mass. no longer own generation.
> Q. So, is it also safe to assume that CL&P and WMECO and/or the parent company have an organization in place that is intended to develop and seek procurement opportunities?
> A. Yes.
> Q. They have that structure in place now?
> A. Yes. There is a - - there's actually a structure in Northeast Utilities Service Company.
> Q. The parent company?
> A. Yes.
> Q. If this Commission were to adopt a full requirements approach for New Hampshire for the ES load, would you anticipate that the same existing structure would also manage the full requirements structure here in New Hampshire?
> A. I would think, based on their expertise in other jurisdictions, yes.

Tr. 1, pp. 88-89.

PSNH's only response to these facts is to try to differentiate its circumstances from the circumstances of these other utilities, stating that its "[o]wnership of generation places PSNH in a unique position relative to other utilities." Exh. 2, p. 12. This is a red herring.

As detailed above, PSNH's continued ownership of generation was a temporary step towards moving to a fully restructured utility. Divestiture was laid out as a matter of policy (RSA 369-B:1) and remains fully authorized as a matter of law (RSA 369-B:3-a and RSA 374-F:3, III). The continued provision of default service from PSNH assets was only intended to be temporary until the assets were divested (RSA 369-B:3, IV(1)(A)). PSNH can only seek to recover stranded costs associated with default service (RSA 374-F:2, IV) if it pursues divestiture as a mitigation measure (RSA 374-F:2, XII(c), (d)). PSNH's reliance on the fact that it owns generation only highlights the fact that it is time to fully restructure PSNH and move towards retirement or divestiture of its generation fleet.

As Mr. Allegretti noted while under cross examination from the OCA, "we're now at a turning point where customer migration is reaching a level and retail competition is reaching a level that this Commission needs to seriously consider and this company needs to seriously consider whether its time for PSNH to become a fully restructured company." Tr. 2, p. 112. Retirement and/or divestiture utilizing stranded costs, along with adoption of a FRS Structure and implementation of the recommendations to enhance retail competition (discussed in Section IV below) are all appropriate tools this Commission can use to move PSNH to becoming a fully restructured utility like National Grid and Unitil in New Hampshire, and like PSNH's affiliated utilities in Connecticut and Massachusetts.

4. **Recent independent, data-driven analysis demonstrates that the FRS Structure results in lower risks to consumers and requires fewer resources to meet obligations to default customers.**

As indicated in Section II.B.3 above, the Rhode Island Commission recently investigated the procurement practices of National Grid for its default service load obligations in that State. Mr. Allegretti also testified in the relevant Rhode Island proceedings in support of the FRS Structure. See Tr. 2, pp. 130-36; see also Exh. 17 (Rhode Island Commission Orders). After weighing the merits of both the FRS and Managed Portfolio procurement strategies, the Rhode Island Commission confirmed that the use of the FRS Structure is not only appropriate, but that the value to Rhode Island customers associated with the FRS Structure's reduction in risks was in the public interest. See Tr. 2, pp. 111-12. In so finding, the Rhode Island Commission relied heavily on an analysis the NorthBridge Group performed on behalf of National Grid ("NorthBridge Group Study", a copy of which was attached to Mr. Allegretti's testimony (Exh. 16) at Attachment 1.3).

Mr. Allegretti provided some background on this study and its findings both in his prepared testimony and at cross examination. See Exh. 16, pp. 16-18; see also Tr. 2, pp. 130-31. At the direction of the Rhode Island Commission in its Docket No. 4041, National Grid committed to perform an empirical study comparing default service approaches for mass market customers, including a comparison of the FRS Structure and the Managed Portfolio model. To accomplish this task, National Grid asked the NorthBridge Group to conduct an examination and comparison of the FRS Structure, Managed Portfolio approach and spot market purchases. Importantly, the NorthBridge Group Study was not designed to produce a particular result or recommendation:

> [t]he NorthBridge Group was not commissioned to perform a study that would justify a particular result. Rather, National Grid asked the NorthBridge Group to help them determine which approach would be better for their customers. I believe this objective approach gives the Northbridge Study added credibility. Further, because the NorthBridge Study is based on *actual* market data, rather than conjecture about the relative merits of various procurement approaches, it represents a sound empirical foundation on which to evaluate the benefits of different procurement approaches. Finally, the analysis involves a comparison of default approaches against several metrics that pertain to various objectives with respect to default service, and therefore allows for an

> assessment of the tradeoffs with respect to key objectives, such as rate stability and rate minimization

See Exh. 16, p. 17 (internal citations omitted).

