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N.H.P.U.C. Case No.	DE 11-184
Exhibit No.	PS01#4
Witness	Panel 1
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STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 11-184

REBUTTAL TESTIMONY OF
STEPHEN R. HALL

Joint Petition
for
Approval of Power Purchase and Sale Agreements
and
Settlement Agreement

November 14, 2011

1 **Q. Please state your name, position and business address.**

2 **A.** My name is Stephen R. Hall. My business address is PSNH Energy Park, 780 North
3 Commercial Street, Manchester, New Hampshire. I am Rate and Regulatory Services
4 Manager for Public Service Company of New Hampshire (“PSNH” or the “Company”).

5
6 **Q. Have you previously testified before the Commission?**

7 **A.** Yes, I have testified on numerous occasions before the Commission.

8
9 **Q. What is the purpose of your testimony?**

10 **A.** The purpose of my testimony is to provide PSNH’s rebuttal concerning the pre-filed
11 testimony filed by Mr. Steven E. Mullen on behalf of Commission Staff.

12
13 **Q. Please summarize your testimony.**

14 **A.** As noted in the Joint Petition that initiated this docket, PSNH has entered into five Power
15 Purchase Agreements (“PPAs”) for the purchase of energy from five existing wood-fired
16 generating plants located within the state in order to achieve the public interest goals
17 described by Commissioner Bald in his prefiled direct testimony. The PPAs and the Joint
18 Petition expressly note that the effectiveness of the Wood IPP PPAs is conditioned upon
19 the Commission’s approval of a ratemaking methodology which provides for full
20 recovery of all costs of these transactions by PSNH without increasing the Company’s
21 Energy Service rate. The Joint Petition detailed the ratemaking methodology deemed
22 reasonable by all the Joint Petitioners, whereby \$8.5 million of costs would be transferred
23 from PSNH’s Energy Service rate to the Company’s distribution rates in order to “make

1 room” for up to \$8.5 million in annual above-market costs from the PPAs. Since the
2 Joint Petition discusses this ratemaking methodology in detail, I will not repeat those
3 details in this rebuttal testimony.

4
5 In his direct testimony, Mr. Mullen objects to the ratemaking methodology set forth in the
6 Joint Petition, stating, “[I] am not in favor of the recovery methodology put forth by the
7 Joint Petitioners. Being mindful, however, that the proposed recovery methodology is
8 one of the stated conditions for PSNH to begin purchasing energy pursuant to the PPAs, I
9 offer some alternatives for consideration that I believe would achieve similar results to
10 those sought by PSNH.” (Mullen Testimony at 4).

11
12 PSNH, in concert with the other Joint Petitioners has reviewed Mr. Mullen’s alternative
13 ratemaking proposals and finds each of his proposals to be problematic in some respect.
14 That review determined it is doubtful Mr. Mullen’s alternatives “would achieve similar
15 results to those sought by PSNH” and therefore, those alternative recommendations are
16 unacceptable.

17
18 **Q. What are the alternative ratemaking methodologies proposed by Mr. Mullen?**

19 **A.** On page 18 of his prefiled direct testimony, Mr. Mullen outlines three ratemaking
20 alternatives to that proposed by the Joint Petitioners as follows:

- 21 • Defer all above-market costs of the PPAs for future recovery through the energy
22 service rate;

- 1 • Recover the above-market costs of the PPAs through the stranded cost recovery
- 2 charge (SCRC); or
- 3 • Defer all above-market costs of the PPAs for future recovery in a method to be
- 4 determined by the legislature.

5

6 **Q. Why is Mr. Mullen’s first alternative ratemaking proposal (defer all above-market**

7 **costs of the PPAs for future recovery through the energy service rate) unacceptable?**

8 **A.** Mr. Mullen’s first alternative ratemaking proposal is unacceptable because it does not

9 fulfill the condition that requires “full cost recovery of the rates, terms and conditions of

10 the Wood IPP PPAs by PSNH” as set forth in the PPAs and the Joint Petition. Mr.

11 Mullen testified that under this proposal, “Recovery of the deferred amount could

12 commence at any such time when either the energy price in the PPAs becomes below

13 market or PSNH’s energy service rate becomes lower than its marginal cost of

14 supplemental power.” (Mullen Testimony at 18). He continues by admitting, “One

15 drawback to this approach is that, given the uncertainty of future market prices, the

16 deferred amount may not be recovered for quite some time.” (*Id.*).

