

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

**APPEAL OF PNE ENERGY SUPPLY, LLC
PURSUANT TO RSA 541:6 AND SUPREME COURT RULE 10
DOCKET NO. _____**

APPENDIX TO APPEAL BY PETITION

James T. Rodier, Esq.
1465 Woodbury Ave., No. 303
Portsmouth, NH 03801-5912
NH Bar No. 8583
603-559-99876
jtrodier@mbtu-co2.com

**APPENDIX TO APPEAL BY PETITION
PURSUANT TO RSA 541:6 AND SUPREME COURT RULE 10**

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- (3) Transcript of Hearing (October 18, 2012) (p. 22 hereto).
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- (5) Order No. 25,488 of the Public Utilities Commission dated April 8, 2013 Conditionally Approving Alternative Energy Default Service Pilot Program (p. 259 hereto);
- (6) PNE’s Motion for Rehearing dated May 7, 2013 (p. 289 hereto);
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**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-216

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition to Establish an Alternative Default Energy Service Rate

Order Denying Petition

ORDER NO. 25,320

January 26, 2012

APPEARANCES: Gerald M. Eaton, Esq., and Sarah B. Knowlton, Esq., on behalf of Public Service Company of New Hampshire; James T. Rodier, Esq., on behalf of Freedom Energy Logistics and Halifax American Energy Company; the Office of Consumer Advocate on behalf of residential ratepayers by Meredith A. Hatfield, Esq.; and Suzanne G. Amidon, Esq., on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On September 23, 2011, Public Service Company of New Hampshire (PSNH or Company) filed a petition for approval of an Alternative Default Energy Service Rate ADE. In support of its petition, PSNH filed the testimony of Stephen R. Hall, the Company's Rate and Regulatory Services Manager, with attachments consisting of illustrative tariff pages. PSNH made the filing pursuant to Commission Order No. 25,256 (July 26, 2011) in Docket No. DE 10-160, *Public Service Co. of N. H., Investigation of the Effects of Customer Migration*. In Order No. 25,256, the Commission directed PSNH to develop and file as part of its 2012 default energy service filing "alternate rates and tariffs for customers who return to PSNH default energy service from competitive supply." Order No. 25,256 at 40. In its petition, PSNH recommended that Rate ADE become effective on January 1, 2012.

PSNH said that Rate ADE will be consistent with RSA 369-B:3, IV(b)(1)(A) since it will be based on PSNH's actual costs, which for Rate ADE is the forward market price (PSNH's

marginal cost) for power necessary to serve additional customers returning from competitive supply to PSNH's default energy supply. In its petition, PSNH proposed an adder to Rate ADE to recover the non-operating costs of the newly-installed wet flue gas fluidized desulfurization system (Scrubber Project) at Merrimack Station. PSNH said that Rate ADE cannot take effect until the Scrubber Project is providing service to customers and, because that had not occurred at the time of the initial filing, PSNH had not proposed a Rate ADE amount. PSNH stated that, as is customary in cases involving establishment of its default energy service rate (Rate DE), it would update the filing just prior to the hearing in the docket. PSNH expected to have more information regarding the in-service date and the costs of the Scrubber Project at that time to use in calculating the appropriate rate level and effective date for Rate ADE.

The Commission issued an order of notice on October 5, 2011 scheduling a prehearing conference for October 17, 2011. On October 12, 2011, the Office of Consumer Advocate (OCA) notified the Commission of its participation in this docket on behalf of residential ratepayers consistent with RSA 363:28. On October 13, 2011, Freedom Logistics, LLC d/b/a Freedom Energy Logistics and Halifax-American Energy Company, LLC (FEL/HAEC) filed a joint petition to intervene. On October 14, 2011, PSNH filed an objection to FEL/HAEC's petition to intervene; the Commission granted the joint petition by a secretarial letter dated October 20, 2011 and also approved a procedural schedule including a hearing scheduled for December 19, 2011.

PSNH filed the supplemental testimony of Mr. Hall and testimony of Frederick White on October 14, 2011 and included an update of Rate ADE using estimated costs for the Scrubber Project. Mr. White is a Supervisor in the Wholesale Power Contracts department of Northeast Utilities (NU) Service Company, the entity which provides services to NU's affiliates, including

PSNH. The testimony claimed that the Scrubber Project at Merrimack Station began operation on September 28, 2011 and was used and useful as of that date. PSNH calculated the adder comprising the non-operating costs of the scrubber to be 0.97 cents per kilowatt hour (kWh). PSNH stated that it would further update Rate ADE closer to the date of the hearing in this matter.

On November 4, 2011, Commission Staff filed a letter requesting that the Commission either assign a separate docket for consideration of the Scrubber Project costs, or extend the time within the current docket for consideration of those costs. Staff indicated that all parties except PSNH agreed with its recommendations. In its November 4, 2011 response to Staff's recommendation, PSNH said that while it agreed that the prudence and amount of Scrubber Project costs could be determined by the Commission in a separate docket, it would be in the best interest of PSNH customers to place the estimated Scrubber Project costs into ES rates as of January 1, 2012 to avoid deferral of approximately \$61 million.

On November 15, 2011, the Commission determined that it would open a separate docket in which to consider the in-service status, PSNH's prudence, the appropriate rate treatment and the costs of the Scrubber Project. The Commission stated that costs of the Scrubber Project would not be included in any PSNH rates proposed for effect January 1, 2012. The Commission also said that it would treat the October 14, 2011 filing as PSNH's petition in that separate docket.¹

On November 17, 2011, PSNH filed a motion for protective treatment for its response to data request OCA 1-8 that requested a "fully functioning electronic copy of the 'power supply portfolio model' " referenced in the Company's supplemental testimony. FEL/HAEC filed an

¹ The Commission designated Docket No. DE 11-250 as the docket for investigation of the Scrubber Project costs.

objection to PSNH's motion for protective treatment on November 29, 2011; FEL/HAEC withdrew its objection at hearing.

On November 22, 2011, PSNH filed the second supplemental testimony of Mr. Hall in response to the Commission's decision to consider Scrubber Project costs in a separate docket. In that testimony, the Company said that the Commission could still establish a Rate ADE for use as of January 1, 2012 by establishing Rate ADE equal to PSNH's marginal cost of providing energy service plus an adder of one cent per kWh. PSNH said that the one cent adder could remain in place until such time as PSNH begins to recover the costs of the Scrubber Project through its ES rate. PSNH further updated the filing on December 14, 2011. Based on its updated forecast, the Company estimated its marginal cost of power to be 6.33 cents per kWh, plus the one cent per kWh adder referred to in its November 22 filing. As a result, PSNH requested approval of a Rate ADE of 7.33 cents per kWh. The parties filed written closing statements on December 21, 2011.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

PSNH testified that Rate ADE was developed pursuant to Order No. 25,256 in Docket No. DE 10-160. Consistent with RSA 369-B:3, IV(b)(1)(A), PSNH designed Rate ADE based on PSNH's actual cost, which for Rate ADE is the forward market price (PSNH's marginal cost) for power necessary to serve additional customers returning to PSNH's ES rate, plus an adder based on the non-operating costs of the Scrubber Project. As proposed by PSNH, Rate ADE would only be available to customers who take delivery service under Primary General Service Rate GV, Large General Service Rate LG, or Backup Service Rate B (the rate classes for PSNH's largest customers) and who return to PSNH energy service after having taken energy

service from one or more competitive suppliers for at least twelve months. The Company said that it had not designed a product for residential or small commercial customers who return to PSNH from competitive supply because such customers were billed under a different billing system than Rate GV, Rate LG and Rate B customers, and reprogramming that separate billing system would be a major effort.

According to the Company, the proposed Rate ADE was designed so that once a customer terminated service from a competitive supplier following at least twelve consecutive months of taking competitive supply, that customer must take energy service from PSNH under Rate ADE during any of the next twenty-four months. Because the default energy service rate (Rate DE), also known as Energy Service (ES), would not be available to customers during the twenty-four month period, PSNH also proposed to change the availability of Rate DE to clarify that it is not available to customers who are required to take service under Rate ADE.

To illustrate how Rate ADE would be applied, PSNH assumed that a qualifying customer has been taking service from a competitive supplier for at least twelve consecutive months and decides to return to PSNH for energy service. The commencement of service under Rate ADE would start a twenty-four month "clock" during which the customer may take service either under Rate ADE or from a competitive supplier, with no restrictions on transferring from PSNH to the competitive market or vice versa. During this twenty-four month period, if the customer subsequently switches to a competitive supplier for at least twelve consecutive months, the twenty-four month "clock" is reset and begins counting anew when and if the customer returns to PSNH for energy service. If the customer switched to competitive supply but returns to Rate ADE within twelve months, the original twenty-four month "clock" continues to run. Once the

twenty-four month period expires, the customer would thereafter be rendered service under Rate DE as long as the customer takes energy service from PSNH.

According to PSNH, prices under Rate ADE may be less than or greater than under Rate DE, depending upon PSNH's then-current marginal costs. At present, PSNH's marginal cost of providing energy service is lower than its average cost, resulting in pricing of Rate ADE to be below the pricing under PSNH's Rate DE. PSNH explained that limiting the availability of Rate ADE to customers who have taken service from a competitive supplier for at least twelve months will ensure that customers who are currently taking service under Rate DE don't terminate such service for a brief period for the sole purpose of qualifying for service under Rate ADE. Without this limitation, customers could switch from Rate DE to the competitive market and return for a period as short as one month for the sole purpose of qualifying for Rate ADE and receive a lower price, resulting in revenue loss to the detriment of all remaining Rate DE customers. The Company claimed that this limitation will prevent "gaming" by customers who would otherwise frequently switch between service from a competitive supplier and energy service from PSNH.

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. If that situation occurs, Rate ADE would be priced above Rate DE. According to the Company, in such an event, customers who have been taking energy service from the competitive market would then have an incentive to return to Rate DE at the very time that increased load under Rate DE would result in higher rates for all other customers. To avoid this situation, any customer who returns to energy service from PSNH after at least twelve consecutive months of service from a competitive supplier must take such service under Rate ADE rather than under Rate DE.

PSNH proposed to determine Rate ADE on an annual basis in the same time frame that PSNH determines its Rate DE. Under this scheme, prices would be effective January 1 of each year but would be subject to a mid-year adjustment on July 1 to the extent that forward market prices for the second half of the year are materially different than they were at the time that the rate was initially calculated.

The Company said that the price would be a forecast of the marginal cost to provide full requirements service to the New Hampshire load zone, plus an adder. The forecast of the marginal cost will include forward energy market prices, forward capacity market prices, forecasted ancillary service costs, forecasted Independent System Operator-New England (ISO-NE) market administration costs and forecasted renewable portfolio standard compliance costs, all of which will be determined in a manner consistent with that utilized in calculating Rate DE. In practice, the marginal cost to provide full requirements service to the New Hampshire load zone will be calculated as the change in cost to serve energy service load divided by the change in energy service sales resulting from the removal of migration from the energy service forecast.

PSNH originally proposed that the adder be equal to the non-operating costs of the Scrubber Project. Exh. 1 at 6-7. Following the Commission's letter of November 15, 2011 which stated that the costs of the Scrubber Project would not be considered in the instant docket, the Company proposed an adder of one cent per kWh. Exh. 2 at 3. PSNH proposed keeping the one cent per kWh adder in place until such time as PSNH begins to recover the costs of the Scrubber Project in energy service rates, at which point the adder would be calculated based on the non-operating costs of the Scrubber Project. *Id.* The Company said that PSNH's customers could benefit by the implementation of Rate ADE even without recovery of the Scrubber Project costs because the adder "will provide benefits to all other customers that will not otherwise

exist.” PSNH said that the purpose of the adder to be paid by customers who return to Rate ADE from competitive supply is to provide revenue in excess of PSNH’s marginal cost for the benefit to all other energy service customers. *Id.* at 4.

The Company said that the adder of one cent per kWh was reasonable, based on its judgment and stated that it doesn’t really matter how the adder is calculated as long as it exists and provides benefits to all customers. PSNH also agreed that if no customers took service under Rate ADE, the proposal would not address certain issues that were explored in Docket No. DE 10-160, because the remaining customers taking service under Rate DE would still be paying for all of PSNH’s fixed generation costs.

In its closing statement, PSNH said that its proposed Rate ADE complied with RSA 369-B:3, IV(b)(1)(A) and that it had appropriately calculated its marginal costs based on forward market prices for 2012, including capacity costs, ancillary services, Renewable Portfolio Standard costs and ISO-NE expenses that would be incurred by the return of customers from competitive supply. PSNH claimed that Rate ADE is reasonable and designed to attract customers back to default service and that the rate is adequate enough to provide a contribution to fixed energy service costs, but not so high as to discourage customers from switching to Rate ADE. In addition, PSNH said Rate ADE was designed to prevent customers “gaming” for the lowest energy service rate.

According to PSNH, the proposed Rate ADE is not discriminatory. The Company said that absolute equality in rates is not required and that there is no undue preference afforded to those customers who qualify for Rate ADE. PSNH stated that the expense and administrative burden of reprogramming the billing system under which small customers are billed is not

justified given the small number of such customers who have migrated and the small amount of associated load.

PSNH also argued that Rate ADE will not unduly harm competition. The Company said the purpose of the rate is to provide an alternative default service price for customers taking service from competitive suppliers and contribute to the default service costs above marginal costs; and that the proposed Rate ADE is another price signal for customers to use when comparing offers from competitive suppliers.

PSNH concluded by requesting that the Commission approve Rate ADE to provide migrated customers with an opportunity to return to energy service from PSNH at a time when market prices are low and to avoid the incurrence of higher costs by standard energy service customers as a result of migrated customers returning to energy service supplied by PSNH when the market price for energy is high. PSNH noted that all of the benefits realized from providing energy to returning customers at a price in excess of marginal costs will flow to standard default energy service customers.

B. FEL/HAEC

FEL/HAEC said that “default service” is electricity supply that is available to retail customers who are otherwise without an electricity supplier pursuant to RSA 374-F:2, VI. FEL/HAEC said that large customers have competitive supply available to them and therefore the proposed Rate ADE is prohibited by the statute. Further, FEL/HAEC pointed out that the price of default service for PSNH should be its “actual, prudent, and reasonable costs of providing such power” pursuant to RSA 369-B:3, IV (b)(1)(A).

FEL/HAEC said that PSNH hopes that Rate ADE will attract large customers from the competitive market; however, because the rate is based on PSNH’s marginal cost, or market cost,

it will be very unlikely that Rate ADE will be attractive to any large PSNH customer unless the customer has very poor credit. FEL/HAEC concluded by saying that implementation of Rate ADE would not address PSNH's financial problems.

C. Office of Consumer Advocate

The OCA argued that, pursuant to RSA 369-B:3, IV(b)(1)(A), the price of default service must be PSNH's actual, prudent and reasonable costs of providing such power. According to the OCA, PSNH's proposal violates this requirement because it includes a penny "add" that the Company admits is not based upon the cost to provide the service but rather is based on the Company's judgment that a penny seems right. The OCA pointed out that one cent per kWh was very close to the Company's original add, which was calculated to recover certain costs associated with the Scrubber Project. Because the ADE proposal does not represent PSNH's actual costs of providing energy service, the OCA concluded that there is no legal basis to approve it.

The OCA noted that one of the purposes of the add, according to PSNH, is to provide additional revenues in the event that the estimated costs of providing ADE service is too low. PSNH stated at hearing, however, that it is possible that the proposed ADE rate, even with the add, will be too low to recover the actual costs of providing the service, and any under-recovery will be collected from all regular default service customers. The OCA opined that this effect undermines the purpose of Rate ADE, which is to reduce the costs and risks to default energy service customers resulting from migration.

The OCA then argued that PSNH's second reason for the add, to provide benefits to regular default service customers, is problematic, as PSNH said at hearing that if no customers take Rate ADE, there will be no benefit to regular default service customers. The OCA further

pointed out that customers eligible for Rate ADE could “game the system,” thus obviating any benefits to those who are not eligible to take Rate ADE.

The OCA argued that the proposed Rate ADE is discriminatory because it is not available to all customers. The OCA noted that the Commission’s order in Docket No. DE 10-160 stated that alternate rates must be cost-based and non-discriminatory. According to the Company, PSNH will not offer Rate ADE to all residential and small commercial customers who have migrated, in part due to billing software changes that would be necessary. The OCA opined that, as a result, the Rate ADE proposed by PSNH violates RSA 378:10, which prohibits preferences or discrimination in rates. The OCA also noted that the Company had not conducted an analysis of the impact of Rate ADE on competition.

The OCA said that it was troubling for small customers that the ADE rate, which would not be available to small customers even if they have migrated, is so much lower than regular default service. For example, the regular default service rate was calculated at 7.91 cents per kWh for 2012 in Docket No. DE 11-215 while the marginal cost to serve incremental load in the instant proceeding was estimated to be 6.33 cents per kWh. The implication, according to the OCA, is that the cost related to PSNH using its own plants to provide regular default service is 1.58 cents per kWh more than the cost of buying power from the market. The OCA noted that this rate did not take into account the additional estimated costs related to the Scrubber Project, for which PSNH had proposed to add an additional 1.18 cents per kWh to regular default service, for a total default service rate of 9.09 cents per kWh for 2012. The OCA said that these rate comparisons illustrate that the excess cost of PSNH’s aging fleet is increasing rates for customers, thus driving up customer migration, and also demonstrates that the ADE rate is

unjust, unreasonable, discriminatory and not palliative of the effects of migration on customers taking default service from PSNH.

The OCA pointed out that PSNH did not work collaboratively with other parties to develop its Rate ADE as encouraged by the Commission in Order No. 25,256, nor did it seek any customer feedback in developing the proposal. In conclusion, the OCA requested that the Commission reject the proposed ADE rate and require PSNH to work with interested parties and Staff in the development of a new proposal that actually addresses the cost-shifting problems from migration.

III. COMMISSION ANALYSIS

A. Motion for Protective Treatment

PSNH requested protective treatment for its response to OCA 1-8 which provided “a fully functioning electronic copy” of the Company’s power supply portfolio model used by the Company to evaluate its generation and load responsibilities in both power and environmental markets. PSNH claimed a privacy interest in the response. According to the Company, the model contains all of the inputs used to develop not only the ADE service rate but the default energy service rate itself. While some of the of the proprietary assumptions and information regarding generating unit characteristics were removed from the model because they were not necessary to the calculation of the ADE Rate, the Company claimed that it would be disadvantaged if the model were released publicly, particularly to competitive electric suppliers. If the information about how the Company modeled its load as well as its needs for wholesale procurement of energy or Renewable Energy Certificates (RECs) were publicly available, PSNH said its ability to negotiate the best possible prices could be compromised to the detriment of its customers. In addition, PSNH stated that if the Company’s portfolio strategies were revealed to

competitive electric suppliers, they may gain an ability to negotiate with customers who might seek to migrate away from the Company's energy service rate. The Company said that this would be particularly harmful since the purpose of the ADE Rate is to attract customers back to taking electricity from PSNH.

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. We have had occasion to rule on motions for confidential treatment in the context of confidential, commercial, and financial information regarding utilities and their affiliates. *See, Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) 94 NH PUC 484 and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009) 94 NH PUC 611.

Following the approach in these cases, we consider the three-step analysis applied by the New Hampshire Supreme Court in *Lambert v. Belknap County Convention*, 157 N.H. 375, 382 (2008) in determining whether the information identified by PSNH should be deemed confidential and private. First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know law requires disclosure. *Id.* at 382-83. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. *Id.* at 383. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. *Id.* Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interest in non-disclosure. *Id.*

We have reviewed the response to OCA 1-8 *in camera* and have determined that this information is confidential to PSNH. If this information were made public, and made accessible to competitive electric suppliers, PSNH would be at a competitive disadvantage in establishing

Rate ADE. The result could be detrimental to the customers who continue to take energy service from PSNH. We find that disclosure of this information could harm customers who might end up paying higher costs for energy service if the portfolio strategy were disclosed. Further, disclosure of this information does not provide the public with any information regarding the Commission's statutory responsibilities. Therefore, we do not find that the public has an interest in disclosure of this information and grant the motion for confidential treatment in the response to data request OCA 1-8. We will not address FEL/HAEC's objection because it was withdrawn at hearing.

B. Rate ADE

PSNH's filing was made pursuant to Order No. 25,256 in Docket No. DE 10-160, which was opened because PSNH had demonstrated that, as energy service customers migrate to third party competitive supply during a time when the marginal cost to serve is lower than the average cost to serve, Rate DE increases for those customers (primarily residential and small commercial customers) who continue to take energy from PSNH. Among other things, Order No. 25,256 directed PSNH to file an alternative proposed rate for customers who return to PSNH energy service from competitive supply. The Order also identified issues to take into account regarding the design of an alternative default service rate. Specifically, the proper design of rates would need to; discourage the long-term use of default service (RSA 374-F:3, V(c)), be based on PSNH's actual, prudent and reasonable costs of providing such service (RSA 369-B:3,IV(b)(1)(A)), and be nondiscriminatory to be consistent with the policy principles of RSA 374-F. Order No. 25,256 at pp. 31-32.

PSNH designed Rate ADE based on its marginal cost for power necessary to serve additional customers returning to PSNH's default energy supply plus an adder to provide

benefits to customers who continue to take service under PSNH's Rate DE. The specific marginal cost rate proposed in PSNH's December 14 updated filing is 6.33 cents per kWh; and the adder proposed by PSNH is one cent per kWh based on its subjective judgment that one cent is an appropriate adder. The result would be a Rate ADE of 7.33 cents per kWh, which is almost a penny less than the ES rate of 8.31 cents per kWh that we approved in Order No. 25,313 (December 30, 2011) in Docket No. DE 11-215.

Our first concern is that the pricing of Rate ADE may not reflect market prices. PSNH proposes to adjust Rate ADE twice a year, in January and July, which is the schedule for its adjustments to the ES and stranded cost adjustment charge rates; and it proposes to establish those rates based on forecasts of power costs. If market prices suddenly increased or decreased, for example, in March or August of any year, under PSNH's proposal, Rate ADE would remain unchanged.

If market prices increased during the six-month period between rate adjustments, Rate ADE would be more attractive to customers who had migrated to competitive supply, and those customers could return to PSNH for energy service. If qualifying load returned to PSNH at a lower-than-market Rate ADE, PSNH would not collect sufficient revenue from returning load to pay the marginal cost of power. In this example, PSNH would have to purchase power on the market at a higher rate than the revenue collected through Rate ADE. Because the ADE rate is not reconciled to actual costs as is the DE rate, in a rising market, PSNH would then expect to recover any under-collection due to Rate ADE from customers remaining on Rate DE. Those remaining customers would pay not only the actual cost of power they receive but the additional under-collection amount associated with Rate ADE, exacerbating existing adverse effects of customer migration on the Rate DE customer group.

If market prices suddenly and significantly decreased, PSNH has acknowledged that Rate ADE customers could migrate to competitive supply and there would be no benefit to customers remaining on Rate DE. PSNH's failure to consider significant and unexpected market swings in the design of the rate could have the unintended consequence of either (1) increasing costs to customers who remain on PSNH's Rate DE, or (2) denying the benefit intended by Rate ADE. While the rate fluctuations used in these examples may seem unlikely, the examples suggest that further development is warranted.

Our second concern is that the Company designed Rate ADE so that any customer returning to Rate ADE following 12 consecutive months of taking energy from a competitive supplier must remain on Rate ADE for a 24-month period; however, during that 24-month period, a customer would be able to move between competitive supply and Rate ADE on a monthly basis, as long as the customer did not stay with a competitive supplier for a consecutive 12-month period. The risk that customers will switch from PSNH's Rate ADE to competitive supply, whichever is at lowest cost – a form of “gaming” – is inherent to the rate design. The ability of the customer to move back and forth between competitive supply and Rate ADE, combined with fact that Rate ADE is fixed for a period of six months, increases the possibility that PSNH will under-recover costs in Rate ADE, resulting in higher costs for Rate DE customers than currently results from existing customer migration.

Finally, we find that the record does not support the calculation of the adder at one cent per kWh. Furthermore, there is enough uncertainty in the rate design to suggest that the one cent per kWh may not collect enough revenue to cover unexpected price spikes in the marginal cost of electricity that would be used to supply Rate ADE load.

With respect to other issues raised during the proceeding, the OCA argued that the proposed Rate ADE is discriminatory because it would not be offered to residential and small commercial customer rate class customers who had migrated to competitive supply, having been designed for only large commercial customers. PSNH should have as its ultimate goal the design of an alternate energy service rate that would be available to customers in all rate classes who qualify for the alternative rate upon their return to PSNH from competitive supply; however, we do not find it discriminatory or preferential that PSNH begin to offer an alternative rate to its large customers, who comprise the greatest amount of load that has migrated to competitive supply.

The OCA also argued that PSNH should have worked collaboratively with other parties to develop its proposal. In Order No. 25,256, we said that it “could prove useful” for PSNH to work with other parties in developing its alternative rate design. Order No. 25,256 at 33. While it is true that the Company was not required to seek assent in developing its proposal, the course of this proceeding does speak to the benefits of working with parties who have expressed an interest in the alternate rate design inasmuch as such collaboration may have led to the design of a mechanism that would have addressed many of the concerns raised above. Therefore, we expect that in a future filing PSNH will demonstrate its efforts towards collaboration; at the same time we want to make clear that PSNH is not compelled to submit a filing that is agreed to on all issues or by all parties.

Based on the foregoing analysis, we find that PSNH’s proposed alternative default energy service rate requires further development. We therefore direct the Company to file a redesigned Rate ADE by June 30, 2012, based on the analysis provided herein. We restate our direction in Order No. 25,256 that “such rates must be cost-based and non-discriminatory and should not

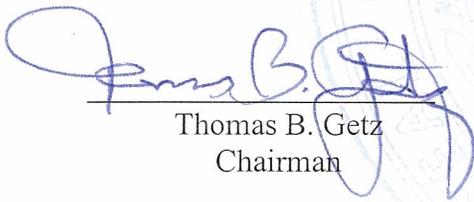
have an adverse effect on competition,” and that the alternative rate may exceed the marginal cost of default service. Order No. 25,256 at 32-33. With respect to PSNH’s large customer group, we also restate our suggestion in Order No. 25,256 that PSNH consider having a separate tariff and default service rate for its largest classes of customers generally.

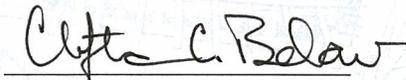
Based upon the foregoing, it is hereby

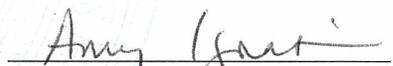
ORDERED, that the petition for a proposed Rate ADE originally filed by Public Service Company of New Hampshire on September 23, 2011 and modified by subsequent filings is hereby DENIED; and it is

FURTHER ORDERED, that the motion for protective treatment filed by Public Service Company is hereby GRANTED.

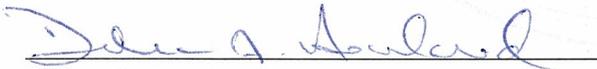
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of January, 2012.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
al-azad.m.iqbal@puc.nh.gov
amanda.noonan@puc.nh.gov
arvanhm@nu.com
baumara@nu.com
catherine.corkery@sierraclub.org
Christina.Martin@oca.nh.gov
daviekl@nu.com
desbiam@psnh.com
donna.l.mcfarland@oca.nh.gov
dpatch@orr-reno.com
eatongm@nu.com
gilfavor@comcast.net
hallsr@nu.com
jrodier@freedomenergy.com
knowlsb@nu.com
langdond@axsessgroup.com
Meredith.A.Hatfield@oca.nh.gov
mhoffer@clf.org
njpress@clf.org
ocalitigation@oca.nh.gov
puzios@nu.com
Stephen.R.Eckberg@oca.nh.gov
steve.mullen@puc.nh.gov
suzanne.amidon@puc.nh.gov
tilloeh@nu.com
tom.frantz@puc.nh.gov

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Amy L. Ignatius

COMMISSIONERS
Michael D. Harrington
Robert R. Scott

EXECUTIVE DIRECTOR
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX (603) 271-3878

Website:
www.puc.nh.gov

June 19, 2012

Re: DE 11-216, Public Service Company of New Hampshire
Petition for Approval of an Alternate Default Energy Service Rate
Interventions

To the Parties:

On May 25, 2012 and May 30, 2012, Retail Energy Supply Association (RESA) and PNE Energy Supply, LLC d/b/a Power New England (PNE) respectively, filed petitions for late intervention in the above referenced proceeding. There were no objections to the petitions.

The Commission has determined that no party will be prejudiced by the granting of the petitions, which are consistent with the applicable standards for intervention. Accordingly, the Commission has granted RESA's and PNE's petitions for intervention conditioned on their willingness to abide by the procedural schedule previously approved by the Commission in this docket.

Sincerely,

A handwritten signature in blue ink that reads "Debra A. Howland".

Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	
al-azad.m.iqbal@puc.nh.gov	steve.mullen@puc.nh.gov
allen.desbiens@psnh.com	suzanne.amidon@puc.nh.gov
amanda.noonan@puc.nh.gov	tom.frantz@puc.nh.gov
baumara@nu.com	
catherine.corkery@sierraclub.org	
Christina.Martin@oca.nh.gov	
donna.l.mcfarland@oca.nh.gov	
dpatch@orr-reno.com	
elizabeth.tillotson@nu.com	
gilfavor@comcast.net	
heather.arvanitis@nu.com	
jmiranda@rc.com	
jrodier@freedomenergy.com	
kristi.davie@nu.com	
langdond@axsessgroup.com	
mhoffer@clf.org	
njperess@clf.org	
ocalitigation@oca.nh.gov	
puzios@nu.com	
Rorie.E.P.Hollenberg@oca.nh.gov	
sarah.knowlton@nu.com	
stephen.hall@nu.com	
Stephen.R.Eckberg@oca.nh.gov	

Docket #: 11-216-1 Printed: June 19, 2012

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
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CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

October 18, 2012 - 10:22 a.m.
Concord, New Hampshire

DAY 1

RE: DE 11-216
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Alternative Default Energy Service Rate.

NHPUC NOV05'12 PM 2:49

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Michael D. Harrington

Sandy Deno, Clerk

APPEARANCES: **Reptg. Public Service Co. of New Hampshire:**
Matthew J. Fossum, Esq.
Robert A. Bersak, Esq.

Reptg. PNE:
James T. Rodier, Esq.

Reptg. Retail Energy Suppliers Association:
Joey Lee Miranda, Esq. (Robinson & Cole)
Jonathan H. Schaefer, Esq. (Robinson & Cole)

Reptg. Residential Ratepayers:
Susan W. Chamberlin, Esq., Consumer Advocate
Stephen R. Eckberg
Donna L. McFarland
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.
Steven E. Mullen, Asst. Dir./Electric Div.
Al-Azad Iqbal, Electric Division

Court Reporter: Steven E. Patnaude, LCR No. 52

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I N D E X

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FREDERICK B. WHITE

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{DE 11-216} [Day 1] {10-18-12}

1 P R O C E E D I N G

2 CHAIRMAN IGNATIUS: I'd like to open the
3 hearing in Docket DE 11-216, which is Public Service
4 Company of New Hampshire's proposed revised Alternative
5 Default Energy Service rate. On Oct -- excuse me, on
6 April 27th, 2012, PSNH filed testimony and exhibits
7 describing a proposed redesigned Alternate Energy Service
8 rate, called "Rate ADE". That was filed pursuant to
9 Commission Order Number 25,320. And, the Company proposed
10 it be in effect as of July 1st, 2012. We, by a subsequent
11 secretarial letter, scheduled a hearing for today.

12 And, I understand we've had a little bit
13 of a flurry over figuring out phone access for a witness
14 who has, at the last minute, become unavailable. So, I'm
15 hoping that that's working. We'll find out.

16 Let's start with taking appearances.
17 And, when it's time for Mr. Estomin, I'll cue you. Mr.
18 Fossum.

19 MR. FOSSUM: Good morning. For Public
20 Service Company of New Hampshire, my name is Matthew
21 Fossum. And, this morning with me are Robert Bersak,
22 Stephen Hall, and Frederick White for the Company.

23 CHAIRMAN IGNATIUS: Good morning.

24 MR. BERSAK: Good morning.

{DE 11-216} [Day 1] {10-18-12}

1 MR. RODIER: Good morning. Jim Rodier,
2 with Gus Fromuth.

3 CHAIRMAN IGNATIUS: Good morning.

4 MR. RODIER: For PNE.

5 MS. MIRANDA: Good morning,
6 Commissioners. Joey Lee Miranda, from Robinson & Cole,
7 along with my colleague, Jonathan Schaefer, on behalf of
8 the Retail Energy Supply Association.

9 CHAIRMAN IGNATIUS: Good morning.

10 MS. CHAMBERLIN: Susan Chamberlin,
11 Consumer Advocate for the residential ratepayers. And,
12 with me today is Donna McFarland and Steve Eckberg.

13 CHAIRMAN IGNATIUS: Good morning.

14 MS. AMIDON: Good morning. Suzanne
15 Amidon, for Commission Staff. I have with me today Steve
16 Mullen, who is the Assistant Director of the Electric
17 Division, and Al-Azad Iqbal, who is an analyst in that
18 division.

19 CHAIRMAN IGNATIUS: And, Mr. Estomin,
20 can you hear me?

21 MS. CHAMBERLIN: He's --

22 MR. ESTOMIN: Yes, I can.

23 CHAIRMAN IGNATIUS: Good. So, that's
24 working. And, I apologize, is it "Estomin"? "Estomin"?

{DE 11-216} [Day 1] {10-18-12}

1 MR. ESTOMIN: "Estomin".

2 CHAIRMAN IGNATIUS: "Estomin", thank
3 you. If for some reason you get cut off or you're unable
4 to hear, obviously, speaking up won't help. So, maybe you
5 can --

6 MS. AMIDON: He could relay a message
7 through the Office of Consumer Advocate.

8 CHAIRMAN IGNATIUS: Right. We also have
9 Wifi access in this room. So, if anyone has a Smartphone
10 or computer access on them here, and then could get a
11 message, if you were to send an e-mail, I don't know if
12 anyone at OCA has that with them?

13 MS. CHAMBERLIN: No. But I can get
14 someone from my office to quickly contact him.

15 CHAIRMAN IGNATIUS: All right. So, if
16 something goes wrong, the system gets cut off, call in to
17 the Consumer Advocate's regular number, Mr. Estomin, and
18 they will run down and let us know and we'll get you
19 reconnected.

20 MR. ESTOMIN: All right. Thank you.

21 CHAIRMAN IGNATIUS: Thank you. Are
22 there any other procedural matters before we begin with
23 evidence?

24 MS. AMIDON: Yes. I just wanted to

{DE 11-216} [Day 1] {10-18-12}

1 clarify the order of witnesses for the Commission. As you
2 know, a Settlement Agreement was filed in this docket, and
3 the settling parties are PSNH, the Office of Consumer
4 Advocate, and Staff. So, what we propose to do is to
5 first put on PSNH witnesses to present the Settlement,
6 followed by Mr. Estomin for the Office of Consumer
7 Advocate, because the Office of Consumer Advocate
8 participated in the Settlement, and then Staff. The final
9 witness will be Mr. Fromuth, who filed testimony for PNE.

10 CHAIRMAN IGNATIUS: Thank you. I assume
11 that's acceptable to everyone?

12 (No verbal response)

13 CHAIRMAN IGNATIUS: And, any other
14 matters to take up, before we have Mr. White and Mr. Hall
15 take the stand?

16 (No verbal response)

17 CHAIRMAN IGNATIUS: If not, gentlemen.

18 (Whereupon *Stephen R. Hall* and
19 *Frederick B. White* were duly sworn by
20 the Court Reporter.)

21 **STEPHEN R. HALL, SWORN**

22 **FREDERICK B. WHITE, SWORN**

23 **DIRECT EXAMINATION**

24 BY MR. FOSSUM:

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 Q. Good morning. Mr. Hall, I suppose we'll start with
2 you. Could you state your name and place of employment
3 for the record please.

4 A. (Hall) My name is Stephen R. Hall. I'm employed by
5 Public Service of New Hampshire.

6 Q. And, what are your responsibilities in that position?

7 A. (Hall) I am Manager of New Hampshire Revenue
8 Requirements. I'm primarily responsible for docket
9 strategy and management for all PSNH dockets, other
10 than dockets involving C&LM and low income programs.

11 Q. And, Mr. White, your name and place of employment for
12 the record please.

13 A. (White) Frederick White. I'm employed by Northeast
14 Utilities Service Company.

15 Q. And, what are your responsibilities in your position
16 with Northeast Utilities Service Company?

17 A. (White) I'm a Supervisor in the Energy Supply group at
18 NUSCO. And, our responsibilities are primarily the
19 analysis of the power supply for energy service at
20 Public Service of New Hampshire for purposes of rate
21 setting and reconciliation dockets.

22 Q. And, back on April 27th, did you submit prefiled
23 testimony in this matter?

24 A. (Hall) Yes.

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 A. (White) Yes.

2 Q. And, do you have any changes, updates or corrections to
3 that testimony?

4 A. (Hall) No.

5 A. (White) No.

6 Q. And, that testimony is true and accurate to the best of
7 your knowledge and belief today?

8 A. (Hall) Yes, it is.

9 A. (White) Yes.

10 MR. FOSSUM: I'd like to enter that
11 testimony as the next exhibit, which I believe is 7.

12 CHAIRMAN IGNATIUS: So marked for
13 identification.

14 (The document, as described, was
15 herewith marked as **Exhibit 7** for
16 identification.)

17 BY MR. FOSSUM:

18 Q. Now, on September 21st, did you submit rebuttal --
19 prefiled rebuttal testimony in this docket?

20 A. (Hall) Yes.

21 Q. And, do you have any changes, corrections or updates to
22 that testimony?

23 A. (Hall) No.

24 Q. And, is that testimony true and accurate to the best of

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 your knowledge and belief today?

2 A. (Hall) Yes, it is.

3 MR. FOSSUM: And, I'd like to have the
4 rebuttal, the September 21st rebuttal testimony as the
5 next exhibit for identification.

6 CHAIRMAN IGNATIUS: So marked as
7 "Exhibit 8" for identification.

8 (The document, as described, was
9 herewith marked as **Exhibit 8** for
10 identification.)

11 BY MR. FOSSUM:

12 Q. And, pursuant to a procedural order in this docket, did
13 you participate in settlement discussions?

14 A. (Hall) Yes.

15 Q. And, out of those discussions, was a settlement or a
16 partial settlement reached?

17 A. (Hall) Yes, it was.

18 Q. And, was that Settlement filed on October 12th, 2012?

19 A. (Hall) Yes, it was.

20 MR. FOSSUM: And, I would like to enter
21 copies of that Settlement for identification as "Exhibit
22 9".

23 CHAIRMAN IGNATIUS: So marked.

24 (The document, as described, was

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 herewith marked as **Exhibit 9** for
2 identification.)

3 BY MR. FOSSUM:

4 Q. Now, Mr. Hall or Mr. White, as may be appropriate,
5 could you very briefly explain the Settlement terms.

6 A. (Hall) Uh-huh. Under the Settlement, PSNH, the
7 Commission Staff, and the OCA agreed to a design of a
8 Rate ADE that is similar to the design that PSNH
9 originally filed back in September 2011, with certain
10 modifications, to address both the Commission's
11 concerns expressed in their order and the OCA's
12 concerns.

13 Under the Partial Settlement that we
14 entered into, Rate ADE would be put into effect as a
15 pilot program for a period of 36 months. And, to
16 summarize the way it works, once a customer is on
17 competitive supply for 12 consecutive months, if they
18 return to energy service from PSNH, they would then be
19 required to take service under Rate ADE, rather than
20 standard Rate DE for a term of service. The term of
21 service in the Settlement is undefined. That is the
22 one issue on which the parties were unable to agree.

23 From a pricing perspective, Rate ADE
24 will be determined annually, with the price based on

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall-White]

1 forward market prices, plus an adder. And, the adder
2 would equal the non-operating costs of the Scrubber,
3 depreciation, return and incremental property taxes.

4 Under the Settlement, PSNH has agreed
5 that it will track forward market prices on a monthly
6 basis, and provide a report that compares the new
7 forward market prices to the original forward market
8 prices used to establish Rate ADE. If the difference
9 between those two amounts is greater than 75 percent of
10 the amount of the adder, Rate ADE would, under its
11 terms, be closed to new customers. Existing customers
12 would be allowed to remain on Rate ADE, but no new
13 customers would be allowed to take service under Rate
14 ADE.

15 Under its terms, Rate ADE can be
16 reopened if prices subsequently decrease, forward
17 market prices subsequently decrease, or if the rate is
18 adjusted after six months have elapsed.

19 Under the Settlement, PSNH has agreed to
20 provide monthly reports to the Commission and the
21 parties on the revenue that it receives under Rate ADE,
22 as compared to the marginal cost of serving the load.
23 And, by doing that, parties will have information on
24 how much benefit Rate ADE is providing to all customers

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 served under standard Rate DE.

2 And, that completes my summary.

3 Q. Thank you. Now, you had mentioned that there had been
4 modifications to address concerns that had been raised
5 by the Commission. Was one of those concerns the price
6 of the adder?

7 A. (Hall) Yes, it was. In the Commission's original
8 order, they stated that there was no factual basis for
9 the amount of the adder that PSNH had been proposing.
10 PSNH had changed its position in that original
11 proceeding, because of an order the Commission issued
12 that said that "no costs associated with the Scrubber
13 were going to be recovered as of the date that PSNH had
14 proposed Rate ADE would go into effect." And, as a
15 result, PSNH modified its position and said that "the
16 average should be one cent per kilowatt-hour." In
17 their order, the Commission indicated that there really
18 wasn't any factual basis for the one cent per
19 kilowatt-hour. We're in a different situation now.
20 Cost recovery of the Scrubber has commenced. And,
21 therefore, PSNH is proposing, and under the Settlement,
22 we're proposing that the adder will be equal to the
23 non-operating costs of the Scrubber.

24 Q. Now, you also mentioned that the rate would close

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 temporarily, if forward market prices increased. How
2 would that occur exactly?

3 A. (Hall) The way that would happen is that, as I
4 indicated earlier, every month we will do a new
5 calculation of forward market prices. That will be
6 done on or about the 15th of each month. And, we will
7 compare the new forward market prices as of that date
8 to the corresponding prices used to establish Rate ADE.
9 If forward market prices have increased, to the extent
10 that the difference is great -- between the new prices
11 and the original prices is greater than 75 percent of
12 the amount of the adder, which is around one cent per
13 kilowatt-hour, by its terms, the rate will be closed,
14 and no new customers will be allowed to take service
15 under the rate. The purpose of that provision is to
16 address a second concern that the Commission voiced in
17 their earlier order, which is they want to ensure that
18 existing customers under PSNH's standard Rate DE would
19 be -- would not be subject to additional risk as a
20 result of the implementation of Rate ADE. So, closing
21 the rate is a mechanism that we have agreed to that
22 will result in minimizing any risk that could otherwise
23 occur, to the extent that market prices increase
24 significantly.

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 Q. Thank you. Now, just for the record, at present, if
2 Rate ADE was to go into effect today, for example, what
3 -- approximately what would that rate be equal to?