As the Rhode Island Commission held, the results of the NorthBridge Group Study are compelling and fully support the adoption of a FRS Structure for purposes of serving a default load such as ES. In comparing the FRS and Managed Portfolio approaches, the NorthBridge Group Study concluded that the Managed Portfolio approach "could result in higher unexpected increases in [default] costs, due to unhedged positions and/or unpredictable [default] load levels" whereas under the FRS Structure "supply costs are known when rates are established, therefore no or minimal deferrals are required unless spot purchases are also included in the plan." Exh. 16 at Attachment 1.3, pp. 16-17. In other words, the FRS Structure lowers volatility risks for the ES customers. The NorthBridge Group Study also concluded that the difference between the expected default rate under FRS Structure and under a Managed Portfolio approach is about $0.72 per MWh. See id., p. 15. As Mr. Allegretti summarized:

> [t]he NorthBridge Study provides significant and well-developed analytical support for the use of a FRS Structure to meet National Grid's default supply requirements. Looking at a wealth of *actual* data, the NorthBridge Study finds that, in comparison to other approaches, a FRS Structure: results in lower risks allocated to customers, lower supply cost surprises and minimal deferral account balances; reduces the potential effects of additional costs and risks that the NorthBridge Group did not model; and will require lower internal resources for the utility to implement. The NorthBridge Study finds that the FRS Structure provides all of these benefits, while resulting in only a *minimally* higher expected rate level for consumers.

See Exh. 16, p. 16 (internal citations omitted).

This independent, data driven analysis fully supports the adoption of a FRS Structure for PSNH's ES load obligations. The Commission has already adopted such a structure for the two other major utilities in this State, as described above. To do so for PSNH is a logical extension of that policy, is consistent with the competitive mandates of the Restructuring Statutes, and is fully supported not only by the record herein but the realities of the marketplace fully analyzed in the NorthBridge Group Study.

C. Recommendations Relative to an FRS Structure.

The preceding sections have explained that an FRS Structure, coupled with divestiture and/or retirement of PSNH generation assets, would comport with the Restructuring Statutes and serve the interests of PSNH ratepayers, competitive suppliers and their customers and other stakeholders. Moreover, as discussed in Section I above, RESA and Constellation have recommended that the Commission initiate a divestiture investigation or, at minimum, request that PSNH show cause why divestiture would not be in the economic interests of New Hampshire consumers. Specifically with respect to the FRS Structure, the Commission should direct that any new dockets established as a result of the instant investigation include a transition to FRS structure. The Commission should also make an express finding in the Order resolving this investigation that the FRS Structure for PSNH is fully consistent with the Restructuring Statutes and comports with the public interest.

III. INTERIM MEASURES ARE POTENTIALLY HARMFUL TO COMPETITION AND SHOULD BE AVOIDED OR LIMITED.

Commission Staff has expressed interest in determining whether actions should be taken on an interim or short term basis to address the adverse rate impacts on the remaining members of the ES rate classes, and the Commission's January 21 Secretarial Letter seeks legal advice on certain interim relief issues. All of the interim measures suggested to date would harm the competitive market, limit customer choice, be of doubtful utility, or all three. For these reasons, the Commission should reject the proposed interim measures and move promptly to finish the restructuring of PSNH as contemplated in the Restructuring Statutes enacted more than a decade ago.

Several parties mentioned the possibility of imposing restrictions on the return of customers from competitive supply to ES service as ways of reducing incentives for customers to migrate in the first place or of improving the predictability of ES requirements. One option is a "stay out" provision that would either outright bar, or impose a penalty for, returning from competitive supply to ES within a fixed period of time, such as six months or one year. See Exh. 13 (Traum Testimony), p. 9; see also Exh. 14, p. 11 (Hachey Testimony). Another is to create some form of new return rate, under which customers seeking to return from competitive service within an undefined period of time would be subject to a higher cost ES rate. See Exh. 13, p. 9; see also Tr. 2, pp. 26, 38-40.

There are significant issues associated with these types of stay out restrictions. First, in limiting customer choice, such programs interfere with the operation of the competitive market. As such, they contravene the letter and underlying policies of several statutory provisions, including RSA 374-F:1, I and II (stating that "[i]ncreased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry" and highlighting a portion of the New Hampshire constitution that provides that "[f]ree and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it").

Second, these stay out restrictions unreasonably disadvantage competitive supply customers. See RSA 378:10 (barring undue or unreasonable prejudice or disadvantage in any respect in utility rates). As a general matter, all distribution customers have the opportunity to choose between default service and competitive options for their generation supply. Under a stay out provision, competitive supply customers within the stay out period are barred from default service options available to all other customers even if it would be preferable from the customer's perspective.