17

18 PSNH Data Request 1-5 (Attachment 1 to this rebuttal testimony) to Mr. Mullen,

19 regarding this first ratemaking alternative asked “Is it possible that under your proposal

20 such deferred amount might never be recovered by PSNH?” Mr. Mullen began his

21 response by stating, “There are many possible outcomes, *and that is one of them.*”

22 (Emphasis added). When asked in that same data request how the possibility that such a

23 deferral might never be recovered by PSNH may “‘provide the same result’ as the

1 ratemaking proposal contained in the Joint Petition,” Mr. Mullen responded, “As for the
2 possibility posed in the question that the deferred amounts are never recovered, *that could*
3 *‘provide the same result’ by virtue of a write-off* to expense – an outcome I assume PSNH
4 would not view as favorable.” (Emphasis added). Mr. Mullen appears to be correct on
5 both counts – his first ratemaking proposal is likely to result in a write-off of above-
6 market costs attributable to the PPAs, and PSNH would not agree to any ratemaking
7 methodology that does not allow for the full cost recovery of the rates, terms and
8 conditions of the Wood IPP PPAs by PSNH.

9
10 In both PSNH Data Request 1-5 and Wood IPP Data Request 1-9 (Attachment 2), Mr.
11 Mullen was asked about the impact of Generally Accepted Accounting Principles
12 (“GAAP”), or specifically “Financial Accounting Standards Board Statement No. 71,
13 ‘Accounting for the Effects of Certain Kinds of Regulation’ as amended by FSAS 90 and
14 FSAS 92,” on his proposed deferral mechanism. Mr. Mullen responded identically to
15 both questions:

16 “Under Generally Accepted Accounting Principles, the recoverability of the
17 deferred amount will depend on whether it is considered probable that future
18 revenue will be provided that will at least equal the cost. In this case, the
19 probability of recoverability will depend on the relationship of the energy price in
20 the PPAs to the market price for energy or the relationship between PSNH’s
21 energy service rate and PSNH’s marginal cost of supplemental power. *If at some*
22 *point it is not probable that the deferred amount will be recoverable, then the*
23 *remaining amount must be written off.*” (Emphasis added).

1 PSNH cannot agree to a ratemaking proposal that does not ensure the timely full recovery
2 of all costs of the PPAs. To do so would expose PSNH to the risk of not recovering the
3 above-market cost. Even Mr. Mullen admits that his first ratemaking alternative not only
4 fails to meet this condition, but it may lead to a write-off of the deferred above-market
5 costs of the PPAs.

6
7 **Q. Why is Mr. Mullen’s second alternative ratemaking proposal (recover the above-**
8 **market costs of the PPAs through the stranded cost recovery charge) problematic?**

9 **A.** Mr. Mullen’s second ratemaking alternative is problematic due to the limitations set forth
10 by statute on costs that may be defined as “stranded costs.” RSA 374-F:2, IV defines
11 “stranded costs” as follows:

12 "Stranded costs" means costs, liabilities, and investments, such as uneconomic
13 assets, that electric utilities would reasonably expect to recover if the existing
14 regulatory structure with retail rates for the bundled provision of electric service
15 continued and that will not be recovered as a result of restructured industry
16 regulation that allows retail choice of electricity suppliers, unless a specific
17 mechanism for such cost recovery is provided. ***Stranded costs may only include***
18 ***costs of:***

19 (a) Existing commitments or obligations incurred prior to the effective date of
20 this chapter;

21 (b) Renegotiated commitments approved by the commission; and

22 (c) New mandated commitments approved by the commission, including any
23 specific expenditures authorized for stranded cost recovery pursuant to

1 any commission-approved plan to implement electric utility restructuring
2 in the territory previously serviced by Connecticut Valley Electric
3 Company, Inc.

4 (Emphasis added).

5
6 There can be little argument that the costs of the five Wood IPP PPAs do not fall under
7 the criteria of subparagraphs (a) (existing commitments or obligations) or (b)
8 (renegotiated commitments), nor are such costs related to PSNH's acquisition of
9 Connecticut Valley Electric Company, Inc. Thus, inclusion of the above-market costs of
10 these five PPAs in PSNH's stranded cost recovery charge would hinge on whether these
11 five PPAs are deemed to be "new mandated commitments approved by the commission."
12 If they are deemed so by the Commission, then they could be recovered through the
13 stranded cost recovery charge.