4 A. (Hall) Currently, based on today's forward market
5 prices, it would be around seven cents a kilowatt-hour.
6 However, if the rate is approved, what we're proposing
7 in the Settlement is that, about a month prior to the
8 effective date, which we're proposing as being
9 January 1, 2013, that we would come up with a revised
10 calculation, based on forward market prices at that
11 time, and file that rate with the Commission at that
12 time.

13 Q. Thank you. Now, you had mentioned the one issue that
14 was not settled was the "term of service". Before
15 getting into issues about the term of service, could
16 you explain just generally how the "term of service"
17 provision works?

18 A. (Hall) Certainly. During the term of service, which
19 the Commission will have to determine, Rate ADE would
20 be the only Default Service rate available to customers
21 who are returning to PSNH for Default Service, if those
22 customers have been on competitive supply for at least
23 12 consecutive months. So, customers who have migrated
24 and have been gone for at least 12 consecutive months,

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 if they return, Rate ADE is the only rate available to
2 them. Those customers will still be allowed to leave
3 Rate ADE at any time and return to competitive supply.
4 But the clock associated with the term of service would
5 continue to run. That term of service would only be
6 reset if the customer were to leave Rate ADE and remain
7 gone for 12 consecutive months, in effect, requalifying
8 for service and a new term of service under Rate ADE.
9 If customers leave for less than 12 consecutive months
10 and return, the term of service would continue to run.

11 BY CMSR. HARRINGTON:

12 Q. Excuse me. I just -- I don't quite understand --
13 understood the term you're making, when you say "term
14 of service". So, if somebody was -- let's, a
15 hypothetical, someone was on there for, say, they went
16 to the ADE for six months, and then they left.

17 A. (Hall) Uh-huh.

18 Q. And, then, nine months later they came back. Would
19 they go back on ADE for additional six months, the six
20 months that they were on, and then six months to give
21 them the year?

22 A. (Hall) No.

23 Q. Or could they -- that's why I'm a little confused. You
24 said the "term", and then --

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 A. (Hall) Understood.

2 Q. The clock, the mechanism on when it starts and when it
3 stops, I'm not following.

4 A. (Hall) Yes. "Term of service" is the length of time
5 that Rate ADE is available to customers, the only
6 Default Service rate available. Parties were unable to
7 agree on that term of service. Staff is proposing 12
8 months; PSNH and I believe OCA are proposing 24 months.
9 For discussion purposes, let's assume that the
10 Commission decides it's a 24-month term of service. If
11 a customer is on a competitive supply for 12
12 consecutive months, and they leave and return to PSNH,
13 they are then served under Rate ADE. Using your
14 example, if they stay on Rate ADE for six months, and
15 then leave and go back to the competitive market, that
16 24-month term of service clock continues to run. If
17 they're on competitive supply for nine consecutive
18 months, and they come back to PSNH for energy service,
19 that time frame is now 15 months from the time they
20 first took service under Rate ADE. Therefore, their
21 return would be during the time frame that the term of
22 service clock, the 24-month clock is still running,
23 upon return, they would be served under Rate ADE. And,
24 if they stay on Rate ADE, once their term of service

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 ran out, once the 24 months was reached, they would
2 then be transferred to standard Rate DE at that time.

3 CMSR. HARRINGTON: Thank you. That
4 helps quite a bit.

5 WITNESS HALL: Okay.

6 BY MR. FOSSUM:

7 Q. And, I guess that sort of jumps into the next question.
8 You had said the Company has proposed a 24-month term
9 of service. Why, in your opinion, why is 24 months the
10 appropriate term of service to use?

11 A. (Hall) Well, I covered this in the testimony that we
12 filed in April. And, those customers who are returning
13 to Rate ADE, because they have migrated and are now
14 returning, their return will provide a benefit to all
15 other customers. The benefit being the amount above
16 marginal cost that PSNH receives in revenue from those
17 customers. Really, you want to maximize that benefit,
18 and therefore maximize the amount of benefit that all
19 other customers receive.

20 That said, when marginal costs are very
21 low, as they are now, with Rate ADE priced below our
22 standard Rate DE, we don't want to be in a situation
23 where returning customers have that benefit of lower
24 pricing for an indefinite period. So, based on that,

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 PSNH proposed 24 months as an appropriate period of
2 time during which returning customers could receive the
3 benefit of the lower pricing.

4 But Rate ADE works in both directions.
5 If market prices were to significantly increase, now a
6 customer returning to energy service from PSNH could
7 actually pay a higher price than PSNH's standard
8 Default Energy Service rate. In that situation, you
9 don't want returning customers to be required to pay a
10 higher rate for an indefinite period. And, again, we
11 concluded that 24 months was the appropriate period
12 during which customers would be subjected to those
13 prices.

14 Q. Mr. Hall, would it -- is it, in sum, is the term of
15 service essentially a 12 months of competitive supply
16 equals two years on Rate ADE, is that effectively what
17 happens?

18 A. (Hall) Yes.

19 Q. And, do you consider that to be inherently confusing?

20 A. (Hall) No. I think it's relatively straightforward.
21 In particular, I think the customers that are most
22 likely to take service under Rate ADE will be larger
23 customers. These customers are sophisticated users of
24 energy, they understand their energy options. They

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 have demonstrated that understanding by the fact that
2 they have migrated. I think it's going to be
3 relatively easy for customers to understand that, once
4 they're on competitive supply for 12 consecutive
5 months, they can then return to PSNH and Rate ADE for
6 up to 24 months.

7 Q. And, you mentioned that another term of service period
8 has been suggested by Staff, at 12 months. Do you
9 agree that 12 months is -- what's your opinion about
10 the value of 12 months as a term of service?

11 A. (Hall) Well, PSNH doesn't agree with limiting the term
12 of service to 12 months. Understand that the whole
13 purpose of Rate ADE is to provide value for standard
14 Rate DE customers. That's why we're proposing the
15 rate. Rate DE customers receive value when migrated
16 customers will return to Rate ADE. And, as I said
17 earlier, that value is the increment above marginal
18 cost in revenue that we receive.

19 If the term of service is limited to 12
20 months under Rate ADE, it diminishes the value that all
21 other customers can receive, by limiting the maximum
22 duration of that potential value to 12 months. The
23 term of service under Rate ADE really isn't related to
24 the 12-month time frame necessary to qualify for Rate

{DE 11-216} [Day 1] {10-18-12}

[WITNESS PANEL: Hall~White]

1 ADE. They're really for two completely different
2 purposes. The 12 months under competitive supply
3 necessary to qualify for Rate ADE is to prevent gaming,
4 to prevent customers from jumping back and forth. For
5 example, if we didn't have the 12-month term of
6 service -- if we didn't have the minimum 12 consecutive
7 months under competitive supply in order to qualify for
8 Rate ADE, without that provision, a customer could go
9 to competitive supply for one month, and immediately
10 return to PSNH under Rate ADE and get a lower price, at
11 least under today's prices. So, the 12 consecutive
12 months under competitive supply to qualify for Rate ADE
13 is to prevent that kind of gaming.

14 The 24-month term of service is intended
15 to provide significant value to all other customers,
16 but we've got to balance that with the objective of not
17 having an indefinite term of service under Rate ADE.
18 And, that's why we didn't propose 36 or 48 months or
19 something longer. It's a limited term, but it's
20 balancing those objectives; providing value to all
21 other customers, without having it so long that it
22 becomes an indefinite term.

23 The other thing to keep in mind is that
24 the term of service that we're proposing, the 24

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[WITNESS PANEL: Hall~White]

1 months, isn't necessarily a continuous term of service.
2 As I said earlier, customers can come and go as they
3 please. So, the result is that, with a 24-month term
4 of service, that doesn't necessarily mean that a
5 customer is going to return to Rate ADE, stay on it for
6 24 months, and therefore provide 24 months' worth of
7 benefit, if you will, to standard Rate DE customers,
8 because a customer always has the option of going to
9 the competitive market. And, therefore, the 24-month
10 term of service under Rate ADE is not -- we can't
11 assume that it's going to be 24 consecutive months that
12 a returning customer will provide value to all other
13 customers.

14 Q. Now, I guess right now one last question, Mr. Hall. If
15 Rate ADE is approved and implemented, would PSNH
16 shareholders receive any additional profit for those
17 customers choosing to return to PSNH and take Rate ADE?

18 A. (Hall) No.

19 MR. FOSSUM: Thank you. I have nothing
20 further at this time.

21 CHAIRMAN IGNATIUS: Thank you.

22 Mr. Rodier, questions?

23 MR. RODIER: Yes. Madam Chairman, is
24 that the correct way to address you, "madam Chairman", or

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[WITNESS PANEL: Hall~White]

1 would you prefer something else?

2 CHAIRMAN IGNATIUS: No, I think "madam
3 Chairman" is good.

4 MR. RODIER: Okay.

5 CHAIRMAN IGNATIUS: Thank you.

6 MR. RODIER: Thank you.

7 CHAIRMAN IGNATIUS: And, basically
8 anything is okay, as long as it's not mean.

9 MR. RODIER: Okay. All right.

10 **CROSS-EXAMINATION**

11 BY MR. RODIER:

12 Q. Okay. Well, I guess I want to -- let's just start with
13 that last point, okay? Then, we'll go to your data
14 responses. You said "stockholders" --

15 (Court reporter interruption.)

16 MR. RODIER: Oh, I'm sorry.

17 BY MR. RODIER:

18 Q. Mr. Hall, you said "stockholders won't benefit from
19 ADE"?

20 A. (Hall) Correct.

21 MR. RODIER: Okay. I've got a portion
22 from a PSNH filing with the Securities & Exchange
23 Commission. I'd like it marked into evidence. I'll have
24 it -- maybe I should have the Company verify first that

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[WITNESS PANEL: Hall~White]

1 it's their document.

2 CHAIRMAN IGNATIUS: Why don't you ask
3 the witness if they recognize it.

4 MR. RODIER: Okay. May I -- it's okay
5 to approach?

6 CHAIRMAN IGNATIUS: Of course.

7 MR. RODIER: Yes. Okay.

8 (Atty. Rodier handing document to
9 Witness Hall.)

10 BY MR. RODIER:

11 Q. Do you recognize this, Mr. Hall?

12 A. (Hall) I haven't seen it before, but it looks like an
13 NU 10-K.

14 MR. RODIER: Okay. May we mark this for
15 identification, madam Chairman?

16 CHAIRMAN IGNATIUS: Is that the
17 foundation? Is there anything else you can bring to --

18 MR. RODIER: Yes.

19 CHAIRMAN IGNATIUS: -- where it's from,
20 what it's dated, and why it's something --

21 MR. RODIER: Well, here's what I could
22 do. I could give the Chairman a copy right now or I could
23 say that it is a Form 10-K Annual Report to the Securities
24 & Exchange Commission for the fiscal year ending

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[WITNESS PANEL: Hall~White]

1 December 31st, 2001. And, I'm only going to ask about one
2 paragraph on Page 18, Page 18, at the bottom.

3 CHAIRMAN IGNATIUS: Fiscal year 2001?

4 MR. RODIER: Eleven.

5 CHAIRMAN IGNATIUS: Eleven.

6 MR. RODIER: Sorry. Eleven.

7 CHAIRMAN IGNATIUS: Thank you. And,
8 counsel for PSNH, have you received it? Do you have any
9 objection to it being marked for identification?

10 MR. FOSSUM: No, not at this time. No.

11 CHAIRMAN IGNATIUS: And, you've got
12 copies for all parties?

13 MR. RODIER: I believe I brought ten, so
14 I believe I have.

15 CHAIRMAN IGNATIUS: All right.

16 MR. RODIER: May I proceed?

17 CHAIRMAN IGNATIUS: Yes, please.

18 MR. RODIER: Okay.

19 (Atty. Rodier distributing documents.)

20 CMSR. HARRINGTON: Could we have three,
21 if you have it?

22 CHAIRMAN IGNATIUS: We can make it. We
23 can make an extra copy. So, we'll mark this for
24 identification as "Exhibit 10".

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[WITNESS PANEL: Hall~White]

1 (The document, as described, was
2 herewith marked as **Exhibit 10** for
3 identification.)

4 BY MR. RODIER:

5 Q. Mr. Hall, did you notice that in Mr. Estomin's
6 testimony that he also had a footnote to an SEC report?

7 CHAIRMAN IGNATIUS: One moment, before
8 you answer. Ms. Amidon, yes?

9 MS. AMIDON: I just want to make the
10 point that Mr. Estomin will not be able to hear anything
11 unless Mr. Rodier addresses his questions through the
12 microphone.

13 CHAIRMAN IGNATIUS: All right. And,
14 also, Mr. Estomin, you don't have a copy of Exhibit 10,
15 but it is as Mr. Rodier just stated, it's an SEC filing
16 Form 10-K for the year ending December 31st, 2011, which
17 you may have access to in your own materials. But we'll
18 try to make sure questions are clear, because he won't be
19 able to flip to them.

20 MR. ESTOMIN: All right. Thank you.

21 CHAIRMAN IGNATIUS: Mr. Rodier, go ahead
22 please.

23 BY MR. RODIER:

24 Q. Are you on Page 18, Mr. Hall?

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[WITNESS PANEL: Hall~White]

1 A. (Hall) I am.

2 Q. Okay. Do you see the paragraph one-third of the way
3 down, "Migration of customers from PSNH energy service
4 to competitive suppliers is increasing the cost to the
5 remaining customers of energy produced by PSNH
6 generation assets and decrease our revenues"? You see
7 that paragraph?

8 A. (Hall) I do.

9 Q. I want you to take a look, I think we're familiar with
10 the first two or three sentences, but I want you -- I'm
11 going to read you the last sentence of that paragraph.

12 A. (Hall) Uh-huh.

13 Q. And, I'm not going to belabor this point, but I just
14 want you to comment on the following sentence: "This
15 trend could lead to PSNH continuing to lose retail
16 customers and increasing the burden of supporting the
17 cost of its generating facilities" -- "generation
18 facilities on remaining customers and being unable to
19 support the cost of its generating" -- sorry --
20 "generation facilities through an ES rate." Did I
21 basically read that correctly?

22 A. (Hall) Yes.

23 Q. What does that mean, "being unable to support the cost
24 of its generation facilities through an ES rate"?

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[WITNESS PANEL: Hall~White]

1 A. (Hall) It means exactly what it says.

2 Q. So, what we're saying here, that there is a danger
3 lurking out there from Public Service's perspective,
4 because, if things keep going the way they have, you
5 may not be able to recover the cost of these facilities
6 through ES rates?

7 A. (Hall) "Through ES rates", I agree with you.

8 Q. Okay. So, in fact, Rate ADE may enable your
9 stockholders to recover revenues they otherwise
10 wouldn't recover, isn't that correct?

11 A. (Hall) No, it isn't.

12 Q. Why?

13 A. (Hall) You're operating under the assumption in your
14 question to me that, if PSNH is unable to recover the
15 cost of its generating facilities through ES rates,
16 that those costs could never be recovered. I don't
17 agree with that assumption.

18 Q. Okay. All right.

19 A. (Hall) Moreover, Rate ADE is designed to mitigate the
20 very impact discussed in this paragraph. That's the
21 whole purpose of it. And, that is the impact on Energy
22 Service rates for all other customers.

23 Q. My point is, that without Rate ADE, stockholders may
24 come up short; with Rate ADE, they may get some of that

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[WITNESS PANEL: Hall~White]

1 money.

2 A. (Hall) Your point is incorrect.

3 Q. Okay.

4 A. (Hall) And, the reason your point is incorrect is the
5 law is very clear with regard to recovery of costs
6 associated with generating facilities that are either
7 retired or divested.

8 Q. I wasn't aware that was a settled issue, but let's move
9 on. You have a copy of your data requests with you?
10 First thing I really want to do here is walk through
11 your data responses.

12 MR. RODIER: And, I would like to, madam
13 Chairman, mark for identification Mr. Hall's first set of
14 data -- his responses to PNE's first set of data requests.
15 The cover letter is dated "July 5th".

16 CHAIRMAN IGNATIUS: All of them are
17 being marked or particular ones?

18 MR. RODIER: All of them. There's only
19 like five in this set.

20 CHAIRMAN IGNATIUS: And, you're going to
21 question on all of them?

22 MR. RODIER: On each one.

23 CHAIRMAN IGNATIUS: Okay. So marked for
24 identification. And, I assume everyone has copies

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[WITNESS PANEL: Hall~White]

1 already?

2 (Atty. Rodier distributing documents.)

3 CHAIRMAN IGNATIUS: Mr. Rodier, --

4 MR. RODIER: Everybody okay?

5 CHAIRMAN IGNATIUS: So, the packet dated

6 July 5th, 2012 will be marked for identification as

7 "Exhibit 11".

8 (The document, as described, was

9 herewith marked as **Exhibit 11** for

10 identification.)

11 BY MR. RODIER:

12 Q. Okay. Mr. Hall, let's just quickly go through here,
13 just to see what the question and the response was, and
14 I may pick up on some of these a little later. But
15 would you look at Page 1 of 1. This is PNE/FEL-001.
16 Do you have that in front of you?

17 A. (Hall) I do.

18 Q. "Is Rate ADE only available to customers who are
19 otherwise without a supplier?" "Yes."

20 (Court reporter interruption.)

21 BY MR. RODIER:

22 Q. "Is Rate ADE only available to customers who are
23 otherwise without a supplier?"

24 A. (Hall) Yes.

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[WITNESS PANEL: Hall~White]

1 Q. And, would it be fair to say that we have a difference
2 of opinion as to what that language means?

3 A. (Hall) I'm not quite sure what your opinion is, but, to
4 me, it's pretty clear.

5 Q. Okay. Well, we'll get -- we'll clear it up later on,
6 how's that?

7 A. (Hall) Okay.

8 Q. Two, would you read the question.

9 A. (Hall) "Is Rate ADE designed to provide a safety net
10 and to assure universal access and system integrity?
11 Please explain."

12 Q. And, your answer says "Yes." And, I'm wondering, you
13 say here "complies with [all of] the requirements of
14 RSA 374-F", don't you?

15 A. (Hall) Yes.

16 Q. Okay. Well, for example, how does Rate ADE provide a
17 safety net and assure universal access?

18 A. (Hall) The same way standard Rate DE does. It's a
19 default energy service rate that's available to
20 customers who are otherwise without a supplier.

21 Q. Okay. Next, this is Request 3. And, here, I have
22 asked, and I think it's a provision of RSA 374-F, as
23 you know, that the Commission -- well, let me stop and
24 let me just ask the question. "Does Rate ADE

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[WITNESS PANEL: Hall~White]

1 discourage long-term use of default service?"

2 A. (Hall) Yes.

3 Q. Okay. And, it's because the other customers can go
4 back and forth, --

5 A. (Hall) Uh-huh.

6 Q. -- as you said, and you can only stay on it for 24
7 months. That's why it does not encourage long-term use
8 of default service?

9 A. (Hall) Correct.

10 Q. But, if this part of the program is successful, this
11 thing could go on for ten or fifteen years, isn't that
12 correct?

13 A. (Hall) I don't know. That remains to be seen.

14 Q. Well, would that be indefinite?

15 A. (Hall) Would default energy service rates be
16 indefinite? This is nothing more than a default energy
17 service rate.

18 Q. I'm asking you, could Rate ADE go on indefinitely?

19 A. (Hall) I don't know.

20 Q. Next, FEL-004. "Does Rate ADE encourage long-term use
21 of default service?" And, your answer is "no" for the
22 same reasons?

23 A. (Hall) Correct.

24 Q. Okay. And, you won't even admit that it could go on

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[WITNESS PANEL: Hall~White]

1 indefinitely, because you just don't know. That's your
2 answer, right?

3 A. (Hall) Correct.

4 Q. All right. Next, I asked whether "the price of service
5 under Rate ADE equals PSNH's actual, prudent, and
6 reasonable costs of providing such power?" And, you
7 said "yes." And, there's probably two parts to this.
8 I think the part I want to get to right now is that the
9 adder only includes the non-operating costs of the
10 Scrubber, is that correct?

11 A. (Hall) Correct.

12 Q. Why doesn't it include all of the costs of the
13 Scrubber?

14 A. (Hall) Primarily due to difficulties associated with
15 allocating costs to different components of plant.

16 Q. Okay. You're not saying -- you're not denying that the
17 operating costs of the Scrubber are a cost of the
18 Scrubber, are you?

19 A. (Hall) Say that again.

20 Q. Should the adder under Rate DE [ADE?] cover the costs
21 of the Scrubber?

22 A. (Hall) Yes, and it does, at least those costs that can
23 be easily identified.

24 Q. All right. But it does not cover certain costs.

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[WITNESS PANEL: Hall~White]

1 A. (Hall) Well, the other costs that I think you're
2 referring to are costs which there will be some of
3 which would be incurred regardless of whether or not
4 the Scrubber existed, and, therefore, it becomes an
5 allocation issue.

6 Q. Well, allocating costs is something you do for a
7 living, you're a rate manager, right?

8 A. (Hall) I don't do cost allocations. That's not my job.

9 Q. Where does that get done these days?

10 A. (Hall) That's done in Connecticut by --

11 Q. Okay.

12 A. (Hall) I'm not responsible for cost of service.

13 Q. All right. Anyway, the point is that, what you were
14 saying, you haven't included them, because you'd have
15 to allocate costs, you'd have to allocate some costs,
16 is that right?

17 A. (Hall) Correct. And, when it comes to cost allocation,
18 no two people ever agree on what the appropriate
19 allocation is.

20 Q. That's correct. But you're not saying it couldn't be
21 done in Connecticut, are you?

22 A. (Hall) That it couldn't be done in Connecticut?

23 Q. That they could not take a crack at this?

24 A. (Hall) To what end?

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[WITNESS PANEL: Hall~White]

1 Q. To include it. To include something, to at least, in
2 principle, recognize the fact that there are other
3 costs of that Scrubber that aren't being included in
4 the adder as you proposed it.

5 A. (Hall) So, you're asking me, in theory, could we do a
6 cost allocation? The answer to that is "Sure." Anyone
7 can do a cost allocation.

8 Q. All right. And, the next question, which is 6, "Does
9 the price of service under DE equal PSNH's actual,
10 prudent, and reasonable costs of providing such power?"
11 "Yes." And, it looks like you say here "Rate DE
12 includes the embedded cost of PSNH's generation [as
13 long as] the marginal cost of power purchases",
14 correct?

15 A. (Hall) Yes.

16 Q. So, what this comes down to, you're saying both DE and
17 ADEE -- I'm sorry. Both DE and ADE equal PSNH's actual
18 prudent and reasonable cost of providing such power?

19 A. (Hall) Yes.

20 Q. Even though they're very different?

21 A. (Hall) Yes.

22 Q. They're different --

23 A. (Hall) One's marginal cost based and one's embedded
24 cost based.

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[WITNESS PANEL: Hall~White]

1 Q. All right. So, the small captive customers pay the one
2 that's based on embedded cost, and the larger customers
3 pay the one that's based on the marginal cost of power
4 purchases?

5 A. (Hall) I don't agree with your characterization that
6 customers are "captive". There is no such thing as a
7 "captive" customer.

8 Q. Okay. So, small customers who stay on Rate DE would
9 pay the embedded cost of PSNH's generation, while the
10 larger, mobile customers would just pay the marginal
11 cost of power purchases?

12 A. (Hall) Any customer receiving service under Rate ADE
13 pays embedded cost. Rate ADE -- Rate DE is an embedded
14 cost rate.

15 Q. Okay. You meant to say "Rate DE"?

16 A. (Hall) Rate DE.

17 Q. Yes.

18 A. (Hall) Standard Default Energy Service rate --

19 Q. Okay.

20 A. (Hall) -- is an embedded cost rate. Therefore, any
21 customer taking service under that rate pays embedded
22 costs.

23 Q. Okay.

24 A. (Hall) Customers who have migrated and been gone for 12

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[WITNESS PANEL: Hall~White]

1 months, and subsequently returned, would pay a marginal
2 cost based rate --

3 Q. Okay.

4 A. (Hall) -- for a term of service to be determined by the
5 Commission.

6 Q. So, customers who stay on Rate DE pay for the high cost
7 power, and the ones who migrate pay for the lower cost
8 power?

9 A. (Hall) I don't agree with your characterization. Rate
10 ADE can be higher priced than Rate DE.

11 Q. Okay. And, that's a good point, because, in all my
12 questions, please assume that I'm only talking about
13 the situation where marginal costs are less than
14 average costs, okay?

15 A. (Hall) Okay.

16 Q. Because I'll just interject that I don't think we have
17 any problem with what your proposal is when marginal
18 costs are higher than average cost, all right?

19 A. (Hall) I'm glad you don't have a problem with the
20 proposal in that event.

21 Q. Excuse me?

22 A. (Hall) I'm glad you don't have a problem with our
23 proposal in the event that the situation reverses.

24 Q. Well, you and I have talked a lot about this aspect

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[WITNESS PANEL: Hall~White]

1 over the years about what happens when purchased power
2 costs are higher than average costs, haven't we?

3 A. (Hall) Yes, we have. And, in fact, we entered into an
4 agreement that was very similar to Rate ADE when the
5 situation was reversed. And, that was a marginal cost
6 based rate.

7 Q. And, that was to offer customers a credit so they would
8 switch, right?

9 A. (Hall) Yes.

10 Q. To jump start the market, correct?

11 A. (Hall) Yes.

12 Q. Okay. And, that program was a big success, wasn't it?
13 I'm being facetious.

14 A. (Hall) Is that a rhetorical question?

15 Q. Yeah. It failed, didn't it?

16 A. (Hall) No customers took service under it.

17 Q. Okay. Now, the next one I thought was interesting.
18 Would you read, I'll have you do it this time, we'll
19 share the workload here, FEL-007. Would you read the
20 question.

21 A. (Hall) "Is the purpose of Rate ADE to provide customers
22 who have migrated from PSNH's default service an
23 attractive opportunity to return to the Company for
24 energy service?"

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[WITNESS PANEL: Hall~White]

1 Q. And, then, you referred to your testimony, correct?

2 A. (Hall) Yes.

3 Q. Can you answer this question "yes" or "no"?

4 A. (Hall) Let me turn to my testimony.

5 Q. No, I was just asking right now whether you could
6 answer this question as "yes" or "no"?

7 A. (Hall) Let me turn to my testimony.

8 Q. Okay. Let's cut this short. Is that going to be your
9 answer, you're going to read me your testimony?

10 A. (Hall) I want to see what I said.

11 Q. Okay.

12 A. (Hall) The answer to that question would be "no".

13 Q. That's not the purpose?

14 A. (Hall) No.

15 Q. So, you don't recognize this language is taken directly
16 from Attorney Knowlton's cover letter that you filed
17 with the Commission on April 27th?

18 A. (Hall) From Attorney Knowlton's cover letter?

19 Q. Yes. Do you have that?

20 A. (Hall) It may well have been in the cover letter.

21 Q. Okay. So, you don't agree with the characterization in
22 her cover letter?

23 A. (Hall) I'm agreeing with the characterization in my
24 testimony.

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[WITNESS PANEL: Hall~White]

1 Q. Okay.

2 A. (Hall) That "the purpose...is to provide...energy
3 service at prices in excess of marginal cost while
4 providing a contribution to fixed costs that will
5 benefit all other customers taking energy service from
6 PSNH." And, the reason for that is the discussion that
7 we just had a few minutes ago. Rate ADE can be higher
8 than Rate DE. And, therefore, it's the
9 characterization of the question that I disagreed with.

10 Q. Just you -- you do not agree that "the purpose of Rate
11 ADE is to provide customers who have migrated from
12 PSNH's default service an attractive opportunity to
13 return to the Company", even though I'm representing,
14 if we look at Attorney Knowlton's cover letter on
15 April 27th, that's what she says, you still disagree?

16 A. (Hall) That cover letter may have been in preference to
17 the circumstances as they exist today. My testimony
18 describes the general purpose of Rate ADE. And, in
19 fact, that statement and that question may be a result
20 of approval of Rate ADE. But the purpose is --

21 Q. Okay. Let's --

22 A. (Hall) -- "to provide...energy service at a price in
23 excess of marginal cost while providing a contribution
24 to fixed costs that will benefit all other customers."

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[WITNESS PANEL: Hall~White]

1 Q. Do you have Mr. Eaton's cover letter he sent to the
2 Commission that's dated December 27th, 2011 with you?
3 I'm sorry, it would be -- would it be the post trial
4 statement?

5 CHAIRMAN IGNATIUS: Can you repeat the
6 date and the -- I didn't follow what you just said.

7 MR. RODIER: If I could have a moment, I
8 just want to get it up here myself.

9 (Short pause.)

10 WITNESS HALL: Just to follow up on your
11 earlier question, --

12 MR. RODIER: There's no question
13 pending, Mr. Hall.

14 WITNESS HALL: Well, I want to
15 supplement my answer, if that's all right?

16 CHAIRMAN IGNATIUS: No.

17 MR. RODIER: Well, you can do it on
18 redirect, okay?

19 WITNESS HALL: Okay.

20 MR. RODIER: I am referring to PSNH's
21 final statement in this proceeding, closing statement. I
22 think, let me look and see what the date is on the back.
23 It was submitted by Attorney Eaton. And, it's dated
24 December 20th, 2011.

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[WITNESS PANEL: Hall~White]

1 BY MR. RODIER:

2 Q. And, without spending much time on this at all, you
3 don't have that, right, Mr. Hall?

4 A. (Hall) No, I don't.

5 Q. Okay. So, I want you to just accept this subject to
6 check, okay? That, under Paragraph 5, on Page 4, it
7 says, in part, "The purpose of the rate is to provide
8 an alternative default service price for customers" --
9 that's not the one I wanted.

10 A. (Hall) I now have it.

11 MR. RODIER: Mr. Hall, I'm going to have
12 to come back to this, if I ever do. I can't find what I
13 was asking. So, I apologize to the Commission and
14 everybody else in getting us down this track and not being
15 able to back up at the moment. So, let's come back to
16 that. Sorry.

17 BY MR. RODIER:

18 Q. All right. Let's move onto the second set of data
19 requests. Do you have those?

20 A. (Hall) The ones from you?

21 Q. Yes.

22 A. (Hall) Yes, I do.

23 MR. RODIER: I'd like to mark these for
24 identification.

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[WITNESS PANEL: Hall~White]

1 CHAIRMAN IGNATIUS: What is it that
2 we're marking please?

3 MR. RODIER: Sorry. This would be
4 PSNH's responses to PNE's second set of data requests, and
5 the cover -- in this proceeding, and the cover letter is
6 dated "July 25th, 2012".

7 CHAIRMAN IGNATIUS: And, again, it's a
8 packet of multiple questions and answers?

9 MR. RODIER: It is. Every question and
10 every answer that was given, but, again, it's only five
11 data responses.

12 (Atty. Rodier distributing documents.)

13 CHAIRMAN IGNATIUS: Thank you. So
14 marked as "Exhibit 12" for identification.

15 (The document, as described, was
16 herewith marked as **Exhibit 12** for
17 identification.)

18 BY MR. RODIER:

19 Q. So, Question FEL-001, the question was "How long will
20 Rate ADE be in existence?" You said you "don't know
21 how long"?

22 A. (Hall) Correct.

23 Q. And, then, Mr. Fromuth said, in his testimony, it's
24 going to be in effect indefinitely, and you took

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[WITNESS PANEL: Hall~White]

1 umbrage at that, didn't you?

2 A. (Hall) Correct. I didn't say "it was going to be in
3 effect indefinitely." I said "I didn't know".

4 Q. And, you're saying -- suggesting there's a distinction
5 between those two?

6 A. (Hall) Yes. I think there's a big distinction.

7 Q. Okay. Number 2, moving on quickly here. "Please
8 describe in detail any marketing and outreach program
9 that PSNH would undertake in conjunction with Rate ADE.
10 Will PSNH undertake any targeted" -- that should
11 probably say "targeted", it reads "targeting marketing
12 to customers presently under contract with an electric
13 supplier?" You said you "have not formulated any
14 marketing or outreach programs", is that correct?

15 A. (Hall) Correct.

16 Q. Is that still the case?

17 A. (Hall) Yes.

18 Q. So, you want the Commission to let this go into effect
19 January 1st, and you still don't have any marketing or
20 outreach program, is that correct?

21 A. (Hall) Correct.

22 Q. You've had no discussions, no e-mails, no exchange of
23 documents, nothing on this matter?

24 A. (Hall) Discussions, e-mails, and exchange of documents

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[WITNESS PANEL: Hall~White]

1 with whom?

2 Q. Anybody.

3 A. (Hall) With anybody?

4 Q. Yes. In terms of --

5 A. (Hall) I've had lots of discussions, e-mails, and
6 exchanges of documents with people at PSNH and at
7 Northeast Utilities.

8 Q. On marketing and outreach programs for Rate ADE?

9 A. (Hall) Marketing and outreach?

10 Q. For Rate ADE? Look, I'll accept your answer. You want
11 this to start January 1st, and you don't have -- you
12 have done no work of developing a marketing program or
13 outreach programs?

14 A. (Hall) Is that a question?

15 Q. Yes.

16 A. (Hall) We have had discussions with account executives.
17 We haven't developed any formal programs. We don't
18 know what form it's going to take. We don't know how
19 account executives are going to contact customers, if
20 at all. In fact, the role of account executives and
21 their responsibilities are changing. So, we don't even
22 know to what extent they will be utilized. I have
23 certainly described the rate to them.

24 Q. Is that because all the account executives are going

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[WITNESS PANEL: Hall-White]

1 under the new community service organization?

2 A. (Hall) I didn't understand your question.

3 Q. Never mind. Okay. So, you don't know whether your
4 account executives will be making outgoing calls to the
5 customers. You don't know, in addition, you don't know
6 whether you're going to be sending them glossy
7 brochures in the mail or e-mails. Is that what your
8 testimony is?

9 A. (Hall) I don't know what's planned.

10 Q. Okay. But, then again, I guess you're not in charge of
11 planning, so that's one reason you might not know,
12 correct?

13 A. (Hall) Could be. I'm not aware of any marketing or
14 outreach planning or programs.

15 Q. Okay. All right. Okay. Then, the last one I want to
16 ask you about, in 3, the next one. I'll read it.

17 "Please provide an estimate for the costs expected by
18 PSNH to be incurred for Rate ADE, including, without
19 limitation, costs for administration, promotional
20 materials, marketing, sales and customer service." The
21 same answer as what we just discussed, is that correct?

22 A. (Hall) No. The answer refers to two other data
23 responses.

24 Q. Okay. Well, what is the answer, so we don't have to

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[WITNESS PANEL: Hall~White]

1 look it up?

2 A. (Hall) Say that again please.

3 Q. What's the substance of the answer? You do refer to
4 "FEL-002", and I think that's the one we just looked
5 at, where it says you don't have anything. So, --

6 A. (Hall) Correct. And, I also referred to "OCA 2-002",
7 which basically talked about the work necessary or that
8 will be necessary to be done, if ADE is approved.

9 Q. Okay. So, there's going to be costs incurred, aren't
10 there, Mr. Hall, with respect to rolling out Rate ADE?

11 A. (Hall) Opportunity costs, because people will be
12 working on --

13 Q. I see.

14 A. (Hall) -- programming.

15 Q. Well, how about the marketing and -- well, let's just
16 take customer service. Don't you expect a lot of calls
17 from customers that say "how do we get in on this?"

18 A. (Hall) I don't know. Perhaps. We are not planning on
19 hiring additional customer service reps --

20 Q. Okay.

21 A. (Hall) -- to deal with additional calls as a result of
22 Rate ADE.

23 Q. How about written materials? Anything? Now, you said
24 -- well, let me follow up. You said "opportunity

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1 costs". That means that you have people now, they're
2 not sitting around with nothing to do, they're working,
3 right?

4 A. (Hall) Correct.

5 Q. They're going to be working on something and now
6 they're going to be re-deployed over to ADE. So, then,
7 the question becomes "that's costs, why isn't that
8 included in the adder?"

9 A. (Hall) It's not a marginal cost. Rate ADE is a
10 marginal cost based rate.

11 Q. Well, how about the cost of the lost opportunity to use
12 them doing something else?

13 A. (Hall) It would be difficult to calculate it. I
14 wouldn't know how to calculate that lost opportunity
15 cost.

16 Q. I guess where I'm coming from is that competitive
17 suppliers have concerns here. And, you're using the
18 resources of a regulated utility, whose costs are all
19 in base rates, and you're using those to market this
20 rate?

21 A. (Hall) And, we're not seeking any cost recovery from
22 the Commission as a result of this rate.

23 Q. Okay. So, I guess then the way that we leave it is,
24 you said there was an "opportunity cost", because the

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1 employees would no longer be doing what they normally
2 do, right?

3 A. (Hall) Yes. But your question makes it sound like this
4 is going to be a full-time job for someone. It's not.

5 Q. Well, let's look at it this way. Let's just say that
6 this goes into effect. And, we've talked in the past
7 about the two customers on Dubuque Street, in
8 Manchester, haven't we?

9 A. (Hall) Is that your old neighborhood?

10 Q. No, it's not.

11 A. (Hall) Oh. Okay.

12 Q. Even though I'm French, it's not. But I have asked you
13 in the past, a typical person in Manchester, I say
14 "Dubuque Street", okay, it's right behind West High.

15 A. (Hall) I wasn't aware of that.

16 Q. So, there's two customers, okay? And, they talk to
17 each other. And, one's paying 9. -- what's your
18 proposal for January 1st? 9.57? I mean, 8.97? What's
19 your proposed ES rate for January, ES rate?

20 A. (Hall) I don't recall.

21 A. (White) 8.97.

22 Q. Thank you. One's paying close to 9. What did you say
23 your current estimate was for ADE?

24 A. (Hall) About 7 cents.

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1 Q. The other's paying 7. And, so, one's saying "well, how
2 did you do that?" Let's assume that Customer 1 has
3 been with PNE.

4 A. (Hall) Uh-huh.

5 Q. Goes back to the house, goes to PSNH, gets your 7
6 cents. You don't think that that is going to cause a
7 lot of calls to you or concerns?

8 A. (Hall) I have no idea.

9 Q. Okay.

10 A. (Hall) What if Customer 2 is getting a deal from
11 Comcast because they have been gone or they're a
12 brand-new customer?

13 Q. Yes, but --

14 A. (Hall) Is that going to cause problems between them?
15 Perhaps. I don't know.

16 Q. Yes, but Comcast is not regulated.

17 A. (Hall) Understood.

18 Q. Let me ask you, then. What if a residential supplier
19 were to say "You're a chump, you're paying 9 cents a
20 kilowatt-hour, and your neighbor is paying 7 cents; go
21 to -- come to us for a year, and then you can get the 7
22 cents yourself"?

23 A. (Hall) Uh-huh.

24 Q. You really think that's not going to happen?

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1 A. (Hall) I have no idea what suppliers might say.

2 Q. Okay.

3 A. (Hall) In fact, some of the reports that I receive from
4 what some suppliers are telling customers are somewhat
5 disturbing.

6 Q. Are you talking about Gold's Gym? Are you talking
7 about the incident with Gold's Gym?

8 A. (Hall) No.

9 Q. Okay. So, let's just leave it at that. I think I'm
10 going to try to ask Mr. Mullen whether -- well, let me
11 just leave it with you, rather than -- there could be
12 some unanticipated consequences that might not be
13 pleasant for PSNH out of this program, is that right?

14 A. (Hall) I don't agree with your characterization.

15 Q. I said "there could be". You're saying "no"?

16 A. (Hall) I don't agree with your characterization.

17 Q. Okay.

18 A. (Hall) I don't know what you mean by "unpleasant for
19 PSNH". I don't know what you mean by "unanticipated
20 consequences".

21 Q. Okay.

22 A. (Hall) Your question is too vague for me.

23 Q. All right, Mr. Hall. Then, I'll make it very specific.
24 You could have 200,000 residential customers leave for

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1 the competitive market so that -- as a matter of fact,
2 you were saying today, they could leave for the
3 competitive market on January 1st, and 12 months,
4 customers are going to be on ADE for 12 months, then
5 they can go back. A customer has to be with a
6 competitive supplier for 12 months, I'm very sorry.
7 After that, they can go back to ADE on January 1st,
8 leave again on April 1st, come back again July 1st, and
9 leave again on October 1st?

10 A. (Hall) They could.

11 MR. RODIER: Okay. Are you going to
12 take a break, madam Chairman? I'm happy to keep going.

13 CHAIRMAN IGNATIUS: No, we'll keep
14 going.

15 MR. RODIER: Okay.

16 BY MR. RODIER:

17 Q. Well, I think we're down to my last one, which is the
18 metaphysical debate about what's the meaning of
19 "otherwise without a supplier". And, I have asked you
20 on a number of occasions. But we both agree that Rate
21 ADE is available to customers who -- that you intend to
22 make it available to customers who are otherwise
23 without a supplier, is that correct?

24 A. (Hall) Correct.

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1 Q. You interpret that as meaning, well, if the customer is
2 with a competitive supplier and they quit, and they go
3 to Rate ADE, then they're otherwise without a
4 competitive supplier. Without a supplier. Sorry.
5 Your position, let me see if I got it right. A
6 customer is with a competitive supplier, they terminate
7 their contract. So, they qualify for Rate ADE, because
8 they're otherwise without a supplier?

9 A. (Hall) Correct.

10 Q. So, even though -- by the way, did you notice -- did
11 you read Mr. Estomin's testimony?

12 A. (Hall) I did.

13 Q. He said "the purpose of ADE is to lure customers back
14 to the regulated utility." Did you read that?

15 A. (Hall) I read it.

16 Q. Did you read Mr. Fromuth's testimony, he said the same
17 thing, he even you used the same word "lure"? Do you
18 recall that?

19 A. (Hall) I read it.

20 Q. Okay. Using their phrases, if you "lure" the customer
21 back to the house, back to the regulated utility, your
22 saying they're otherwise without a competitive
23 supplier?

24 A. (Hall) I don't agree with the characterization of

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1 "lure". That only applies or would only apply in a
2 situation where marginal costs are low. Remember, Rate
3 ADE applies regardless of whether marginal costs are
4 low or high. And, if the situation reverses, certainly
5 you wouldn't suggest that we're "luring" customers back
6 at a price above --

7 Q. Right.

8 A. (Hall) -- the standard Default Energy Service rate.
9 Beyond that, I address this very issue in my rebuttal.
10 If you apply your logic, then, even without Rate ADE,
11 let's set that aside, then, using your logic, Rate DE
12 would not be a rate that's available to customers who
13 are otherwise without a competitive supplier. Because,
14 in the same situation where marginal costs increase,
15 would you then be saying that Rate DE, the standard
16 Default Service rate, is meant to "lure" customers
17 back? I don't think so. And, therefore, your argument
18 doesn't hold water. Your logic falls apart.

19 Q. Okay. And, I've asked -- earlier I asked you to assume
20 that all my questions were in the context of marginal
21 costs being less than average costs, okay? You have
22 that in mind?

23 A. (Hall) I have today's situation in mind.

24 Q. Right.

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1 A. (Hall) But I think you need to understand, and the
2 Commission needs to understand, the broader context in
3 which Rate ADE is designed and will apply. We can't be
4 putting blinders on and looking at one specific
5 situation and assuming that's the way it's always going
6 to be.

7 Q. Well, I'm getting ready to wrap this up, I believe.
8 But I want to stick to the present situation, which
9 could prevail for quite a long period of time, I guess.
10 Marginal costs are less than the average costs. PSNH,
11 you don't like the use of the word "lure", do you?