Third and finally, stay out provisions are of questionable utility in avoiding adverse impacts associated with migration. Such provisions may have some arguable utility when market prices, ES prices, or both are changing rapidly and untrammeled change rights among customers may create opportunities for destabilizing market timing or arbitrage strategies. No parties have argued for the existence of such unstable market conditions on the record. Additionally, stay out provisions address a theoretical concern that market prices will move well above ES rates, leading customers to flock back to PSNH. The record contains no evidence that such movement is a realistic concern. Thus, the provisions likely are not necessary to protect the public and will serve only to deny a customer's choice in case he or she wants to move back to ES for any reason. Moreover, as Mr. Allegretti testified during hearings, customers ordinarily do not focus on return options when making the decision to go to competitive supply. Tr. 2, pp. 106-07. Hence, customers are likely to continue migrating from PSNH service despite the stay out restrictions, only to be barred artificially from exercising their choice to return to ES.

IV. THE COMMISSION SHOULD TAKE STEPS TO IMPROVE ACCESS TO COMPETITIVE RETAIL OFFERINGS.

Even though the proposed nonbypassable charge is demonstrably unwarranted and unlawful as detailed above, the PSNH Petition did highlight a policy problem that merits the Commission's close attention – namely, that the significant recent successes of competitive suppliers in the large and medium customer classes have not been matched in the residential and small commercial classes. In order to address the impact of PSNH's above-market generation costs on the dwindling number of ES customers, it is prudent for this Commission to adopt policies and enact programs that enhance the market structure. In so doing, the Commission will entice suppliers into serving the residential and small commercial classes. Accordingly, customers will have a broad array of competitive choices providing each with viable options to avoid inflated ES rates. In turn, the Commission will meet its obligations to enhance the competitive markets as instructed in the New Hampshire laws detailed in Section II.B.1 above.

As discussed in Mr. Allegretti's testimony, problems associated with retail access in the harder to reach residential and small commercial sectors are not unique to New Hampshire but have been addressed successfully in other states through implementation of reasonable policy initiatives. See Exh. 16, pp. 23-25. In many cases, PSNH affiliates in other states have experience with implementing these measures both operationally and as a matter of billing system design.

The Commission should investigate and implement in New Hampshire all of these measures. This will help ensure that all customer classes benefit from retail competition, as is the case in states such as Connecticut and New York. In response to the January 21 Letter requesting information on any potential regulatory impediments, there are no known legal impediments relative to implementation of any of these measures other than the fact that the Commission has not adopted them in the past. The OCA has taken the position that the Commission should investigate all of these proposed programs in order to "jump start" competition in the smaller classes. See Tr. 2, pp. 10, 19.

A. Purchase of Receivables Program.

A POR program is "the first and most important prerequisite" for achieving mass market access to the competitive market in New Hampshire. See Exh. 16, p. 24. When such a program is put in place, the distribution utility is transferred rights to receivables relating to supply costs incurred by a generation customer of a competitive supplier and is responsible for collecting from the customer any unpaid supply charges. See id. In return, the utility receives a Commission-approved payment from each supplier in the form of a discount off of inter-company payments, with the figure being periodically adjusted to reflect actual costs. See id. This is a win/win for all parties, as the utility has an existing collections department for unpaid charges that can still be used for unpaid competitive supply charges from these same customers while still fully recovering its costs, thereby achieving efficiencies and scale economies lost in this area upon restructuring. Consequently, suppliers can market to all potential customers – including residential customers – without incurring the expenses associated with the credit checks needed to minimize risks that collection efforts on nonpaying customers would eat up the slim margins in mass market customer segments. See id.; see also Tr. 2, p. 143 (Allegretti testimony under questions from Commissioner Below that a New Hampshire

POR program would lead Constellation to investigate possible entry into residential markets).

POR programs serve both electric and natural gas industries and are in place or being implemented in most restructured states, including New York, Connecticut, Pennsylvania, New Jersey, Maryland, Massachusetts, Ohio and Illinois. See, e.g., Exh. 16, p. 23. PSNH already has POR resources available through its CL&P affiliate and its WMECo affiliate is awaiting the final Massachusetts Department of Public Utilities approval to implement such a program in the Commonwealth. See Tr. 1, pp. 97-99; Tr. 2, pp. 114-15.