14
15 **Q. Why is Mr. Mullen's third alternative ratemaking proposal (defer all above-market**
16 **costs of the PPAs for future recovery in a method to be determined by the**
17 **legislature) unacceptable?**

18 **A.** Under Mr. Mullen's third ratemaking proposal, the Commission would apparently
19 approve the substance of the PPAs, but would not specify a cost recovery methodology,
20 instead leaving that determination to the state's General Court. The PPAs and the Joint
21 Petition clearly note that PSNH's obligation to purchase power under the Wood IPP
22 PPAs is contingent upon receipt of a final, nonappealable decision from the New
23 Hampshire Public Utilities Commission, approving the Petition as submitted without
24 alteration, modification or condition, and allowing for full cost recovery of the rates,

1 terms and conditions of the Wood IPP PPAs by PSNH in a manner not to increase
2 PSNH's energy service rate as set forth in the Petition.

3
4 Under Mr. Mullen's third ratemaking alternative, PSNH would not receive approval of
5 the requisite cost recovery methodology unless and until the General Court was to enact
6 acceptable legislation. There is no guarantee that the General Court would in fact enact
7 acceptable legislation. Even if such legislation was forthcoming, it might take many
8 months for it to be enacted.

9
10 The uncertainty of gaining the necessary approval, and the potentially lengthy delay that
11 would likely be required to obtain the necessary legislation, places the five Wood IPPs
12 into a period of uncertainty which affects both their on-going operation and the public
13 policy benefits of the PPAs described by Commissioner Bald. Hence, adoption of Mr.
14 Mullen's third ratemaking alternative would place the PPAs in jeopardy of ever taking
15 effect.

16
17 **Q. If none of Mr. Mullen's ratemaking alternatives are acceptable, is there any other**
18 **ratemaking mechanism that the Commission could adopt that might resolve the**
19 **issues in this docket?**

20 **A.** Yes. While the ratemaking treatment set forth in the Joint Petition is PSNH's preferred
21 approach, in the event that the Commission determines that methodology to be
22 unacceptable, PSNH suggests an additional ratemaking proposal for the Commission's
23 consideration.

1 This additional ratemaking proposal is based upon the Commission’s plenary ratemaking
2 authority. Under this alternative, the Commission would create a new and distinct
3 nonbypassable distribution charge to collect and recover the above-market costs of the
4 PPAs. This new and distinct charge would be temporary in nature, lasting only as long as
5 necessary to recovery all above-market costs of the PPAs with a return at the Company’s
6 weighted cost of capital for its generation segment.

7
8 I have been advised by counsel that the Commission has the ability to create such a
9 charge because the Commission’s authority over ratemaking is broader than its general
10 supervisory power, and has been described as “plenary,” limited only by specific
11 statutory language which restricts that power. The New Hampshire Supreme Court has
12 noted that the statutory scheme dictates the Commission's ratemaking power "is plenary
13 save in a few specifically excepted instances." *State v. New England Tel. & Tel. Co.*, 103
14 N.H. 394, 397, 173 A.2d 728, 730 (1961), citing *Lorenz v. Stearns*, 85 N.H. 494, 506,
15 161 A. 205, 212 (1932)., *Legislative Utility Consumers Council v. PSNH*, 119 N.H. 332,
16 341 (1979).

17
18 The Commission has agreed that it has such plenary ratemaking authority. In *Re New*
19 *Hampshire Electric Cooperative, Inc.*, 86 NH PUC 539 (2001), relying upon the
20 *Legislative Utility Consumers Council v. PSNH* decision, the Commission noted, “We
21 begin with the premise that the statutory scheme under which the Commission operates
22 give it ‘plenary’ ratemaking authority over the state's utilities, except in circumstances
23 specifically enumerated in the statute.”

1 According to *Black's Law Dictionary*, "plenary" is defined to mean "full, entire,
2 complete, absolute, perfect, unqualified." Under the Supreme Court's rulings, the
3 Commission's ratemaking power is therefore "complete" and "unqualified" "save in a
4 few specifically excepted instances."