12 A. (Hall) I don't agree with it. That's not the purpose
13 of the rate.

14 Q. Okay. Back to --

15 MR. RODIER: Very quickly, madam
16 Chairman, I really am almost done.

17 BY MR. RODIER:

18 Q. I want to go back to Gerald Eaton's closing statement
19 in this proceeding, dated December 20, 2011. Page 2,
20 bottom of Page 2. Do you have that, Mr. Hall?

21 A. (Hall) I'm getting it.

22 Q. And, let me know when you reach it.

23 A. (Hall) I'm there.

24 Q. Okay. Bottom of Page 2, there's a paragraph there that

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1 says "Reasonableness", do you see that?

2 A. (Hall) I do.

3 Q. Would you read the first sentence in that paragraph.

4 A. (Hall) Sure. "Rate ADE is reasonable because it's
5 designed to attract customers back to default service."

6 Q. Do you disagree with his statement?

7 A. (Hall) The statement describes today's situation. I'd
8 direct your attention to Page 4.

9 Q. I'm just --

10 A. (Hall) Where you were before.

11 Q. Okay.

12 A. (Hall) That also talks about the purpose of Rate ADE.
13 Where that same document says "the purpose of the rate
14 is to provide an alternative default service price for
15 customers taking service from competitive suppliers and
16 contribute to the default service costs above marginal
17 costs; therefore, it provides another price signal to
18 compare with competitive suppliers' offers."

19 Q. I want to invite your attention back to the bottom of
20 Page 2, the first sentence that says "Rate ADE is
21 reasonable because it is designed to attract customers
22 back to default service."

23 A. (Hall) Okay.

24 Q. You seem to have a problem with anything that suggests

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1 that what you're trying to do here is really take
2 customers out of the competitive market. But, in any
3 event, do you agree or disagree with this sentence?
4 That's all.

5 A. (Hall) I agree with the sentence in the context of the
6 circumstances that were in effect when it was drafted,
7 and today's circumstances. Since the rate is lower
8 priced and it's marginal cost based, we hope it will be
9 attractive to customers. And, if it is, that will
10 result in benefit to all other customers who are served
11 under the standard rate.

12 Q. Okay. By the way, when this -- this, I think, is the
13 last one. I just wanted to ask you this, it just
14 occurred to me. A customer leaves PSNH to go to PNE.
15 Do you have that hypothetical in mind?

16 A. (Hall) Yes.

17 Q. Okay. PNE pays you the selection charge, billing
18 charges, a charge -- a third charge for payments and
19 collections, is that right?

20 A. (Hall) Assuming PNE has contracted for those services.

21 Q. Okay. Which every supplier in your territory must do?

22 A. (Hall) No.

23 Q. No?

24 A. (Hall) No.

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[WITNESS PANEL: Hall~White]

1 Q. Okay.

2 A. (Hall) Some suppliers do their own billing.

3 Q. Okay. For the residential customers, stick to
4 residential, okay? Sorry. This is a residential
5 customer. Now, so, all the way into PNE, let's just
6 stick to the selection charge, PNE pays five bucks. On
7 the way out the door, PSNH -- a customer leaves to go
8 back to you, PSNH pays another \$5.00 -- PNE pays
9 another \$5.00 to you?

10 A. (Hall) I don't know. I'd have to check the tariff.

11 Q. Okay. Let's assume that's the case.

12 A. (Hall) I don't believe it is.

13 Q. Okay. Then, can you check that and maybe let me know
14 after lunch or something like that, whether that's the
15 case? We know we pay it --

16 A. (Hall) I'm not going to be able to do it today.

17 MR. RODIER: Okay. That's all I have,
18 madam Chairman.

19 CHAIRMAN IGNATIUS: Thank you.

20 Questions from Ms. Miranda?

21 MS. MIRANDA: Thank you, madam Chairman.
22 Good morning, gentlemen.

23 WITNESS HALL: Good morning.

24 MS. MIRANDA: For the record, Joey Lee

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1 Miranda, from Robinson & Cole, on behalf of the Retail
2 Energy Supply Association.

3 BY MS. MIRANDA:

4 Q. The Rate DE -- ADE is going to be determined on an
5 annual basis, is that correct?

6 A. (Hall) Correct. Subject to change after six months.

7 Q. In one event, and that's when the market price --
8 forward market price is greater than 75 percent of the
9 adder, is that correct?

10 A. (Hall) No. It's when the difference between forward
11 market prices, basically, four or five months into the
12 annual period, the forward market prices differ from
13 the forward market prices used to set the rate. And,
14 that difference is more than -- is 75 percent or more
15 of the adder.

16 Q. Okay. So, it's the -- it was the difference between
17 the forecasted forward energy market prices and the
18 actual energy market prices that is greater than
19 75 percent, the difference?

20 A. (Hall) No. No. It's looking at two different sets of
21 forward market prices that were determined at two
22 different times. I mean, the market can shift. So,
23 forward market prices for a 12-month period,
24 determined, say, in December of the previous year, will

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1 be different than forward market prices for the
2 remainder of that 12-month period, when looked at in,
3 say, May of the following year.

4 Q. Okay. So, then, essentially, it is -- you're not
5 comparing -- you're comparing your forward market price
6 forecast when the rate is set, let's say, for
7 January 1st, 2013, to the forward market price as it
8 exists, say, in February 2013. And, if there's less
9 than a 75 percent -- 75 percent or less difference, the
10 rate remains in effect. If it's greater than
11 75 percent, you would seek to close Rate ADE?

12 A. (Hall) Essentially, yes.

13 Q. Okay. So, it's not looking at forward market price as
14 a comparison to actual costs. It's a forward market
15 price versus the forward market price in some other
16 month?

17 A. (Hall) Correct.

18 Q. Thank you. With respect to the term -- the term of
19 service, I thought I understood it, but now, based on
20 your response to Commissioner Harrington's question,
21 I'm confused.

22 A. (Hall) Okay.

23 Q. So, I'd like to clarify. For the term of service,
24 let's assume right now that it's 24 months as you

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1 propose. If I'm a customer that has been on
2 competitive supplier for 12 or more months, I return.
3 I stay with PSNH for six months on the Alternative
4 Default Energy rate.

5 A. (Hall) Okay.

6 Q. I then leave and go back to competitive supply for some
7 period less than a year. During the time I'm on
8 competitive supply, does that go into the 24 months or
9 does the clock stop at the six months I was at PSNH,
10 and then starts again when I come back to PSNH?

11 A. (Hall) The clock continues to run.

12 Q. So, if I am -- so, I just want to clarify it. I'm on
13 PSNH service for six -- Alternative Default Energy rate
14 for six months.

15 A. (Hall) Uh-huh.

16 Q. I go to the competitive market, and I'm served by a
17 competitive supplier for nine months. I then return to
18 PSNH, return to PSNH Alternative Default Energy rate,
19 correct?

20 A. (Hall) Correct.

21 Q. And, I'm on it for nine more months, for a total of 24?

22 A. (Hall) Yes. Except that understand, even during that
23 remaining nine more months, there's no requirement to
24 stay on energy service from PSNH.

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1 Q. Right. But I am required to stay on Alternative
2 Default Energy, not Default Energy, if I am at PSNH?

3 A. (Hall) Yes.

4 Q. Thank you. Earlier, I believe you testified that you
5 "did not believe that the rate was confusing, because
6 you expect mostly larger sophisticated customers to
7 take advantage of it." Is that accurate?

8 A. (Hall) Yes.

9 Q. However, the rate is open to customers who are small
10 commercial and industrial customers, is that correct?

11 A. (Hall) It will be within nine months following the
12 initial effectiveness of the rate.

13 Q. So, nine months after the initial effectiveness, it
14 will be open to small commercial and industrial
15 customers?

16 A. (Hall) Yes.

17 Q. And, nine months after the initial effectiveness, it
18 will be open to residential customers?

19 A. (Hall) Yes.

20 Q. Okay. Currently, PSNH cannot track how long a customer
21 has been out on -- an individual customer has been out
22 on competitive supply services, is that correct?

23 A. (Hall) No. I think a more accurate statement would be
24 "Currently, we do not track how long, because there's

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[WITNESS PANEL: Hall~White]

1 no need to do so."

2 Q. Do you recall receiving a data request from the Retail
3 Energy Supply Association --

4 A. (Hall) Yes.

5 Q. -- in connection with this proceeding?

6 A. (Hall) Yes.

7 Q. And, do you recall, in those RESA -- in those data
8 requests that RESA asked for specific information
9 regarding the number of customers that switched back
10 and forth from competitive supply for some period of
11 time?

12 A. (Hall) Yes. I'm turning to them now. I think it is
13 Questions 1 and 2.

14 Q. That's correct. I'm sorry, I'm actually having trouble
15 finding them. One second. In response to those
16 requests for information regarding how many customers
17 moved back and forth between competitive supply and
18 default service, you indicated that "PSNH does not
19 track this information and has no way of obtaining it,
20 other than by analyzing each individual's customer
21 history", is that correct?

22 A. (Hall) Correct.

23 Q. Okay. For purposes of determining how long customers
24 are on Rate ADE, and how long customers are away and on

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1 competitive supply, --

2 A. (Hall) Uh-huh.

3 Q. -- PSNH will need to obtain this information, is that
4 correct?

5 A. (Hall) Not the specific question you asked, but we will
6 need to track individual customers and the amount of
7 time their own on competitive supply.

8 Q. And, the amount of time they're on Rate ADE?

9 A. (Hall) Yes.

10 Q. And, will that be done through an automated system or a
11 manual system?

12 A. (Hall) Automated.

13 Q. And, will that require changes to your IT
14 infrastructure to make that happen?

15 A. (Hall) I'm not sure what you mean by "changes to IT
16 infrastructure". There will be programming necessary
17 to do it.

18 Q. Okay. And, the costs of that programming will be borne
19 by who? PSNH stockholders?

20 A. (Hall) Essentially, yes. I mean, any costs that PSNH
21 incurs, that doesn't get flowed through some tracking
22 mechanism, is effectively borne by stockholders.

23 Q. In response to questions from Attorney Rodier, you
24 indicated that existing employees would be used to

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1 provide -- to make whatever changes were necessary to
2 implement this program, is that correct?

3 A. (Hall) Yes. We're not going to be hiring contractors
4 to do it.

5 Q. And, where are the costs associated with those
6 employees' salaries currently recovered? In the
7 generation portion of rates or the distribution portion
8 of rates?

9 A. (Hall) I'm going to answer this in two ways. It
10 depends on the type of work that they're doing. In
11 general, the test year costs associated with work done
12 by that function is included in distribution rates.
13 But, once rates are set, distribution rates are just a
14 price. There is no matching after-the-fact of costs
15 incurred with rates recovered.

16 So, with that caveat, I think the answer
17 to your question is "distribution, generally."

18 Q. So, essentially, the costs are incurred through
19 distribution, with the understanding that there is no
20 reconciliation between estimated costs and actual
21 costs, is that correct?

22 A. (Hall) Again, I'm going to add the caveat. Because, if
23 costs have increased since the time that rates were
24 set, and the test year used to set rates, then who

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1 knows where those costs are recovered. Maybe they're
2 not recovered at all.

3 Q. So, essentially, there is no reconciliation process for
4 your distribution rates?

5 A. (Hall) Correct.

6 Q. Okay. Thank you. In response to questions from
7 Attorney Rodier, and I know it's been talked about
8 through the technical sessions and discovery, the plan
9 is for PSNH to engage in some educational or marketing
10 opportunity to make customers aware of Rate ADE and how
11 it will work, is that correct?

12 A. (Hall) I'm sure that there will be some sort of
13 education or discussions with customers or whatever.
14 I'm not sure what it will be.

15 Q. The costs associated with that will be collected in the
16 distribution rates?

17 A. (Hall) No. Going --

18 Q. From PSNH stockholders?

19 A. (Hall) Going back to my earlier response, it's
20 impossible to trace where certain costs are collected.
21 Distribution rates are just a number. Therefore, to
22 the extent that any of these costs are incurred, we're
23 not going to change rates as a result of it.

24 Q. Isn't it true that Northeast Utilities, when it has an

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1 employee performing functions, it can have that
2 employee categorized, the functions that they're
3 performing as "generation related", "transmission
4 related", "distribution related"?

5 A. (Hall) Or "customer service related", and there are
6 probably two or three others.

7 Q. But, yes, Northeast Utilities Service Company employees
8 do account for their time based on the function that
9 they're performing, is that correct?

10 A. (Hall) Yes.

11 Q. And, based on the function that they're performing,
12 that those costs are allocated to generation,
13 distribution, and transmission rates, generally, using
14 the broad -- the broad categories, I know there are
15 customer service charges, but using the broad
16 categories, it's generation, distribution and
17 transmission, correct?

18 A. (Hall) Oh, I agree. Right.

19 Q. Thank you. In response to questions from Attorney
20 Rodier, he referred you to PSNH's response to the
21 PNE-FEL Set 1, Question 6. Can you just turn there
22 please?

23 CHAIRMAN IGNATIUS: And, that would be
24 in Exhibit 11?

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[WITNESS PANEL: Hall~White]

1 MS. MIRANDA: Yes. I apologize, yes.

2 That's Exhibit 11.

3 BY MS. MIRANDA:

4 Q. Okay. Exhibit 11, Question 6. And, the response
5 indicates that "Rate DE includes the embedded cost of
6 PSNH's generation and the marginal cost of PSNH's power
7 purchases." Did I read that correctly?

8 A. (Hall) Yes.

9 Q. Rate ADE, on the other hand, will be the marginal cost
10 of PSNH's power purchase necessary to serve the
11 customers on that rate, plus the adder, is that
12 correct?

13 A. (Hall) Yes.

14 Q. As a result, the marginal cost paid by the Rate DE
15 customers, currently paid by the Rate DE customers,
16 will decrease, is that correct?

17 A. (Hall) No. It will remain the same.

18 Q. When a customer -- so, let me clarify then. When a
19 customer returns today, no Rate ADE in effect, when a
20 customer returns from competitive supply today, no
21 matter how long they have been gone, they return to
22 Rate DE, is that correct?

23 A. (Hall) Yes.

24 Q. When the customer returns to Rate DE, if PSNH does not

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1 have sufficient power from its own generating resources
2 to serve that customer, it must purchase that power in
3 the market, is that correct?

4 A. (White) Yes.

5 Q. And, there is a marginal cost associated with
6 purchasing the power for that additional customer in
7 the market, correct?

8 A. (White) Correct.

9 Q. And, if two customers come back, I know this is
10 probably over simplifying it, but I'm sure one customer
11 may not change it all that much. But, if two customers
12 come back, two -- you now then have an additional
13 marginal cost to serve the second customer that has
14 returned, is that correct?

15 A. (White) Yes.

16 Q. Okay. Now, let's switch to Rate ADE is in effect.
17 Customer 1 comes back, has been on competitive supply
18 for more than 12 months, they go to Rate ADE.

19 A. (Hall) Uh-huh.

20 Q. There is no additional added marginal cost to Rate DE
21 for serving that customer, correct?

22 A. (Hall) Correct.

23 Q. Rather that added marginal cost is now into Rate ADE,
24 correct?

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[WITNESS PANEL: Hall~White]

1 A. (Hall) Yes.

2 Q. And, then, the second customer returns, same thing, no
3 additional marginal cost to Rate DE, but added marginal
4 cost to Rate ADE?

5 A. (Hall) Conceptually, that's correct. The difference is
6 that all of the costs associated with serving Rate ADE
7 and all of the revenue received from Rate ADE will flow
8 through the Rate DE reconciliation.

9 Q. Okay.

10 A. (Hall) But, conceptually, I agree with you.

11 Q. Thank you. I'd like to turn now to a discussion of
12 what happens when Rate ADE closes and reopens.

13 A. (Hall) Okay.

14 Q. Rate ADE, my understanding is, as we talked about, is
15 the difference between the forward -- the forward
16 market price at the time Rate ADE is set and the
17 forward market price at some point during the one-year
18 period.

19 A. (Hall) Uh-huh.

20 Q. The difference is greater than 75 percent the rate will
21 close, is that correct?

22 A. (Hall) If the difference is greater than 75 percent of
23 the adder, yes. The rate closes to new customers.

24 Q. Customers who come back to PSNH service during the time

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[WITNESS PANEL: Hall~White]

1 that the rate is closed will be placed on Rate DE, is
2 that correct?

3 A. (Hall) Correct.

4 Q. Once Rate ADE reopens, those customers who were put on
5 Rate DE will then be moved to Rate ADE, is that
6 correct?

7 A. (Hall) Yes.

8 Q. Rate ADE will never be closed for longer than six
9 months, is that correct?

10 A. (White) Yes, I don't know how it could stay closed for
11 longer than that.

12 A. (Hall) Yes.

13 A. (White) It would reopen for at least a month, --

14 A. (Hall) Right.

15 A. (White) -- like a mid-year rate adjustment.

16 A. (Hall) I was trying to envision a situation where it
17 would stay closed for longer than six months, and I
18 can't come up with a scenario.

19 Q. If I'm a customer -- if I'm a current customer of PSNH,
20 when I want to know what rate I'm paying, I look to
21 Rate DE and I know that it's X dollars, X dollars per
22 megawatt-hour or X cents per kilowatt-hour, correct?

23 A. (Hall) Yes.

24 Q. When I'm a customer -- under the current situation,

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1 when I'm a customer with a competitive supplier, and
2 I'm trying to figure out if I want to stay with my
3 competitive supplier, or maybe PSNH's rate is better, I
4 look to Rate DE, is that correct, under today's
5 circumstances?

6 A. (Hall) Presumably, yes.

7 Q. Okay. Now, let's jump forward and assume that Rate ADE
8 is implemented.

9 A. (Hall) Okay.

10 Q. I am a current customer of PSNH, when I want to know
11 how much I'm paying, I look to Rate DE, no change?

12 A. (Hall) Correct.

13 Q. When I'm a customer who's on a competitive supplier, I
14 have to first figure out how long I've been with the
15 competitive supplier before I know which rate I'm going
16 to go on when I come back to PSNH, correct?

17 A. (Hall) Yes.

18 Q. Okay. Second, I need to know whether or not Rate ADE
19 -- assume for a second I am in the 12-month period, --

20 A. (Hall) Uh-huh.

21 Q. -- I've been out more than 12 months. I then need to
22 know if Rate ADE is open or not, is that correct?

23 A. (Hall) Yes.

24 Q. So, -- and, then, if Rate ADE is closed, then I know

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[WITNESS PANEL: Hall~White]

1 that I would look to Rate DE to see what I would pay
2 when I switch back?

3 A. (Hall) Yes.

4 Q. But I would only know what Rate DE is -- I would only
5 be on Rate DE until you reopened Rate ADE?

6 A. (Hall) Correct.

7 Q. So, as a customer, who's been out for 12 or more months
8 on the competitive market, in order to figure out what
9 I'm paying when I go back to PSNH, I need to understand
10 if the rate is open or closed, and I need to understand
11 how long DE is going to be closed before I know what my
12 new rate is going to be under ADE, if it's closed, how
13 long it's going to be closed, so that I can figure out
14 what my potentially new rate would be?

15 A. (Hall) Yes.

16 Q. Okay. Thank you. I'd like to refer you to Exhibit 7,
17 which is your initial testimony.

18 A. (Hall) Okay.

19 Q. Page 17. Are you there?

20 A. (Hall) I am.

21 Q. Lines 19 through 21. The first full sentence, the
22 beginning of the sentence started on Line 19, reads
23 "PSNH believes that it is important to establish this
24 rate as soon as possible so that customers will have

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1 another alternative that has the benefit of mitigating
2 migration." End of sentence. Did I read that
3 correctly?

4 A. (Hall) Yes.

5 Q. Thank you. In performing PSNH's analysis for the
6 establishment of Rate ADE, there were essentially three
7 assumptions that were looked at in that analysis, as
8 indicated on Page 18 of Exhibit 7?

9 A. (Hall) Yes. You're referring to the risk analysis?

10 Q. Yes.

11 A. (Hall) Okay.

12 Q. So, with respect to that analysis, you looked at market
13 price movements; the amount of sales, which react to
14 price movements; and the amount of adders to marginal
15 cost to determine retail price, is that correct?

16 A. (White) Yes.

17 Q. However, on Page 20 of Exhibit 7, Lines 11 through 13,
18 you do indicate that "some of the assumptions [you]
19 have made with respect to the market prices are highly
20 unlikely to occur", is that correct?

21 A. (White) That's what's stated there, yes.

22 Q. And, you also, on that same Page 20, at the bottom on
23 Pages 8 -- excuse me, Lines 18 through 20, also
24 indicate that "the amount of the benefit to be realized

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1 from implementation of Rate ADE will largely be
2 dependent on the amount of the load that returns", is
3 that correct? Did I read that or summarize that
4 correctly?

5 A. (White) Yes, you did.

6 Q. Okay. If no customers take service under Rate ADE,
7 there will be no benefit from Rate ADE realized for
8 customers on Rate DE, is that correct?

9 A. (Hall) Yes.

10 Q. If -- and, so, your sentence -- this sentence that I
11 just read about the amount of load that returns, the
12 benefit, as I understand your testimony, is that the
13 Rate ADE customers contribute the -- we'll use one cent
14 we know, adder, to the non-operating costs of the
15 Scrubber. And, that's the benefit that the Rate DE
16 customers receive from Rate ADE customers in having
17 this rate in effect, is that correct?

18 A. (Hall) Yes. The benefit is the increment, the revenue
19 that we get in excess of the marginal cost of serving
20 the load.

21 Q. In reaching your -- coming up with your assumptions
22 with respect to the risk analysis, and this is on Page
23 18 of Exhibit 7, one of those assumptions, correct, is
24 that customers have perfect foresight, that customers

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1 essentially react immediately to a price change that
2 benefits them, even if it's the smallest, you know, if
3 it's four decimal points out, every customer reacts
4 positively or negatively to a price change, is that
5 correct?

6 A. (White) Yes. The analysis was done using Excel. And,
7 the customer decisions were based on a direct
8 comparison of assumed third party supplier rates to
9 Rate ADE. So, any however small a difference would
10 drive the assumed reaction one way or the other.

11 Q. And, the prices that were used to represent the retail
12 market prices, not the PSNH prices, were also based on
13 assumptions on your part, and not actual data, correct?

14 A. (White) Yes. It's based on assumptions. We, through
15 the normal course of business, in other jurisdictions,
16 our group also handles competitive solicitations for
17 standard service supply in Massachusetts and
18 Connecticut. And, during the course of those
19 solicitations, we perform analysis to make a forecast
20 of what we believe should be reasonable offers from
21 suppliers.

22 Q. Those are wholesale suppliers, correct?

23 A. (White) That's correct. Those are wholesale suppliers.
24 And, having done that for several years, and developing

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1 the baseline for that analysis through a marginal cost
2 analysis, and then, through experience, seeing the
3 difference between the straight marginal cost and the
4 offers that actually come in, we've derived some
5 empirical evidence about what profit and risk premium
6 adders are on top of a straight marginal cost
7 calculation. So, --

8 Q. At the wholesale level?

9 A. (White) At the wholesale level. So, it's been roughly
10 using that type of information and knowledge that
11 resides in our department, sort of guided the
12 assumptions used in this risk analysis. It's not hard
13 data necessarily.

14 Q. For purposes of determining the cost of Rate ADE,
15 you've indicated it's a marginal cost, plus the
16 non-operating costs associated with the Scrubber adder.
17 I want to talk not about the adder, because I think we
18 all know sort of what's going in that. I want to talk
19 about the other piece of the cost that is used to
20 establish ADE.

21 A. (White) Okay.

22 Q. That cost will only include the costs that PSNH incurs
23 in buying power out of the market to serve the
24 customers returning, is that correct, and including

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1 energy, ancillary services, renewable energy credits,
2 all of the pieces of the energy? It will -- is that
3 correct?

4 A. (Hall) I want to make sure that we're grounded and
5 understand your question.

6 Q. The cost component, the non-adder component, will
7 consist of the costs that PSNH incurs to serve
8 customers that are on Rate ADE through the market,
9 including all costs of energy, ancillary services,
10 renewable energy credits, capacity congestion,
11 *etcetera*, is that correct?

12 A. (White) Yes. It's market-based full requirements
13 service.

14 Q. So, again, keeping the adder out of the picture, the
15 marginal cost does not include any costs associated
16 with PSNH's existing generation fleet, is that correct?

17 A. (White) That's correct.

18 Q. The adder, I understand, does. But the cost does not,
19 is that correct?

20 A. (White) That's correct. That the forecast of market
21 prices to establish the rate does not include any costs
22 of PSNH owned generation. It's strictly market-based.

23 Q. And, PSNH will set the annual rate for Rate ADE based
24 on its -- based on forward energy -- a forecast of

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1 forward energy market prices, plus the adder, is that
2 correct?

3 A. (White) I'm sorry. Could you repeat that. I think I
4 missed the first part.

5 Q. PSNH will set Rate ADE on an annual basis, assuming --
6 let's assume that the thing that closes the rate
7 doesn't occur, on an annual basis, based on a forecast
8 of forward energy market prices, plus the cost of the
9 adder?

10 A. (White) Yes. And, when you say "forward market energy
11 prices", it will also include the things you mentioned
12 previously, all ancillaries, capacity, ISO
13 administration expenses, all expenses assigned to load
14 in the New England region.

15 Q. And, it will be based on a forecast of all those costs,
16 correct?

17 A. (White) That's correct.

18 Q. Plus the adder?

19 A. (White) Plus the adder.

20 Q. Okay. Assuming again the rate doesn't close, during
21 the -- for one year PSNH will track all of the actual
22 costs that it incurs, is that correct?

23 A. (White) Yes.

24 Q. To serve Rate ADE customers?

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1 A. (White) That's correct.

2 Q. At the end of a year, PSNH will then, again, assuming
3 no closure, at the end of a year, PSNH will then
4 reconcile its actual costs for serving ADE customers,
5 and the -- against its forecast of all the load-serving
6 costs associated with serving those customers, plus the
7 cost of the adder?

8 A. (White) Well, let me address two parts. The "official
9 reconciliation" of default energy service costs, both
10 DE load and ADE load will be reconciled together. As
11 agreed to in the Settlement, --

12 Q. To which RESA is not a party, correct?

13 A. (Hall) Correct.

14 A. (White) That's correct.

15 Q. Thank you.

16 A. (White) By the 25th of each month during the ADE term,
17 we're going to provide a report, which will provide the
18 information you mentioned, which will be a comparison
19 of ADE revenue, compared to the actual costs to serve
20 Rate ADE load during the course of a month. So, at the
21 end of a year, we'll have a year's worth of -- I just
22 mention it, because it's really a calculation sort of
23 off to the side for reporting purposes to evaluate the
24 benefits or the performance of Rate ADE.

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1 Q. And, the reason it's a calculation off to the side is
2 because the actual reconciliation of the costs and
3 revenues will be done in -- costs and revenues
4 associated with Rate ADE will actually be reconciled in
5 Rate DE, is that correct?

6 A. (White) That's correct.

7 Q. Thank you.

8 CHAIRMAN IGNATIUS: Before you move on,
9 Ms. Miranda, this may be a good time for a break. Am I
10 cutting you off on a question?

11 MS. MIRANDA: Nope. That's fine. Thank
12 you, madam Chairman.

13 CHAIRMAN IGNATIUS: All right. So,
14 assuming you have more to go, let's not start a new area,
15 it's now 12:15. I think we should take a lunch break of
16 an hour and fifteen minutes, and resume at 1:30 and
17 continue with your questioning.

18 MS. MIRANDA: Thank you.

19 CHAIRMAN IGNATIUS: All right. Thank
20 you. So, Mr. Estomin, if you can call back in at 1:30,
21 we'll resume.

22 MR. ESTOMIN: I will be here.

23 CHAIRMAN IGNATIUS: Thank you.

24 MS. CHAMBERLIN: Thank you.

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1 MR. ESTOMIN: Thank you.

2 CHAIRMAN IGNATIUS: All right. We will
3 stay in recess until 1:30. Thank you.

4 (Lunch recess taken at 12:14 p.m. and
5 the hearing resumed at 1:32 p.m.)

6 CHAIRMAN IGNATIUS: All right. We're
7 back to the afternoon. And, Ms. Miranda, you're
8 continuing your questioning of the PSNH witnesses.

9 MS. MIRANDA: Thank you, madam Chair.
10 Good afternoon, gentlemen.

11 WITNESS HALL: Good afternoon.

12 MS. MIRANDA: I only have about ten,
13 fifteen more hours -- no, about ten or fifteen more
14 minutes of questions. So, I appreciate your patience.

15 WITNESS HALL: I was going to ask you
16 for a sharp stick to push into my eye.

17 (Laughter.)

18 BY MS. MIRANDA:

19 Q. Earlier, we were discussing customer choices when they
20 come back from competitive supply, once, assuming Rate
21 ADE is implemented, and indicating that, if a customer
22 comes back, who is eligible for Rate ADE, and it is
23 closed, they are put on the Rate DE, that's correct?

24 A. (White) Yes.

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1 Q. Okay. Once Rate ADE is reopened, they are then
2 transferred over to Rate ADE, correct?

3 A. (White) Yes.

4 Q. Okay. How will the customer know what the rate will be
5 on Rate ADE? What notice will they be provided, and in
6 what manner?

7 A. (Hall) You mean when they get transferred back?

8 Q. Yes. How will they know what the -- assuming for a --
9 let me try it this way. I'm a customer and I'm on Rate
10 DE.

11 A. (White) Yes.

12 Q. And, ADE is closed, and you're about to reopen it in
13 some period of time, whether it's two days from now or
14 sixty days from now.

15 A. (Hall) Uh-huh.

16 Q. How am I going to know what my new rate will be on Rate
17 ADE when I -- when that rate reopens?

18 A. (Hall) The only way Rate ADE will change will be
19 pursuant to a hearing before the Commission, which is
20 subject to notice procedure, and then we have a tariff
21 that we file in compliance with an order that the
22 Commission issues. So, it's a public procedure.

23 Q. Will the customer be provided individual notice or will
24 it just be the public notice that there is a proceeding

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1 in front of this Commission?

2 A. (Hall) Right now, if we're transferring them from Rate
3 DE back to Rate ADE, when Rate ADE reopens, we're not
4 planning on individual customer notification. Just
5 like today, there's no notification individually when
6 Rate DE changes.

7 Q. When Rate DE changes, it changes on a predictable
8 schedule for customers, is that correct? Every three
9 months, every six months, every twelve months, whatever
10 that is, it's a predictable schedule?

11 A. (Hall) Rate DE is basically annually, subject to change
12 every six months. Historically, there has been a
13 change every six months. Rate ADE will be the same.
14 It will change on the same dates.

15 Q. And, how far in advance of the new Rate ADE being
16 implemented will customers know what the approved rate
17 is from this Commission? Is it two days? Is it thirty
18 days? Does it vary?

19 A. (Hall) The customers -- excuse me. PSNH's filing would
20 be made, I believe, approximately 45 days in advance of
21 a July 1st effective date. So, there would be at least
22 a 45 day notice.

23 Q. And that, that would be -- the 45 day notice would be
24 the PSNH proposed rate, correct?

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1 A. (Hall) Yes.

2 Q. And, it is possible that this Commission could decide
3 that the proposed rate is not the actual approved rate
4 and change it, correct?

5 A. (Hall) Sure.

6 Q. How far in advance does the Commission issue a decision
7 giving the actual rate that will be -- that will be
8 implemented?

9 A. (Hall) That is up to the Commission and the -- how
10 heavy their schedule is at the time. Typically, the
11 Commission issues orders for rates effective July 1st
12 sometime during the last week of June.

13 Q. So, approximately -- I understand that it varies. But,
14 generally, it's about a week in advance of the rate
15 going into effect?

16 A. (Hall) Could be, yes.

17 Q. If I'm a customer who's currently on PSNH service, and
18 I wish to switch to a competitive supplier, how many
19 advance days notice is required for PSNH to make that
20 change occur?

21 A. (Hall) I think it's two, but that's subject to check.

22 Q. Two business days or two calendar days?

23 A. (Hall) I believe it's two business days. Might be
24 three, but two seems to come to mind.

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[WITNESS PANEL: Hall~White]

1 Q. Okay. Thank you. Okay. Switching gears slightly back
2 to costs for implementation of the Alternative Default
3 Energy rate. In response to an interrogatory from the
4 OCA, Set 2, Question 2, you were asked to provide
5 additional information regarding plans to modify your
6 billing system, to enable residential and small C&I
7 customers to participate?

8 A. (Hall) Yes.

9 Q. Assuming Rate ADE is approved by the Commission,
10 currently, PSNH is seeking to have it go into effect on
11 January 1st, 2013 for large and medium C&I customers,
12 correct?

13 A. (Hall) Correct.

14 Q. And, then, approximately nine months later, you're
15 seeking to have it go into effect for small commercial
16 and residential customers, correct?

17 A. (Hall) Yes.

18 Q. And, the reason that you need that time lag is to make
19 the modifications to the billing system that are
20 referenced in this interrogatory response, is that
21 correct?

22 A. (Hall) Yes.

23 Q. And, you have not yet developed a detailed schedule or
24 cost estimate for making those modifications, is that

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1 correct?

2 A. (Hall) Correct.

3 Q. And, the cost associated with modifying that billing
4 system will not be included in the costs that are
5 charged to customers as part of Rate ADE, is that
6 correct?

7 A. (Hall) Correct.

8 Q. Thank you. Further following up on the cost issue, in
9 response to an interrogatory from OCA, Set 3, Question
10 2, you were asked about the employee hours that will be
11 allocated to the modification of the billing system.
12 And, whether or not PSNH has a mechanism or a process
13 in place to track the employee work tasks and time. Do
14 you recall that?

15 A. (Hall) Yes.

16 Q. Okay. And, you indicated that you do have a time
17 reporting -- PSNH does have a time reporting system
18 that is capable of tracking costs, that's correct?

19 A. (Hall) Yes.

20 Q. But PSNH does not intend to allocate or otherwise
21 apportion costs associated with those changes to Rate
22 ADE itself, is that correct?

23 A. (Hall) Correct.

24 Q. Thank you. During discovery, in RESA's interrogatories

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1 or data requests to the Company, the Company was asked
2 "if the Commission approves Rate ADE, is Rate DE
3 expected to decrease or increase?" Do you recall that
4 question generally? It's Question 6.

5 A. (Hall) Okay. I was just looking for it. Yes, I do
6 recall it.

7 Q. And, then -- and, the response was that you "expect
8 Rate DE will decrease if Rate ADE is approved"?

9 A. (Hall) Yes.

10 Q. That -- and, further on in the response, it indicates
11 that that's based on the assumption essentially that
12 the revenues that you receive through ADE are in excess
13 of the marginal cost of serving those customers, is
14 that correct?

15 A. (Hall) Correct.

16 Q. Okay. And, therefore, it will produce an overrecovery?

17 A. (Hall) Correct.

18 Q. Is there a circumstance under which it would produce a
19 underrecovery?

20 A. (Hall) That circumstance always exists. But that
21 really was -- excuse me -- that was the purpose of the
22 risk analysis that we did that was attached to our
23 testimony that we filed in April. We kind of came up
24 with different scenarios and a set of assumptions which

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1 we thought were relatively conservative, with respect
2 to making it appear as risky as possible. And, what we
3 found is that, in I think all but one or two of the
4 scenarios that we looked at, there would be a decrease
5 in costs for Rate DE. In other words, the revenue from
6 Rate ADE would be greater than the cost of serving the
7 load. And, in those one or two scenarios where the
8 opposite occurred, the difference was a matter of a few
9 thousand dollars. It was very small. So, that really
10 was what that risk analysis was trying to get at.

11 Q. And, in either event, an overrecovery or an
12 underrecovery, that overrecovery or underrecovery will
13 be done through Rate DE, is that correct?

14 A. (Hall) Yes.

15 MS. MIRANDA: Okay. I have no further
16 questions. Thank you, madam Chairman.

17 CHAIRMAN IGNATIUS: Thank you.

18 Questions from Ms. Chamberlin?

19 MS. CHAMBERLIN: Thank you.

20 BY MS. CHAMBERLIN:

21 Q. Mr. Hall, at the beginning of these questions, you
22 estimated that ADE would be approximately seven cents,
23 is that correct?

24 A. (Hall) Yes. Based on a look at 2013 forward market

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1 prices that I think we looked at perhaps a couple of
2 weeks ago.

3 Q. And, that includes the one cent -- approximately one
4 cent adder?

5 A. (Hall) Yes.

6 Q. Yes. Okay. Under the terms of the proposed Settlement
7 Agreement, it's PSNH, the OCA, and Staff that are in
8 agreement, except for the one term of service?

9 A. (Hall) Correct.

10 Q. Correct. And, this is proposed to be a pilot program?

11 A. (Hall) Yes.

12 Q. And, as a pilot program, it will not continue past the
13 three years without a Commission order and review to do
14 so?

15 A. (Hall) Correct. There's language in the Settlement
16 describing what happens. It's on Page 4, under
17 Paragraph 2.2. And, it says, "the term "pilot" is
18 intended to indicate a non-permanent test or trial of
19 Rate ADE, which pilot shall be evaluated by the
20 Commission upon conclusion of the pilot period or prior
21 to any modifications to or extensions of the pilot
22 program." So, something's got to happen.

23 Q. Right. But the Commission has to take action?

24 A. (Hall) Yes.

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1 Q. Right. And, we also included in the agreement that, if
2 the Legislature were to take action and override this,
3 that is not prohibited by this pilot? And, that is --

4 A. (Hall) I believe so. I don't know where that language
5 is offhand.

6 Q. Page 9, Paragraph 3.3?

7 A. (Hall) We're here. Yes. Thank you.

8 Q. And, in terms of the one element that we haven't
9 reached agreement on with the three parties, could you
10 reiterate why you believe 24 months is the correct
11 time?

12 A. (Hall) Sure. The basic reason is to ensure that Rate
13 ADE -- to ensure that value isn't removed from standard
14 Rate DE customers as a result of Rate ADE's
15 implementation. And, PSNH's concern is that, with just
16 the 12-month term of service, there really isn't going
17 to be a whole lot of opportunity for Rate ADE to work
18 and provide that value. And, therefore, we're
19 proposing 24 months, instead of 12.

20 Q. So, looking at the rebuttal testimony, on Page 9, it
21 says, "PSNH's concern with a 12 month term is that it
22 dilutes the value of the rate as a mitigation tool for
23 the effects of migration, and thereby dilutes value for
24 all other customers." And, you still agree with that

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1 statement?

2 A. (Hall) I do.

3 Q. In terms of whether or not the rate is an attractive
4 one, that will be up to the customers, correct?

5 A. (Hall) That's entirely up to customers to determine.

6 Q. So, customers will -- they still have the option to do
7 competitive supply or they can come back to this rate,
8 they will have to choose?

9 A. (Hall) Yes.

10 Q. What they think is best for their business or for their
11 homes?

12 A. (Hall) Correct.

13 Q. And, the only reason that this is being delayed for the
14 residential customers is a software billing issue?

15 A. (Hall) Yes. And, it's because our smaller customers,
16 small general service and residential, are billed under
17 a different billing system than larger customers.

18 Q. Okay.

19 A. (Hall) And, as a result, there's a lot more work
20 involved, it's a more complex system. And,
21 implementing Rate ADE under that billing system,
22 there's a lot more to it. I don't fully understand all
23 of the things that are being done, I'm not an expert in
24 our billing system, but that's what I've been told.

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1 Q. And, if the Commission approves this, you'll make sure
2 they get right on it?

3 A. (Hall) We committed to having Rate ADE available to
4 smaller customers within nine months.

5 Q. Okay. And sooner, if possible?

6 A. (Hall) Yes.

7 MS. CHAMBERLIN: Okay. Thank you. No
8 more questions.

9 CHAIRMAN IGNATIUS: Thank you. Ms.
10 Amidon?

11 MS. AMIDON: Thank you. With your
12 permission, Steve Mullen and I will both have some
13 questions for the witnesses.

14 CHAIRMAN IGNATIUS: That will be fine.
15 I just -- I realize we forgot to check in with our mystery
16 guest here.

17 MS. CHAMBERLIN: He's still here. We
18 brought him in.

19 CHAIRMAN IGNATIUS: Were you here, Mr.
20 Estomin?

21 MS. CHAMBERLIN: Steve, are you there?

22 MR. ESTOMIN: Yes. I'm still here.

23 CHAIRMAN IGNATIUS: Good. Thank you.

24 All right. Please proceed with Staff questions.

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1 MS. AMIDON: Thank you. Good afternoon.

2 WITNESS HALL: Good afternoon.

3 BY MS. AMIDON:

4 Q. I wanted to follow on something that Ms. Chamberlin
5 raised, and that has to do with the term of the pilot
6 program. And, if we look at Page 7 of Exhibit 9, which
7 is the Settlement Agreement, at 2.4.2, the settling
8 parties agree that PSNH shall file a report on
9 December 1 of each year to -- basically, for purposes
10 of assessing what's happening with the Rate ADE, is
11 that correct?

12 A. (Hall) Yes.

13 Q. And, it details in that section, and I won't read it,
14 what the report will consist of. But, if we go back to
15 Page 4 of the Agreement, at Section 2.2, the last
16 sentence in that section says, "Nothing in this
17 agreement shall be construed to limit the authority of
18 the Commission to terminate this rate prior to the end
19 of the 36-month pilot period." Is that correct?

20 A. (Hall) Yes.

21 Q. And, would you agree with me that the purpose of this,
22 recognizing the Commission's authority, is that, based
23 on whatever report may be filed, the Commission may
24 determine that it's appropriate to terminate the pilot

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1 program, for whatever reason?

2 A. (Hall) Yes.

3 Q. Okay. Thank you. And, Mr. Hall, I believe -- I
4 believe this is a question for you. You've talked a
5 lot about how the Company would propose to readjust the
6 marginal -- marginal energy cost portion of the ADE
7 rate. Would you please describe at this point what the
8 Company proposes as an adder to the rate? I know the
9 adder represents the non-operating costs of the
10 Scrubber installed at Merrimack Station. But could you
11 give us a value for that at this point?

12 A. (Hall) In cents per kilowatt-hour?

13 Q. Yes.

14 A. (Hall) I believe it's around 1.03, or at least that's
15 what it was the last time we calculated it. I haven't
16 done an updated calculation of it in a few months.

17 Q. In connection with, for example, the updated forecast
18 that you would be preparing for the marginal energy
19 cost portion of the case -- of the rate, --

20 A. (Hall) Okay.

21 Q. -- would you also be preparing an updated calculation
22 of the adder?

23 A. (Hall) That wasn't the intent. Rather, the adder was
24 intended to remain in effect for 12 months, and the

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1 rate would only be subject to change to the extent the
2 marginal costs shifted.

3 Q. Well, let me ask you this a different way.

4 A. (Hall) Okay.

5 Q. If you were going to set the ADE rate for the year --
6 the calendar year 2013, --

7 A. (Hall) Uh-huh.

8 Q. -- would you recalculate the adder for purposes --
9 closer to the effective date of the rate --

10 A. (Hall) Oh.

11 Q. -- and submitting the filing with the Commission?

12 A. (Hall) Yes.

13 Q. And, if I understand correctly, the current -- the
14 current calculations that you included in this filing
15 were based on the then applicable customer migration
16 rate, is that correct?