PSNH's extreme objections to implementation of a POR program in New Hampshire in its Rebuttal Testimony (Exh. 2, pp. 13-14) are unfounded and unpersuasive. PSNH incorrectly claims that a POR program transfers the risk of customer nonpayment from the supplier to the utility. See id., p. 13. In actuality the cost of non-payment is syndicated across all retail sales and is not charged against the utility, which remains made whole. See Tr. 2, pp. 116-17. This syndication of the risk preserves scale economies and efficiencies that benefit all parties and facilitate customer choice in all market segments. See id. PSNH also voices its concerns with an "unregulated entity" such as a RESA member company taking on duties relating to PSNH distribution service in the event that suppliers in the future are entitled to offer consolidated billing services. Exh. 2, pp. 13-14. As PSNH witnesses discussed under cross-examination, however, retail suppliers are licensed by the Commission and fully subject to various state laws and Commission regulations relating to services offered. See Tr. 1, pp. 105-08. Mr. Hall's bare opinion that he still considers suppliers to be "unregulated" (id., p. 108) does not mean that retail suppliers are not subject to Commission oversight through its licensing authority or that they would not continue to be in the future if participating in a POR regime. PSNH's unsuccessful efforts to be any more specific than claiming that POR was a "new risk" for New Hampshire in response to Commissioner Below's invitation at hearing to expand on their concerns (Tr. 1, pp. 208-10) highlights why there is no reason these well-established programs could not help improve choice for residential and small commercial customers in New Hampshire.

B. Customer Referral Program.

Customer referral programs are a second, useful form of program that facilitates awareness of competitive supply choices. See Exh. 16, p. 24. They usually entail a system in which appropriate contacts by a distribution customer to the utility customer service staff trigger an inquiry whether the customer is interested in participating in a referral program in which they can select service from participating suppliers and receive a discounted price for a time limited period (such as two months). See id. The customer would thereafter remain with the supplier or could elect to go back to the utility or another supplier without any fees or termination penalties. See id. Participating suppliers would be responsible for approved costs incurred by the distribution company in implementing the program, including the cost of periodic bill inserts or mailings concerning the program. See id. PSNH's affiliate, CL&P, maintains such a program in Connecticut. See Exh. 6; see also Tr. 1, pp. 140-42. PSNH did not offer specific objections to the proposal to investigate customer referral programs other than pointing out that PSNH has marketing executives that "talk about market opportunities" with customers. Tr. 1, p. 142 (Hall Testimony).

C. Electronic Interfaces.

Mr. Allegretti, in his testimony (Exh. 16, pp. 24-25), identified the need for development of a dedicated web-based site that would allow suppliers access to key customer usage and account data information. These tools allow a retail supplier to provide a prospective customer with timely, accurate and personalized competitive offers, check enrollment status of new customers and similar service functions for potential, new and existing customers. See id. They are common features that avoid time delays and costs associated with manual processing in nearly every restructured state. See id.; see also December 1, 2010 Tr., pp. 144-45. RESA and Constellation support the investigation and implementation of standard electronic interfaces as important tools for reducing costs and enhancing choice in all customer segments, including the residential and small commercial mass market segments.

PSNH offers an extreme and unsupported opposition to these common sense, cost and time saving measures. See Exh. 2, p. 14. The rebuttal witnesses complain again that these measures will give confidential information to "unregulated entities" and that the Commission should "question the motives behind this recommendation." Id. As discussed in Section V.B above, retail suppliers are regulated electric service providers under New Hampshire law and will be implementing these electronic access provisions under the Commission's supervision. The "motives behind this recommendation" are obvious – to bring to New Hampshire the benefits of competition found in many, if not most, other restructured states. The PSNH witness also failed to provide a single instance in which their fears were manifested in the context of another utility that utilizes such electronic interfaces.

D. Separate Default Service for Customers with Hourly Metering.

Pre-filed testimony and testimony at hearing addressed the possibility of restructuring ES rates so that the largest commercial customers would receive a rate based on hourly market prices determined by the Independent System Operator – New England. E.g., Tr. 1, pp. 211-14. This suggestion assumes that large customers have a wide variety of competitive options in the marketplace, tend to return to ES for short periods of time, and would want a simple market-based short term rate in place while investigating other competitive options. See id. RESA and Constellation support investigation of this potential change.

Conclusion

RESA and Constellation appreciate the opportunity to participate in this important investigation. PSNH's generation assets are above-market, causing increasing migration, and PSNH offers no analysis to support that this is only a short term discrepancy. The PSNH solution of charging a nonbypassable stranded cost rate contravenes State law and will hinder competition in violation of the Restructuring Statutes. Accordingly, the Commission should reject a nonbypassable charge and immediately commence proceedings to complete restructuring and divestiture of the PSNH generation assets. It also should endorse the use of FRS procurements in the PSNH service territory, as they are done in the territories of other New Hampshire investor owned utilities and in most other restructured states around the country. RESA and Constellation oppose interim measures to address migration-related impacts, as they will limit competitive choice and be of limited utility. Finally, the Commission should open a procceding and speedily implement the measures Mr. Allegretti identified that have jump started competition for mass market customers in other utilities, including POR, customer referral programs and robust electronic interfaces.

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