5
6 The above-market costs that would be incurred as a result of implementing the five Wood
7 IPP PPAs are the price to be paid for gaining the public policy benefits described by
8 Commissioner Bald. The costs of the Wood IPP PPAs also do not run afoul of the state's
9 electric restructuring law, RSA Chapter 374-F. These public policy benefits are similar
10 in nature to those funded by the "system benefits charge" created by RSA 374-F:3, VI.
11 The system benefits charge is described in that statute as "A nonbypassable and
12 competitively neutral system benefits charge applied to the use of the distribution system
13 may be used to fund public benefits related to the provision of electricity." The benefits
14 described by Commissioner Bald are all "public benefits related to the provision of
15 electricity." The Commission has the authority to create a similar special purpose
16 nonbypassable charge to fund the public benefits of the Wood IPP PPAs .

17
18 **Q. Do the Wood IPP PPAs conform to the least cost integrated resource plan most**
19 **recently filed and found adequate by the Commission?**

20 **A.** Yes. PSNH's 2007 Least Cost Integrated Resource Plan reviewed by the Commission in
21 Docket No. DE 07-108 discussed the requirement under federal law to interconnect and
22 purchase the generation from generators deemed to be Qualifying Facilities ("QF") under
23 the Public Utility Regulatory Policies Act ("PURPA"). PSNH further clarified its

1 obligations under PURPA more recently in Docket No. DE 09-067, *Complaint of Clean*
2 *Power Development*. At the margin, PSNH is always participating in the energy market
3 to buy/sell supplemental power needs. To that end, the 2007 Least Cost Integrated
4 Resource Plan also notes that “PSNH will also explore opportunities to increase its
5 supply base through contracts for durations of greater than one-year from merchant
6 generators, providing energy, capacity, and Renewable Energy Certificates if eligible.”

7

8 **Q.** Does this conclude your testimony?

9 **A.** Yes.

Attachment 1 -- Staff Response to PSNH Data Request 1-5

Public Service Company of New Hampshire, et al.
DE 11-184

NH PUC Non-Advocate Staff Responses to Data Requests of PSNH

Date Received: October 21, 2011

Date of Response: October 28, 2011

Request: PSNH – 1-5

Witness: Steven E. Mullen

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REQUEST:

Page 18, line 23: You describe your first proposed ratemaking alternative, where all above-market costs of the PPAs would be deferred for future recovery through the energy service rate, with such recovery commencing “at any such time when either the energy price in the PPAs becomes below market or PSNH’s energy service rate becomes lower than its marginal cost of supplemental power.” You continue by stating that “the deferred amount may not be recovered for quite some time.”

- a) Is it possible that under your proposal such deferred amount might never be recovered by PSNH?
- b) If your answer to item a) is that there is no possibility that the deferred amount would never be recovered, please explain the basis of that opinion.
- c) If your answer to item a) is that it is indeed possible that such deferred amounts might never be recovered by PSNH:
 - i. please explain how that possibility is consistent with your testimony on page 18, line 8, that your ratemaking alternatives may “provide the same result” as the ratemaking proposal contained in the Joint Petition.
 - ii. if there is uncertainty as to if, when or how the deferred costs will be recovered, how will such deferral be accounted under GAAP?
 - iii. under the proffered conditions, is it your opinion that it is likely PSNH be required to write-off the deferral?
- d) Under your proposal, would PSNH be entitled to accrue interest at the Company’s weighted cost of capital for its generation segment on amounts waiting to be recovered, until they are fully recovered?

RESPONSE:

- a) There are many possible outcomes, and that is one of them. I note, however, that the possibility of PSNH’s energy service rate remaining above its marginal cost of supplemental energy purchases is not consistent with PSNH’s views expressed in other recent dockets. For instance, in Stephen R. Hall’s September 23, 2011 testimony in Docket No. DE 11-216 in support of alternative default energy service rate (Rate ADE), Mr. Hall stated,

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**NH PUC Non-Advocate Staff Responses
to Data Requests of PSNH**

Date Received: October 21, 2011
Request: PSNH – 1-5 (cont'd)

Date of Response: October 28, 2011
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...Rate ADE will initially be priced below Rate DE, since PSNH's marginal cost of providing energy service is currently lower than its average cost. *However, that may not always be the case.* In the event that market prices increase in the future, PSNH's marginal cost of providing energy service could be in excess of its average cost, as was the case for many years following restructuring. (emphasis added)