17 A. (Hall) Yes.

18 Q. And, the Company has updated its report to the
19 Commission on customer migration?

20 A. (Hall) We made a filing yesterday or the day before, I
21 think.

22 Q. And, would you agree with me that it's -- the customer
23 migration is now roughly 44 percent? 43.96, perhaps?

24 A. (Hall) Maybe in energy. Yes, that might be.

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1 Q. Okay. So, what I'd like to know is, as the migration
2 continues to change, does that -- what impact does that
3 have on the calculation of any portion of this rate,
4 and -- well, specifically, does it affect the
5 calculation of the adder?

6 A. (Hall) Yes. Because the --

7 Q. And, could you explain how?

8 A. (Hall) Sure. The denominator of the equation used to
9 calculate the adder is lower, and, therefore, the
10 average cents per kilowatt-hour is higher.

11 Q. So, with the higher migration level, what would you
12 anticipate be happening to the adder?

13 A. (Hall) All else being equal, it would be slightly
14 higher.

15 MS. AMIDON: Okay. Thank you. Mr.
16 Mullen.

17 MR. MULLEN: Good afternoon.

18 WITNESS HALL: Good afternoon.

19 WITNESS WHITE: Good afternoon.

20 BY MR. MULLEN:

21 Q. Just to follow up on a question that Attorney Amidon
22 just asked you, regarding changes to the calculation of
23 the adder. I believe you stated that, in your annual
24 filing, you would recalculate the adder, is that

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1 correct?

2 A. (Hall) Yes.

3 Q. Would you also anticipate doing that for any July 1st
4 change?

5 A. (Hall) We didn't anticipate doing it then, and it's not
6 in the Settlement. So, it's not something that we
7 settled on. So, the Settlement doesn't contemplate
8 that revised calculation.

9 Q. Okay. In relation to -- you also discussed quite a bit
10 the changes to the projected marginal costs. Let's
11 just run through a scenario to see if we can make sure
12 that everybody is clear on how this works.

13 A. (Hall) Okay.

14 Q. And, in doing an annual filing, and determining the
15 projected marginal costs, you will look at forward
16 prices for the next 12 months, is that correct?

17 A. (Hall) Yes.

18 Q. Okay. So, that would -- say you were doing a rate for
19 effect January 1st, 2013.

20 A. (Hall) Uh-huh.

21 Q. The marginal costs would include a projection of every
22 month in calendar year 2013?

23 A. (Hall) Yes.

24 Q. On the 15th of the following month, you would submit an

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1 updated forecast of marginal costs for the remainder of
2 the year, in this case, it would be the months February
3 through December of 2013, is that correct?

4 A. (Hall) Yes.

5 Q. Okay. So, say the marginal costs in the annual filing
6 were at six cents.

7 A. (Hall) Uh-huh.

8 Q. And, then, say now we've gone -- now we're at
9 February 15th, and you had a projection for the months
10 of March through December 2013?

11 A. (Hall) Okay.

12 Q. Now, say -- and assume you have a one cent adder, just
13 for purposes of the discussion.

14 A. (Hall) Yes.

15 Q. Now, when you look at that, that forecast for March --
16 got to make sure which month I'm in now, February 15th,
17 for the months of March to December.

18 A. (Hall) Right.

19 Q. Now, the marginal cost has increased to seven cents.

20 A. (Hall) For those months.

21 Q. Right. So, now, you will compare the seven cents to
22 what?

23 A. (Hall) We would compare that seven cents to the forward
24 prices for the months of March through December of

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1 2013, the same time period, that were used, that were
2 looked at and determined back in December, when we
3 calculated the entire rate for 2013. So, we basically,
4 as you said earlier, we do a -- we have forward monthly
5 prices that we use to calculate an annual rate. Once
6 we get to February, we look at the new forward monthly
7 prices for March through December, compare it to the
8 original forward monthly prices for March through
9 December, using the calculation of the annual rate.
10 The difference -- I'm sorry?

11 Q. Go ahead.

12 A. (Hall) The difference between those two, we then
13 compare to the amount of the adder. And, if that
14 difference is greater than -- if it's 75 percent or
15 more of the amount of the adder, the rate would be
16 closed as of March 1st.

17 Q. Okay. Bringing us a little further, if, when you did
18 your annual calculation, --

19 A. (Hall) Uh-huh.

20 Q. -- the projected forward prices for the months of March
21 through December --

22 A. (Hall) Yes.

23 Q. -- were six cents?

24 A. (Hall) Yup.

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- 1 Q. Now, on February 15th, you look at them, and the
2 projected marginal prices for those months are now
3 seven cents?
- 4 A. (Hall) Yup.
- 5 Q. So, you have a change of one cent?
- 6 A. (Hall) Uh-huh.
- 7 Q. What happens?
- 8 A. (Hall) And, in your scenario, the adder was also one
9 cent. In that, under that scenario, the rate would
10 close on March 1st.
- 11 Q. Okay. And, now, we move forward another month.
- 12 A. (Hall) Okay.
- 13 Q. March 15th.
- 14 A. (Hall) Yes.
- 15 Q. Now, you look at the marginal costs for the months of
16 April through December, is that correct?
- 17 A. (Hall) Yes.
- 18 Q. And, you compare those back to the same months that
19 were in the annual filing?
- 20 A. (Hall) Yes.
- 21 Q. Okay. Now, if that -- now, if, for those months, the
22 projected marginal cost is six and a half cents, --
- 23 A. (Hall) Uh-huh.
- 24 Q. -- what happens?

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1 A. (Hall) The rate would reopen on April 1st.

2 Q. And, why is that?

3 A. (Hall) Because the difference between the forecasted,
4 between forward market prices currently, versus the
5 original forward market prices used to establish the
6 rate, would be less than 75 percent of the one cent
7 adder. And, therefore, the rate would reopen. And,
8 there's language in the proposed tariff pages that were
9 in Attachment 1, I believe, to the Settlement Agreement
10 that provide for that potential reopening.

11 Q. Would Rate ADE itself change at that time?

12 A. (Hall) No.

13 Q. If a customer was currently receiving Rate ADE at the
14 time it closed, what happens to them?

15 A. (Hall) Rate ADE would have closed on February 1st or
16 March 1st, I can't remember where we were. Let's say
17 Rate ADE closed on March 1st.

18 Q. Okay.

19 A. (Hall) Customer was on Rate ADE at that time?

20 Q. Yes.

21 A. (Hall) They continue to receive it. Rate ADE reopens
22 on April 1st. That customer who's on Rate ADE, if he
23 stays on Rate ADE in April, would continue to receive
24 Rate ADE.

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1 Q. Okay. And, that's different than some of the
2 discussion about a customer that would have qualified
3 -- otherwise qualified for Rate ADE at the time it was
4 closed, they would have been a new customer, they would
5 have gone instead to DE until the rate reopens?

6 A. (Hall) Yes. The distinction is, that a customer who is
7 taking service under Rate ADE on the date that it
8 closes is an existing customer.

9 Q. Okay. Now, this whole -- this whole mechanism to close
10 the rate and look at the -- a new forecast of the
11 marginal costs, --

12 A. (Hall) Uh-huh.

13 Q. -- was that done in response to the Commission's prior
14 order in this proceeding?

15 A. (Hall) Yes.

16 Q. And, that was to address which particular problem that
17 the Commission had?

18 A. (Hall) That was to address the concern the Commission
19 had over marginal costs shifting and to limit risk
20 associated with such a shift. If you recall, in the
21 original proposal, there was no provision for closing
22 the rate. Rather, what PSNH had proposed, back in
23 2011, was it would be subject to another look after six
24 months, subject to change -- the rate would be subject

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1 to change. Now, not only is the rate subject to change
2 after six months, but to further limit risk to all
3 other customers, we will close the rate to new
4 customers, to the extent the marginal costs jump even
5 prior to recalculating the rate.

6 Q. With respect to the difference of opinion we have on
7 the length of the term of service, --

8 A. (Hall) Uh-huh.

9 Q. -- I believe you said that "use of a 12-month term of
10 service would dilute the value of the rate to other
11 customers"?

12 A. (Hall) I believe it would.

13 Q. Regardless of the length of the term of service, any
14 value is highly dependent on how long a customer
15 decides to remain on Rate ADE and not go back to
16 competitive supply or self-supply, is that correct?

17 A. (Hall) Absolutely.

18 Q. So, you could have a situation where, whether it's 12
19 months or 24 months, depending on the length of time a
20 customer were to stay on, you could get the same amount
21 of benefit?

22 A. (Hall) You could. Obviously, if the rate is available
23 for 12 more months, there's a potential for up to an
24 additional 12 months of benefit. That really, I think,

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1 is the difference between our two positions.

2 MR. MULLEN: Thank you. I have nothing
3 further.

4 CHAIRMAN IGNATIUS: Thank you.
5 Commissioner Harrington, questions?

6 CMSR. HARRINGTON: Yes. Good afternoon.

7 WITNESS HALL: Good afternoon.

8 BY CMSR. HARRINGTON:

9 Q. I guess whoever is most appropriate should just go
10 ahead and answer these. I've got a number of
11 questions. A lot of them are just trying to get
12 straight on how the Settlement Agreement works and some
13 of the things that may have changed over the past
14 months since this docket was initiated.

15 In the previous docket, DE 10-160, there
16 was a discussion by the Commission, and it was
17 something to the effect that we had customers that were
18 on the engineering service -- or, the energy service
19 rate that had little or no option, they had but to stay
20 on that. Would you agree at this time or just answer
21 the question, are there any Public Service customers
22 now who have no option but to take the Default Service
23 rate?

24 A. (Hall) Not in my opinion.

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1 Q. Okay. So, there is no one -- there is no captured
2 customer base, if you will, that couldn't go to an
3 alternative supplier, if they chose to do so?

4 A. (Hall) Correct.

5 Q. Okay. And, just sort of trying to get the whole
6 concept of this, when we look in 374-F:3, which is the
7 restructuring statute under policy principles in
8 Section II. One of the principles it starts out with,
9 and it seems to be quite clear, "Customers should
10 expect to be responsible for the consequences of their
11 choices." And, I would assume that would mean the
12 choice of taking an alternative energy supplier or not
13 to take one.

14 So, given that, we seem to be looking at
15 a program here that will help those who chose to stay
16 with Public Service's energy supplier under the default
17 -- the DE rate. Why do we have to have or why should
18 we have a program that would help these people out
19 because they chose to stay with the DE rate, where the
20 law is pretty explicit that, people making that choice
21 should be responsible for the consequences of their
22 choice?

23 A. (Hall) Because notwithstanding the fact that all
24 customers have the ability to go to competitive supply,

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1 when you get right down to it, there are certain
2 customers that will not choose, and that, for whatever
3 reason, would always remain on standard Default Energy
4 Service rate. What Rate ADE will do is reduce costs
5 for those customers. And, really, the entire purpose
6 of restructuring is to reduce costs for customers,
7 reduce the cost of electricity. And, that's what this
8 will do.

9 Q. Okay. But you do agree that those customers who, for
10 whatever reason, would never leave, are facing higher
11 rates because they're suffering the consequences or
12 being responsible for the consequences of their choice
13 not to move?

14 A. (Hall) No question.

15 Q. Okay. There's been a lot of discussion about the
16 "moving back and forth" portion of this.

17 A. (Hall) Uh-huh.

18 Q. And, part of that is the justification, I guess. It
19 sort of disrupts the whole planning process. So, if
20 you have a bunch of customers that one month decide to
21 go to an alternate supplier, because the price is
22 lower, and then something happens, two months later
23 they jump back, it makes it extremely difficult for
24 Public Service then to buy power, because they're

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1 responsible to supply it to whoever comes back to the
2 default rate, or the DE rate, and they may have to go
3 out and get what would be higher priced contracts to
4 accommodate that. So, it seems as if this process that
5 we're talking about really doesn't solve that problem,
6 because, and tell me if I'm wrong here, if you go into
7 the ADA [ADE?] rates, somebody says "I'm going to go to
8 an alternative supplier." They have been there for
9 over a year. The ADE rates have been approved. Now,
10 they decide "well, because of market conditions, I'm
11 going to back."

12 A. (Hall) Uh-huh.

13 Q. And, so, they go back to Public Service. Public
14 Service says "okay, we're going to put you on ADE
15 rates." And, as we've heard previous testimony, that
16 basically you're going to go out and find power to
17 accommodate those customers. You really have no
18 specific way of knowing. I guess you could do some
19 estimation based on market trends and looking at
20 forward prices, but you could do that right now just as
21 well. So, they switch back, and they're getting the
22 ADE rate. And, then, three months later something else
23 happens, and they decide to move out to a competitive
24 supplier, and they go and back and forth, back and

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1 forth. So, how does this address that issue? It seems
2 like, to me, the exact same thing occurs.

3 A. (Hall) We will not be purchasing power in advance to
4 serve the Rate ADE load. And, Mr. White can expound
5 more on this than I can. But, rather, since Rate ADE
6 is truly a marginal rate, and based entirely on
7 marginal costs, what we will do is essentially rely on
8 spot market purchases to serve this additional load.
9 And, when we do our analysis to determine whether Rate
10 ADE is providing benefit, we will use spot market
11 prices to do that analysis.

12 So, there won't be any forward purchases
13 that we're making. And, as a result, if a customer
14 comes out of Rate ADE and then leaves, all that would
15 do is it would reduce the amount of spot market
16 purchases that we make, and won't -- I'm sorry?

17 Q. I understand that. But I guess I'm trying to
18 understand how that would be different under the
19 present setup. Because, right now, a customer who has
20 taken an alternative supplier says "okay, I'm coming
21 back. Now, at that point, I would assume you don't
22 have contracts out there that you've signed, with
23 someone saying that "we're going to maintain an extra
24 supply, just in case customers come back." You would

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1 more than likely say, "okay, now I've got a new load I
2 have to serve. We'll go to the same spot market and
3 serve that load." So, I'm just not sure. It seems to
4 me as if the exact same problem, potential idea that
5 you're going to buy in the spot market, which could
6 drive up the price, as compared to maybe longer term
7 contract or whatever. So that whatever happens would
8 happen under both circumstances, isn't that correct? I
9 see nodding, but you have to say something, so
10 people --

11 A. (White) Yeah. If I'm with you, I'm not sure, but I
12 think you're right. And, as we've stated, the
13 portfolio of our resources and the load, DE load and
14 ADE load combined, will be managed as one portfolio.
15 So, to the extent today, when DE load goes up or down,
16 we make decisions about whether forward purchases are
17 appropriate or not. And, it would be the same with ADE
18 load, as it came and went, we would continually monitor
19 the position of that portfolio as a whole, and make
20 decisions about the proper management going forward.
21 And, if that involved forward purchases, then we would
22 make those purchases.

23 So, I think, if your point is that we
24 would approach portfolio management in the same manner,

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1 there's another group of another portion of load,
2 customers making individual decisions that would affect
3 the position of that portfolio through time.

4 Q. Okay. Well, maybe I can put it another way then. I'm
5 trying to just discern what the differences on these
6 are. And, I guess, let me see if this plays out, if
7 you think this is correct. Under the present scenario,
8 where there's only one Default Service Rate, DE,
9 there's -- you get migration back and forth. They come
10 in, they go away, they could come back, depending on
11 market prices.

12 At that point, when you go out and you
13 buy, let's say we've got an influx of people returning
14 to the Default Service rate. So, you go to the market
15 and you buy spot market prices as Mr. Hall stated.
16 Now, that price is higher, for whatever reason, that's
17 probably what's driving the people back to the DE load,
18 because the market prices are going up. Would that
19 additional cost associated with servicing the new
20 customer, who has returned to the DE load, be borne by
21 all DE customers? There wouldn't be -- there's no
22 special rate for someone who just came back. If they
23 can come back and bring additional costs with them,
24 that costs would be spread out to all customers in that

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1 class, is that correct?

2 A. (Hall) Yes. But, under the circumstances that exist
3 today, there's two things to keep in mind. First,
4 we're not seeing customers migrating back to standard
5 Rate DE, because it's above market. Secondly, to the
6 extent that that did happen, PSNH's costs would be
7 impacted by market price, which is at a certain level.
8 We get revenue from Rate DE above market. And,
9 therefore, customers returning to standard Rate DE
10 today would result in lower overall costs to all other
11 Rate DE customers. The whole purpose of Rate ADE,
12 however, is that we're not seeing that migration back
13 in today -- under today's circumstances.

14 Q. Okay. So, I guess we get back to then to somewhat of a
15 debate, I guess, to some extent. The purpose of the
16 ADE rate is -- one purpose could be stated that it
17 could help bring additional customers back to Public
18 Service?

19 A. (Hall) At a price in excess of marginal cost.

20 Q. At a price in excess of marginal cost, okay. And, so,
21 again, to try to reverse the trend that we're seeing
22 where migration is in one direction, and that's out?

23 A. (Hall) That's part of it.

24 Q. Okay. Let me just move around to a different subject

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1 here, so I can see if I can get a few more facts here.
2 Let's go back to the figure that was given where, if
3 you had to set the ADE rate today, it would be about
4 seven cents a kilowatt-hour. So, let's just -- we'll
5 just do that. The breakdown of that is how much of
6 that is the marginal and how much of that is the
7 Scrubber?

8 A. (Hall) Not quite six cents, I believe, somewhere just
9 under six cents would be the marginal cost, and
10 something slightly more than a penny would be the
11 adder.

12 Q. Okay. And, I think it's sort of straightforward what
13 the variables would be to the marginal cost, because,
14 obviously, you're talking about buying power out in the
15 market, and that could change. On the variables to the
16 adder, is there any variables there other than property
17 tax? I'm trying to think what else would vary there.
18 Is that fairly fixed, when you take out the other
19 things?

20 A. (Hall) Yes. Property taxes don't change too
21 frequently. Then, there's depreciation and return.

22 Q. Okay. And, you're saying the depreciation and rate of
23 return would change as time went along, because there
24 would be less depreciation to do it, okay. And, the

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1 last proposal, there was a proposal to put an adder on
2 of about one cents a kilowatt-hour, and you said there
3 was no factual basis for your coming up with that
4 number, I think it was stated earlier. So, now, you're
5 talking about using the non-operating Scrubber costs.
6 What's the factual basis for using the non-operating
7 Scrubber costs?

8 A. (Hall) Well, we know what the costs are. And, they're
9 costs that are currently being recovered through our
10 Default Energy Service rate, or at least partially
11 recovered.

12 Q. Then, maybe I should make my question a little bit
13 broader. Why pick non-operating Scrubber costs? Why
14 not pick non-operating -- other costs associated with
15 Merrimack Station? The non-operating costs --

16 A. (Hall) Okay.

17 Q. -- associated with all generating facilities or
18 whatever?

19 A. (Hall) That kind of goes back to the discussion we had
20 the last time around, in 2011. Where I said, "it
21 really doesn't matter how you come up with the adder."
22 It doesn't matter whether you base it on certain costs
23 or whether you simply say, "oh, it's going to be a
24 penny a kilowatt-hour." It's the fact that there is an

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1 adder in excess of marginal cost of serving the load
2 that's important. And, at that time, in the last
3 order, the Commission determined that it needed some
4 sort of analytical or factual basis, rather than coming
5 up with a number, as we had proposed, one cent, that
6 the Commission viewed as somewhat arbitrary. But,
7 going back to what I said back then, it's the existence
8 of an adder that's important, an adder above marginal
9 costs, rather than the mechanics of how you calculate
10 it.

11 Q. So, it could have been -- it could have been calculated
12 as a certain part of some other fixed cost?

13 A. (Hall) Sure.

14 Q. Such as, you know, Schiller Station or whatever, it's
15 just you happened to choose this particular one?

16 A. (Witness Hall nodding in the affirmative).

17 Q. Okay. There was some previous discussion on both of
18 these, the DE and the ADE, as being actual, prudent,
19 and reasonable costs. And, I think you stated that
20 both of them were. And, you know, I kind of revert
21 back to math on these things. And, you know, if we're
22 saying that the DE equals the actual, prudent, and
23 reasonable cost, and the ADE equals the actual,
24 prudent, and reasonable cost, but then we say that the

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1 DE and the ADE don't equal each other. We sort of get,
2 you know, DE equals X and ADE equals X, but DE doesn't
3 equal ADE.

4 A. (Hall) Uh-huh.

5 Q. That doesn't -- how do you account for that? It
6 doesn't make it with me. You're saying two things are
7 the same, but they're not equal.

8 A. (Hall) The language in the law is "actual, prudent, and
9 reasonable cost". What the law doesn't say is, "here's
10 how that cost should be determined." On the one hand,
11 Rate DE is based on average embedded cost, while Rate
12 ADE is based on marginal costs. Two very different
13 concepts results in two different answers, yet both of
14 them can meet the definition of -- excuse me --
15 "actual, prudent, and reasonable costs", because the
16 law doesn't say "embedded costs", nor does it say
17 "marginal cost".

18 Q. But you're saying, for the exact same service, both
19 people are buying the same product, electricity, from
20 Public Service.

21 A. (Hall) Uh-huh.

22 Q. That one group of people -- or, they're both being --
23 both groups are being charged actual, prudent, and
24 reasonable costs, yet there's two different prices

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1 associated with that?

2 A. (Hall) Yes. And, that goes back to pricing principles,
3 where customers who have migrated have demonstrated a
4 high demand elasticity. In other words, they respond
5 more quickly to changes in price. Marginal cost
6 pricing principles state that, for those customers who
7 have highly elastic demand, their price ought to be
8 priced based on marginal cost, and that's exactly what
9 Rate ADE is doing.

10 Q. And -- okay. I don't want to get into an extended
11 discussion of this, but I'm just saying, what you're
12 saying then is, somewhere in the concept of actual,
13 prudent, and reasonable costs, there's embedded in
14 there this idea that highly elastic customers can be
15 charged a different rate than non-elastic customers?

16 A. (Hall) Might point is that there really isn't anything
17 in those words that says "how's that cost determined".

18 Q. Okay.

19 A. (White) And, just to add, at the end of the year,
20 there's a reconciliation to actual, prudent, and
21 reasonable costs, to be trued up against revenues
22 received during that year.

23 A. (Hall) Uh-huh.

24 A. (White) So, the reconciliation process is part of that

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1 whole outcome.

2 Q. And, the reconciliation process, maybe I misunderstood,
3 but I thought all reconciliation was done through the
4 DE rate, is that correct?

5 A. (Hall) Yes.

6 A. (White) Yes.

7 Q. So, if there's reconciliation associated with, let's
8 say, both rates at the end of the year, whatever that
9 is, it's only going to affect the DE customer?

10 A. (Hall) Yes.

11 Q. Okay. So, then, -- so, if there was a underpayment of
12 some type associated with ADE, at the end of the year
13 when you reconcile, you send the bill to the DE
14 customers?

15 A. (Hall) That could happen. We think it's highly
16 unlikely. We think the reverse is going to happen,
17 which is, there's an overpayment by Rate ADE. They're
18 paying in excess of marginal cost, and that value is
19 going to be sent to Rate DE customers.

20 Q. Okay. I'll have to think about that one for a little
21 bit. And, please appreciate that some of these
22 questions will jump around a little bit because they
23 were written at a different time.

24 A. (Hall) Not a problem.

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1 Q. There was a lot of discussion, again, on getting back
2 to, because I think this has probably been resolved,
3 about "otherwise without a supplier", and what we --
4 basically, previous statements, there was a lot of
5 discussion on what "otherwise without a supplier"
6 actually implied.

7 A. (Hall) Uh-huh.

8 Q. And, from what I'm hearing, from what you're saying, at
9 least your opinion is "there's no such thing as that
10 because all Public Service customers have an option to
11 either go to some type of default service or some other
12 competitive supplier?"

13 A. (Hall) In a sense, yes. What I'm saying is that PSNH
14 has to offer default energy service for customers who
15 are otherwise without a supplier. My interpretation of
16 "otherwise without a supplier" means a supplier has
17 dropped the customer, either on its own volition, or
18 the customer has requested that the supplier drop them.
19 Once that happens, if the customer doesn't select a
20 supplier, Default Energy Service must be available to
21 them.

22 Q. Right. Okay. I think we're clear on that in the
23 agreement. Thank you. A couple more questions. In
24 125-O, the Multi-Pollutant Reduction Program, 125-O:18,

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1 under "Cost Recovery", it talks about, and this is the
2 cost recovery of the Scrubber, it says, "During
3 ownership and operation by the regulated utility,"
4 which, in this case, is Public Service, "such costs
5 shall be recovered via the utility's default service
6 charge." How is having this, your proposal, going to
7 comply with that part of the law?

8 A. (Hall) Well, the cost of the Scrubber is recovered
9 through standard Rate DE. That's how we do the
10 calculation. By including the non-operating costs of
11 the Scrubber in Rate DE, we believe that we're
12 complying with the requirements of --

13 Q. Maybe did you mean "ADE"?

14 A. (Hall) "ADE", I'm sorry. We're complying with the
15 requirements of 125-0:18, because those costs are
16 identifiable, and they're being included in the
17 calculation of the rate. That's what the adder is.

18 Q. So, the Company's position would be that, where this
19 says it's "via the utility's default service charge",
20 that that could be either DE or ADE or ABCDE, if you
21 decide to come up with a third group, as long as
22 they're all default service charges?

23 A. (Hall) Yes.

24 Q. Okay. You had stated earlier that there was a case

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1 where the ADE could result in an increased cost to DE.
2 Now, I thought I followed this that, if you go in and
3 you have a certain amount of fixed costs associated
4 with the Default Service rate, and right now, without
5 the ADE, all of that is being charged to the DE
6 customers. So, if you were to bring back or add new
7 customers under ADE, would they pay the marginal going
8 forward cost, plus an adder, they would be covering
9 some of those costs, otherwise would have to be borne
10 exclusively by the DE customers. So, hence, it would,
11 in the long term, put downward pressure on DE rates, is
12 that correct?

13 A. (Hall) Yes.

14 Q. Okay. So, now I'm trying to figure out, how is it that
15 they could put upward pressure on those rates?

16 A. (Hall) In a circumstance where market -- forward market
17 prices, and, therefore, marginal costs, shift
18 significantly from the forward market prices that were
19 used to calculate the Rate ADE rate level, if it shifts
20 -- if the shift is by more than the amount of the adder
21 to determine Rate ADE, then you could be in a situation
22 where marginal costs are at a certain level and Rate
23 ADE, even with the adder, is at a level below that
24 marginal cost.

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1 Q. Okay. I think I understand what you're saying then is,
2 if rates were to go up, if future rates were to go
3 up --

4 A. (Hall) Yes.

5 Q. -- substantially, then someone that got in just under
6 the wire before that rate increase to the ADE, would
7 actually be getting a discount rate --

8 A. (Hall) Yes.

9 Q. -- until the ADE was adjusted upward in the next --

10 A. (Hall) Right.

11 Q. -- whatever is next year?

12 A. (Hall) Now, we've put in safeguards to somewhat
13 mitigate the impact of that, in that, if that situation
14 occurs, Rate ADE gets closed. But, nonetheless, any
15 customer that is on Rate ADE at the time of closure
16 would be allowed to remain on it. But Rate ADE would
17 then be reset after six months. So, we think that
18 exposure is relatively small. But, conceivably, I
19 suppose it could happen.

20 Q. Okay. And, getting back to what's called "Exhibit 9",
21 which is the Settlement Agreement, I just had a couple
22 of questions there. In the beginning of this, on Page
23 1, it's just a statement that "PSNH proposed to address
24 certain issues relating to customer migration by

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1 removing a portion of the fixed costs from its default
2 energy service (Rate DE) and recovering those costs
3 through a non-bypassable charge." Now, that is no
4 longer in your proposal, is that correct?

5 A. (Hall) Correct.

6 Q. Okay. So, that non-bypassable charge has gone away,
7 okay. I have to admit, I must have read this about 30
8 times last night, and then before, trying to figure out
9 exactly what all this said, this rate -- term of
10 service thing, that really screwed me up. I wasn't
11 quite sure what all that meant. But, I think, after
12 your explanation to my question this morning, that
13 helped quite a bit on that.

14 So, basically, the Settlement Agreement
15 is stating that, whatever this term of service is, it's
16 going to be set by the Commission, and that will be
17 that length of time that we were discussing earlier
18 this morning?

19 A. (Hall) Yes.

20 Q. Okay.

21 A. (Hall) The length of time under which customers can
22 take service under Rate ADE, excuse me.

23 Q. And, on the pricing aspect of this, when they were
24 discussing about the adder, and, again, I think you

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1 made it clear that how the adder was exactly set is not
2 as important as the fact that you needed one, to some
3 extent, to mitigate what we were just discussing in the
4 rates that were going up quite a bit. And, the
5 non-operating costs, was there a particular reason why
6 operating costs -- just the total cost of the Scrubber
7 weren't used as the benchmark to measure against, some
8 percentage of that?

9 A. (Hall) Yes. That gets into a discussion that we had
10 earlier this morning. When you start talking about
11 "operating costs", you're talking about things like
12 labor, insurance, things that are general to the plant,
13 A&G expense. And, the issue there is, all right, how
14 much of that do we now allocate to just the Scrubber?
15 It's not clear what the Scrubber's share, if you want
16 to call it that, of that cost is, because we don't
17 treat the Scrubber as a separate plant.

18 Q. It's just part of the plant?

19 A. (Hall) Correct.

20 Q. Okay.

21 A. (Hall) It's the same plant.

22 Q. So, I just -- for the purposes of making a more
23 definitive calculation, it was chosen to do something
24 different and variable?

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1 A. (Hall) Yes.

2 Q. Is that -- okay. And, just I'm trying to, again, just
3 kind of get back to the restructuring statute here,
4 374-F:3. And, it talks about that "Default service
5 should be [used] to provide a safety net and to assure
6 universal access and system integrity." I think you
7 just discussed that about someone who might not have
8 had anyplace else to go for whatever reason.

9 A. (Hall) Uh-huh.

10 Q. Then, "If the commission determines it to be in the
11 public interest, the commission may implement measures
12 to discourage misuse, or long-term use, of default
13 service." Is your proposal addressing -- is it being
14 covered under that provision of the law?

15 A. (Hall) Yes, we believe it is. Because the term under
16 Rate ADE, the term of service is limited. Whether the
17 Commission selects 12 or 24 months, customers aren't
18 going to be able to continue to take service under Rate
19 ADE indefinitely.

20 Q. But you -- is there any misuse that this proposal is
21 attempting to discourage?

22 A. (Hall) Rate ADE isn't intended to discourage any
23 misuse. Rather, Rate ADE is intended to address the
24 effects of migration on all customers served under Rate

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1 DE.

2 Q. Okay. And, the other portion that it talks about,
3 "Notwithstanding any provisions of the subparagraph
4 [above], as competitive markets develop", and I think
5 we can admit that competitive markets are starting to
6 develop, "the commission may approve alternative means
7 of providing...default service which are designed to
8 minimize customer risk, not unduly harm the development
9 of the competitive markets, and mitigate against price
10 volatility without creating new deferred costs, if the
11 commission determines [it's] in the public interest."

12 A. (Hall) Uh-huh.

13 Q. Would you comment on how your proposal complies with
14 that part of the law?

15 A. (Hall) Sure. We've already talked about the risk
16 mitigation to all other customers. We don't believe
17 that Rate ADE will result in competitive harm. In
18 fact, Rate ADE, we believe, will enhance the
19 competitive market. And, it will do that by, in
20 effect, creating a new benchmark that competitive
21 suppliers will have to beat. And, this is sort of a
22 follow-p on a discussion we had earlier, which was
23 "well, if no customers take service under Rate ADE, is
24 there any benefit to Rate DE customers?" And, the

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1 answer to that question was, "Well, no. If no
2 customers take service under it, there's no benefit to
3 DE customers." However, there may well be benefit to
4 customers who are currently served under the
5 competitive market. Because, if Rate ADE is priced at,
6 for example, seven cents, now that conceivably could
7 establish a new benchmark that competitive suppliers
8 are going to have to say, "Oh, okay. Instead of
9 looking at a rate of 8.97 that PSNH is proposing and
10 pricing slightly below that, I've now got to price
11 below seven cents." So, it could actually reduce cost
12 to customers who are currently taking supplier service.

13 CMSR. HARRINGTON: Okay. Thank you.

14 That's all the questions I have.

15 CHAIRMAN IGNATIUS: Thank you.

16 BY CHAIRMAN IGNATIUS:

17 Q. Mr. Hall, the discussion of the adder, and looking back
18 at the first phase of this docket, is interesting,
19 because the Company was very forthright in the first
20 phase to say "it was a number selected that might
21 work." There was no math, there was no theoretical
22 basis. Really, it just seemed like it was high enough
23 to bring some benefit, but not so high that it would
24 drive customers away. Is that right?

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1 A. (Hall) Yes. If you recall, I believe, when we
2 originally proposed it, we did base it on the
3 non-operating cost of the Scrubber, and we came up with
4 something that was -- it was right around a penny.
5 Then, when the Commission issued an order, that
6 basically said "we're not going to be rendering a
7 decision on rate level including the cost of the
8 Scrubber as of January 1st. Rather, that's going to be
9 put off, and we're not going to allow any cost of the
10 -- cost recovery of the Scrubber through either Rate DE
11 or Rate ADE until we render this decision on a
12 temporary rate level."

13 At that point, that's when PSNH said
14 "Well, okay. We can't base it on the cost of the
15 Scrubber, so let's remove that. But let's make it a
16 one penny adder." And, our position then was "it seems
17 about right." We think that is enough to provide
18 benefit to other customers, to reduce risk associated
19 with marginal costs jumping, and to be attractive to
20 customers who have migrated.

21 Since that time, since the Commission's
22 last order, we've done something to address the risk
23 aspect. We've also gotten back to our original
24 proposal, since we're now recovering at least part of

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1 the cost of the Scrubber through our standard Rate DE,
2 we've gone back to the notion of basing the adder to
3 Rate DE [ADE?] on the non-operating costs of the
4 Scrubber, which happens to be right around a penny a
5 kilowatt-hour. So, we kind of think it works.

6 Q. It feels, though, as if you went looking for something
7 that totaled up to about a cent, because that was the
8 number that you thought would be a palatable level.
9 And, there you were, the non-operating costs of the
10 Scrubber fit that test?

11 A. (Hall) When we first came up with the notion of Rate DE
12 -- Rate ADE, we knew we had to deal with the cost of
13 the Scrubber. And, so, we came up with this notion of
14 "Okay, what are the costs that are easily identifiable,
15 and now what does the rate look like?" And, lo and
16 behold, when we did our calculations, came out to be
17 about a penny. When we saw it was about a penny, we
18 concluded "yes, that seems about right." It seemed to
19 be in the right ballpark.

20 So, it wasn't -- we didn't go about this
21 saying "Gee, we need to figure out how to come up with
22 a penny. So, now, let's come up with costs that add up
23 to a penny." Rather, it was the other way around. It
24 was, "Let's look at the non-operating costs of the

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1 Scrubber. They come up to about a cent per
2 kilowatt-hour. That seems to work."

3 Q. Where are the operating costs of the Scrubber being
4 recovered?

5 A. (Hall) Through Rate DE.

6 Q. And, when we say "operating costs", can you define
7 that?

8 A. (Hall) Sure. They include --

9 Q. And, I'll be more specific. In a plant that sometimes
10 is dispatched to run and sometimes is not dispatched to
11 run?

12 A. (Hall) Yes. It includes all costs associated with the
13 plant: Labor, O&M, maintenance, fuel, total property
14 taxes, environmental costs, everything. It also
15 includes admin. -- administrative and general expense
16 associated with management personnel, whose costs are
17 allocated to various functions and various plants. So,
18 it's really the total cost of running the plant.

19 Q. So, what falls into the "non-operating costs" bucket?

20 A. (Hall) Depreciation is one, O&M is one -- I'm sorry,
21 depreciation, return, incremental property taxes.
22 Those are the three largest amounts that are
23 non-operating costs.

24 Q. I have a few questions about the reconciliation

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1 process. And, I don't know, Mr. White or Mr. Hall,
2 whoever prefers to answer them. I think, Mr. White,
3 you had said that, when you get to the reconciliation
4 process in Rate DE, you take all of the ADE actuals and
5 feed that into one reconciliation process. But can you
6 just explain a little more how that would really work?
7 I mean, do you track ADE actuals against projected or
8 is it truly all in one pool of money?

9 A. (Hall) It's the latter. The Rate DE reconciliation
10 process looks at total cost of generation and purchased
11 power, 100 percent of it. So, we have all of these
12 costs associated with meeting energy service load. We
13 compare that -- and that bucket of costs will include
14 costs associated with serving Rate ADE load, by --
15 automatically, by definition, because all we're going
16 to look at is total cost of serving load, both
17 generation and purchased power. And, a piece of the
18 purchased power cost is going to automatically flow
19 into those costs. We're then going to look at the
20 total revenue we receive under Rate DE, plus the
21 revenue we receive under Rate ADE. The sum of those
22 two is the revenue number that we look at. And, we
23 compare that total revenue number to the total cost
24 number, and the difference is the Rate DE

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1 reconciliation.

2 As long as the Rate ADE revenue exceeds
3 the costs that automatically go into the "cost" bucket,
4 customers under Rate DE will benefit, because, all else
5 being equal, it would create an over recovery.

6 Q. Are you ever looking at how your actual cost of serving
7 Rate ADE customers compares to your projected cost of
8 serving them?

9 A. (White) Yes. We'll be doing that in a monthly report
10 throughout the course of the year. We'll do exactly
11 that. We'll track, through ISO reporting, of costs and
12 using actual cleared energy prices, we'll track the
13 cost of serving ADE load, and compare that to revenues
14 received for ADE load, and provide a monthly status
15 report on how that --

16 A. (Hall) Right.

17 A. (White) -- how that looks. And, it's our belief that
18 it will create an overrecovery. That's by design, and
19 we expect that to occur.

20 Q. And, if the projections, your forecasts turn out to be
21 right on target, you would be collecting the adder, the
22 adder really would be for the benefit of Rate DE
23 customers?

24 A. (Hall) Yes.

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[WITNESS PANEL: Hall~White]

1 Q. Have you ever thought of a rate where you actually put
2 that adder amount into Rate DE automatically, the
3 revenue received from the adder, rather than pooling
4 all of the dollars and seeing how -- whether they come
5 up high or low?

6 A. (Hall) I'm not quite following you. I think that the
7 way we reconcile it, it will do just that. It will
8 take that, if our forecasts are perfect, the benefit
9 will be the amount of the adder, that adder amount will
10 automatically flow directly into Rate DE.

11 Q. But, if your forecasts turn out not to be, and they're
12 -- either way, the amount of the adder that ends up to
13 the benefit of DE customers will be higher or lower?

14 A. (Hall) Yes. Yes. There will either be benefit in
15 excess of the adder, if marginal costs turn out -- if
16 the cost of serving load turns out to be lower, or it
17 will be less than the adder. Hopefully, it's greater
18 than or equal to the adder.

19 Q. And, either way, the Rate ADE customers see no
20 reconciliation, no change --

21 A. (Hall) Correct.

22 Q. -- at the end of the term?

23 A. (Hall) Correct.

24 Q. I don't even mean "term", that's the wrong word. At

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1 the end of the reconciliation period, --

2 A. (Hall) That's correct.

3 Q. -- whether it turned out to be high or low, there's no
4 readjusting their rate on that account?

5 A. (Hall) Correct. But the rate is, remember, subject to
6 closure, if marginal costs jump, number one. Number
7 two, the rate is subject to midterm adjustment.

8 Q. On a going forward basis?

9 A. (Hall) Yes.

10 Q. Not on an actual basis?

11 A. (Hall) Correct.

12 Q. Shifting gears a little bit. The billing system
13 changes that will be required for all of the customers,
14 and I take it more substantially for the smaller
15 customers, all of the costs that will be incurred by
16 the Company to do that are -- there will be no request
17 for recovery of any of those costs?

18 A. (Hall) Correct.

19 Q. And, there's no inclusion of those costs in Rate ADE or
20 DE or anything else?

21 A. (Hall) Correct.

22 CHAIRMAN IGNATIUS: I think those are my
23 questions. Thank you very much. Is there redirect from
24 the Company?

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[WITNESS PANEL: Hall~White]

1 MR. FOSSUM: Just a few, yes.

2 **REDIRECT EXAMINATION**

3 BY MR. FOSSUM:

4 Q. Mr. Hall, you were asked or you responded to questions
5 earlier about, from Attorney Miranda, about what it is
6 that a customer would need to know about ADE. Do you
7 recall that line of questioning?

8 A. (Hall) Yes.

9 Q. And, specifically, questions like having to do with
10 whether to return to ADE, knowing whether ADE is open
11 to them, and what the price of ADE is. Do you recall
12 those questions?

13 A. (Hall) Yes.

14 Q. Now, in your experience, have you seen or do you know
15 of offers from competitive suppliers that have been
16 made to potential purchasers in the marketplace?

17 A. (Hall) Generally, yes.

18 Q. And, you know, without referencing any particular
19 supplier, --

20 A. (Hall) Uh-huh.

21 Q. -- have you seen some offers that have promotional or
22 introductory rates?

23 A. (Hall) Yes.

24 Q. Have you seen some that include fees for exiting or

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[WITNESS PANEL: Hall~White]

1 ending service before a particular period elapses?

2 A. (Hall) Yes.

3 CHAIRMAN IGNATIUS: Mr. Fossum, before
4 you go on any further, I'm a little troubled by the
5 questioning. Why is that not something that was brought
6 out in direct?

7 MR. FOSSUM: I guess I didn't think it
8 relevant at the time.

9 CHAIRMAN IGNATIUS: And, so, why
10 relevant now?

11 MR. FOSSUM: I was going to ask just one
12 more question that may bring that around, if I might?

13 CHAIRMAN IGNATIUS: You still haven't
14 told me anything about why it's relevant?

15 MR. FOSSUM: Why it's relevant is that
16 we believe that there will be contentions that Rate ADE is
17 somehow confusing, is somehow introduction -- introducing
18 some new level of confusion to the marketplace. The
19 questioning was in an attempt to indicate that customers
20 are already faced with a number of choices that require
21 them to do a number of analyses and calculations about
22 their energy needs. And, that Rate ADE is simply one more
23 offering that has certain terms associated with it, and
24 is, in that way, not in any meaningful way particularly

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1 different than what is in the competitive marketplace.

2 CHAIRMAN IGNATIUS: Well, if it's in
3 response to the earlier questioning from Mr. Rodier and
4 Ms. Miranda about customer communications and possible
5 confusion, I'll allow it.

6 BY MR. FOSSUM:

7 Q. And, that was simply, my last question was going to be,
8 Mr. Hall, in your opinion, is Rate ADE any more
9 complicated or confusing than any of those offers that
10 you are aware of?

11 A. (Hall) Not in my opinion.

12 MR. FOSSUM: Thank you.

13 MR. RODIER: Madam Chairman, could I
14 have leave to ask a couple questions following up on
15 Commissioner Harrington. No?

16 CHAIRMAN IGNATIUS: Not necessarily.

17 MR. RODIER: Okay.

18 CHAIRMAN IGNATIUS: What's the area and
19 why is it appropriate?

20 MR. RODIER: Well, --

21 CHAIRMAN IGNATIUS: We don't do a full
22 going around the room.

23 MR. RODIER: I understand. That's why
24 I'm asking for leave. I will certainly respect and

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[WITNESS PANEL: Hall~White]

1 understand your position. But I think we touched on
2 what's really going on here, the exchange about "reversing
3 the trend", the witness agreed. I think that is a correct
4 characterization of what is at stake here. The Commission
5 taking actions to "reverse the trend".

6 CHAIRMAN IGNATIUS: So, what would your
7 question -- what would your question be? I don't want a
8 closing argument here, I want what's the question to the
9 witness?

10 MR. RODIER: Just want to hammer home
11 that point that that's what they were talking about.

12 CHAIRMAN IGNATIUS: Well, he was asked
13 the question --

14 MR. RODIER: Okay.

15 CHAIRMAN IGNATIUS: -- and gave you an
16 answer. You may not get the same answer the second time.

17 MR. RODIER: That's true. I should quit
18 while I'm ahead. Let me ask -- the other one I wanted to
19 follow up on, Commissioner Harrington really made a unique
20 point about "consequences of not making a choice".
21 Somehow, okay, you got this informed electorate out
22 there --

23 (Court reporter interruption.)

24 MR. RODIER: I'm sorry. The

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[WITNESS PANEL: Hall-White]

1 "consequences of not making a choice", so that it implies
2 there's this informed, savvy group of people out there
3 that are making a informed decision.

4 CHAIRMAN IGNATIUS: And, help me
5 understand what would your question be, not your --

6 MR. RODIER: Well, my question would be,
7 the vast majority of the residential customers have no
8 idea of what's going on. They don't know that they have a
9 choice.

10 CHAIRMAN IGNATIUS: I'm going to not
11 allow it. You could have asked that in the beginning.

12 MR. RODIER: That's true.

13 CHAIRMAN IGNATIUS: There's nothing in
14 the questioning that came forward to keep you not thinking
15 of that question.

16 MR. RODIER: Okay.

17 CHAIRMAN IGNATIUS: So, moving forward?

18 MR. RODIER: So, I'm done.

19 CHAIRMAN IGNATIUS: Thank you. Unless
20 there's anything further of these witnesses, you're
21 excused. Thank you. Why don't we take a break until
22 3:00. Thank you.

23 (Recess taken at 2:48 p.m. and hearing
24 resumed at 3:07 p.m.)

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[WITNESS: Estomin]

1 CHAIRMAN IGNATIUS: Okay. So, we are
2 back. And, OCA, I assume you're calling your witness, Mr.
3 Estomin?

4 MS. CHAMBERLIN: Yes. Let me see if
5 he's still here. Steve, are you connected?

6 MR. ESTOMIN: I'm still here.

7 MS. CHAMBERLIN: Good. We are going to
8 call you as a witness. If the court reporter has any
9 trouble hearing you, he's going to let me know, and I'll
10 let you know.

11 MR. ESTOMIN: Very good.

12 CHAIRMAN IGNATIUS: He can first swear
13 the witness in.

14 (Whereupon *Steven L. Estomin* was duly
15 sworn by the Court Reporter.)

16 **STEVEN L. ESTOMIN, SWORN**

17 **DIRECT EXAMINATION**

18 BY MS. CHAMBERLIN:

19 Q. Please state your name and position for the record.

20 A. My name is Steven Estomin. I'm a Senior Economist and
21 principal at Exeter Associates, Incorporated, a
22 consulting firm located in Columbia, Maryland.

23 Q. Could you summarize your qualifications.

24 A. I have been involved in analysis of regulated industry

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[WITNESS: Estomin]

1 for approximately 31 years. During that time, also
2 heavily concentrating in the field of energy and
3 electricity, in particular.

4 In terms of educational background, I
5 have a Bachelor's degree and a Master's degree and a
6 Ph.D in Economics, all from the University of Maryland.
7 I've testified previously in approximately 40
8 occasions, most of which were before regulatory
9 commissions, but I've also testified before U.S.
10 District Court and before the General Assembly of
11 Maryland.

12 Q. And, on August 24th, did you prefile testimony in this
13 case?

14 A. I did.

15 Q. And, do you have any changes to that testimony at this
16 time?

17 A. I do not.

18 Q. Is it true and accurate as filed?

19 A. Yes.

20 MS. CHAMBERLIN: I'm going to give
21 copies to the court reporter. Could you mark this for
22 identification?

23 CHAIRMAN IGNATIUS: That would be
24 "Exhibit 13" for identification.

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1 (The document, as described, was
2 herewith marked as **Exhibit 13** for
3 identification.)

4 BY MS. CHAMBERLIN:

5 Q. Mr. Estomin, could you give a summary of your position
6 on the Settlement Agreement that is being proposed in
7 this docket today?

8 A. Yes. I looked at the --

9 CHAIRMAN IGNATIUS: And, sir, before you
10 begin -- before you begin, let me just tell you, we've
11 read your testimony and the Settlement, you don't need to
12 do an extensive summary.

13 WITNESS ESTOMIN: All right. Then, let
14 me keep it brief.

15 **BY THE WITNESS:**

16 A. I support the elements of the summary -- of the
17 Settlement.

18 BY MS. CHAMBERLIN:

19 Q. With this Settlement, will there be benefits to
20 residential ratepayers that would not take place absent
21 the Settlement?

22 A. I believe that is to be expected, the way the
23 Settlement is structured. Existing residential
24 customers currently receiving service on DE, which is

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[WITNESS: Estomin]

1 the vast bulk of residential customers, would, I
2 believe, receive a benefit in the form of reduced
3 responsibility for coverage of some of PSNH's fixed
4 system costs.

5 Q. For the term of service, we did not reach agreement.
6 Can you summarize why you believe the 24 months is the
7 better term of service?

8 A. I believe it's the better term of service for two
9 reasons. One reason is that it provides a longer
10 period of time over which customers could receive the
11 benefits associated with the rate, that is
12 contributions to fixed costs that would otherwise be
13 covered by the DE customers. And, the second, which is
14 not unrelated, is that I believe a 24-month term of
15 service would be more attractive to customers
16 contemplating movement to Rate ADE.

17 MS. CHAMBERLIN: Thank you. That's all
18 I have on direct.

19 CHAIRMAN IGNATIUS: All right.
20 Cross-examination, Mr. Fossum?

21 MR. FOSSUM: Apologize, I have nothing
22 for Mr. Estomin.

23 CHAIRMAN IGNATIUS: All right. Mr.
24 Rodier?

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[WITNESS: Estomin]

1 MR. RODIER: Thank you.

2 **CROSS-EXAMINATION**

3 BY MR. RODIER:

4 Q. Mr. Estomin, you've been listening in most of the day,
5 I take it?

6 A. Yes.

7 Q. Okay. I guess the first thing I want to do is very
8 quickly follow up on your qualifications. I counted
9 about 60 reports that you've done. Is that roughly
10 correct?

11 A. Yes. There's a few more that would show up with an
12 updating, but that's approximately right.

13 Q. And, then, you list 40 to 45 pieces of testimony that
14 you've done over the years before regulatory agencies?

15 A. Yes.

16 Q. Okay. So, you, obviously, have a lot of experience and
17 you have a very broad view of the issues that are at
18 stake in these proceedings, is that correct?

19 A. I believe so, yes.

20 Q. Yes. And, some of these issues really aren't new, are
21 they? I mean, they seem to reoccur every ten or
22 fifteen years, and then go away for ten or fifteen
23 years, and then come back. Would you agree with that?

24 A. I'd like a little more specificity on what issues

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[WITNESS: Estomin]

1 you're referring to.

2 Q. Oh. Okay. Well, the one that most intrigued me was
3 the colloquy on elasticity of demand. Did you hear
4 that?

5 A. Yes.

6 Q. Have you heard talk about that recently? I mean,
7 that's fifteen, twenty years ago, isn't it? Wasn't
8 that correct?

9 A. You know, at least. But that -- that discussion, I
10 think, in the context that it was made here was related
11 to those customers most likely to be attracted to Rate
12 ADE.

13 Q. They are -- those are the elastic customers, correct?

14 A. Customers with more price elastic demand, yes.

15 Q. Right. And, the smaller customers, they, for whatever
16 reasons, tend to be the last ones to change, and
17 therefore they're inelastic?

18 A. As a general rule, the price elasticity for smaller
19 customers tends to be lower.

20 Q. Okay. Now, have you done any work over the years on
21 price discrimination in the electric industry?

22 A. Yes.

23 Q. Okay. And, is there such a thing as -- have you seen
24 places where price discrimination has been deemed

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[WITNESS: Estomin]

1 unlawful?

2 A. Unlawful?

3 MS. CHAMBERLIN: I'm going to object.
4 I'm not sure what he means by "price discrimination" and
5 how it's relevant to this proceeding.

6 CHAIRMAN IGNATIUS: Well, Mr. Rodier, I
7 guess maybe inquire of the witness if he's unclear of what
8 you mean by "price discrimination".

9 BY MR. RODIER:

10 Q. Mr. Estomin, by "price discrimination", I'm talking
11 about charging different prices to similar -- to
12 basically similarly situated customers, except that
13 they have different degrees of elasticity. Do you
14 follow that?

15 A. Yes.

16 Q. Okay. And, it seems that's what we're doing here, is
17 that correct?

18 A. That is what's being done here.

19 Q. Okay. By the way, did you hear the exchange between
20 Mr. Hall and Commissioner Harrington about "reversing
21 the trend of migration"?

22 A. I did.

23 Q. Okay. And, I'm referring now to Page 6 of your
24 testimony. Do you have that in front of you, right at

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1 the top?

2 A. Yes, I do.

3 Q. I'll just quickly read it, Page 6 of Mr. Estomin's
4 testimony: "The purpose of the rate is to lure
5 customers back to PSNH as a way of reducing fixed
6 kilowatt-hour costs to PSNH generation customers."
7 Now, let me stop right there. Mr. Estomin, as I
8 understand your testimony, what you were saying is,
9 this really isn't a good idea. However, we're in a
10 situation that's rather dire, and there's no good
11 remedies available at this point. And, therefore, you
12 are on board with this partial pilot program
13 settlement, because you think that this is -- and this
14 is probably the only thing that's left to try at this
15 point, is that correct?

16 A. I would not be willing to agree to that
17 characterization.

18 Q. Okay. Can you recharacterize it then?

19 A. I think my testimony is what it is and stands on its
20 own. I've looked at this rate that was proposed by the
21 Company, and assessed that it would provide what I
22 believe to be economic advantages to the residential
23 customers that are being served under Rate DE.

24 Q. Okay. Now, in Line 4, Page 6, let me pick up again:

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[WITNESS: Estomin]

1 The notion of enacting programs to reduce the amount of
2 load being served by the competitive market, which the
3 OCA supports as an interim measure to protect
4 residential default service customers, is antithetical
5 to the basic premise of industry restructuring."

6 Right?

7 A. Right.

8 Q. So, obviously, you don't think this is the best way to
9 go -- to go about addressing the problems that PSNH is
10 facing right now?

11 A. In the short term, I believe it is.

12 Q. Okay. But what you say is that, you continue on, and
13 you say "well, hey, there's some other options that the
14 Commission should expeditiously move to take up."

15 CMSR. HARRINGTON: Excuse me, Mr.
16 Rodier. What page are you quoting from in his testimony?

17 MR. RODIER: Page 6. I'm in the middle
18 of Page 6.

19 CMSR. HARRINGTON: Thank you.

20 MR. RODIER: Do you have it, --

21 WITNESS ESTOMIN: Yes, I do.

22 MR. RODIER: -- Commissioner?

23 Commissioner Harrington, do you have it, before I --

24 CMSR. HARRINGTON: Yes, I do. Thank

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[WITNESS: Estomin]

1 you.

2 MR. RODIER: I want to make sure you
3 have it before I proceed.

4 BY MR. RODIER:

5 Q. So, you're saying, are you not, that the real solutions
6 really are things like divestiture, and that the
7 Commission ought to move expeditiously, is that right?

8 A. Well, as indicated in my testimony, I believe that the
9 current situation that exists, with respect to the rate
10 setting process for Public Service of New Hampshire, is
11 -- is not sustainable where you have the intention of
12 establishing a competitive market. There are going to
13 be times when the embedded cost of service is going to
14 exceed the market rate, the rate that's available to
15 retail customers on the market, and there are times
16 when it's going to be below that. And, those
17 differences may persist for fairly long periods of
18 time. And, it's going to be a situation that's either
19 going to create difficulties for Public Service of New
20 Hampshire or difficulties for the competitive
21 suppliers.

22 Q. Okay. And, right now, it's creating difficulties for
23 PSNH, right?

24 A. And, in particular, its customers on Rate DE.

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[WITNESS: Estomin]

1 Q. Right. And, I noticed in your testimony that you
2 referred to a report that PSNH -- well, you actually
3 referred, on Page 5 of your testimony, to the
4 "Northeast Utilities 2011 Annual Report, Page 6",
5 didn't you?

6 A. That's correct.

7 Q. And, did you hear the portion of the 2011 report filed
8 with the SEC, I think it was a 10-K, I can't remember?
9 Did you hear that? Where they said, "if migration
10 continues, we may not be able to cover all of the costs
11 of the Scrubber through the ES rate." Did you hear
12 that?

13 A. Yes, I did.

14 Q. So, is this implementation of Rate ADE going to help
15 PSNH recover costs they wouldn't otherwise be able to
16 recover?

17 A. No.

18 Q. Okay. Would you --

19 A. They would be recovering those rates from, you know,
20 Rate DE customers. And, the implementation of Rate ADE
21 will permit those fixed costs to be spread over a
22 larger number of customers.

23 Q. Okay. Now, and just briefly, I said that this may --
24 implementation of ADE may help the stockholders, as

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1 much as ratepayers, would you agree with that?

2 A. I think there is a benefit to stockholders in helping
3 to mitigate the impacts that I identified on Page 5, as
4 quoted from their 2010 Annual Report.

5 Q. Okay. Now, you said "the existing situation is not
6 sustainable", I believe. And, I wanted to just refer
7 quickly to the bottom of Page 5, where you say that's
8 "not conducive to development of a competitive market,
9 which is a cornerstone of industry restructuring." Is
10 that correct?

11 A. Specifically where are you referring to?

12 Q. The "boom/bust" cycle, where you refer to on the bottom
13 of Page 5.

14 A. Right.

15 Q. You're saying that's not really good to developing a
16 competitive market?

17 A. That's correct.

18 Q. Okay. And, when you say that programs, such as Rate
19 ADE, are "antithetical to the basic premise of industry
20 restructuring", what do you mean?

21 A. Well, there's a tension here. In order to promote
22 industry restructuring and a competitive market, you
23 would want customers moving away from default service
24 or standard offer service or standard supply, whatever

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1 is the appropriate term, they're all used in various
2 places, and to receive service from competitive
3 suppliers, with a notion that the competitive market
4 will be in a position to provide, over the long term,
5 better prices, and provide perhaps some products that
6 customers might not be receiving under regulated
7 service. You know, Rate ADE works if a customer is
8 coming back to service from their regulated utility.
9 So, there's this inherent tension between these two
10 concepts.

11 I do think it's important, however, to
12 draw a distinction between a short-term situation and a
13 longer-term situation. Rate ADE, particularly as a
14 pilot program as proposed in the Settlement Agreement,
15 represents a way to ameliorate a short-term problem.
16 The issues that I discussed on Page 5 and 6 of my
17 testimony are longer-term problems.

18 Q. Okay. Do you think that Rate ADE could have a chilling
19 effect on the willingness of competitive suppliers to
20 do business in New Hampshire?

21 A. It may.

22 Q. And, were you troubled by the language of "reversing
23 the trend"?

24 A. No, I wasn't particularly troubled by the language.

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[WITNESS: Estomin]

1 But I do -- and, I do see the point that is being made.
2 And, that's certainly a circumstance and a result that
3 one would expect with Rate ADE.

4 Q. Okay. And, that would be "antithetical to the basic
5 premise of industry restructuring", is that right?

6 A. Correct, with the *proviso* that I had mentioned before
7 regarding short term versus long term.

8 Q. Right. So, what you're saying is that, "yes, it looks
9 like something's got to be done, and we can do this in
10 the short term, while we work on a longer-term
11 solution"?

12 A. That is, I think, a fair, broad characterization of my
13 testimony.

14 (Cellphone ringing.)

15 CMSR. HARRINGTON: Your phone is
16 ringing.

17 MR. RODIER: I'm very sorry. Would you
18 shut that off.

19 BY MR. RODIER:

20 Q. Just wanted to ask you about the discussion of
21 residential customers "bearing the consequences of not
22 making a choice", did you overhear that?

23 A. Yes, I did.

24 Q. And, do you think that the residential customers really

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1 are making an informed choice here of not going to a
2 competitive supplier or would they just not be informed
3 or aware of what their choices are?

4 A. I think both conditions exist within the residential
5 class.

6 Q. Okay. But, I guess what we're saying here, whether or
7 not they're informed, it's appropriate that these
8 customers who don't make a choice should pay a higher
9 rate?

10 A. Can you repeat that please?

11 Q. Well, you're talking about price elasticity again, the
12 customers who, for whatever reason, whether they're
13 informed or not, who do not make a choice to go to the
14 competitive market, it's okay for them to pay a higher
15 default rate, because they're -- because they're
16 inelastic?

17 A. I don't think that is what's going on here. It's not
18 that they're paying a higher rate, they would actually
19 be paying a lower rate with the implementation of ADE.

20 Q. Okay.

21 A. They would be paying a higher rate than the ADE
22 customers, but they would be paying a higher rate than
23 they otherwise would be -- a lower rate than they would
24 otherwise be paying.

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[WITNESS: Estomin]

1 Q. Let me put it another way then.

2 A. Okay.

3 Q. Would you agree with the characterization that the DE
4 customers are paying for the high cost power and that
5 the ADE customers will be buying the low cost power?

6 A. No. I would -- what you have is a situation, I mean,
7 conceptually, it's a simple situation. What you have
8 is a group of customers, the current DE customers are
9 responsible for covering the, you know, fixed system
10 costs of Public Service of New Hampshire. In order to
11 reduce that burden, a rate is being offered to attract
12 additional customers who would be covering their
13 marginal costs, plus making a contribution to the fixed
14 costs. So, the existing DE customers would be
15 benefiting from this arrangement.

16 Q. Okay. So, you're saying they're benefiting, they're
17 not being exploited?

18 A. No.

19 Q. Okay. Then, let me just ask you quickly. When would
20 unlawful price discrimination in a regulatory setting
21 exist?

22 A. Depends on what the laws are of the state. There are
23 some states, for example, that --

24 (Court reporter interruption.)

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[WITNESS: Estomin]

1 MS. CHAMBERLIN: -- have laws on their
2 books. Can you continue from there?

3 **BY THE WITNESS:**

4 A. Oh. Have laws on their books that preclude, for
5 example, different price structures for different
6 customers in different parts of the state that are
7 served by the same utility. And, there are, you know,
8 certainly variations on that. But price discrimination
9 generally is a very common arrangement. And, you see
10 it with, you know, senior discounts at movie theaters
11 and early bird specials at restaurants. And, I mean,
12 it's pervasive.

13 BY MR. RODIER:

14 Q. Okay. But we're talking about regulated rates here,
15 though, aren't we?

16 A. Yes, we are.

17 Q. Okay. Let me move on. Do you think that the Rate ADE
18 adder should include all of the costs associated with
19 this program? And, by that, I'm referring to the
20 marketing costs, administrative costs, promotional
21 costs, sales costs, and customer service costs. Do you
22 think they should be in there?

23 A. I mean, clearly, if those marginal costs, in aggregate,
24 added to the energy costs would be so large as to swamp

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[WITNESS: Estomin]

1 the benefit of the contribution to fixed costs, I think
2 that would be an issue. Given the temporary nature of
3 the program, and the fact that I would not anticipate
4 those costs to be particularly large, I don't know if I
5 would look for that to be a requirement for this,
6 especially since the utility has indicated that those
7 costs are not going to be sought for recovery
8 elsewhere.

9 Q. Okay. So, you're saying -- I guess what we're saying
10 here, as long as they are not like eventually recovered
11 through distribution rates, that you could live with
12 these not being included in the adder, is that right?

13 A. Yes.

14 Q. Okay. So, what it comes down to is no cost recovery?

15 A. No cost recovery, or, I would even go further, I think,
16 if the costs are relatively minor, I would not view
17 this as an issue. And, I would expect those costs to
18 be minor.

19 Q. Okay. Okay. You don't think there's going to be a
20 full-blown marketing -- I guess we don't have the -- we
21 don't know, because the Company did not have any
22 information or opinion on what they were going to be
23 doing with respect to marketing and administration,
24 *etcetera*, do you recall that?

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[WITNESS: Estomin]

1 A. Yes, I do.

2 Q. Okay. So, that would bring us probably to the next
3 question, which do you think that this is a complex
4 program to understand?

5 A. I mean, there are -- there is a little bit of
6 complexity to it. You know, is it significantly more
7 complex than, you know, other rate arrangements out
8 there? I don't think so.

9 Q. Well, you heard Commissioner Harrington say he had to
10 "read it 30 times", did you hear that?

11 A. Yes.

12 Q. Doesn't that tell you it is complex?

13 A. No. It tells me that the settlement document is a
14 little bit dense. Doesn't necessarily say that the
15 program is necessarily complex.

16 Q. If I spent a half hour going through that Settlement
17 Agreement and asked you every question I could think
18 of, do you think you'd get every one right?

19 A. Well, I hope we're not going to do an experiment on
20 this. I think I would probably come close.

21 Q. Okay. Now, I guess the -- do you think there's any
22 chance here of setting off envy between similarly
23 situated customers? They're living right next door to
24 each other, okay? One's paying nine cents to PSNH,

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1 one's paying seven cents. Do you see any -- and, do
2 you see any -- well, let me just ask you. Do you see
3 any problems associated with that? What do you think
4 is going to happen?

5 A. Do I believe that there may be some customers who take
6 some umbrage at this?

7 Q. Yeah, that --

8 A. Who might view themselves as somehow disadvantaged by
9 not having availability of the lower rate? I suspect
10 that that may be the case.

11 Q. Okay. And, they will call the Commission and complain,
12 don't you think?

13 A. Perhaps.

14 Q. And, so, the Commission Staff here will have to, the
15 ones that deal with consumers, will have to master all
16 the intricacies of this Agreement, correct?

17 A. Well, I think -- I think we're getting into some fairly
18 speculative areas here.

19 MR. RODIER: Okay. I'm just checking to
20 see -- I want to thank you very much for your testimony.

21 WITNESS ESTOMIN: Thank you.

22 CHAIRMAN IGNATIUS: Thank you, Mr.
23 Rodier. Ms. Miranda?

24 MS. MIRANDA: No questions. Thank you,

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1 madam Chair.

2 CHAIRMAN IGNATIUS: Ms. Amidon?

3 MS. AMIDON: We have no questions.

4 Thank you.

5 CHAIRMAN IGNATIUS: All right.

6 Commissioner Harrington, questions?

7 CMSR. HARRINGTON: Yes. Just a couple.

8 First, thanks. I thought you were going to call me

9 "dense", not the document.

10 (Laughter.)

11 CMSR. HARRINGTON: So, that's
12 appreciated. But, having said that, let me get on with a
13 couple questions.

14 BY CMSR. HARRINGTON:

15 Q. In your testimony on Page 6, on the top of the page,
16 the end of the first answer, it ends with "is
17 antithetical to the basic premise of industry
18 restructuring". Are you referring to this in general
19 for restructuring or are you talking specifically about
20 the principles of restructuring as defined in New
21 Hampshire law?

22 A. Just give me a moment, so I can view that.

23 Q. Sure. It would be Line 7, on Page 6.

24 A. No. I mean, I think this -- and, I don't know what the

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1 specific legal environment is in New Hampshire related
2 to this. What I've been saying here is that, if the
3 notion of restructuring is to create a competitive
4 market that would be serving the generation needs of
5 consumers, that this rate and that concept are in some
6 friction.

7 Q. Okay. Thank you. Okay. And, you've also stated in
8 your testimony and in discussions with Mr. Rodier, that
9 this is -- you view this as a short-term solution to
10 the migration issue, is that correct?

11 A. Yes.

12 Q. Okay. And, when you say "short term", can you kind of
13 give us some idea of exactly, is that "short term" ten
14 years? Ten weeks? Ten months?

15 A. Ha, ha, ha. Yes, this is always a tricky question. In
16 the context of what I was looking at this, I would view
17 "short term" as the period of time that would be
18 required to implement an alternative arrangement that
19 would address this issue on a more permanent basis.

20 Q. Okay.

21 A. And, I think three years is certainly, you know, within
22 that time period.

23 Q. Okay. That helps. Now, during that short term, we're
24 saying somewhere in the general vicinity of three

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1 years, did you make any assumptions on wholesale
2 electric prices in New England over that short term, to
3 make any determination as to whether this option was
4 beneficial to ratepayers or not?

5 A. I think, over the -- certainly, over the next year, and
6 if you look at projections out further than that, I
7 would anticipate this arrangement being beneficial to
8 Rate DE ratepayers.

9 Q. So, I guess I'm trying to figure what you used as a
10 basis for doing that, would have to have looked at
11 wholesale prices. Are you assuming that wholesale
12 prices in New England will stay in the area of \$50 a
13 megawatt-hour on average?

14 A. Yes. Or, you know, maybe just a bit higher than that.

15 Q. Okay. And, the two things -- two factors that are --
16 or, major factors, I guess, that will be affecting the
17 rates for Public Service's default service, whether
18 that be DE or ADE, is going to be the Scrubber and the
19 Berlin biomass plant. Now, the Berlin biomass plant
20 rates are set by a previous order of the Commission.
21 Did you look at those -- let me just hold on and say
22 that they're set by a previous order of the Commission.
23 Now, the Scrubber, obviously, has not. But did you
24 make any assumptions with the effect that the Scrubber

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1 could have on future Public Service rates?

2 A. No, I did not.

3 Q. Okay. When looking at the marginal rate that is used
4 to calculate the ADE, you must have come up with some
5 type of a rate for Public Service going forward in the
6 short-term?

7 A. You mean under Rate DE or under Rate ADE?

8 Q. ADE, I'm sorry.

9 A. Yes, I took a look at what the forwards were in the
10 market. They're in the high 50s. And, to that, you
11 would add a penny a kilowatt-hour for the adder.

12 Q. Well, what I'm trying to get at is, we have the Public
13 Service rates that are based right today on the
14 temporary rates approved for the Scrubber, which, by
15 most estimates, may -- could be higher, at least with
16 permanent rates, it's a possibility.

17 A. Uh-huh.

18 Q. And, then, we have the market prices that the Company
19 has to pay for electricity in New England, which are
20 fixed and would be the same as any other person buying
21 wholesale rates. But the Scrubber costs are an
22 addition that most other suppliers do not have, most
23 other suppliers supplying power at market rates. Where
24 the Scrubber would be market rates, plus the cost of

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1 the Scrubber. And, we also have the Berlin biomass
2 plant, which has a fairly substantial impact on what
3 Public Service has to incorporate into their energy
4 service rates. So, I assume, when they do their
5 marginal cost of energy service in the ADA [ADE?]
6 rates, they will be including both of those costs,
7 because that will be -- that's part of the overall
8 Public Service cost, is that correct?

9 A. In their ADE rate?

10 Q. Yes.

11 A. I don't believe so. I believe that the only things
12 that will be included in that cost is the forward price
13 of electricity, prior to the commencement of the
14 program, just prior to the commencement of the program.

15 Q. Okay.

16 A. Plus a adder equal to a bit over one cent a
17 kilowatt-hour.

18 Q. Okay. So, you're then, when you say "forward rates",
19 you're stating -- your basic assumption is that the
20 Scrubber costs and the Berlin biomass plant's are not
21 included in any of the going forward costs? That
22 they're simply fixed costs, like the price of Schiller
23 Station, for example?

24 A. Yes. In Rate ADE?

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1 Q. Yes.

2 A. Yes.

3 Q. Okay. So, they won't have any effect on the Rate ADE
4 at all?

5 A. No.

6 Q. Okay. And, so, what -- I guess, is it correct then to
7 assume that, when those two factors, or whatever the
8 Scrubber costs happen to be, and the known Berlin
9 biomass costs, when they get added in, they will be
10 borne completely by the DE customers?

11 A. They will be borne by the DE customers, except for the
12 --

13 Q. Adder.

14 A. -- contribution of the adder to defray fixed costs.

15 Q. Right. So, I guess what I'm trying to get at here is
16 the separation between the two prices, which, if it
17 were to occur today or very shortly, would look --
18 we're talking around nine cents a kilowatt-hour for the
19 DE rates, and seven cents a kilowatt-hour for the ADE
20 rates. If we were to go ahead some period of time
21 where whatever the Scrubber rates that were going to be
22 incorporated were incorporated, and when the Berlin
23 biomass rates kicked in, that separation would be, in
24 fact, quite a bit larger than as well, because the ADA

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1 rate -- ADE rates would not see anything from Berlin
2 biomass, and they have already incorporated part of
3 their portion of the Scrubber rates, which is the fixed
4 cost portion, where the DE rates presently have a
5 limited amount of Scrubber in, just the temporary rates
6 that were approved, and none of the Berlin biomass.
7 So, would it be safe to say that, if we were to look
8 ahead, we're going to see, assuming the wholesale power
9 prices stay about the same, we see a further separation
10 of this, where, instead of two cents, it may be three
11 or four or whatever cents that separates the DE and the
12 ADE rates?

13 A. And, to the extent that you have, you know, say
14 relatively stable wholesale market prices on a
15 forward-going basis, in other words, stable forwards,
16 and your DE rates are increasing, then, arithmetically,
17 you would see a wider gap between those -- those two
18 sets of rates.

19 Q. And, I guess that what my point is I'm trying to get
20 across is we're not dealing with hypotheticals here.
21 We don't know what the Scrubber is, but there's a good
22 chance that the rates incorporated from the Scrubber
23 could be higher than the temporary rates that are now
24 in there. And, we know what the Berlin bio rates are,

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1 and none of that is incorporated in the present DE
2 rates, and that is going to add to those rates. That's
3 not hypothetical, that's not supposition, that's a
4 fact.

5 A. Uh-huh. No, I understand.

6 Q. Okay. So, we will see further separation between these
7 two. Which gets us back to the earlier point where now
8 we're talking about selling the exact same product to
9 two customers from the exact same company, and we start
10 seeing the difference that we charge getting greater
11 and greater between those companies, based on sort of
12 circumstances of how often they happen to switch
13 between one supplier and another supplier. But the
14 fact is, when they're buying the power from Public
15 Service, they're buying the same product at what's
16 going to be increasingly different prices?

17 A. No, I mean, what you're saying is certainly true. It's
18 also a situation that isn't unique. I mean, many
19 utilities, for example, you know, offer, you know, what
20 they will call "economic development rates". Where, if
21 there's a user who is contemplating either leaving the
22 service area or coming into the service area with a new
23 load, they will provide some period of time during
24 which lower rates are available to that customer. The

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1 idea being that marginal costs are covered. There is a
2 contribution to fixed costs. There's also, you know,
3 social benefits in the form of increased employment,
4 increased tax base and so forth. So, these types of
5 arrangements, where you have differing rates, you know,
6 they're -- I mean, it's not a unique situation to
7 Public Service of New Hampshire. And, the purpose of
8 the differential, I mean, if the differential did not
9 exist, then the benefit to the existing DE customers,
10 in the form of increased contribution to system fixed
11 costs from an outside group, in other words, those
12 folks who are not currently DE customers, would be --
13 would be lost.

14 Q. Okay. So, it's safe to assume then what you're saying
15 is that the present DE customers would be better off
16 with the ADE rates up and running than they are without
17 them?

18 A. Yes.

19 Q. Okay. But, on the other hand, if they were to choose
20 the available options, which, as we discussed earlier,
21 it appears that all or just about, if not all
22 customers, now have the option to pick a competitive
23 supplier, that that would probably even be better for
24 them?

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1 A. Maybe. It depends what they can be offered in the
2 market. And, particularly in the case of residential
3 customers, I mean, there is a certain -- I mean, that
4 is the slowest customer group in any jurisdiction, that
5 is the slowest customer group to move to the
6 competitive market, even where rate differentials are
7 pretty substantial between default service rates and
8 what the competitive market has to offer. Those
9 customers tend to stay with the local distribution
10 utility, for a number of reasons.

11 So, yes. I mean, there is a benefit
12 that would accrue to those customers that are reluctant
13 to switch, for whatever reason.

14 Q. Okay.

15 A. That would not otherwise be available.

16 Q. Okay. Now, going on the other side of that, if you
17 were a customer and you looked at the situation and you
18 said -- excuse me -- "I can get a slightly better rate
19 going to a competitive customer than I can now."

20 A. Uh-huh.

21 Q. And, not only if I do that, and I do that for a year,
22 then I've got sort of in my back pocket this extra ace
23 to play. If things in the competitive market don't go
24 well, I can simply say "I'm coming back to Public

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1 Service", and I get this special discounted rate called
2 "ADE" that's not available to other people, unless you
3 happen to leave Public Service to begin with. So, I
4 could kind of use that as my -- whatever this term is
5 going to be, we've heard recommended one year,
6 recommended two years, I think you recommended two.
7 So, for a two-year period, I'd have almost an insurance
8 policy against higher rates, if market rates decided
9 that, whatever was happening with natural gas, market
10 rates went up substantially, and all of a sudden my
11 competitive supplier was charging me 13 cents a
12 kilowatt-hour, I could jump back to Public Service, get
13 the ADE rate at something substantially lower, and have
14 that as an insurance policy for a couple of years. So,
15 would that not be an inducement to get some people to
16 leave Public Service and go to a competitive supplier,
17 assuming they would just maybe only save a little bit,
18 but it would give them this two-year insurance policy?

19 A. Well, a couple things there. With respect to
20 residential customers, I think that probably lays on
21 them a greater degree of sophistication and market
22 analysis than probably actually exists. Might it
23 happen, you know, on occasion? Sure.

24 I would also point out, and this hasn't

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1 really been brought up before, but, if we're looking at
2 a program that's 36 months in duration, and let's say
3 we offer a term of service period that's 24 months, in
4 order for a customer to benefit from ADE for 24 months
5 under the arrangement that you provided, they would
6 have to leave DE service for a competitive service on
7 month one. If they leave later than month one to
8 receive service from the competitive market, when they
9 return to Public Service of New Hampshire under Rate
10 ADE, the amount of time available to them to receive
11 service under the rate is going to be less than 24
12 months.

13 Q. Okay.

14 A. Just because of the termination of the program, you
15 know, after the 36 months end. But, you know, the
16 situation you described, is that plausible for some
17 customers? Sure.

18 Q. Okay. And, one other question maybe, on the Settlement
19 Agreement itself that you just prompted in me. That
20 what happens to a present customer who, I don't know,
21 let's say, ten months ago left Public Service and went
22 to a competitive supplier, and now the ADE rates come
23 into effect, in a year from now, for whatever reason,
24 they decide they want to go back to Public Service, or

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1 less than a year from now. Do they -- when did their
2 clock start as being a -- for that 12-month period that
3 they have to have a competitive supplier? Is it when
4 they actually went to a competitive supplier? Or, does
5 the clock start the day the ADE rates go into effect?
6 Or does it only affect someone who migrates after ADE
7 goes into effect?

8 A. No. It's my understanding that, if they left ten
9 months before ADE went into effect, they would be
10 eligible to receive ADE service two months after --

11 Q. Okay.

12 A. -- ADE goes into effect.

13 Q. And, if they left three years ago, they would be
14 eligible for ADE at the date of inception of the rates
15 then?

16 A. Yes.

17 CMSR. HARRINGTON: Okay. All right.
18 That's all the questions I had. Thank you very much.

19 WITNESS ESTOMIN: All right.

20 CHAIRMAN IGNATIUS: Thank you. I have
21 no other questions. Ms. Chamberlin, any redirect?

22 MS. CHAMBERLIN: No redirect.

23 CHAIRMAN IGNATIUS: All right. Then,
24 thank you. We appreciate your willingness to take this

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1 through the phone. I hope it's working well enough. And,
2 glad that you could participate that way.

3 WITNESS ESTOMIN: And, I thank you for
4 bearing with this as well.

5 CHAIRMAN IGNATIUS: Well, I know things
6 -- things happen. All right. Our next witness I believe
7 would be Mr. Mullen, is that right?

8 MS. AMIDON: That's right.

9 CHAIRMAN IGNATIUS: Before, Mr. Mullen,
10 before you get started, let's talk about scheduling a bit.
11 Should we go off the record?

12 (Off-the-record discussion ensued.)

13 CHAIRMAN IGNATIUS: Let's go back on the
14 record. We are going to confirm schedules with the
15 Commission and issue a secretarial letter. But it looks
16 as though resuming, when we're done today, to resume
17 Monday, November 26, at 1:00 p.m., for final proceedings
18 in this case.

19 But we still have half an hour. We'd
20 like to keep making progress. So, Staff, are you ready to
21 call your witness?

22 MS. AMIDON: Yes. Mr. Mullen, please.

23 (Whereupon **Steven E. Mullen** was duly
24 sworn by the Court Reporter.)

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[WITNESS: Mullen]

1 MS. AMIDON: Good afternoon.

2 WITNESS MULLEN: Good afternoon.

3 **STEVEN E. MULLEN, SWORN**

4 **DIRECT EXAMINATION**

5 BY MS. AMIDON:

6 Q. Would you please state your full name for the record.

7 A. My name is Steven Mullen.

8 Q. For whom are you employed and what is your position?

9 A. I am employed by the New Hampshire Public Utilities
10 Commission. And, I am the Assistant Director of the
11 Electric Division.

12 Q. Thank you. Have you previously testified before the
13 Commission?

14 A. Yes, I have.

15 Q. And, I have a question regarding your participation in
16 this docket. I can tell from your testimony you have
17 participated in this docket since the initial phase of
18 this docket, which was commenced last year, is that
19 correct?

20 A. Yes, it is.

21 Q. And, did you participate in the discussions that led to
22 the Settlement Agreement?

23 A. Yes, I did.

24 Q. Thank you. Do you have a copy of your testimony before

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1 you?

2 A. I do.

3 Q. And, the testimony consists of about 12 pages,
4 including three one-page attachments, is that correct?

5 A. Yes, it is.

6 Q. Do you have any corrections at this time to your
7 testimony?

8 A. No, I do not.

9 Q. And, if you were asked these questions today under
10 oath, would you provide the same answers?

11 A. Yes.

12 MS. AMIDON: Thank you. I'd like to
13 mark Mr. Mullen's testimony as -- is it Exhibit 14?

14 CHAIRMAN IGNATIUS: So marked for
15 identification.

16 (The document, as described, was
17 herewith marked as **Exhibit 14** for
18 identification.)

19 BY MS. AMIDON:

20 Q. Mr. Mullen, as you know from sitting here today,
21 there's been a lot of discussion about the Settlement
22 Agreement and about how the proposed ADE would operate.
23 The principal question of concern at this point is the
24 term of service, and Staff's position that the term of

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1 service be for 12 months, instead of 24 months. So, I
2 would like you to address -- you can summarize your
3 testimony insofar as it relates to that, but I would
4 really like to direct your attention to addressing why
5 the Staff supports the 12-month period for term of
6 service.

7 A. Sure. In relation to looking at the term of service
8 for this rate, it seems to me that there's a few things
9 that have to be weighed. While I understand the
10 argument put forth by PSNH earlier and by Mr. Estomin
11 about providing for a longer period of potential
12 benefit to other DE customers, there's also some issues
13 with, you know, potential impacts to the competitive
14 market, as well as -- and potential impacts on customer
15 options.

16 So, as I looked at it, I said "well,
17 there's really a few reasons why I prefer a 12-month, a
18 shorter period term of service than the 24 months."
19 One is, it's a better match with the eligibility
20 criteria, where a customer would have to be either
21 served by a competitive supplier or on self-supply for
22 at least 12 consecutive months. It's just easier to
23 remember. Also, in reviewing Mr. Hall's rebuttal
24 testimony, where he agreed with saying "well, you know,

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1 I think having a pilot is a good thing, and I think
2 that we should probably look at this on an annual
3 basis." So, I think it's a better match with the
4 annual assessment of the rate.

5 Also, I mentioned the competitive
6 market. And, I think it helps mitigate potential
7 concerns that this is -- the rate is somehow
8 anti-competitive or will otherwise disrupt the
9 competitive market. And, I think, by having a shorter
10 term of service, that helps mitigate some of those
11 concerns, because somebody might not be served by this
12 rate for a longer period of time.

13 I think also, since it's a pilot rate,
14 and it's proposed to be a 36-month pilot, in accordance
15 with the Settlement. If it's a longer term of service,
16 if you go the whole 36 months of the pilot, at the time
17 you get to the end, you may still have quite a number
18 of customers who haven't gone through their entire term
19 of service. So, therefore, you won't get a total
20 picture of actions customers might take while on or off
21 that term of service. With a shorter term of service,
22 it helps provide, I think, a better assessment of what
23 customers may or may not do when the term of service
24 ends.

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1 Also, if, for some reason, prior to the
2 end of the pilot, the rate is terminated, after the
3 Commission looks at it and says, "you know, maybe
4 that's not working the way that it should." Well, I
5 think any customers served under the rate should serve
6 out their remaining term of service. And, for a
7 customer who just got on the rate prior to any such
8 termination, that would -- there could be a significant
9 number of months still left in that term of service.

10 Also, what I mentioned about in
11 "limiting customer options", a shorter term of service
12 would not limit customers from returning to default
13 service for an extended period of time. So, if, for
14 some reason, it became more advantageous for them to
15 receive service under Rate DE, than Rate ADE, they
16 wouldn't be limited from having that option for some
17 longer period of time.

18 So, I think, when you take all those
19 into account, a 12-month term of service seems to
20 provide a better balance, in my view, of all the
21 competing interests; those of the customers, those of
22 the Company, and those of the competitive market
23 participants.

24 MS. AMIDON: Thank you. I have no

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1 further questions.

2 (Chairman Ignatius and Cmsr. Harrington
3 conferring.)

4 CHAIRMAN IGNATIUS: All right. I think
5 we're going to conclude here, and begin cross-examination
6 when we resume, rather than get started and then break it
7 up. So, before we leave, are there any matters to take up
8 that we need to address? Any administrative issues?
9 Anything hanging out there to take on? I'm not aware of
10 anything.

11 (No verbal response)

12 CHAIRMAN IGNATIUS: All right. Well,
13 seeing none, then we will adjourn until what I expect will
14 be Monday, November 26th, at 1:00. We will send you a
15 letter confirming that, and finish up with Mr. Mullen,
16 then take up Mr. Fromuth, and then oral closings. All
17 right? Thank you very much. We stand adjourned.

18 (Whereupon the hearing was adjourned at
19 4:09 p.m., and the hearing to resume on
20 Monday, November 26, 2012, commencing at
21 1:00 p.m.)