In addition, in Docket No. DE 10-160, PSNH witness Robert A. Baumann included the following question and answer on pages 7-8 of his July 30, 2010 testimony:

Q. Does PSNH believe the current drop in load obligation due to migration will continue long term?

A. No. PSNH believes the current drop in energy service load obligation is primarily due to currently low competitive market prices which historically have fluctuated dramatically over short periods of time. The current short-term unprecedented market price decline over the past 24 months has allowed certain marketers to offer selected larger customers lower ES rates than provided by PSNH's default ES rate. We do not believe the past 24 months is an accurate indicator for long-term prices.

PSNH believes the short-term market decline is more a function of the current unprecedented low natural gas prices setting the New England market price and the world-wide economic decline. These current market prices may very well be short-lived.

b) N/A

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**NH PUC Non-Advocate Staff Responses
to Data Requests of PSNH**

Date Received: October 21, 2011
Request: PSNH – 1-5 (cont'd)

Date of Response: October 28, 2011
Witness: Steven E. Mullen

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- c)
- i. The phrase “provide the same result” refers to PSNH’s concern that there be no upward pressure on its energy service rate as a result of entering into the PPAs. In the event that the energy price in the PPAs becomes below market or PSNH’s energy service rate is lower than its marginal cost of purchasing supplemental energy, the costs of the PPAs would not increase PSNH’s energy service rate to a point that would cause more customers to migrate to competitive supply options. As for the possibility posed in the question that the deferred amounts are never recovered, that could “provide the same result” by virtue of a write-off to expense – an outcome I assume PSNH would not view as favorable.
 - ii. Under GAAP, the recoverability of the deferred amount will depend on whether it is considered probable that future revenue will be provided that will at least equal the cost. In this case, the probability of recoverability will depend on the relationship of the energy price in the PPAs to the market price for energy or the relationship between PSNH’s energy service rate and PSNH’s marginal cost of supplemental power. If at some point it is not probable that the deferred amount will be recoverable, then the remaining amount must be written off.
 - iii. My response is the same as that given by PSNH in its response to Non-Advocate Staff 1-17 regarding the proposed deferral of annual over-market costs in excess of \$8.5 million.

This question cannot be precisely answered without knowing when this proceeding will result in a final, unappealable order; what the market prices for energy will be during the term of each of the PPAs; how the Wood IPPs will operate during the term; what the Commission will approve as the Initial Wood Price for each of the PPAs; and what the actual cost of wood will be for each of the Wood IPP facilities.
- d) As stated in my testimony, the alternatives were put forward as ideas for consideration and discussion. To the extent the parties deem them worthy of consideration, details such as the rate of interest or return applicable to any deferred amounts would be the subject of further discussion.

Attachment 2 -- Staff Response to Wood IPP Data Request 1-9.

**Public Service Company of New Hampshire, et al.
DE 11-184**

**NH PUC Non-Advocate Staff Responses
to Data Requests of the Wood IPPs**

Date Received: October 21, 2011
Request: Wood IPP – 1-9

Date of Response: October 28, 2011
Witness: Steven E. Mullen

REQUEST:

Referencing p.18 line 22 through p.19 line 2 of Mr. Mullen’s testimony dated October 14, 2011 in Docket DE 11-184, please explain Mr. Mullen’s understanding of how a deferred amount that “may not be recovered for quite some time” would be treated under Financial Accounting Standards Board Statement No. 71, “Accounting for the Effects of Certain Kinds of Regulation” as amended by FSAS 90 and FSAS 92, or the successor provisions of any codification of said standards. Does Staff believe it is likely that PSNH would be permitted to carry such a deferred amount as a regulatory asset on its balance sheet or accounting ledger?

RESPONSE:

Under Generally Accepted Accounting Principles, the recoverability of the deferred amount will depend on whether it is considered probable that future revenue will be provided that will at least equal the cost. In this case, the probability of recoverability will depend on the relationship of the energy price in the PPAs to the market price for energy or the relationship between PSNH’s energy service rate and PSNH’s marginal cost of supplemental power. If at some point it is not probable that the deferred amount will be recoverable, then the remaining amount must be written off.

1