22

23

24

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1 STATE OF NEW HAMPSHIRE
 2 PUBLIC UTILITIES COMMISSION
 3
 4 November 26, 2012 - 1:10 p.m. DAY 2
 5 Concord, New Hampshire
 6 RE: DE 11-216
 7 PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
 8 *Alternative Default Energy Service Rate.*
 9 PRESENT: Chairman Amy L. Ignatius, Presiding
 10 Commissioner Michael D. Harrington
 11 Commissioner Robert R. Scott
 12 Sandy Deno, Clerk
 13 APPEARANCES: Reptg. Public Service Co. of New Hampshire:
 14 Matthew J. Fossum, Esq.
 15 Reptg. PNE:
 16 James T. Rodier, Esq.
 17 Reptg. Retail Energy Suppliers Association:
 18 Joey Lee Miranda, Esq. (Robinson & Cole)
 19 Jonathan H. Schaefer, Esq. (Robinson & Cole)
 20 Reptg. Residential Ratepayers:
 21 Susan W. Chamberlin, Esq., Consumer Advocate
 22 Office of Chamber Advocate
 23 Reptg. PUC Staff:
 24 Suzanne G. Amidon, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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1 PROCEEDING
 2 CHAIRMAN IGNATIUS: We are back with
 3 Docket DE 11-216. When we were last together, we had
 4 gotten through the evidence of PSNH and OCA's witnesses.
 5 We had had Mr. Mullen go through his direct, if I'm
 6 correct?
 7 MR. MULLEN: Yes.
 8 CHAIRMAN IGNATIUS: And, still have
 9 cross-examination of Mr. Mullen, and Mr. Fromuth's direct
 10 and cross-examination, I believe.
 11 So, why don't we begin with appearances,
 12 and, then, if there's any other procedural matters to get
 13 oriented, it's always a little hard for me to remember
 14 where we left off. So, anything we have to go back over,
 15 if there's any other matters, before we get into the
 16 evidence, we'll do so. But let's first take appearances.
 17 MR. FOSSUM: Good afternoon. Matthew
 18 Fossum, on behalf of Public Service Company of New
 19 Hampshire.
 20 CHAIRMAN IGNATIUS: Good afternoon.
 21 MR. RODIER: Good afternoon. Jim
 22 Rodier, for PNE. Mr. Fromuth is with me.
 23 MS. MIRANDA: Good afternoon,
 24 Commissioners. Joey Lee Miranda, from Robinson & Cole,

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1 along with my colleague, Jon Schaefer, on behalf of the
2 Retail Energy Supply Association.

3 CHAIRMAN IGNATIUS: Good afternoon.

4 MS. CHAMBERLIN: Good afternoon,

5 Commissioners. Susan Chamberlin, Consumer Advocate, for
6 the residential ratepayers.

7 CHAIRMAN IGNATIUS: Good afternoon.

8 MS. AMIDON: Good afternoon. Suzanne
9 Amidon, for Commission Staff.

10 CHAIRMAN IGNATIUS: Good afternoon,
11 everyone. So, are we right that we pick up with Mr.
12 Mullen's cross-examination, unless is there anything we
13 should take up first?

14 MS. AMIDON: If I may, madam Chairman.
15 What I would like to do is ask Mr. Mullen to summarize his
16 direct testimony, just to give a context for the
17 cross-examination that will follow. And, as you know,
18 there is a Settlement Agreement that's been -- a Partial
19 Settlement Agreement that's been filed in this docket,
20 Exhibit 9. The transcript was available to the parties,
21 and I'm assuming they took advantage of that in order to
22 prepare for today.

23 I think that is all that I have at this
24 point.

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[WITNESS: Mullen]

1 workings of the ADE rate, "ADE" standing for
2 "Alternative Default Energy Service". And, in my
3 testimony, when I was on the stand, I highlighted
4 what's essentially the one difference between my
5 position on the term of service and the position of
6 PSNH and OCA. PSNH and the OCA support a 24-month term
7 of service. And, in my prefiled testimony, I
8 recommended a 12-month term of service.

9 And, to summarize the main reasons for
10 that: One, I think just on simplicity terms, it's a
11 better match for the eligibility criteria. If we
12 recall, in order to be able -- to be eligible for
13 service under Rate ADE, a customer must be served by a
14 competitive supplier for at least 12 consecutive
15 months. So, there, by having a term of service for
16 Rate ADE of 12 months, I think it's just a better
17 match. Also, in Mr. Hall's rebuttal testimony, he had
18 mentioned that, with relation to the term in the
19 Settlement Agreement that this -- actually, this came
20 -- the Settlement Agreement came later, the term that I
21 had recommended in my original testimony, about this
22 being looked at on a pilot basis, he said, "yes, you
23 know, it's probably a good idea, and I think we should
24 look at this on an annual basis." So, I think that

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[WITNESS: Mullen]

1 CHAIRMAN IGNATIUS: Is that acceptable
2 to everyone to, although I know Mr. Mullen summarized
3 testimony before, to kind of get reoriented here to start
4 off the afternoon?

5 MR. FOSSUM: Yes.

6 CHAIRMAN IGNATIUS: All right. Then,
7 unless there's anything else, are we good to go?

8 (No verbal response)

9 (Whereupon *Steven E. Mullen* was recalled
10 to the stand, having been previously
11 sworn.)

12 CHAIRMAN IGNATIUS: Mr. Mullen, you were
13 sworn before. You remain under oath.

14 WITNESS MULLEN: Yes.

15 CHAIRMAN IGNATIUS: Thank you. Please
16 proceed.

17 STEVEN E. MULLEN, Previously sworn

18 DIRECT EXAMINATION (resumed)

19 BY MS. AMIDON:

20 Q. And, Mr. Mullen, please, if you will, summarize the
21 testimony that you filed in this docket.

22 A. Okay. Bringing us back to a few weeks ago, we heard
23 significant testimony from PSNH and from the OCA
24 witness about the Partial Settlement Agreement and the

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[WITNESS: Mullen]

1 12-month term of service that I recommended is also a
2 better match for the annual assessment of the rate.

3 Also, I think it helps mitigate -- the
4 shorter term of service helps mitigate any potential
5 concerns about this being anti-competitive, because the
6 shorter term of service would limit the amount of time
7 any eligible customer could be served under this rate.

8 As another reason, it gives a better
9 idea, you can see more action, especially with this
10 being a 36-month pilot, you can see more in terms of
11 how customers react to the term of service ending and
12 fulfilling their full term of service. If you were to
13 go with a 24-month term of service, under a 36-month
14 pilot, there could be a number of customers still being
15 served by the rate at the end of the 36-month pilot
16 period, that you wouldn't be able to see their full
17 reactions during that entire term of service.

18 Let's see. Also, if for some reason, at
19 the -- if the Commission were to terminate this rate,
20 and say "well, you know, it's not really -- this isn't
21 really working right", my position would be that the
22 customers should serve their remaining term of service.
23 So, if a customer had just recently started being
24 served under Rate ADE, and it was a 24-month term of

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1 service, they could have a significant period of time
 2 left, if, for some reason, the rate was terminated.
 3 So, I think, if you take all those into
 4 account, I just think that the 12-month period is my
 5 preference for what the term of service for this rate
 6 should be.
 7 Q. Mr. Mullen, did you find anything in the Settlement
 8 Agreement that you felt needed to be corrected?
 9 A. Yes. I just found a typo when I was going through
 10 this. If you look at -- this is Exhibit 9, Page 5. In
 11 Section 2.2.3, at the end of that section, there's a
 12 reference to -- it says "and for the reasons set out in
 13 Section 2.3.3 or 2.3.4, below", those really should be
 14 "2.3.3.1 or 2.3.3.2". And, I think, if you look at the
 15 Settlement, there is no "2.3.4", as was originally
 16 referenced in the Settlement.
 17 CMSR. HARRINGTON: Could you give us
 18 those again please?
 19 WITNESS MULLEN: Sure. The references
 20 should be to "2.3.3.1 or 2.3.3.2".
 21 BY MS. AMIDON:
 22 Q. Thank you. Finally, Mr. Mullen, in connection with
 23 discovery, PSNH provided a response that's identified
 24 as "TECH-001". Do you have a copy of that response in
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1 just look at it --
 2 CHAIRMAN IGNATIUS: Please.
 3 MR. RODIER: -- just for five seconds?
 4 (Atty. Amidon handing document to Atty.
 5 Rodier.)
 6 MR. RODIER: I notice this is nothing
 7 recent then. So, on that basis, we have no objection.
 8 CHAIRMAN IGNATIUS: All right. Then,
 9 we'll mark it for identification as Exhibit?
 10 MS. DENO: Fifteen.
 11 CHAIRMAN IGNATIUS: Fifteen. Thank you.
 12 (The document, as described, was
 13 herewith marked as Exhibit 15 for
 14 identification.)
 15 MS. AMIDON: Thank you.
 16 WITNESS MULLEN: And, if I could just
 17 add something in relation to this?
 18 MS. AMIDON: Yes, please.
 19 WITNESS MULLEN: PSNH provided this
 20 response with respect to the 24-month term of service that
 21 they support. So, there are a few spots on here where it
 22 says "24 months", that the only difference in how I would
 23 look at it would be the "12 months", it would substitute
 24 "12 months" for those. But the decisions, the "yes" or
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1 front of you?
 2 A. Yes, I do.
 3 Q. And, it consists of a one-page -- I think, maybe a
 4 two-sentence answer and a diagram which depicts various
 5 situations, depending on when a customer chooses to --
 6 the ADE, and what various things will happen to reset
 7 the 24-month clock, for example, and is that correct?
 8 How would you characterize this?
 9 A. It's a flow chart, that, essentially, it's a decision
 10 tree. And, it shows whether a customer would be served
 11 under Rate ADE or Rate DE, other things like whether
 12 the clock has started again or is it continuing? I
 13 just think that it -- it's a good pictorial view of
 14 what lots of words of the text might say.
 15 MS. AMIDON: May I offer this as an
 16 exhibit? I think we're up to -- mark it for
 17 identification as "Exhibit 15", is that correct? I think
 18 it might be helpful to the Commission, and the other
 19 parties have copies of it. But it offers a flow chart
 20 that's easier to follow, because it's in color and shows
 21 the various decision points.
 22 CHAIRMAN IGNATIUS: Is there any
 23 objection to marking it as an exhibit? Mr. Rodier.
 24 MR. RODIER: Madam Chairman, could I
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1 "noes" and all that won't change.
 2 BY MS. AMIDON:
 3 Q. Okay. For example, if you go to the first triangle
 4 that's green, it says "is 24-month clock running?"
 5 Under Staff's position, it would be "is 12-month clock
 6 running?"
 7 A. Correct.
 8 MS. AMIDON: Thank you. The witness is
 9 available for cross-examination.
 10 CHAIRMAN IGNATIUS: Thank you. Why
 11 don't we continue with other signatories to the Settlement
 12 Agreement. So, PSNH.
 13 MR. FOSSUM: Thank you.
 14 CROSS-EXAMINATION
 15 BY MR. FOSSUM:
 16 Q. Mr. Mullen, I just wanted to ask, since it's been a
 17 while since the first part of this hearing, and I know
 18 that you've given a quick summary of your direct, I
 19 just wanted to ask a few questions that would, I think,
 20 help clarify where we are.
 21 Regarding eligibility for Rate ADE, just
 22 very briefly, how does a customer become eligible to be
 23 served under Rate ADE?
 24 A. The customer must have been receiving service from a
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1 competitive supplier for a period of at least 12
 2 consecutive months.
 3 Q. And, are there circumstances under which Rate ADE can
 4 close to new customers?
 5 A. Yes.
 6 Q. And, what circumstances would those be?
 7 A. And, if I could refer to, give the right direction
 8 here, if you look at the Settlement Agreement, the
 9 description starts on Page 5, in Section 2.2.4. But
 10 the technical workings of that are described in
 11 Section 2.3.3.1, on Page 7. To summarize that, PSNH
 12 will be looking at the projected marginal costs on a
 13 monthly basis. And, if, in one of those monthly
 14 reviews, it's comparison of the marginal costs at that
 15 time for the remaining months of the period are more
 16 than 75 percent -- have increased by at least
 17 75 percent of the amount of the adder, as compared to
 18 the projections of marginal costs for those same
 19 periods at the initial setting of the rate. If that
 20 occurs, then the rate could be temporarily closed to
 21 new customers.
 22 Q. You said that's what happens when the rate increases.
 23 Does the same thing happen if the forward prices would
 24 decrease?

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1 to recover on its fixed costs?
 2 A. Actually, yes, it does. Yes.
 3 Q. Thank you.
 4 A. Sorry.
 5 Q. Is it possible that Rate ADE can be above the rate for
 6 Rate DE?
 7 A. That's possible.
 8 Q. So, the price available to a customer under Rate ADE
 9 will depend or could depend upon the market prices at
 10 the time the customer returns to PSNH for Default
 11 Service?
 12 A. Yes.
 13 Q. Have you reviewed the transcript from the first day of
 14 this hearing?
 15 A. Briefly.
 16 Q. Either through that review or your own recollection, do
 17 you recall questions from Commissioner Harrington about
 18 whether a customer could leave for a competitive supply
 19 and keep Rate ADE as an insurance policy?
 20 A. Do you have a reference?
 21 Q. Yes. The transcript, at Page 170.
 22 A. Okay. I'm there.
 23 Q. Now, this wasn't a question to you. I was just
 24 wondering whether you recall the question being asked.

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1 A. Well, the rate wouldn't close, but PSNH will file a
 2 request for a authorization to decrease the rate.
 3 Q. And, during any time that the availability of Rate ADE
 4 is closed, what happens to customers returning for
 5 Default Service?
 6 A. They would be assigned to Rate DE.
 7 Q. Now, as for -- so, you -- I'm sorry, you spoke about
 8 the price, how the price of Rate ADE is set.
 9 Currently, as you understand it, is the proposed price
 10 for Rate ADE below Rate DE?
 11 A. Yes.
 12 Q. Even at a price that's below Rate AD -- that is below
 13 Rate DE, does Rate ADE provide an opportunity for PSNH
 14 to recover on its fixed costs?
 15 A. No.
 16 Q. Could you explain that. Does it provide any
 17 opportunity for PSNH to recover on its fixed costs?
 18 A. It's just the adder -- the rate itself is the marginal
 19 cost of providing power. That's the bulk of the rate.
 20 And, so, that's not a fixed cost to PSNH, that's
 21 essentially the market price of power. The adder is
 22 calculated on the non-operating costs of the Scrubber.
 23 So, --
 24 Q. So, does the adder then provide an opportunity for PSNH

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1 Nevertheless, for purposes of refreshing your
 2 recollection, the question asked to Mr. Estomin that --
 3 Dr. Estomin, excuse me, on Page 170, at Lines 14
 4 through 18, regarding an "insurance policy". Do you
 5 have that in front of you?
 6 A. Yes, I do.
 7 Q. Does that refresh your recollection?
 8 A. Yes.
 9 Q. So, in light of -- so, in light of the fact that you
 10 have said that Rate ADE could be above Rate DE, do you
 11 think it's likely that a customer would leave for a
 12 competitive supply and believe that, for 12 consecutive
 13 months, and believe that Rate ADE would remain as an
 14 insurance policy?
 15 A. Well, I think -- I think, under various circumstances,
 16 you know, there's lots of different -- there's lots of
 17 different outcomes. And, so, I think, to view it as an
 18 insurance policy kind of ignores the working -- the
 19 movements of the market prices that can happen and the
 20 changes in the rates that could happen.
 21 Q. Thank you. I want to turn now to the issue that you
 22 had said that there's some disagreement among the
 23 signatories about on the term of service. And, you do
 24 agree that there should be a term of service, is that

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1 correct?

2 A. Yes.

3 Q. And, we only -- the only disagreement is the length of

4 that term?

5 A. Correct.

6 Q. In the first part of this hearing, do you recall

7 stating that you understood the arguments of PSNH and

8 the OCA about the benefits of a 24-month term of

9 service?

10 A. Yes.

11 Q. Would you agree that PSNH -- that PSNH's argument for a

12 24-month term of service was that it would avoid an

13 extended term of customers being on a discounted rate,

14 and to avoid having customers pay a higher rate for an

15 extended period?

16 A. Yes, I recall that.

17 Q. And, do you recall Dr. Estomin's testimony that he

18 believed the 24-month term would be more attractive to

19 returning customers?

20 A. Yes, I recall.

21 Q. Okay. And, despite those arguments, you still believe

22 12 months is the preferred term?

23 A. That's correct.

24 Q. Now, going to the issues that you had raised in your

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1 eligibility requirement is, and I'll use my word, and

2 if you don't agree with it, please say so, is to help

3 avoid gaming, and the annual review is just to provide

4 an opportunity to make sure that the Rate ADE is

5 providing the benefits that it's intended to provide.

6 Is that an accurate summary?

7 A. Sure.

8 Q. Now, are either of those purposes the same as the

9 purpose of the term of service?

10 A. Are they the same as the purpose for the term of

11 service?

12 Q. Well, I guess, in other words, what is -- I'll start

13 this way. What is the purpose of the term of service?

14 A. The term of service is provided so that there -- again,

15 it's to avoid -- well, I was going to say -- I was

16 going to say "it's to avoid people moving back and

17 forth", however, people aren't required to stay on Rate

18 ADE. However, what it does is, it avoids a lot of

19 back-and-forth with Rate DE.

20 Q. The term of service avoids a back-and-forth with Rate

21 DE, is that --

22 A. Well, sure. Because, if there's a term of service

23 under Rate ADE, returning customers aren't served by

24 Rate DE, assuming Rate ADE is open.

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1 summary of your direct, the first issue that you had

2 raised for in favor of a 12-month term of service was

3 that it matched, essentially, the eligibility term, is

4 that correct?

5 A. I said it was "a better match", yes.

6 Q. A better match. What is the purpose of the 12-month

7 eligibility requirement that is the purpose of

8 requiring a customer to be on competitive supply for 12

9 consecutive months before qualifying for Rate ADE?

10 A. The purpose of that is to, if I'm following your

11 correction -- your question correctly, is to ensure

12 that there's not a lot of going back and forth.

13 Q. In other words, to use a term that's come up previously

14 in this case, would it help avoid "gaming"?

15 A. Well, that's one thing that can happen with people

16 going back and forth. I might say that there might be

17 people that move back and forth, and it's not

18 necessarily gaming.

19 Q. You had also mentioned a better match with the annual

20 review. What would the purpose be for the annual

21 review?

22 A. To see how the rate is working and to see if there's

23 any adjustments that need to be made.

24 Q. So, if I follow you correctly, the purpose of the

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1 Q. Would you agree with Mr. Hall's previous testimony that

2 the -- that the purpose of the term of service is to

3 provide benefits -- or, is to ensure that customers do

4 not receive an extended period of discount rates or an

5 extended period of excessively high rates?

6 A. Well, I think that's one of the things. There's also

7 the -- the whole point of ADE is to provide, for those

8 returning customers, what it does is it, especially

9 through the adder, provides some benefit to other

10 customers on Rate DE.

11 Q. So, and I guess what I'm trying to get at is that the

12 term of service and the eligibility criteria and the

13 annual review all serve essentially somewhat different

14 purposes. Would you agree with that?

15 A. Yes.

16 Q. So, there's no particular underlying purpose that

17 requires those terms to match, it just sounds better?

18 A. Well, that's your characterization. But I think that,

19 yes, they all have their purpose.

20 Q. Now, you also mentioned in your direct that it would

21 help "mitigate concerns about being anti-competitive".

22 Could you explain that?

23 A. Well, yes. And, I think there's, you know, there's

24 been some concern from, I think, competitive suppliers

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1 that this rate will keep people out of the competitive
 2 market for an extended period of time. Now, whether
 3 those concerns are valid or not, I think a shorter term
 4 of service helps alleviate those concerns.
 5 Q. Now, and you're not an attorney, Mr. Mullen?
 6 A. That's correct.
 7 Q. But are you familiar with the terms of the
 8 restructuring statute, RSA 374-F?
 9 A. Generally.
 10 Q. Would you agree that the primary purpose of the
 11 restructuring law is to reduce costs for all consumers
 12 of electricity?
 13 A. I think that's one of many that are stated in the
 14 statute.
 15 Q. Well, could the implementation of Rate ADE have the
 16 effect of reducing the costs for consumers of
 17 electricity?
 18 A. It could.
 19 Q. So, if it does have that effect, and would that be a
 20 basis to limit it to 12 months?
 21 A. I'm not sure I'm following your question.
 22 Q. Well, if it has the effect of lowering costs for
 23 consumers of electricity, wouldn't that be a basis to
 24 extend it to 24 months, to ensure that those benefits
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1 A. Yes, that's correct.
 2 Q. Now, why would the -- what do you believe would be the
 3 most likely reason that the rate would be terminated
 4 prior to the end of the pilot period?
 5 A. Well, you know, I wasn't thinking of anything in
 6 particular. I was just trying to cover potential
 7 outcomes that could happen. I mean, there's a variety
 8 of things that could happen, you know. Now, whether it
 9 requires a termination or whether it requires some
 10 adjustments to the rate, you know, I haven't really
 11 thought through every scenario that could happen, but I
 12 was trying to cover different potential outcomes.
 13 Q. Is it possible that Rate ADE could be terminated
 14 because few or no customers take it?
 15 A. That could happen.
 16 Q. So, in that case, would there be a significant impact
 17 for having to continue few or no customers till the end
 18 of the term of service?
 19 A. In that particular circumstance, no.
 20 Q. And, Mr. Mullen, also in the first day of this hearing,
 21 you had mentioned, but I didn't hear you mention today,
 22 the possibility that "a longer term of service could
 23 limit customer options". Do you recall saying that?
 24 A. Yes. That's right.
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1 are provided?
 2 A. Well, that assumes (a) that people stay on the rate for
 3 the entire period, which they're not required to.
 4 Sorry, I lost my train of thought.
 5 Q. If I might ask about that. That may be for an
 6 individual customer, and you said this is a concern
 7 about competitive suppliers. So, I was wondering if
 8 this could have the effect of lowering costs in the
 9 marketplace for all consumers of electricity, as
 10 opposed to, say, an individual consumer?
 11 A. Well, I think that, where the rate is calculated based
 12 on marginal costs, I would think that those are
 13 basically reflective of the market price. So, whether
 14 you have a longer term of service or a shorter term of
 15 service, I think that, you know, those same market
 16 prices should be available. Again, I support the
 17 shorter term of service for a variety of reasons, not
 18 just for one in particular.
 19 Q. Yes. And, one of the other reasons that you had raised
 20 is that, if a customer is on Rate ADE at the time that
 21 the pilot period ends or that the rate is terminated,
 22 the customer should remain on, in your opinion, the
 23 customer should remain on Rate ADE until the end of
 24 their term of service?
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1 Q. Currently, customers have the option of having
 2 competitive service for PSNH's Default Service, is that
 3 essentially the case?
 4 A. Yes.
 5 Q. So, once Rate -- assuming Rate ADE is implemented,
 6 would that choice change?
 7 A. The choice of returning to Default Service?
 8 Q. Would customers still have the choice of obtaining
 9 competitive supplier service or PSNH's Default Service?
 10 A. Depending on how long they were being served by a
 11 competitive supplier, they would -- if they wanted to
 12 return, they would still have the competitive supply
 13 option, and, if they wanted to return to PSNH, they
 14 would either be served under Rate DE or Rate ADE.
 15 Q. Either of which is a default service option, is that
 16 correct?
 17 A. That's correct.
 18 Q. So, in that customers would have the choice to remain
 19 on competitive supplier service or return to PSNH's
 20 Default Service, have those choices changed? Would
 21 those choices change with the implementation of Rate
 22 ADE?
 23 A. With the implementation of Rate ADE, the only thing
 24 that changes is the amount of time somebody would be
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1 served under -- a returning customer would be served
 2 under the Alternative Default Energy Service, rather
 3 than the standard Default Energy Service.
 4 Q. But the choice of who would supply the energy is
 5 essentially the same under -- whether Rate ADE exists
 6 or does not exist?
 7 A. Customers would still be served -- could still be
 8 served by competitive suppliers or by PSNH.
 9 MR. FOSSUM: Thank you. I don't have
 10 anything further.
 11 CHAIRMAN IGNATIUS: Thank you.
 12 Ms. Chamberlin, questions?
 13 MS. CHAMBERLIN: I have a few questions.
 14 Thank you.
 15 BY MS. CHAMBERLIN:
 16 Q. Mr. Mullen, it's true that this is the second time that
 17 PSNH has made a Rate ADE filing, correct?
 18 A. Yes.
 19 Q. And, the first time it was rejected by the Commission
 20 for a variety of policy reasons, is that correct?
 21 A. Yes.
 22 Q. On Page 3 of the Settlement Agreement, PSNH summarized
 23 those reasons. It's in Paragraph 1.3. Is it your
 24 recollection that that correctly summarizes the
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1 WITNESS MULLEN: Yes, I did. Thank you.
 2 MR. RODIER: Great.
 3 BY MR. RODIER:
 4 Q. Do you have the transcript in front of you?
 5 A. I do.
 6 Q. Would you turn to Page 52.
 7 CHAIRMAN IGNATIUS: And, if both the
 8 witness and any questioner keep in mind, we don't have the
 9 transcript. So, it's --
 10 MR. RODIER: Okay.
 11 CHAIRMAN IGNATIUS: All right, some of
 12 "we" have it, some of "we" don't have it. There's nothing
 13 wrong with using it, just don't assume that we're reading
 14 along with you.
 15 MR. RODIER: All right.
 16 BY MR. RODIER:
 17 Q. Mr. Mullen, let me know when you get to 52.
 18 A. I'm there.
 19 Q. Okay. I'm going to just read an excerpt from Lines 5
 20 through 10. And, the reason I'm going to read it is,
 21 didn't PSNH ask you a few questions related to "gaming"
 22 a moment ago?
 23 A. Yes, they did.
 24 Q. Okay. Well, since you have it in front of you, would
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1 original concerns of the Commission?
 2 A. Yes.
 3 Q. With this second filing, this is PSNH's attempt to meet
 4 those concerns, correct?
 5 A. Yes.
 6 Q. And, the terms of the Settlement Agreement -- would you
 7 agree with me that the terms of the Settlement
 8 Agreement meet those concerns of the Commission?
 9 A. Yes, they do.
 10 Q. And, the question before the Commission is which
 11 proposal the term of service is a better
 12 implementation, is that correct?
 13 A. Yes.
 14 Q. So, either one meets the original concerns. And, it's
 15 your testimony that 12 months is a better term of
 16 service; it's PSNH and OCA's testimony that 24 months
 17 is a better term?
 18 A. Yes. That's correct.
 19 MS. CHAMBERLIN: That's all I have.
 20 Thank you.
 21 CHAIRMAN IGNATIUS: Thank you. Then
 22 let's turn to non-settling participants. Mr. Rodier.
 23 MR. RODIER: Thank you. Mr. Mullen, by
 24 the way, did you have a good holiday?
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1 you read into the record 5 through 9, starting with the
 2 sentence that begins with "a customer"?
 3 A. And, I believe this is a question from you to the PSNH
 4 panel at the time?
 5 Q. It's Mr. Hall's answer.
 6 A. Yes.
 7 Q. All right. It's in response to my question.
 8 A. Okay. I believe this is your question to Mr. Hall.
 9 Q. No. If you look on the previous page, which is 51,
 10 isn't it -- you're right, it is my question. Then,
 11 given that, would you read that same section that I
 12 asked you to, and then read Mr. Hall's answer, which is
 13 on Page 10 [Line 10?]. I'm sorry.
 14 A. Okay. The section of the question that starts on Line
 15 5 reads as follows: "A customer has to be with a
 16 competitive supplier for 12 months, I'm very sorry.
 17 After that, they can go back to ADE on January 1st,
 18 leave again on April 1st, come back again July 1st, and
 19 leave again on October 1st?" And, Mr. Hall's answer
 20 was "They could."
 21 Q. And, do you agree with that?
 22 A. Yes.
 23 Q. Okay. So, to the extent the impression might have been
 24 left that there's no potential for gaming, this might
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1 say otherwise, is that correct?

2 A. What this says is people can -- people aren't required

3 to stay on Rate ADE, and they can move back to

4 competitive supply and come back to Rate ADE.

5 Q. Right. All right. So, like, in the spring, when the

6 supplier's costs are down, they may -- they could jump

7 to a competitive supplier, and then go back in the

8 summer, when the competitive prices are higher. Is

9 that correct?

10 A. They could do that.

11 Q. Okay.

12 A. A lot is going to depend on the market prices at the

13 time, compared to the existing cost of Rate ADE.

14 Q. Absolutely. You're absolutely correct. Now, the

15 Settlement -- a couple questions on the Settlement

16 Agreement. First one would be -- well, I got the wrong

17 copy of the Settlement Agreement in front of me. My

18 notes are -- well, let me just wing it then off the top

19 of my head. There is a provision in here that says

20 that, if the Commission -- the parties are still

21 looking for an agreement by January 1st, correct?

22 A. Looking to have the rate implemented by January 1st.

23 Q. Okay. Now, if the Commission comes out with an order

24 and they change something, there is a provision in here
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1 "PSNH, the Staff, and OCA", but it doesn't mean

2 necessarily that we exclude anybody?

3 A. Well, as I see it, Rate ADE is a tariffed rate. PSNH,

4 the Staff, and OCA can't make changes to tariffed

5 rates. Those get approved by the Commission.

6 Q. Yes. I'm just working on the part that says "PSNH, the

7 Staff, and OCA shall work cooperatively to develop any

8 recommended changes to the design of Rate ADE."

9 A. And, again, those are recommended changes.

10 Q. Right. And, would there be -- I think you're saying

11 there would be an opportunity for input into that

12 process for people like PNE?

13 A. Yes, I believe there would.

14 Q. Okay. That's all I wanted. Now, the other one I want

15 to go to is the annual -- well, first of all, why is

16 this a pilot? And, I'm looking for a very short

17 answer.

18 A. So it can be evaluated as to how it's working, how many

19 people are taking advantage of it. Just to basically

20 get a good view of, you know, whether it -- whether it

21 should be modified in any way, and how customers react.

22 Q. And, so, basically, keep it on a short leash, in case

23 something unanticipated should happen?

24 A. Sure. There's lots of different things that could
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1 that says the Settling Parties get together, figure out

2 what to do about it, is that right? Now, I'm actually

3 -- I found it. Top of Page 8.

4 A. I'm there.

5 Q. "Should the Commission approve an implementation date

6 other than January 1, 2013, PSNH, the Staff, and the

7 OCA shall discuss whether to amend the date by which

8 the annual report shall be filed and shall report the

9 results of such discussions to the Commission." Now,

10 "PSNH, the Staff, and OCA shall work cooperatively to

11 develop any recommended changes to the design of ADE to

12 the extent that such changes are necessary." Okay.

13 I'll skip the end of the sentence for sake of brevity.

14 Because my question really goes to, if the Commission

15 orders something here to change, why is it just the

16 PSNH, the Staff, and the OCA get to consult with each

17 other and work cooperative? Isn't it possible that my

18 client sees the decision, and they say "well, this

19 thing is on a pretty short leash. You know, we'd like

20 to get our word in edgewise here as to how to make the

21 recommended changes." Is that precluded?

22 A. I don't think it's precluded, no.

23 Q. Okay. And, what makes you think that? It just says --

24 it doesn't say that explicitly, it just includes the
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1 happen, marketwise or otherwise. So, it's basically an

2 evaluation period. It's a test period.

3 Q. Well, and do you recall that I suggested, through some

4 questions I believe to Mr. Hall, that, when you tell

5 people "you can get a lower rate from Public Service,

6 but first you've got to go to a competitive supplier

7 for a year", do you recall me suggesting that could

8 open the floodgates?

9 A. It could. There's lots of things that could happen.

10 Q. Yes. Okay. So, there could be some unanticipated

11 consequences? That's probably the third time you've

12 been asked that question, and I apologize.

13 (Court reporter interruption.)

14 BY MR. RODIER:

15 Q. I said "there could be unanticipated consequences."

16 Now, at the end of the pilot period, the Commission has

17 an opportunity to review this, correct?

18 A. Yes.

19 Q. Going back to Section 2.2, "which pilot shall be

20 evaluated by the Commission". Now, I wonder what that

21 means, if the Commission -- it doesn't say "the Staff

22 of the Commission", it means "the Commission". So, are

23 we talking about there's going to be a hearing,

24 perhaps?
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1 A. If you turn to Page 8, in Section 2.4.3, it says there,
 2 "At least 3 months prior to the end of the pilot
 3 period, PSNH shall file a request to extend, modify or
 4 terminate Rate ADE and shall include information about
 5 the historical performance of Rate ADE and support for
 6 the requested relief." So, I think that in and of
 7 itself would see a hearing.
 8 Q. Okay. So, there would be notice, opportunity to be
 9 heard, *etcetera*?
 10 A. Correct.
 11 Q. Okay. That's good. So, I want to talk to you briefly
 12 about the adder. The adder is the non-operating costs
 13 of the Scrubber?
 14 A. That's correct.
 15 Q. And, why are the costs of the Scrubber in there, and
 16 let me just add a multi two-part question, isn't it
 17 because RSA 125-O:18 says that the costs of the
 18 Scrubber "shall be recovered through default service".
 19 Does that sound right?
 20 A. That's what 125-O:18 says, yes.
 21 Q. So, in essence, it says "you must recover the cost of
 22 the Scrubber through default service"?
 23 A. Correct. Meaning not through any other rate component.
 24 Q. Yes. Not on the wires or anything like that?
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1 this is based on?"
 2 Q. Okay. That's helpful. Well, I thought we agreed that
 3 the costs of the Scrubber must be recovered through
 4 Default Service?
 5 A. Yes. And, they are.
 6 Q. Does that mean just part of the costs or would that
 7 mean total costs? All of the costs?
 8 A. It would be any costs that the Commission finds
 9 allowable into the Default Service rates would be
 10 included in the Default Service rates.
 11 Q. Well, isn't the non-operating -- isn't the operating
 12 costs of the Scrubber going to be included in the
 13 Default Service rates or is Public Service not going to
 14 recover those?
 15 A. PSNH will recover whatever the Commission determines
 16 are recoverable. And, currently, there's a temporary
 17 adder, temporary rate component that's included in
 18 Default Service to include what up until this time that
 19 the Commission has approved in rates for the Scrubber.
 20 Q. That's for Rate DE, isn't that correct?
 21 A. Yes. And, that's a Default Service rate.
 22 Q. Right. In ADD -- ADE, though, it's not all of the
 23 costs of the Scrubber, it's just the non-operating
 24 costs?
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1 A. Correct.
 2 Q. Okay. Why -- tell me why it's just non-operating
 3 costs? Aren't the operating costs costs of the
 4 Scrubber?
 5 A. Well, and I think you had a discussion with Mr. Hall on
 6 this at length during the hearing. And, as he said,
 7 first, those, the non-operating costs are readily
 8 identifiable, as compared to others that include
 9 allocated costs. But, also, the Commission, when PSNH
 10 first proposed a Rate ADE, one of the concerns the
 11 Commission had was that PSNH proposed a flat penny
 12 adder, and said "there was no basis for that." So,
 13 what the -- using the non-operating costs of the
 14 Scrubber is, is a way that it can be calculated. And,
 15 it's based on, you know, actual numbers. It's based on
 16 -- you know, so, there is a basis for it. You know,
 17 there's nothing that says that the adder has, you know,
 18 that there's nothing -- the Commission didn't say
 19 "well, it must be part of the Scrubber costs" or
 20 anything like that. So, what it does is it gives you a
 21 way to, as things change over time, say "here's what
 22 the adder is", rather than just saying "well, it's a
 23 penny." This was, again, to respond to one of the
 24 Commission's concern about, "well, how do we know what
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1 A. That's correct.
 2 Q. So, we have a question here as to whether or not the
 3 operating costs must be included as well in ADE? Would
 4 you agree with that?
 5 A. I think that's your question, yes.
 6 Q. Okay. And, you don't think so, and tell me one more
 7 time very briefly why?
 8 A. I don't think they need to be, because, again, as you
 9 pointed out, the statute in 125-O says that the costs
 10 of the Scrubber get recovered through default service
 11 rates.
 12 Q. Yes.
 13 A. Currently, they are being recovered through default
 14 service rates. So, I don't see any problem with that.
 15 Q. Okay. Now, you're saying ADE isn't a default service
 16 rate?
 17 A. It is.
 18 Q. Okay. And, is there some inconsistency here? You're
 19 saying that it must be recovered through default
 20 service rates, and then you just agreed that ADE is a
 21 default service rate?
 22 A. Yes. But, again, the operating costs are included in
 23 Rate DE, which is Default Service. It's not that
 24 there's any costs that aren't recovered between either
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1 one of those rates.

2 Q. Okay. So, you're saying that the -- here's what it

3 comes down to then, 125-O:18, when it says "the costs

4 of the Scrubber must be recovered through default

5 service rates", what you're saying is not necessarily

6 true for ADE?

7 A. Both operating and non-operating costs are currently

8 included in Rate DE.

9 Q. Right.

10 A. What the adder in Rate ADE does is provide some

11 additional recovery that goes back to the benefit of

12 Default Service customers.

13 Q. Okay. Does 125-O:18, is that applicable to Rate ADE?

14 A. It's applicable to default service rates.

15 Q. Okay.

16 A. And, the Commission can approve whatever it --

17 Q. Yes.

18 A. -- deems appropriate for default service.

19 Q. I'm wondering if you have a response to the question

20 that I asked, which is "does 125-O:18 apply to Rate

21 ADE?"

22 A. And, I believe I just answered that. I said that 125-O

23 applies to Default Service rates. And, the Commission

24 can approve what it deems appropriate for Default

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1 they incurred because of the existence of Rate ADE?

2 A. Again, I think you had a lengthy discussion with Mr.

3 Hall about these types of costs. And, he's basically

4 saying that people that would be performing these tasks

5 are currently employed and being paid. So, to that

6 extent, there's not an incremental cost associated with

7 that. And, they're --

8 Q. Do you agree?

9 A. And, they're not seeking any additional recovery of

10 those costs.

11 Q. Okay. You're not saying there aren't any opportunity

12 costs, are you?

13 A. No.

14 Q. Okay. Because, if they re-deploy people, they're not

15 doing what they have been paid to be doing all along,

16 now they're working on a new program, Rate ADE.

17 A. Well, I hesitate to make a general statement like that,

18 because I think people shift what they're working on

19 all the time, depending on what their job function is.

20 Q. Right. Would you agree with me that the people in

21 question would otherwise be working on other PSNH

22 projects, if they weren't re-deployed to ADE?

23 A. Well, I think, any time you're working on one thing,

24 you can't be working on something else.

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1 Service rates, including alternative methods of

2 providing Default Service.

3 Q. Okay. I think we've beat that one into the ground.

4 So, thank you for your responses. I'm going to move on

5 at this point.

6 Okay. Well, let's talk about, since

7 we're on this general subject, the marketing -- well,

8 let me just read you the response to one of PSNH's data

9 requests. "PSNH's proposed calculation of Rate ADE

10 admittedly does not include any costs for marketing or

11 outreach programs."

12 MS. AMIDON: Could you please identify

13 the data request?

14 MR. RODIER: I don't have it in front of

15 me.

16 BY MR. RODIER:

17 Q. So, what I will just do is ask Mr. Mullen, are there

18 any costs for marketing, outreach, cost of

19 administration, promotional materials, marketing, sales

20 or customer service included in Rate ADE?

21 A. No.

22 Q. Is that because these costs don't exist?

23 A. No, they exist.

24 Q. Okay. Are they -- the fact of their existence, are

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1 Q. That's right.

2 A. But, again, it would depend on the individuals, it

3 would depend on what the nature of their job is anyhow.

4 Q. So, I mean, if somebody is there right now, and they're

5 working on some existing project, their salaries are

6 being recovered through base rates, aren't they?

7 A. Depends on what they're doing, and, right now, it

8 depends on where their time is charged.

9 Q. Well, if the time is charged, it's recovered through

10 base rates, isn't it?

11 A. Well, they also have transmission rates. They also

12 have -- there's other components to their rates.

13 Q. Okay.

14 A. So, when you say "base rates", I assume you're

15 referring to distribution rates, and that might not be

16 the case.

17 Q. With that clarification, I understand. You're correct.

18 So, we could have a situation here where somebody is, I

19 don't know, is in, I don't know, Customer Service, been

20 there for five years. Now, they're working on

21 marketing, outreach, promotion, marketing, sales and

22 customer service for Rate ADE. And, the costs of that

23 are being recovered through base rates?

24 A. Possibly. Again, depending on -- like I say, there's

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1 other rate components.

2 Q. Okay. "Other rate components", meaning "transmission
3 costs" or something like that?

4 A. Yes.

5 Q. Okay. Fair enough. Back to, very quickly, and I know
6 we want to make sure we get out of here at 4:30, so I'm
7 going to try not to belabor this. You heard me
8 question previously about two PSNH customers in
9 Manchester that live next door to each other?

10 A. Yes. I believe it was on Dubuque Street.

11 Q. Exactly. And, so, let's make it North Bay Street this
12 time, to go to a silk stocking district.

13 A. I know where that is, too.

14 Q. I bet you do. Okay. So, we have two customers on
15 North Bay Street. And, one is a loyal PSNH customer,
16 the other flew the coop as soon as they could, these
17 are residential customers, to go to a competitive
18 supplier. Now, there is going to be some kind of
19 marketing and outreach program, is there not, on Rate
20 ADE?

21 A. Yes.

22 Q. Okay. So, isn't the one who has been loyal going to
23 wonder how he can or she can get the new lower rate?

24 A. And, I would assume that would be done through the
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1 A. It could.

2 Q. Do you think the Commission could get angry calls about
3 their neighbor getting a lower rate and they can't get
4 it?

5 A. Well, I think that that goes to the education, in terms
6 of why it's available for some and not for others.

7 Q. Yes.

8 A. But, by the same token, those that would currently be
9 eligible to receive the rate under Rate ADE, those
10 customers already wouldn't be paying the same as a PSNH
11 customer, because they're getting whatever the
12 competitive suppliers have offered.

13 Q. Right.

14 A. So, there's already a difference in what they're
15 paying.

16 Q. Right.

17 A. However much that is depends on what the suppliers are
18 offering.

19 Q. Well, that brings me to my next question. The
20 Commission has expressed an interest in market
21 enhancements, has it not?

22 A. Could you be more specific?

23 Q. Well, like the POR docket?

24 A. The Commission has a docket open on that. I don't
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1 outreach program, education.

2 Q. Okay. And, so, the point would be, the prodigal son
3 who left can come back with a much lower rate than Rate
4 DE; the one who is loyal is out of luck?

5 A. That assumes circumstances as they are today. The one
6 who was -- you say is "loyal", would not have yet met
7 the eligibility criteria for the rate.

8 Q. Well, implied in the -- how I was using the word
9 "loyal" is that they stayed with Public Service and
10 resisted the blandishment of companies like PNE, right?

11 A. I understand your characterization.

12 Q. Okay. Do you -- is the PUC training any people to
13 answer calls from people that are complaining that they
14 can't get this rate?

15 A. Not that I am aware of, but Consumer Affairs is not my
16 department.

17 Q. Okay. Could precipitate workload for the Commission,
18 couldn't it?

19 A. We won't be increasing the number of people that are
20 here. They answer questions all the time. And,
21 there's always changes in tariffs.

22 Q. All right. It could precipitate workload for PSNH,
23 couldn't it? People say "what do I got to do to get
24 this?"
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1 think the Commission has ruled on it one way or
2 another.

3 Q. That's correct. But what precipitated that was the
4 reference in an order of the Commission that they
5 wanted to "consider market enhancements". If you're
6 not aware of that, that's fine.

7 A. No, I'm aware of the docket.

8 Q. Okay.

9 A. And, they said they would open it and take a look at
10 it.

11 Q. Right. Because they were interested in market --
12 considering market enhancements, is that correct?

13 A. They're interested in exploring the idea.

14 Q. Okay. So, do we have a -- do we have some
15 schizophrenia here, where, on one hand, the Commission
16 is looking to go forward here and enhance the market
17 for residential customers, on the other hand, it's
18 considering, to use a phrase that came up earlier, to
19 "reverse the trend"?

20 A. I don't see it that way at all.

21 Q. Why is that?

22 A. Because what I see is, under this rate, I don't see the
23 customers of PSNH are going to be any worse off than
24 they are. If anything, this is a different option, and
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1 it addresses something that was in the Commission's
2 prior docket, DE 10-160. Where it requested that PSNH
3 develop a tariff proposal that would look to mitigate
4 the impacts on those customers who have not migrated,
5 that it's caused -- that the cost impacts, based on --
6 resulting from those that have migrated. What this
7 proposal does is it addresses that.

8 Q. And, that brings me to my last question. Now, it does,
9 but, you know, do you recall in a subsequent order that
10 the Commission issued that they said there were many
11 issues that have to be developed with respect to
12 whether this program is consistent with 374-F and
13 369-B?

14 A. I'm not sure whether that was in relation to this
15 proposal or something else. I have a vague
16 recollection of what you're referring to.

17 Q. Okay.

18 A. But I can't place it in the right docket.

19 Q. Well, --

20 CHAIRMAN IGNATIUS: Mr. Rodier, do you
21 have a citation to that order?

22 MR. RODIER: It was the order that
23 denied my motion to dismiss. And, as a matter of fact,
24 it's mentioned in Mr. Fromuth's testimony. And, if I
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1 to me?

2 CHAIRMAN IGNATIUS: No. I was just
3 curious about which order you were referring to.

4 MR. RODIER: Okay.

5 CHAIRMAN IGNATIUS: So, thank you.

6 MR. RODIER: Okay. You're welcome.

7 CHAIRMAN IGNATIUS: Does that conclude
8 your questioning?

9 MR. RODIER: It does.

10 CHAIRMAN IGNATIUS: Thank you.

11 Ms. Miranda.

12 MS. MIRANDA: Thank you. For the
13 record, Joey Lee Miranda, from Robinson & Cole, on behalf
14 of the Retail Energy Supply Association. Good afternoon,
15 Mr. Mullen.

16 WITNESS MULLEN: Good afternoon.

17 MS. MIRANDA: Just a few questions.

18 BY MS. MIRANDA:

19 Q. In response to cross-examination from PSNH today, you
20 indicated that the Rate ADE allows PSNH to recover for
21 fixed costs associated with the Scrubber, is that
22 correct?

23 A. Yes.

24 Q. And, those costs are incurred by PSNH whether they
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1 could get it. Let me be more specific here. On Order
2 Number 25,372, June 8th, --
3 CMSR. HARRINGTON: Excuse me. Could you
4 give us the exhibit number please?

5 MR. RODIER: Excuse me?

6 CMSR. HARRINGTON: The exhibit number,
7 so we can find what you're reading from?

8 MR. RODIER: No, I'm just reading it,
9 this is Mr. Fromuth's testimony.

10 CMSR. HARRINGTON: Oh. Okay.

11 MR. RODIER: It hasn't been filed yet.

12 And, so, I'm just stating, in response to the question,
13 just make believe I've got this memorized, not reading
14 from anything in particular. Your Order Number 25,372,
15 June 8th, 2012, the Commission stated "Many factual issues
16 will need to be developed in order for the Commission to
17 determine, pursuant to RSA 369-B:3, IV(b)(1)(A), RSA
18 Chapter 374-F, and RSA 377, whether the proposed
19 redesigned ADE is reasonable and serves the public
20 interest."

21 I have no -- I have no further
22 questions, madam Chairman.

23 CHAIRMAN IGNATIUS: All right.

24 MR. RODIER: Do you have any follow-up
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1 serve Rate ADE customers or not, is that correct?

2 A. Yes.

3 Q. Thank you. Also in response to cross-examination from
4 PSNH, you indicated that Rate ADE could lower costs of
5 electricity for customers taking service on that rate,
6 is that correct?

7 A. Yes, it could.

8 Q. But it could also increase the cost of electricity for
9 customers above what customers on DE are paying,
10 depending on the market, is that correct?

11 A. Well, it could. But you'd also have to look at what
12 they're paying to competitive suppliers. Because, if
13 they're on ADE, they're obviously coming from a
14 competitive supply. So, depending on the relative
15 pricing there, it could increase or decrease from that
16 as well.

17 Q. Okay. So, it's possible that there is actually -- a
18 customer, even though ADE is currently lower than DE, a
19 customer returning to PSNH may actually pay more by
20 taking Rate ADE than they would have paid if they
21 stayed with a competitive supplier?

22 A. That's possible. Then, I'd have to question, you know,
23 why they were coming off competitive supply.

24 MS. MIRANDA: Okay. Thank you. Those
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1 are the only questions I have. Thank you.

2 CHAIRMAN IGNATIUS: Thank you. Then, I

3 think we've been around all of the parties. Questions

4 from the Commissioners?

5 CMSR. HARRINGTON: Yes. I have a few.

6 CHAIRMAN IGNATIUS: Commissioner

7 Harrington.

8 BY CMSR. HARRINGTON:

9 Q. Let me see. Mr. Mullen, I guess let me start out with

10 a basic something here. What is the purpose? What is

11 the Rate ADE hoping to accomplish by being established?

12 A. The purpose is to try to mitigate the cost impacts to

13 non-migrating customers, that is the ones who are

14 remaining on PSNH's Default Energy Service, by those

15 who have migrated to competitive supply. Again, this

16 was a subject of an earlier Commission docket, DE

17 10-160. And, in its orders, the Commission requested

18 that PSNH develop a tariff proposal that would address

19 that concern.

20 Q. So, you're saying that, through the use of this rate,

21 it will tend to lower costs associated with people that

22 stay on Default Service, regular Default Service?

23 A. Correct. And, that's essentially through the working

24 of the adder.

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1 A. Well, that's, you know, that's one. Yes, that's

2 certainly one consequence.

3 Q. And, just so I get this straight, the ADE is broken

4 down into two things. One was the marginal cost of

5 power, which I assume was more or less a pass-through?

6 A. Yes.

7 Q. Okay. And, then, the adder was put onto that, and

8 that's going to be revenue that comes out additional to

9 costs?

10 A. Yes. Well, additional to marginal costs.

11 Q. Additional to marginal costs, okay. And, that's

12 because that they are based on the fixed costs of the

13 Scrubber, which aren't marginal, they're going to be

14 there regardless, correct?

15 A. Yes.

16 Q. Okay. So, what we're doing is taking part of the cost

17 of the Scrubber and assigning it to people who are on

18 this ADE rate?

19 A. Yes.

20 Q. Okay. So, that means some of the costs that would have

21 been with the regular Default Service, they don't have

22 those costs?

23 A. No. Those costs are still figured in the Default

24 Service rate. What this does is this creates a

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1 Q. Okay. And, that seems to conflict with, and I'm

2 looking at 374-F:3, F:3, II, where it says "The

3 commission should ensure that customer confusion will

4 be minimized and customers will be well informed about

5 changes resulting from restructuring and increased

6 customer choice." And, above that, it says "Customers

7 should expect to be responsible for the consequences of

8 their choices." Now, are there any customers out there

9 that I'm not aware of that are forced to take Default

10 Service, because nobody else offers it to them? Is

11 that still the case in Public Service's territory

12 anyway?

13 A. No, I don't believe that. That's correct.

14 Q. So, a customer should expect to be responsible for the

15 consequences of their choice. Any customer could leave

16 and go on Default -- off of Default Service and get a

17 competitive supplier, or they could stay on Default

18 Service?

19 A. That's correct.

20 Q. Okay. Well, if the customer needs to be responsible

21 for that, why are we trying to come up with a system to

22 make life better for them? Isn't that one of the

23 consequences of their actions, staying on Default

24 Service?

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1 calculation whereby additional revenue gets recovered,

2 and then gets applied against the Default Energy

3 Service rate through the reconciliation process.

4 Q. So, the people that stay on Default Service will be

5 benefited at the expense of the people that are paying

6 the alternate rate? I'm trying to follow this.

7 A. Yes. There will be additional revenue received from

8 the ADE customers that will go towards lowering the

9 costs paid by Default -- regular DE customers.

10 Q. Okay. So, is the purpose of this then to slow down

11 migration of Default Service customers?

12 A. No.

13 Q. Okay. Then, why are we worried about lowering their

14 costs?

15 A. Well, one thing that came -- that rose in DE 10-160,

16 and, again, that was during -- especially during a

17 period where there were not as many options for

18 customers, especially on the residential and small

19 commercial side, the situation happened that, when

20 customers, primarily large customers left, there was a

21 smaller customer base to recover fixed costs over. So,

22 this proposal was developed in relation to that

23 circumstance.

24 It could be that nobody takes Rate ADE,

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1 and then there won't be any additional benefit to
 2 Default Service customers, because there wouldn't be
 3 any revenue from an adder.
 4 Q. Okay. Can you just help me with this flow diagram a
 5 little bit? I know it came from Public Service, but
 6 I'm sure you can help address my questions on it. I'm
 7 just trying to get how this works. So, we're just
 8 starting in the upper left-hand corner with the red
 9 box, "Customer is taking supplier service." So,
 10 somebody, and since we're dealing with residential
 11 customers, somebody used to be a Default Service
 12 customer of Public Service, and then they chose to go
 13 to a competitive supplier. Is that correct?
 14 A. Correct.
 15 Q. Okay. And, so, for whatever reason now, they have
 16 decided they want to come back to customer service.
 17 They don't want to deal with that competitive supplier
 18 anymore?
 19 A. Back to Public Service, yes.
 20 Q. Okay. So, this "24-month" is the next block, "Is
 21 24-month clock running?" And, I guess we've been told
 22 your position would be "Is 12-month clock running?"
 23 Can you explain what that means?
 24 A. That is really for the situation where a customer had
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1 or "closed" on Rate ADE?
 2 A. That gets to the circumstance that I described before
 3 under questioning from Mr. Fossum. And, that's if --
 4 Rate ADE is normally open. However, when PSNH looks at
 5 the monthly projections of marginal costs, if the
 6 change in those projections is more than 75 percent of
 7 the adder, the rate could be closed. So, this is
 8 referring to the situation "is it open or is it
 9 closed?"
 10 Q. Okay. So, there would be a -- this is would be a
 11 dynamic situation, where customers, based on their
 12 individual circumstances of where they have been buying
 13 their electricity or how they have been buying it over
 14 the past time frame, is there any -- does this go --
 15 where does this go back to? Probably would start fresh
 16 from January 1st, if it was implemented then?
 17 A. Now you've lost me to where you are.
 18 Q. Maybe I can reword it. To get to this initial box, the
 19 green box, which says "Is 24-month clock running?" It
 20 would be -- that's based on what they did previously as
 21 a electric customer, correct?
 22 A. Correct.
 23 Q. Okay. So, does everybody start with a fresh slate on
 24 January 1st, if this were to go into effect then, or is
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1 previously been served under Rate ADE, and they had
 2 gone back to the competitive market.
 3 Q. So, this is for somebody who, I don't know, the boxes
 4 that aren't on the chart, I guess, Default Service
 5 customer of Public Service, left to go to take supplier
 6 service, came back to Public Service and took ADE, then
 7 went back to a supplier? Do I have that right?
 8 A. Well, this -- yes. So, this box, this green box is
 9 questioning "do they fit that circumstance or not?"
 10 Q. Okay. And, then, going down, if the answer is "no",
 11 that means "the clock isn't running." So, what does
 12 that imply then? That they aren't eligible for
 13 Alternative?
 14 A. No. What that means is they were not previously served
 15 under Rate ADE. This is their first time coming back
 16 from a competitive supply.
 17 Q. Okay. So, does that mean the clock's running or not
 18 running?
 19 A. The clock is not running.
 20 Q. Not running. So, you would go to the "no", I mean, is
 21 clock not running, you come down to "no". "12 months"
 22 -- "12 consecutive months on supplier service?" And,
 23 if the answer is "yes", then they go over to "Is Rate
 24 ADE open?" And, what exactly does that imply, "open"
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1 it January 1st, looking backwards two years?
 2 A. Everybody starts with a fresh slate. This would be the
 3 first time that the tariff is actually available. So,
 4 there would be nobody that was previously served under
 5 ADE, so nobody would already have a 24-month clock
 6 running.
 7 Q. So, the fact that they may or may not have been served
 8 under DE in the past, then left and came back and left
 9 and came back, has no bearing?
 10 A. Correct.
 11 Q. Only whether they were ADE in the past?
 12 A. They wouldn't have been ADE.
 13 Q. Yes. But, I mean, that's the only criteria as we go
 14 into the future?
 15 A. Yes.
 16 Q. Okay. All right. I think I have a little better
 17 handle on how that works now. Thank you. There's a
 18 couple of things on here I'm trying to figure out
 19 what's the rationale for. And, the green box that
 20 talks about "12 consecutive months on supplier
 21 service?" Is there any basis for that "12 months"? I
 22 mean, why not 6 months or 13 months or whatever?
 23 A. It's, you know, there's no -- there's no magic number.
 24 But it's a reasonable number of months in terms of,
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1 well, how long have they been out on competitive
 2 supply? You know, if they have been out for a month,
 3 do you set up a new tariff proposal for them or, you
 4 know, 12 months is, you know, basically, is looked at
 5 as a reasonable significant period of time.
 6 Q. So, you would have a situation then where some
 7 customers were eligible for one rate, some customers
 8 weren't?
 9 A. Correct.
 10 Q. For instance, if someone went with a competitive
 11 supplier, and the supplier went out of business. And,
 12 at that time, the only option left to them was to come
 13 back to Public Service. If they had been with this --
 14 both people, two people been with that supplier, one
 15 for 14 months, one for 6 months, the one with 14 months
 16 would come in and get Rate ADE at a lower rate than the
 17 one that came in with the 6 months, because they would
 18 have to get the DE rate, is that correct?
 19 A. Well, that's possible. But, considering there's other
 20 competitive supplier options out there, if one supplier
 21 was to go out of business, I would assume there would
 22 be others there that they could also look at.
 23 Q. And, this is where I get confused. Because you said
 24 earlier that the intent of this was not to get
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1 A. Correct.
 2 Q. Okay. So, maybe it's not what we're trying to
 3 accomplish here with this rate, but it's certainly
 4 required for it to accomplish that. We have to get
 5 customers that are paying the ADE rate, so you can take
 6 advantage of that adder to help the DE rate?
 7 A. Correct. In order for any benefit to flow to DE
 8 customers, customers have to be taking service under
 9 ADE.
 10 Q. Okay. And, these are the same customers that are
 11 supposed to be responsible for the consequences of
 12 their choices. So, I get back to that. And, I'm just,
 13 again, a little confused as to what we're trying to
 14 accomplish with that. But you're saying that you have
 15 two customers then could be in the situation where
 16 they, for whatever reason, they both decide they want
 17 to do business with Public Service, as far as buying
 18 Energy Service from them. And, we're supposed to be
 19 sensitive to a regulated utility charging, you know,
 20 actual, prudent and reasonable costs. And, that would
 21 have to be the same, whether it was ADE or DE, and yet
 22 they're different. So, how do you reconcile that
 23 seemingly confusion?
 24 A. Well, first, without the proposal for ADE, they would
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1 customers back to Public Service. But, if that doesn't
 2 happen, what is this rate accomplishing?
 3 A. This rate is put in place to, again, to provide benefit
 4 to other default -- DE customers through the revenue
 5 provided from the adder.
 6 Q. So, in order to do that, you've got to attract people
 7 to take the ADE rate?
 8 A. Well, again, but I don't see the purpose of developing
 9 the rate as being done for that purpose. I see it
 10 being done to provide benefit to other customers. Now,
 11 again, I think I said in my prefiled direct testimony
 12 that the number of customers that take it, it's going
 13 to basically depend on how the amount of the adder
 14 compares to the margin charged by suppliers. Assuming
 15 that marginal cost is at the market price will be the
 16 same for all players. So, you have to kind of see how
 17 that matches up. And, right now, I'm not sure how
 18 that's going to match up. It could be that a number of
 19 people take advantage of ADE, it could be that nobody
 20 does.
 21 Q. But, I guess, in order to accomplish the goal of
 22 benefiting Default Service customers, somebody has to
 23 take the Alternate -- the ADE rate or that won't
 24 happen, correct?
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1 have just basically one choice, and that would be DE.
 2 Second, also in 374-F, I'm looking at 374-F:3, V(e),
 3 which also says that "Notwithstanding any decision of
 4 subparagraphs (b) and (c), as competitive markets
 5 develop, the Commission may approve alternative means
 6 of providing transition or default services which are
 7 designed to minimize customer risk, not unduly harm the
 8 development of competitive markets, and mitigate
 9 against price volatility without creating new deferred
 10 costs, if the Commission determines such means to be in
 11 the public interest." So, I think, it's certainly, you
 12 know, this is certainly something that's permitted.
 13 Q. Okay. So, what you're saying here is, even though the
 14 rates are both held to the same standard, they can be
 15 different, and that's acceptable?
 16 A. Yes.
 17 Q. Okay. And, this section you just read talks about or
 18 "not unduly harm the development of competitive
 19 markets". What effect do you think this will have on
 20 competitive markets, if this rate were to go into
 21 effect?
 22 A. It's one other option out there. Again, I don't see,
 23 you know, I don't see this as something that's going to
 24 cause all the competitive marketers -- competitive
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1 suppliers to lose their customers. Again, because this
2 is priced above marginal cost. So, again, you've got
3 to think that the competitive suppliers are, you know,
4 have their market price as their basis. And, now,
5 whatever they do to that price, you know, for any
6 margin or whatever else they add to it, you would think
7 it would be somewhat comparable. What this basically
8 does is it provides another option, which also, to the
9 extent customers take service under it, provides
10 benefit to other customers.

11 Q. Well, I guess, if you look at competitive markets, I
12 look at them and I picture them as Public Service being
13 a cost-based utility, it's not part of the competitive
14 market. They develop their costs and they get recovery
15 through the tariffs for those costs. So, to the effect
16 that, now you've got a different non-competitive
17 market-based option out there, at a lower price than
18 Default Service, I'm finding a hard time saying or
19 figuring out how this doesn't harm the development of
20 competitive markets. It would seem to me it would be
21 directly harmful to it, in that the goal here is to get
22 people to leave competitive suppliers and sign up with
23 Public Service under this new Rate ADE. Because,
24 unless, we already established, unless that happens,
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1 service through Public Service. So, I don't see how it
2 cannot be harmful to the competitive supplier market?

3 A. Well, that could happen.

4 CMSR. HARRINGTON: Okay. All right.
5 That's all the questions I have. Thank you.

6 CHAIRMAN IGNATIUS: Commissioner Scott.

7 CMSR. SCOTT: Thank you.

8 BY CMSR. SCOTT:

9 Q. Following the same stream of questioning. So, I just
10 want to make sure I understood you right, Mr. Mullen.
11 Your thought was, and I don't want to put words in your
12 mouth, so, if I do, please correct me, that the ADE
13 rate will still be higher than the competitive supplier
14 rate?

15 A. I say on that, I'm not sure.

16 Q. Okay. Would you agree that a rational customer would
17 not likely change from a competitive supplier back to
18 PSNH, if the ADE was higher than the rate they were
19 currently paying?

20 A. That would be my assumption, yes.

21 Q. Do you think it's possible that this pricing scheme
22 with ADE would be an inducement for people to leave
23 PSNH Default Service?

24 A. Well, if so, then they have to -- you know, if creating
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1 there is going be no benefit to the DE rate customers,
2 which, as you stated, is the whole purpose of this.

3 A. But, by the same token, competitive suppliers will all
4 know how this rate is calculated. So, they can, you
5 know, they will be looking at forward prices, as well
6 as PSNH. And, they will know, they can do a pretty
7 easy calculation of the adder, plus this is set on an
8 annual basis, with some provision for changing it
9 possibly at six months.

10 You know, so, suppliers can alter their
11 offerings, they can, again, they will know how this is
12 set. So, from that perspective, you know, PSNH, I
13 don't believe, knows how competitive suppliers set
14 their rates. So, you know, I think that -- I don't see
15 this as something that's going to cause competitive
16 suppliers to fold up their tent and go home. I just
17 see it as another option that's out there.

18 Q. Okay. But, again, I'm still trying to get back to this
19 then. Where we have retail suppliers out there now,
20 the purpose of this new rate structure is to get funds
21 to flow to the Default Service customers that are
22 presently Default Service customers. And, the only way
23 that happens is if a customer, who used to be with a
24 competitive supplier, switches back to a cost-based
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1 this rate leads a current Default Service customer to
2 figure "well, 12 months down the road, I'll be eligible
3 for Rate ADE", not knowing what that ADE price is going
4 to be at that time, you know, I think, as more and more
5 competitors come into the market, there will be more
6 options out there as well.

7 So, you know, could there be a customer
8 out there who thinks that way? Possibly. But, I
9 think, doing that, you have to have a pretty good
10 crystal ball, in order to figure out that "12 months,
11 I'm still going to be better off than where I am."

12 Q. Let me ask the question another way. Is it -- if I was
13 a PSNH customer, and I believed that the ADE rate
14 ultimately was going to be less than the competitive
15 supply rate, do you believe that would be an inducement
16 for me to leave PSNH and go to a competitive supplier?

17 A. I think, if you thought that, and actually thought that
18 you had a pretty good handle on that, that's certainly
19 an outcome. However, where, again, the foundation for
20 the rate is on market prices, and competitive suppliers
21 most likely are starting with market prices as well.
22 So, unless there's expected to be a significant
23 difference between the two, again, then I go back to my
24 "crystal ball" comment.

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- 1 Q. Right now, though, the Default Service rate is higher
- 2 than the competitive rate, competitive suppliers' rate?
- 3 A. I'm not sure of what all the competitive suppliers are
- 4 offering. Right now, PSNH's Default Service rate is
- 5 7.11 cents. But that's scheduled to change on
- 6 January 1st. And, right now, PSNH has proposed a rate
- 7 that's almost 9 cents. Again, I'm not familiar with
- 8 what competitive suppliers are offering. I'm aware of
- 9 one that's slightly below 7.11 cents, but I'm not sure
- 10 what others are offering.
- 11 Q. In the scenario I presented that, as a customer, I
- 12 think all this -- I have this crystal ball, and I think
- 13 this is how I want to go. Do you see that -- would
- 14 that have the potential to be a windfall for the
- 15 competitive suppliers, at least in that first year?
- 16 A. A windfall, in terms of an influx of new customers?
- 17 That's possible.
- 18 Q. Okay. Let me go back to the term of service. Just a
- 19 couple quick questions on that. Do you -- obviously,
- 20 you've made a good case, I think, for the 12 months.
- 21 Others have made a case for the 24 months. I'm not
- 22 suggesting the Commission would do this. What's your
- 23 opinion if we split the baby and did 18 months, for
- 24 instance?

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- 1 A. Well, and I think PSNH is going to be providing
- 2 information about the number of customers taking
- 3 service under Rate ADE. So, in looking at that, we'll
- 4 be able to see some of the movement back from
- 5 competitive supply. That's one way we can review it.
- 6 Q. So, help me out then with that a little bit more. So,
- 7 what would that tell us about the impact on
- 8 competition? How would we --
- 9 A. Well, if we saw a significantly large number of
- 10 customers being served under Rate ADE, we know that
- 11 they're no longer in the competitive market. Granted,
- 12 you'd also have to kind of see, well, how many of those
- 13 customers stay on ADE for the term? Or, maybe stay on
- 14 for a couple months, then go back to competitive
- 15 supply. So, you know, there could be some movement
- 16 from competitive supply, but there also could be
- 17 movement back to competitive supply from the ADE,
- 18 depending on what's going on in the marketplace.
- 19 Q. And, you feel we'll be able to see that, we'll have
- 20 sight of that?
- 21 A. Yes.
- 22 Q. Okay. How about gaming -- well, let me back up. Is
- 23 gaming necessarily bad?
- 24 A. Bad for whom?

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- 1 A. That's, again, that's a potential outcome. You know,
- 2 I've supported 12 months for the reasons I've stated,
- 3 and PSNH and OCA have stated -- supported 24 for their
- 4 reasons. So, again, you know, the Commission is free
- 5 to do as it chooses. But, you know, I would still
- 6 support the shorter 12 months.
- 7 Q. Or, another alternative, what if we were to split, for
- 8 instance, residential and non-residential customers,
- 9 put one at 24 months and the other at 12 months, is
- 10 there a value to something like that?
- 11 A. That's nothing that I had looked at before. So, again,
- 12 I suppose that's a -- that's a potential outcome. It's
- 13 not something that I had considered.
- 14 Q. Okay. Thank you. You mentioned, both in your
- 15 testimony verbally and in your -- I don't remember what
- 16 exhibit it is, forgive me, the need for a review or the
- 17 12-month review, and your indication was that was a
- 18 good thing, I believe. And, some of the things I think
- 19 were talked about were the impact on competition, is
- 20 that correct?
- 21 A. That's one of them, yes.
- 22 Q. How would we or how do you plan to measure that? How
- 23 would we know if it's having a negative impact on
- 24 competition?

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- 1 Q. I guess that's my question. So, I know, in the
- 2 Commissioners' earlier order, we talked about "gaming
- 3 could have a negative impact on PSNH", if I remember
- 4 correctly. Is some gaming okay, though? Is that not
- 5 just competition?
- 6 A. Well, you know, some people might look at one customer
- 7 moving back and forth as "gaming", and others might
- 8 just think it's a customer taking advantage of
- 9 opportunities in the marketplace. So, you know,
- 10 whether it's good or bad, I think, if something is done
- 11 in a way where it becomes detrimental in one way or
- 12 another, but you really have to look at -- I think it's
- 13 hard to paint all customer movement with the same
- 14 brush, and say "well, all this movement back and forth
- 15 is "gaming"." Different customers will move for
- 16 different reasons.
- 17 Q. So, the proposal is for a 36-month pilot. What do you
- 18 see as the -- you know, at the end of the day, what
- 19 does this do for the utility? Where do we end up at
- 20 the end of this?
- 21 A. Well, I think, one of the things that's going to have
- 22 to be assessed is, you know, how's this working? Is it
- 23 providing benefit to other customers? You also have to
- 24 look at, you know, what kind of impacts is it having on

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1 the competitive market? And, should it continue?
 2 Should it be revised further? You know, there's going
 3 to be -- there can be a lot of changes between now and
 4 the end of 36 months that could impact this proposal
 5 one way or another. So, I think what it provides is a
 6 way to reassess everything and say "Okay. Now, knowing
 7 what we know, and having this track record of customers
 8 that took service under ADE, and how long they stayed?
 9 You know, what the impacts were or weren't, I think
 10 would just provide a good assessment of all of that.
 11 Q. At the end of the day, isn't the Default Service rate
 12 going to determine all of that at the end of the day,
 13 as far as migration and what competitive suppliers are
 14 doing?
 15 A. Well, that's -- and that's one indicator, and it's
 16 basically the relationship of the Default Service price
 17 to what the market price is and what competitive
 18 suppliers are offering.
 19 CMSR. SCOTT: Okay. Thank you. That's
 20 all I have.
 21 CHAIRMAN IGNATIUS: Thank you. A few
 22 more questions.
 23 BY CHAIRMAN IGNATIUS:
 24 Q. Mr. Mullen, looking at the Settlement Agreement, there
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1 basis.
 2 Q. So, in both cases, you're forecasting -- using
 3 forecasted numbers. And, then, at what point do you
 4 analyze actuals?
 5 A. That all gets done through the DE reconciliation
 6 process. Any revenue from the adder, from this rate,
 7 gets incorporated into the DE reconciliation. That's
 8 done on an annual basis.
 9 Q. And, the Rate ADE doesn't get adjusted on the basis of
 10 actuals, actuals could tell you whether the rate --
 11 whether the class should be closed -- whether the rate
 12 should be closed?
 13 A. No. The rate should be -- whether the rate is closed
 14 or not depends on the marginal costs and the forecast
 15 of marginal costs, looked at on a monthly basis each
 16 year, compared to what the forecast for those
 17 particular months was at the beginning of the process.
 18 Q. You're right. I was wrong. So, it's comparing an
 19 earlier set of forecasts against a more current set of
 20 forecasts?
 21 A. Correct.
 22 Q. So, there's no reconciliation for Rate ADE as we think
 23 of it in Rate DE?
 24 A. Correct.
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1 are a few just mechanical questions I want to be sure I
 2 understand. And, following in the order that they
 3 appear, if you turn first to Page 6.
 4 A. I'm there.
 5 Q. Section 2.3.1 requires "forecasting of marginal costs".
 6 Then, 2.3.2, addressing the adder, to include
 7 "non-operating costs of the Scrubber". It doesn't say
 8 if it's "forecasted" or "actual". What's anticipated
 9 there?
 10 A. That is going to be done in the same manner as PSNH's
 11 Energy Service rate is calculated. Let me see if I can
 12 refer you to -- for example, if you look at Exhibit 7,
 13 which is PSNH's April 27th testimony.
 14 Q. I'm sorry, which exhibit?
 15 A. Exhibit 7.
 16 Q. And, did you give us a page yet or no?
 17 A. I did not. And, it's one of the attachments at the
 18 very back. It's Attachment 5, which is a three-page
 19 attachment.
 20 Q. All right.
 21 A. If you look at that, you can see that, say on Line 19,
 22 it says "Total Forecasted Merrimack Scrubber
 23 Non-Operating Cost", then you have "Forecasted Retail
 24 Megawatt-Hour Sales". So, it's done on a prospective
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1 Q. All right. Going back to the Settlement Agreement,
 2 Section 2.3.3, at the bottom of Page 6, I think maybe
 3 what we were just talking about. Just describe, give
 4 me maybe a little more explanation of how that 2.3.3
 5 provision would operate.
 6 A. Yes. As we just discussed, on a monthly basis, PSNH
 7 will take a look at its forecasted marginal costs, and
 8 compare those to the prices that were used when the
 9 rate -- the annual rate was set at the beginning of the
 10 process. So, for instance, when you get to the 15th
 11 day of February, PSNH will provide a forecast for the
 12 remaining period of March through December, assuming
 13 this goes into effect on January 1st. And, it will
 14 compare those forecasted marginal prices to the
 15 forecasted marginal prices for the months of March
 16 through December that were included in its annual
 17 forecast at the beginning of the process. To the
 18 extent that the new forecasts -- new forecasted
 19 marginal prices are more than 75 percent of the adder,
 20 then the rate could be closed.
 21 Q. And, if you don't hit that 75 percent trigger, you'll
 22 just be looking at comparison of the forecast used for
 23 the start of the program to what the more updated
 24 forecasts are for the completion, the remaining months
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1 of the program?

2 A. Right. And, the rate would remain open, if you did not

3 hit the 75 percent trigger.

4 Q. And, as you get closer to the -- to December, assuming

5 it started January 1st, you'd be comparing fewer months

6 forecast to the original forecasted levels?

7 A. Yes.

8 Q. So, let's assume that's all in place. You get to the

9 following January 1st, the second year for Rate ADE.

10 How is the rate set?

11 A. And, that is set on an annual basis. And, that would

12 be done, again, they would look at a 12-month calendar

13 year, assuming it goes into effect January 1st,

14 forecast the prices for the year, calculation for the

15 Scrubber adder.

16 Q. Is there a docket open, parties to intervene, to

17 evaluate all of that, or is it more of a sort of

18 compliance filing, in your anticipation?

19 A. I believe that would be done through a docket process.

20 Q. So, that would have to come in some number of months

21 before January 1st, --

22 A. Yes.

23 Q. -- in order to be through the process and a resolution?

24 A. Yes. And, I'm just trying to refresh my memory on
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1 decision-making process.

2 Q. Also, on the very top of that page, it actually begins

3 on the bottom of Page 4, is the provisions that allow

4 someone to come in and out of service under ADE that

5 Mr. Rodier was asking you about. Tell me if I have

6 this right. There is an eligibility requirement to get

7 involved in the program in the first instance. So, the

8 12 months consecutive service from a competitive

9 supplier, correct?

10 A. Correct.

11 Q. Once you're eligible and a customer opts to get into

12 ADE, leave the competitive supplier and get in on ADE,

13 they can come and go without any consecutive periods of

14 time, as long as they don't go more than -- they don't

15 go a full 12 months off the program. But, if they go

16 in and out every month or a few months, that's okay?

17 A. If they go back to competitive supply for a period of

18 less than 12 consecutive months, and the term of

19 service, whether it be 24 months or 12 months, would

20 continue -- that clock will continue to run. If they

21 go back to competitive supply for a period of more than

22 12 -- at least 12 consecutive months, and they were to

23 come back to Rate ADE, they would start a new clock.

24 Q. What's the logic of requiring a full 12 months to be
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1 here. It would be set at the same time that the price

2 on the Rate DE is set, and that's discussed in

3 Section 2.2.3.

4 Q. So, although it doesn't say a deadline for the Company

5 to make a filing, there will have to be something, if

6 this were approved, as a setup, would have to set some

7 dates for filing of a proposed Rate ADE?

8 A. Yes.

9 Q. In the provision just above that, I had forgotten to

10 ask you about that one, so, I'm glad you flipped back

11 to it. What's the reason for a nine month delay for

12 implementation for smaller customers?

13 A. That is for PSNH to get its computer systems to allow

14 for those changes to those rate classes.

15 Q. Do you anticipate the marketing efforts at the

16 beginning of the program would be designed to include

17 those that, although they can't yet take it, would be

18 aware of how it's going to play out?

19 A. I would assume so, yes. Because it would, even though

20 somebody might not be eligible for nine months from

21 now, until nine months from now, to the extent that

22 they were to make some decisions about whether to stay

23 on Default Service or go to competitive supply in the

24 interim, I think that could help inform their
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1 eligible for the program, full 12 months off of PSNH's

2 service in order to be eligible? But, once they're in

3 the program, they're able to come and go?

4 A. Well, I think it's, you know, it's -- if you were to

5 keep them -- if you were to restrict them from going

6 back to the competitive market, I think then that

7 certainly could be viewed as "anti-competitive",

8 because now you're restricting what option they

9 previously had even under Default Service.

10 Q. Can you explain that?

11 A. Well, under Default Service, they're free to leave and

12 go to the competitive supply. If somebody were to

13 return to PSNH and be served under ADE, and said "oh,

14 by the way, you're now -- you have to take this rate,

15 you can't go back to competitive supply", that -- I'm

16 sure that would be viewed as "anti-competitive".

17 Q. But what about if you were to allow someone to come

18 back on the service, and if they decide to leave again

19 and go back to a competitive supplier, why not have

20 another eligibility period before they can return to

21 ADE?

22 A. Well, you do, and that's, again, the 12 months.

23 Q. Well, maybe I'm misunderstanding. I thought we were

24 saying that, once you've met the eligibility test and
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1 you opt for ADE, you could stay on it for a few months,
2 and then leave, and come back in a few months after
3 that. And, so, there's no corollary to the 12-month
4 eligibility period once you're in the program. If
5 you're out 12 months, then you reset that clock. But
6 you can come and go in the program for any reason you
7 may choose. And, what's the logic? If we think
8 there's a good reason for requiring a 12-month
9 eligibility period to initially get in the program, why
10 is it no longer important that someone stay put for a
11 while under ADE?

12 A. Well, again, then I think you'd be limiting options
13 that they currently have now to come and go under
14 regular Default Service. So, this is not to be more
15 restrictive than what currently exists.

16 Q. If you turn to Page 8 of the Settlement Agreement, it
17 calls for, in Section 2.4.3, that, at least three
18 months prior to the end of the pilot period, PSNH will
19 have an obligation to make a request to extend or
20 modify or terminate the rate. Is three months adequate
21 time for people to be able to evaluate the program,
22 make sense of its success or lack of success, and
23 whether any modifications should be made or whether it
24 should even be terminated at that point?

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1 A. For the Default Service reconciliation dockets?

2 Q. Yes.

3 A. Those come in on an annual basis. And, there's not a
4 set time it has to be resolved by. Because, if you
5 recall, we also look at operation of PSNH's plants and
6 outages and all sorts of things, and that takes some
7 time to go through. As a result of those
8 reconciliation dockets, there isn't a rate adjustment
9 at that time. But any adjustments through the
10 reconciliation process take place through the Default
11 Service rate-setting process independent of the
12 reconciliation.

13 Q. How long does the Default Service rate-setting time
14 from filing to our general track record on when the
15 rate changes go into effect?

16 A. The rate is initially set on an annual basis, and it
17 usually comes in during the month of September. And,
18 then, we have hearings in December, for a rate on
19 January 1st. Then, we have a mid-year review, that
20 information is filed around the middle of May for a
21 July 1st rate change.

22 Q. Earlier this afternoon you were asked, I think by Mr.
23 Fossum, that "could the Rate ADE be terminated if few
24 or no customers take it?" And, you said "yes, that's

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1 A. Well, I think, if you go back to the beginning of
2 Section 2.4, on Page 7, in 2.4.1 and 2.4.2, it
3 describes other reports PSNH is going to be filing,
4 either monthly or annually, about activity in the rate,
5 number of kilowatt-hours served, difference between the
6 revenue received and marginal costs. So, I think
7 there's going to be a lot of information filed in the
8 interim, prior to that three-month filing, that would
9 allow for people having a good idea even before that
10 filing comes in.

11 Q. And, that's a good point, if people are evaluating
12 what's being generated regularly over the course of the
13 pilot. But, then, the three-month period is really
14 when the Commission process kicks in to put it out
15 through an adjudicative process for review and parties'
16 participation. You think three months will work?

17 A. I think it's certainly doable. I mean, it wouldn't be
18 a new thing, as it is today. So, you know, I think
19 there would be a decent track record, in terms of
20 what's happened over time. And, that I think -- it
21 says "at least three months", too. So, I mean, it
22 could come in sooner than that.

23 Q. The time period for the reconciliation dockets is -- is
24 it more like six months?

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1 correct." Is there a provision in the Settlement
2 Agreement that says that that I've missed?

3 A. I believe there is. And, now, you've tested me with
4 finding it. Yes. On Page 4, Section 2.2. The last
5 sentence says that "Nothing in this agreement shall be
6 construed to limit the authority of the Commission to
7 terminate this rate prior to the end of the 36-month
8 pilot period."

9 CHAIRMAN IGNATIUS: All right. Thank
10 you. That's it for questions from me. But, Commissioner
11 Harrington, another question?

12 CMSR. HARRINGTON: Yes. Just still
13 trying to maybe just follow this moving in and out thing,
14 to make sure I've got it correct.

15 BY CMSR. HARRINGTON:

16 Q. I think I understand you have to be with a competitive
17 supplier for 12 months before you're eligible for Rate
18 ADE, that's correct?

19 A. At least 12 months.

20 Q. At least 12 months. Once you meet that, you are then
21 able to come back to Public Service and get the ADA
22 rate?

23 A. ADE, yes.

24 Q. ADE rate. And, then, you could take that for two

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1 months, and then go back to a competitive supplier for
 2 two months, and come back and get the ADE rate again?
 3 A. Yes.
 4 Q. And, is there any -- there was some other clock
 5 involved in that. How does that work? You just keep
 6 switching every two months?
 7 A. You could do that. And, then, your term of service,
 8 whether it be 12 months or 24 months, would continue to
 9 run. The only time that that clock would be reset is
 10 if you went back to competitive supply for a period of
 11 at least 12 consecutive months.
 12 Q. So, you could do this back and forth for up to that
 13 term of service, let's just say it's 12 months, and
 14 then, if you stayed with Public Service, you'd go to
 15 the DE rates, or you could go back to a competitive
 16 supplier?
 17 A. Once your term of service runs out, --
 18 Q. Yes.
 19 A. -- if you stayed with PSNH, you would be assigned to
 20 Rate DE.
 21 Q. Okay. Fine. That helps. Thank you. Now, one final
 22 question. Has there been any analysis done on this? I
 23 mean, it appears what we're doing is putting out a
 24 proposal, and, you know, as stated by yourself and in
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1 A. Well, otherwise would be using competitive suppliers
 2 or, without this rate, would be served under DE.
 3 Q. Okay. And, is there -- this is what I'm trying to get
 4 at. Do we have any numbers? I mean, how many
 5 customers that have left Public Service, that are on
 6 some competitive supplier now, how many would have to
 7 come back to make this program successful, because, I
 8 mean, was there any estimate? Do we need a thousand
 9 customers? Twenty thousand customers?
 10 A. I'm not aware of any analysis on that. But, one way to
 11 look at it is, any customers that are served under this
 12 rate would provide -- any revenue from them would
 13 provide some benefit that isn't currently there.
 14 Q. Okay. And, after the 12-month clock or whatever period
 15 of time runs out, then they have the option of being
 16 assigned to Default -- just the regular Default Service
 17 rate or going back to a competitive supplier. And, I'm
 18 assuming no analysis has been done for that. Because,
 19 in other words, if this thing worked fairly well, you'd
 20 get people coming back. And, if it was, as
 21 Commissioner Scott pointed out, most rational people
 22 are not going to say "well, I can get a", making up a
 23 number, "a 10 percent rate increase by going with ADA
 24 -- ADE rates, go back to Public Service. I'll just
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1 various letters, filings here, it's -- the idea is to
 2 help the DE customers, I mean, it's to mitigate some of
 3 the costs that they're seeing. So, in order for that
 4 to happen, someone just doing a loop, you know, if they
 5 were a DE customer, they became a competitive supplier
 6 customer, they came back to ADA [ADE?], that really
 7 didn't -- they have to get them back, you still haven't
 8 created any more customers for Public Service that way,
 9 you just stayed even. So, presumably, you're going to
 10 have to get customers that would otherwise not come
 11 back to use this ADE rate. So, if you bring customers
 12 back, then I guess you're saying, because you're
 13 covering the marginal cost of power, plus the adder,
 14 each customer will be paying that adder, and that's an
 15 extra source of revenue that they would get -- Public
 16 Service wouldn't receive otherwise, is that correct?
 17 A. That's an extra source of revenue that would get
 18 applied to the benefit of other Default Service
 19 customers.
 20 Q. Okay. But that's where the benefit of the program
 21 comes from, is bringing back people who otherwise would
 22 be using competitive suppliers?
 23 A. Yes.
 24 Q. Okay.
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1 stay with the competitive supplier." And, if their
 2 rates were lower than the competitive supplier, then
 3 people would come back. Presumably, they're -- I guess
 4 the best case would be that it would be lower than the
 5 regular Default Service rates, but lower than the
 6 competitive supplier, that would induce people to come
 7 back, take the ADE rates, which would bring in the
 8 extra revenue. But, after 12 months, they lose that.
 9 So, then, they're looking at Default Service rates
 10 versus competitive supplier rates. So, chances are,
 11 they're going to make the same decision they made six
 12 months -- or, two years ago, whenever they first left,
 13 and say "well, that's still lower, so I'm going to go
 14 back and do that again." So, now, there's no more
 15 benefit from this program for that -- at least for
 16 those people. So, has there been any analysis of how
 17 this works in equilibrium, when you're going to have
 18 this constant flow of, if the rate attracts people in,
 19 at the end of a year, it's more than likely going to
 20 have them go back to where they came from?
 21 A. Well, there's a lot of scenarios in your question. I
 22 can tell you, I haven't performed that analysis. And,
 23 I can't speak for the Company or anyone else in this
 24 room as to whether they have performed any such
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1 analysis.
 2 Q. But you haven't seen any?
 3 A. I have not.
 4 CMSR. HARRINGTON: Okay. Thank you.
 5 CHAIRMAN IGNATIUS: Thank you. Ms.
 6 Amidon, do you have redirect?
 7 MS. AMIDON: No, I don't. Thank you.
 8 CHAIRMAN IGNATIUS: All right. Then,
 9 you're excused, Mr. Mullen. Thank you. Let's take a
 10 break for ten minutes, let's say 3:15, to resume with
 11 Mr. Fromuth.
 12 (Recess taken at 3:02 p.m. and the
 13 hearing resumed at 3:18 p.m.)
 14 CHAIRMAN IGNATIUS: We're back on the
 15 record. Mr. Fromuth, I think you are up next. Are you
 16 ready, Mr. Rodier?
 17 MR. RODIER: Yes, we are. And, if we
 18 could have the witness sworn here, before we takes a seat,
 19 that would be good.
 20 (Whereupon August G. Fromuth was duly
 21 sworn by the Court Reporter.)
 22 MR. RODIER: May I?
 23 CHAIRMAN IGNATIUS: Please.
 24 AUGUST G. FROMUTH, SWORN
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1 BY MR. RODIER:
 2 Q. Mr. Fromuth, a couple of introductory questions. Let
 3 me first just very quickly go to so-called "Freedom
 4 Energy Logistics". Does the providence of Freedom
 5 Energy Logistics, does that go back to the mid '90s or
 6 earlier?
 7 A. Yes.
 8 Q. And, briefly, the signature accomplishment at that
 9 point was the obtaining a decision from the New
 10 Hampshire Supreme Court that basically said there's no
 11 exclusive franchise for utilities, is that right?
 12 A. That's correct.
 13 Q. Okay. And, one other thing about Freedom, did you
 14 pioneer the market in New England for MPEUs?
 15 A. Yes, I did.
 16 Q. And, what's an "MPEU"?
 17 A. It's a "Market Participant End User". It's an entity
 18 that can take power directly from the Grid, from the
 19 Power Pool, by conforming to some entry requirements
 20 and other stair-step items that it must clear with the
 21 various states in which it's located.
 22 Q. Is there anybody we've heard of that you can mention
 23 here today to give an example of an MPEU?
 24 A. Yes. We have a number in New Hampshire that are --
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1 DIRECT EXAMINATION
 2 BY MR. RODIER:
 3 Q. Mr. Fromuth, did you prefile some testimony in this
 4 proceeding?
 5 A. I did.
 6 Q. Do you have a copy of it with you?
 7 A. I do.
 8 Q. Is there any errors or anything in there that you would
 9 want to correct at this point? Or does it look --
 10 A. No, it's fine.
 11 Q. It's still accurate, okay. And, it's true and accurate
 12 to the best of your information, knowledge and belief
 13 today, right?
 14 A. It is.
 15 MR. RODIER: Okay. Madam Chairman,
 16 could I have that marked for identification please?
 17 CHAIRMAN IGNATIUS: Yes. That would be
 18 "Exhibit 16".
 19 MS. DENO: Yes.
 20 (The document, as described, was
 21 herewith marked as Exhibit 16 for
 22 identification.)
 23 MR. RODIER: Okay. Thank you. Does
 24 anybody need a copy?
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1 have a commercial relationship with the Power Pool
 2 directly, and don't operate with any kind of a supplier
 3 middleman, including Saint Anselm's College, High Liner
 4 Foods, the Manchester Union Leader.
 5 Q. Okay. And, do you provide services to them, managing
 6 their accounts?
 7 A. We do. We schedule and coordinate their power for
 8 them.
 9 Q. Okay. Now, I just want to ask you about one of the
 10 other companies that you're CEO, PNE Energy Supplier.
 11 That's sort of a newcomer to the market, would you say?
 12 A. Yes. That's a competitive energy provider.
 13 Q. And, you're testifying on behalf of PNE here today, is
 14 that right?
 15 A. That's correct.
 16 Q. And, was PNE the first company to market to residential
 17 customers in New Hampshire?
 18 A. Indirectly, PNE was -- is a source of supply for an
 19 aggregator, Resident Power, that was the first to
 20 aggregate households, to combine them to sell power to
 21 households.
 22 Q. Okay. So, and that's one of your companies as well,
 23 Resident?
 24 A. Right.
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1 Q. And, working, not exclusively, but working with PNE,
2 they were the first to market with a residential
3 offering in New Hampshire?

4 A. That's correct.

5 Q. Okay. Now, what I want to -- hmm, just trying to --
6 oh. The only other thing in a preliminary I want to
7 ask you is are you active in NEPOOL and ISO-New
8 England?

9 A. Yes.

10 Q. And, what's your capacity with NEPOOL?

11 CHAIRMAN IGNATIUS: Mr. Rodier, before
12 you go on, I'm a little concerned.

13 MR. RODIER: Yes.

14 CHAIRMAN IGNATIUS: As far as I can
15 tell, none of this is in the prefiled testimony. The
16 whole point of prefiled is for everyone to have an
17 opportunity to review and ask discovery questions. It's
18 interesting information, but, if it wasn't important
19 enough to put in the prefiled, why are we going into it
20 now?

21 MR. RODIER: Well, madam Chairman, I
22 think it is, on the top of Page 1, isn't it? It talks
23 about "MPEUs", talks about "Freedom Logistics", talks
24 about how "Mr. Fromuth is Vice Chairman of NEPOOL, Chair
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1 them back. And, it will frustrate, I think, almost ten
2 years of marketplace advancement and increased
3 sophistication to have, as the saying goes, the
4 900-pound gorilla re-enter the market with an offering
5 price that will be, obviously, well below where they
6 are right now, or where they will be after the first of
7 the year, according to their forecast. And, my concern
8 is that this will redirect folks away from the notion
9 that they should be, on the whole, migrating away from
10 being dependent upon standard offer service or default
11 energy service. And, they retreat from essentially
12 what's been public policy in New Hampshire for more
13 than a decade, through, I think, three gubernatorial
14 terms, obviously, ten years of PUC rulings, and
15 investment in this state, by not just my firm, but
16 many, many others that have come into this state and
17 have built customer books that are substantial for one
18 reason, and that's because the price advantage to
19 customers for doing so has been evident.

20 My view is that Public Service is, in
21 many respects, acting like a competitive energy
22 provider by undertaking this rate class. And,
23 throughout their testimony, they haven't shied away
24 from the notion that the idea here is to lure customers
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1 of the End User Sector." I'm just trying to establish his
2 -- refresh the Commission's mind, you know, his
3 credentials. And, I'm almost through. And, certainly, if
4 that's your wish, that we move on, we're going to move on.

5 CHAIRMAN IGNATIUS: Well, we need -- we
6 have.

7 MR. RODIER: Okay. I agree.

8 CHAIRMAN IGNATIUS: -- not a lot of time

9 left. And, we're to focus on the issues --

10 MR. RODIER: I agree.

11 CHAIRMAN IGNATIUS: -- of his testimony
12 regarding ADE. So, --

13 MR. RODIER: So, we'll do that.

14 CHAIRMAN IGNATIUS: Thank you.

15 BY MR. RODIER:

16 Q. Mr. Fromuth, would you please summarize your testimony.

17 A. My testimony focuses on the fact that the offering
18 before the Commission of Rate ADE is, in our view,
19 anti-competitive. It will injure the marketplace from
20 the standpoint of creating, not just confusion, but it
21 will create the perception and, obviously, which is
22 tied very much to the reality, that PSNH is seeking to
23 have customers return to the host utility, with an
24 offering price that's an inducement to do so to lure
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1 back into the fold, so that they can -- so they can
2 gain revenue that would then be applied to the
3 activities that they have described. That's all well
4 and good, but it does completely -- causes a complete
5 juxtaposition of what the role -- I thought the role
6 was of the host utility, which is to be a prior of
7 default service, and not to be and actively campaign to
8 bring new business back to its supply.

9 MR. RODIER: That's all we have, madam
10 Chairman. Are you through, Mr. Fromuth? Is that your
11 summary?

12 WITNESS FROMUTH: Yes, that is my
13 summary.

14 MR. RODIER: Okay.

15 CHAIRMAN IGNATIUS: Thank you.

16 MR. RODIER: You're welcome.

17 CHAIRMAN IGNATIUS: I don't know if
18 there was any discussion of order of witnesses -- I mean,
19 excuse me, order of cross. If not, I think we should
20 first take the non-settling parties, which really is RESA,
21 and then go to the settling parties. So, Ms. Miranda?

22 MS. MIRANDA: Thank you. Good
23 afternoon, Mr. Fromuth.

24 WITNESS FROMUTH: Good afternoon.
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CROSS-EXAMINATION

1
 2 BY MS. MIRANDA:
 3 Q. Wouldn't you agree that, when customers have accurate
 4 price signals, they can make better choices about their
 5 energy use and management?
 6 A. Yes.
 7 Q. And, the most accurate price signal that a customer can
 8 receive is the actual price they're paying for a
 9 particular power at a particular time of day or month,
 10 correct?
 11 A. Correct.
 12 Q. And, PSNH is planning to base Rate ADE on a forecast of
 13 pricing for up to a year in advance, is that correct?
 14 A. That's my understanding.
 15 Q. And, when customers have accurate price signals, can
 16 they use those accurate price signals to make
 17 conservation decisions and energy efficiency decisions
 18 about their power?
 19 A. Yes.
 20 Q. And, if the price during the month of August is
 21 artificially low, customers don't have a reason to
 22 conserve energy in August, for instance, is that
 23 correct?
 24 A. That's correct.

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1 A. That's right.
 2 Q. And, typically, when an introductory rate is provided,
 3 the customer is also told what the rate will be after
 4 the introductory rate expires, is that correct?
 5 A. I'm sorry, could you repeat that.
 6 Q. Assuming a customer takes an introductory rate from a
 7 competitive supplier, do they typically know at the end
 8 of the introductory period what their rate will be or
 9 how that rate will be calculated?
 10 A. Yes, they do.
 11 Q. Thank you. When PSNH proposed its original Rate ADE,
 12 that was rejected by the Commission. Are you familiar
 13 with that?
 14 A. A bit.
 15 Q. And, in that, in that original proposal, they proposed
 16 to adjust rates two times per year, is that correct, in
 17 January and July?
 18 A. That's my recollection.
 19 Q. And, now, they're proposing only to adjust the rates
 20 once per year, is that correct?
 21 A. That's right.
 22 MS. MIRANDA: Thank you. I have no
 23 further questions.
 24 CHAIRMAN IGNATIUS: Thank you. Mr.

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1 Q. You were here on the first day of the hearing, correct?
 2 A. I was.
 3 Q. And, did you hear PSNH testify that Rate ADE is no
 4 different than introductory rates from competitive
 5 suppliers?
 6 A. I believe I did.
 7 Q. And, when a customer is considering an introductory
 8 rate from a competitive supplier, they aren't required
 9 to -- typically aren't required to be on, for instance,
 10 Rate DE from PSNH for some period of time, is that
 11 correct?
 12 A. No.
 13 Q. That's not correct?
 14 A. You are correct. They are not required to have that
 15 preface to their deal, right.
 16 Q. And, they're not required to determine how long they
 17 were on a particular rate from PSNH, for instance,
 18 before being eligible for an introductory rate, is that
 19 correct?
 20 A. That is correct.
 21 Q. And, they're not typically required to understand how
 22 long they were with another competitive supplier before
 23 they are eligible to take an introductory rate from a
 24 competitive supplier, is that correct?

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1 Fossum.
 2 MR. FOSSUM: Thank you.
 3 BY MR. FOSSUM:
 4 Q. Mr. Fromuth, I'd like to begin by understanding your
 5 role exactly. Your -- the first page of your testimony
 6 states that you're the "Managing Director of Freedom
 7 Logistics, and CEO of PNE", is that correct?
 8 A. That's correct.
 9 Q. And, earlier in this docket, Freedom Logistics had
 10 petitioned to intervene as a joint petition with
 11 Halifax American Energy Company. Are aware of that?
 12 A. I believe so, yes.
 13 Q. And, in response to Mr. Rodier's question, you
 14 testified that you're here only on behalf of PNE today,
 15 is that correct?
 16 A. That's right.
 17 Q. So, as the Managing Director of Freedom Logistics, do
 18 you have authority to speak for that entity?
 19 A. Yes, I do.
 20 Q. Does Freedom have a position that's different from PNE?
 21 A. No.
 22 Q. So, would it be fair to say that the positions that
 23 Freedom has taken at various stages of this docket
 24 would be the same as PNE would have taken had PNE been

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1 the entity asserting those positions?
 2 A. Correct.
 3 Q. And, would the same also be the case for Halifax
 4 American Energy Company?
 5 A. Yes.
 6 Q. Thank you. Do you have a copy of your testimony with
 7 you?
 8 A. I do.
 9 Q. Would you turn to the bottom of Page 2 of your
 10 testimony please. Now, in the paragraph at the bottom
 11 numbered "1", your testimony states: "The purpose of
 12 RSA 374-F is to "harness the power of competitive
 13 markets"." Did I read that accurately?
 14 A. Yes, you did.
 15 Q. And, you have a footnote there that attributes that
 16 quotation to "RSA 374-F:1, I". Is that also correct?
 17 A. I believe that -- yes. That's right, yes.
 18 Q. Isn't it true that RSA 374-F:1, I, actually begins by
 19 stating "The most compelling reason to restructure the
 20 New Hampshire electric utility industry is to reduce
 21 costs for all consumers of electricity"?
 22 A. Well, I don't have the cite here, so I can't react to
 23 that.
 24 Q. I'm happy to provide you with a copy of the statute, if
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1 five six, the seventh line down in the version that
 2 I've handed to you, does that read that "increased
 3 customer choice and the development of competitive
 4 markets for wholesale and retail are key elements of a
 5 restructured industry"? Does it begin with that
 6 phrase?
 7 A. It does.
 8 Q. So, you would agree then -- do you agree then with the
 9 statute -- do you agree with the statement then that
 10 "increased customer choice is a key element in the
 11 restructured industry"?
 12 A. I would. And, this is the same statute, I believe,
 13 that also prescribed for the divestiture of all of
 14 PSNH's generating assets, which, as we all know, has
 15 not yet transpired. So, there's a number of aspects to
 16 the statute that are relevant today, and some that were
 17 not fulfilled.
 18 Q. Yes, I understand. I was just asking whether you
 19 agreed that "increased customer choice is", as the
 20 statute says, "a key element of a restructured
 21 industry"?
 22 A. It does say that.
 23 Q. Thank you. Returning to your testimony, near the
 24 bottom of Page 3, you state that Rate ADE is a
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1 you'd like to read it?
 2 A. Sure.
 3 MR. FOSSUM: May I approach?
 4 CHAIRMAN IGNATIUS: Please.
 5 (Atty. Fossum handing book to the
 6 witness.)
 7 BY MR. FOSSUM:
 8 Q. So, I would restate my question. Does RSA 374-F:1, I,
 9 actually begin with the phrase "The most compelling
 10 reason to restructure the New Hampshire electric
 11 utility industry is to reduce costs for all consumers
 12 of electricity"?
 13 A. It does.
 14 Q. Thank you. So, would you agree that the actual purpose
 15 of RSA Chapter 374-F is to reduce costs for all
 16 consumers of electricity?
 17 A. Well, it certainly is one of the stated purposes, yes.
 18 Q. Now, if the Commission were to approve Rate ADE, would
 19 any customer be forced to take Rate ADE?
 20 A. No.
 21 Q. Would Rate ADE provide another option to customers for
 22 their consideration?
 23 A. It would.
 24 Q. Now, in RSA 374-F:1, I, about one, two, three, four,
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1 "discounted default service rate", do you see that?
 2 MR. RODIER: I think you have to be a
 3 little more specific, madam Chairman. Even I'm having a
 4 little trouble finding it.
 5 CHAIRMAN IGNATIUS: Yes. I haven't
 6 found it either.
 7 MR. FOSSUM: I apologize. There's no
 8 line numbers, so -- yes. The very last line in the main
 9 text on Page 3.
 10 CMSR. HARRINGTON: Is this under "A.
 11 Issues with respect to RSA 374-F"?
 12 MR. FOSSUM: Yes. So, directly above
 13 where the footnotes begin, the very last line -- the last
 14 two lines state about "the design of Rate ADE", and "PSNH
 15 is proposing...a discounted default service rate", in the
 16 last line there.
 17 BY THE WITNESS:
 18 A. Well, the line that I am reading from here, which I
 19 think is geographically where you are, it says: "The
 20 design of Rate ADE PSNH is proposing to take on the
 21 role of a competitive supplier by means of offering a
 22 discounted default service rate targeted to customers
 23 who have migrated to competitive suppliers." Is that
 24 where you are?
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1 Q. Yes. And, it was the characterization of "a discounted
 2 default service rate". Now, as we've read, the very
 3 first words of RSA 374-F indicate that "the most
 4 compelling reason to restructure the industry is to
 5 reduce all costs." So, wouldn't a rate reducing costs
 6 meet that compelling reason?
 7 A. The marketplace that is anticipated by the
 8 restructuring statute is one in which the players in
 9 the marketplace were to be competitive providers, and
 10 that the PSNH's role would sunset as a supplier. That
 11 was the idea 10 or 12 years ago, and here is where we
 12 are today. We're talking about re-entering Public
 13 Service into the marketplace with a newer rate, a lower
 14 rate as of today, and it takes on all the appearances
 15 of a competitive energy provider.
 16 Q. Okay. Thank you. On the next page of your testimony,
 17 on Page 4, there's a section of your testimony, letter
 18 "A" there, and there is, in the third paragraph under
 19 letter "A", your testimony states: "There cannot be
 20 two very different definitions under RSA 369-B for the
 21 term "actual costs"; one based on booked costs", and
 22 then, in parentheses, "(Rated DE), and then the other
 23 based upon estimated marginal costs", and then, in
 24 parentheses, "(Rate ADE)." Did I read that accurately?
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1 CHAIRMAN IGNATIUS: I think it's a
 2 question of what the "aren't" was qualifying.
 3 MR. RODIER: Oh. I'm sorry.
 4 CHAIRMAN IGNATIUS: But why don't you go
 5 ahead and rephrase the question Mr. Fossum.
 6 BY MR. FOSSUM:
 7 Q. In your testimony, it seems to state that "actual costs
 8 are booked costs", and that "Rate DE is based on booked
 9 costs", which are actual costs, but that there is
 10 another cost, marginal costs, that are not permitted to
 11 be included under the term "actual" costs. Is that
 12 correct?
 13 A. The marginal cost is a cost that is not included under
 14 the booked costs, that's right.
 15 Q. So, I guess to phrase it very simply, is marginal cost
 16 an actual cost?
 17 MR. RODIER: That question has been
 18 answered at least twice already.
 19 CHAIRMAN IGNATIUS: No, I'd like to hear
 20 the answer.
 21 MR. RODIER: Okay.
 22 WITNESS FROMUTH: Your question is what
 23 again?
 24 BY MR. FOSSUM:
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1 A. You did.
 2 Q. Is it your testimony that marginal cost is not an
 3 actual cost?
 4 A. No.
 5 Q. In the very next sentence of your testimony, it reads
 6 "An "actual" cost is a booked cost as utilized in the
 7 calculation of Rate DE for over ten years." Did I read
 8 that accurately?
 9 A. You did.
 10 Q. So, does your testimony say that "an actual cost is a
 11 booked cost"? Is that an accurate characterization of
 12 your testimony there?
 13 A. That is what is said, yes.
 14 Q. So, is it your testimony then that marginal costs are
 15 not actual costs?
 16 A. No, it is not.
 17 Q. Then, perhaps you could help me understand why your
 18 testimony states that "actual cost is a booked cost"
 19 and that marginal costs are not. That I don't -- could
 20 you explain that apparent inconsistency?
 21 MR. RODIER: Excuse me. That
 22 mischaracterizes his testimony. He says "actual costs
 23 are". He's saying -- the question was "tell me why they
 24 aren't?"
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1 Q. Are marginal costs an actual cost?
 2 A. Marginal costs are an actual cost, certainly.
 3 Q. Thank you.
 4 A. They're incurred costs.
 5 Q. Turning to Page 5 of your testimony, in the third
 6 paragraph under section, the V, "Summary and
 7 Conclusion". That third paragraph states: "Moreover,
 8 the PUC does not appear to have any authority to
 9 implement a default service option to encourage
 10 long-term use of default service." Is that correct?
 11 A. That's what it says, yes.
 12 Q. Now, do you still have the statute book in front of
 13 you?
 14 A. I do.
 15 Q. Could you turn to RSA 374-F:3, V, please. And, more
 16 specifically, to subpart (d), 80 percent of the way
 17 down the page. Now, that section reads: "The
 18 commission should establish transition and default
 19 service appropriate to the particular circumstances of
 20 each jurisdictional utility." Did I read that
 21 accurately?
 22 A. You did.
 23 Q. So, the Commission has the -- would you agree that the
 24 Commission has the authority to establish default
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1 service appropriate to the particular circumstances of
 2 PSNH?
 3 A. It would certainly make reference to that here, yes.
 4 Q. Thank you. And, I apologize. Going back a couple of
 5 pages in your testimony, and I apologize, to Page 3.
 6 At the very top of the page, the paragraph numbered
 7 "2". The testimony states that "By law, Default
 8 Service means electricity supply that is available to
 9 retail customers who are otherwise without an
 10 electricity supplier." Did I read that accurately?
 11 A. Yes.
 12 Q. To the best of your knowledge, does the law provide any
 13 reason for a customer to be "otherwise without a
 14 supplier"?
 15 A. Does the law provide any what?
 16 Q. Any reason for a customer to be "otherwise without a
 17 supplier"?
 18 A. I'm not sure I understand what your question is.
 19 Q. Well, could you turn please to RSA 374-F:2, Paragraph
 20 I-a, under "Definitions". There it defines "Default
 21 Service" to mean "electricity supply that is available
 22 to retail customers who are otherwise without an
 23 electricity supplier and are ineligible for transition
 24 service." Is there anything in there that asks why a
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1 isn't your characterization of PSNH's belief, in fact,
 2 accurate, and not erroneous?
 3 A. Well, I think that PSNH's belief is erroneous, because
 4 I view their position is based upon a sense of what the
 5 market is -- is or is not offering. And, their view of
 6 the market behavior, with respect to what will happen
 7 as a consequence of introduction of ADE, that is
 8 erroneous. And, they're portraying this as being a
 9 choice that does not exist currently. And, my argument
 10 is that it very much does exist currently.
 11 Q. Could you point me to where that is spelled out in your
 12 testimony?
 13 A. Well, I think it's spelled out throughout my testimony,
 14 but I'm opining on it right now. I'm not citing a
 15 particular statement in the testimony. I'm simply
 16 elaborating on what I already said in writing.
 17 Q. In your direct, you testified that you believe "Rate
 18 ADE would be anti-competitive", is that accurate?
 19 A. Yes.
 20 Q. If a new competitor, a new competitive supplier entered
 21 the market tomorrow, say, with prices set exactly at
 22 the same level as PSNH's, would that be harmful to
 23 competition?
 24 A. No.
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1 customer is "otherwise without an electricity
 2 supplier"?
 3 A. In other words, the circumstances of why they don't
 4 have one is not explored, is that what your point is?
 5 Q. Yes. That's what I'm asking.
 6 A. Right. That's what -- that doesn't address that, no.
 7 Q. So, is it possible that a customer could be without a
 8 supplier for pretty much any reason?
 9 A. Yes. There are all sorts of reasons.
 10 Q. Could it be that the customer doesn't want a supplier?
 11 A. It could very well be that, yes.
 12 Q. Could it be that a customer, for example, might have
 13 poor credit, and that no supplier would be willing to
 14 offer service to them?
 15 A. True.
 16 Q. Now, back to your testimony on Page 3, in the first
 17 paragraph under "A", the second to last sentence, it
 18 reads: "PSNH erroneously believes that default service
 19 is for any customers who, for whatever reason, elect
 20 not to have a competitive supplier supply their
 21 energy." Did I read that accurately?
 22 A. You did.
 23 Q. So, because -- since a customer, as we've just
 24 discussed, could be without a supplier for any reason,
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1 Q. If that new competitor offered prices below those
 2 offered by PSNH, would that be harmful to competition?
 3 A. No.
 4 Q. So, in your opinion, it's only because it's PSNH making
 5 this offering that is harmful to competition?
 6 A. Well, what goes into making a rate offer, a price offer
 7 by a competitive supplier, is not just merely the
 8 construct of that rate. That rate has to be arrived at
 9 through careful calculations of what the costs are that
 10 go into the rate. Not just the energy, but all the
 11 other aspects of it. Plus, to offer the rate and to
 12 promote it, a competitive provider has to spend a great
 13 deal of resources to broadcast that rate offering and
 14 has to put it out in the marketplace. So, all of those
 15 add up to a war chest that a competitive provider must
 16 have to essentially offer -- successfully offer a rate
 17 inducement to the market and get people to enroll.
 18 In the case of PSNH, I think we've heard
 19 here today, on the first day, that there really isn't
 20 any value that's been assigned to the marketing budget
 21 of PSNH, which we know is immense from past
 22 disclosures. And, in the case with my company, whereas
 23 sometimes we spend as much as \$10,000 a month on
 24 marketing and putting information out into the media,
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1 we could find ourselves having to double down or triple
 2 down or spend enormous sums just to keep up with the
 3 fact that PSNH, which, as you know, has very, very
 4 expansive resources, would be able to spend --
 5 Q. Mr. Fromuth, I --
 6 A. -- at a much higher rate than we could.
 7 Q. I apologize for interrupting. I asked a relatively
 8 simple, straightforward question. Is your belief that
 9 this is "anti-competitive", is that based upon the fact
 10 that it's being offered by PSNH?
 11 A. Based upon the fact that it's being offered by a
 12 company with a very, very large deep pocket, and the
 13 ability to go and market a product that may not be
 14 successful financially, but may have other objectives.
 15 Q. So, is the answer "yes"?
 16 A. Yes, it is.
 17 Q. So, is it your testimony then that the relative
 18 financial strength of the competitor has something to
 19 do with whether they have a competitive offering? Or
 20 that whether their competitive offering would be
 21 anti-competitive, I'm sorry?
 22 A. Well, let's be clear. The offering that's being
 23 proposed by PSNH has a cost basis to it, which they,
 24 obviously, detailed for us, plus it has a marginal
 {DE 11-216} [Day 2] {11-26-12}

1 objective. So, that's an unfair advantage posed by
 2 PSNH's entry into this market with this rate.
 3 Q. Well, I want to follow up, I guess, on two things.
 4 First, you said that other companies entering have a
 5 profit motive and a desire to return money to
 6 shareholders that PSNH does not have. Is that an
 7 accurate summary of what you -- at least one portion of
 8 what you said?
 9 A. Yes. Because I was comparing the offering, if it was
 10 coming from a private company, as you pointed out,
 11 versus PSNH. So, in that isolated instance, that is a
 12 very, very great advantage for PSNH and a disadvantage
 13 for the private actor.
 14 Q. Would a "private actor", as you describe it, with
 15 substantial funding from some source, coming into New
 16 Hampshire and offering prices at or below what PSNH is
 17 offering, would that be anti-competitive?
 18 A. No. That's the case today with many companies.
 19 MR. FOSSUM: Thank you. I have nothing
 20 further.
 21 CHAIRMAN IGNATIUS: Thank you.
 22 Ms. Chamberlin, questions?
 23 MS. CHAMBERLIN: I have no questions.
 24 CHAIRMAN IGNATIUS: Ms. Amidon?
 {DE 11-216} [Day 2] {11-26-12}

1 element that's going to be fully allocated to the
 2 operation or the retirement of the Scrubber costs.
 3 In a competitive market environment,
 4 while we don't have to worry about Scrubber costs, we
 5 have to worry about profit margin, we have to worry
 6 about cost of capital, we have to worry about labor, we
 7 have to worry about the O&A of operating a business.
 8 So, all of those things must go into the cost of our
 9 recovery in a price, none of which have I heard is a
 10 consideration for Public Service. Plus, we have to
 11 have a profit margin to return to our investors; also
 12 not a concern of Public Service.
 13 Q. Okay. I was merely asking a follow-up on your prior
 14 testimony that you gave just a few minutes ago, having
 15 to do with the relatively financial strength of a
 16 company. And, I understood your testimony to be that,
 17 because PSNH has, as you put it, I believe, "deep
 18 pockets", that is a problem that may be
 19 anti-competitive. Is that accurate?
 20 A. Well, it's also -- it's also the equivalent of, say, an
 21 entity coming in that does not have a profit objective,
 22 but merely a market share objective or a cost recovery
 23 objective, coming into the market, and competing with
 24 other companies. Every other company has a profit
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1 MS. AMIDON: We have nothing.
 2 CHAIRMAN IGNATIUS: All right.
 3 Questions from the Commissioners? Commissioner
 4 Harrington.
 5 CMSR. HARRINGTON: Yes. I've got a few
 6 questions.
 7 BY CMSR. HARRINGTON:
 8 Q. On -- I'm not quite as organized, so, I'll be jumping
 9 around your testimony a little bit more. On Page 4, in
 10 the middle of the page, there was a lot of discussion
 11 of actual costs versus booked costs and so forth. And,
 12 I had read this slightly different, I guess. I thought
 13 what you were implying here is that, in the case of the
 14 DE rate, that it was based on the actual booked costs
 15 versus the estimated marginal costs for the ADE rate.
 16 And, that the major difference was one was an actual
 17 and one was an estimated cost, is that correct?
 18 A. Yes. That's a much better flowing characterization
 19 than I had in there.
 20 Q. Okay. I just wanted to make sure on that. And, going
 21 along that paragraph a little lower, it says:
 22 "Moreover, PSNH's proposed calculation of Rate ADE
 23 admittedly does not contain any costs for marketing,
 24 outreach", etcetera, etcetera. And, so, again, if I'm
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1 reading this correctly, what you're saying is, because
 2 the administration, promotional materials, marketing,
 3 *etcetera*, are not in the ADE rate, then that rate
 4 cannot be an actual cost, because it's missing some
 5 actual costs?
 6 A. That's correct.
 7 Q. Oh. Well, while we're on that particular page,
 8 something that I thought was -- right at the beginning
 9 of Paragraph A, the first paragraph -- under "A", I
 10 should say, it says concluding "moreover, PSNH must
 11 supply all default service Rates DE and ADE in the
 12 first instance from its own generation assets." Can
 13 you elaborate on that statement? What does the "first
 14 instance" mean? Is it before buying power someplace
 15 else?
 16 A. Well, before resorting to market purchases, they first
 17 draw down all available power from their own
 18 generation.
 19 Q. So, I'm trying to get this straight. So, if the cost
 20 of running, say, the Merrimack plant is higher than the
 21 real-time price for buying power in the ISO market,
 22 they run the plant nonetheless, rather than buying it
 23 cheaper?
 24 A. Well, Commissioner, I'm not aware of what the practices
 {DE 11-216} [Day 2] {11-26-12}

1 "Introduction", you quote from a PUC docket. And, on
 2 the third line it says -- it talks about "residential
 3 and smaller commercial customers who have little choice
 4 but to remain on Energy Service even as market price
 5 fluctuations above and below Energy Service rates."
 6 Would you say that that statement is no longer true
 7 then? That there are choices?
 8 A. I'm looking here for -- to look at your cite.
 9 Q. Yes. But it's --
 10 A. Right. And, the choice is much more expansive now than
 11 when first written.
 12 Q. Okay. And, there was a lot of discussion on what meant
 13 competition, what was good for competition and what
 14 wasn't. And, there was talk about, if an entity was --
 15 had deep pockets or a lot of financial resources, would
 16 that be good or bad for how they -- whether they were
 17 considered competitive or not. And, you seem to be
 18 saying that Public Service is not competitive as, let's
 19 say, some other independent non-public utility that
 20 came in to sell electricity in New Hampshire, because
 21 of their -- and this is the part I'm trying to get, is
 22 it because of their rate structure? Or, is it because
 23 they're a public utility that has -- you know, is a
 24 cost of service basis, as compared to another company
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1 are on a daily basis by PSNH. But it's my, on my
 2 information and belief, that they generally operate the
 3 power plants when there is, obviously, both regulatory
 4 and economic financial reasons for doing so. In the
 5 scenario that you pose, I actually don't know what
 6 would be the internal policy.
 7 Q. Okay. Fair enough. Thank you. Looking at 374-F:2,
 8 and it talks about ""default service" means electricity
 9 supply that is available to retail customers who are
 10 otherwise without an electricity supplier and are
 11 ineligible for transition service." Do you agree with
 12 Mr. Mullen, that there is nobody in New Hampshire that
 13 is otherwise without an opportunity to at least select
 14 an electric supplier now?
 15 A. The abundance of providers out there means that there
 16 is virtually a provider for everybody. And, if
 17 somebody in his example, and now that I've had it to
 18 think about it, was -- had less than desirable credit,
 19 then there would probably be an arrangement that could
 20 be made to satisfy the credit concerns of the provider,
 21 to enable that customer to participate in a non-PSNH
 22 source of energy.
 23 Q. Okay. And, kind of going along with this availability
 24 of options, on Page 1 of your testimony, under
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1 that doesn't have that?
 2 A. Well, first of all, the disadvantage that I posed was
 3 one where, certainly, there are companies here in the
 4 state who probably have the financial wherewithal and
 5 the strength of Public Service just on a value
 6 measurement. The problem I have with is the other end
 7 of that transaction. Which is that those companies are
 8 here for one reason only, and that is that they see an
 9 opportunity to make a profit in serving this market.
 10 Without that opportunity, of course, they would
 11 redirect their efforts elsewhere.
 12 The question on the table, though, is
 13 "does Public Service have that same motivation?" And,
 14 I'm submitting that they don't. And that, without a
 15 profit motivation, without a return on that
 16 transaction, that goes into the profit bucket, then
 17 that is a -- that basically is a -- well, it submerges
 18 the market, because what it does is it puts into the
 19 marketplace a player of significant financial strength,
 20 that has the wherewithal to do these transactions, but
 21 whose objectives are not to make a profit, but to
 22 retire the cost of an investment that has caused them
 23 to look for other ways to do so, other than the
 24 traditional mechanism. So, that is a much different
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1 set of motivations. It's almost a public policy
 2 motivation, not a private market motivation. And, that
 3 makes for a very, very screwed up marketplace.
 4 Q. And, you said in the beginning of your testimony here,
 5 sort of like a mini-resumé, you've been involved in
 6 competitive power supply for sometime, and in a number
 7 of states. That's correct?
 8 A. Yes, sir.
 9 Q. Okay. Now, we've also discussed previously that the
 10 proposed ADE rate would be approximately seven cents a
 11 kilowatt-hour. What will -- if that rate were to be
 12 out there and were available to people, what effect
 13 would that have on competitive suppliers in New
 14 Hampshire?
 15 A. Well, we have looked at this. And, we think that the
 16 competitive marketplace would have, as a result,
 17 pressures that would cause other marketers, whose rates
 18 are higher than seven cents, obviously, to have to go
 19 and calibrate themselves against that benchmark rate.
 20 Now, that in and of itself is a calculation that each
 21 one of these marketers must do on their own. The
 22 problem with the whole structure of the rate is that,
 23 in every case, the private competitive energy providers
 24 will be factoring in a profit margin of some value to
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1 have a very, very good handle on how some of the
 2 non-energy costs are priced by Public Service. We know
 3 what they are, because we have independent sources.
 4 But, Public Service, for instance, will price capacity
 5 charges to a particular end-user at a rate that's much
 6 different than what we think that capacity charge ought
 7 to be. So, we have some -- we feel we have a
 8 disadvantage there, because PSNH can have capacity
 9 charges associated with a single account, that is less
 10 than what we would price that capacity charge at, then
 11 there is another source of pricing disadvantage for us
 12 that would become much more striking under this
 13 scenario.
 14 Q. So, you -- I guess it sounds like you're saying their
 15 method of coming up with this marginal cost to provide
 16 full requirements, plus an adder, is on a completely
 17 different basis than a competitive supplier would be
 18 doing it?
 19 A. It very well could be.
 20 CMSR. HARRINGTON: Okay. All right.
 21 Thank you. That's all the questions I have.
 22 CHAIRMAN IGNATIUS: Thank you
 23 Commissioner Scott.
 24 CMSR. SCOTT: Good afternoon.
 {DE 11-216} [Day 2] {11-26-12}

1 compete with the random seven cents that we're talking
 2 about. That is not a factor that goes into PSNH's
 3 equation. So, therefore, at the beginning of the day,
 4 when the number is set, everybody has to have a rate
 5 that's below PSNH, but it does include a profit margin.
 6 And, since the rate has been said to have been
 7 benchmarked against what the forward price curve is in
 8 the marketplace, it's hard for me to see how, over
 9 time, competitive energy providers could successfully
 10 and continually realize a margin, if continually
 11 pressed to price against PSNH's value of what the
 12 forward market is telling them.
 13 Q. And, the costs that that -- the ADE is made up of is
 14 the marginal going-forward cost, I think was the term,
 15 marginal cost to provide full requirements of service,
 16 plus an adder. Now, is that marginal cost to provide
 17 full requirements, is that basically the same cost that
 18 competitive suppliers could go out and buy electricity
 19 for?
 20 A. Well, that is a question that I don't have the answer
 21 to, Commissioner. Because, in our business, we
 22 obviously have a -- assert the same look, forward look
 23 at prices in the energy market that everybody else in
 24 the trade does. But what we don't have is we don't
 {DE 11-216} [Day 2] {11-26-12}

1 WITNESS FROMUTH: Good afternoon.
 2 BY CMSR. SCOTT:
 3 Q. Okay. I'm going to re-ask, I think, something you've
 4 already answered, I apologize, from Commissioner
 5 Harrington, but just a clarification. So, if the ADE
 6 is implemented, and, again, we've been talking about
 7 seven cents, is your -- is it correct, effectively, you
 8 were suggesting that the competitive electric suppliers
 9 would then adjust their prices to accommodate that
 10 price?
 11 A. Well, with Rate ADE going into force at that level,
 12 then your price levels, of course, with competitive
 13 providers would have to respond to that and to maintain
 14 some pricing advantage to their -- either their
 15 incumbent customers or future customers, because,
 16 without a pricing advantage, there really isn't any
 17 relevance in the marketplace for competitive providers.
 18 Q. Thank you. And, do you agree that the availability of
 19 an ADE, lower than the DE, could create a windfall for
 20 the competitive electric providers? Is that a
 21 potential scenario, at least in the short term?
 22 A. I think the windfall scenario is one in which people
 23 flock to competitive providers, so they can put in
 24 their time to become eligible for the ADE. I'm not a
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1 really big believer in that. I think that that all
 2 depends upon how well publicized the ADE rate is by
 3 Public Service. That's a concern that I've got.
 4 Because, if they're going to put it forward, they need
 5 to do, obviously, something to get the word out. And,
 6 that could consist of a major media campaign, it could
 7 consist of sending out their flock of key account reps
 8 to pedal it to their markets. It's very, very
 9 ambiguous right now, because they have not assigned any
 10 value to it, nor have they said what their plan is.
 11 But any time you're coming into this market, whether
 12 you're a brand new entrant, or you're one that's been
 13 around for a while, you have to put a lot of resources
 14 into promoting your product, and making sure that
 15 there's an distinction understood by the marketplace as
 16 to what you're offering. So, if PSNH is going to break
 17 new ground here, which, of course, they are, then
 18 they're going to have to make sure that it is well
 19 publicized that they're doing so. And, that is a --
 20 and the effect of that will be it's hard to measure
 21 today, until we know what the scale that's going to be.
 22 Q. Thank you. If, in the scenario that, again, the ADE is
 23 in effect, and, as a competitive supplier, you start to
 24 lose customers to that Alternative Default Service, is
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1 presumably, they would wait till their contracts
 2 lapsed, and then they would have to have the
 3 information that this was a choice. The fact that it's
 4 a choice may not be provided to them by their
 5 competitive provider, for obvious reasons. So, there
 6 would have to be some sort of an advisement given them
 7 by PSNH that this was going to take place. PSNH, to my
 8 knowledge, has no information, independent information
 9 as to what the duration of independent customer
 10 contracts are. So, they would have to do a random
 11 notification on an ongoing basis to do this to make
 12 folks aware of it. I think that, so, it would take
 13 some time, a considerable amount of time for this to
 14 come home to roost, because then you have a delay, in
 15 terms of how this information is filed, accumulated,
 16 and reported. And, the impact over time certainly
 17 could be seen in a way that perhaps your migration
 18 reports now reveal what's going on with more
 19 specificity. But I think that my concern is that, by
 20 the time that information reached this body, some
 21 serious damage could be done, and the market could be
 22 -- the market could be distorted by, frankly,
 23 artificially low prices.
 24 Q. Is the -- is 36 months enough time to see that result,
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1 there anything that would prevent you from implementing
 2 a similar program, for somebody who was a PNE customer,
 3 and they wish to come back, they get a lower rate. Is
 4 that a possibility or does that make sense?
 5 A. Well, it does make sense. But my problem would be that
 6 I would -- I have to clear all my costs, then I would
 7 also have to clear some sort of a margin to justify the
 8 offering. And, in that respect, I'm not competing on a
 9 level playing field with PSNH.
 10 Q. Thank you. You may recall, when Mr. Mullen was here, I
 11 was asking him some questions regarding the annual
 12 review. And, maybe you could help me out. One of the
 13 things, assuming we went down this road, is we would
 14 want to be looking at anti-competitive impacts of ADE.
 15 Do you have any suggestions on, if we went down that --
 16 if we were to do that, how would we measure that? How
 17 would we know that's happening? Are there some metrics
 18 we could use?
 19 A. Well, I think that, from an absolute numerical
 20 standpoint, it would be important to quantify both the
 21 number of customers and their size that had undertaken
 22 this migration back to ADE from a competitive supplier.
 23 Most customers who are engaged in a competitive
 24 supplier relationship are under contract. So,
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1 that negative result?
 2 A. Well, I think 36 months is plenty of time to see that
 3 result. But it's also probably enough time to have
 4 some harm done to the competitive market that can't be
 5 reversed. What I'm focusing on, basically, is that the
 6 market has matured and has come a long way in ten
 7 years, with basically the helping hand of public
 8 policy, which has not reversed itself. This would be a
 9 situation in which it would be -- created a great
 10 amount of uncertainty, because then private consumers
 11 of electricity would always be of the mind that, rather
 12 than being told to migrate away from Public Service,
 13 which was what the initial intention was, I thought.
 14 They're being induced to come back. And, obviously,
 15 there being induced to come back with the Commission
 16 blessing that action.
 17 So, I think it creates a very, very
 18 distorted and confused marketplace, where, to date,
 19 we've had a single-minded marketplace directionally, in
 20 the direction of more competition, welcoming more
 21 entrants into the market. And, I think that one thing
 22 that could possibly happen would be that marketers, if
 23 they weren't successful and saw a lot of migration,
 24 might pick up and leave and go elsewhere where this
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1 wasn't going on.
 2 CMSR. SCOTT: Thank you. That's it.
 3 CHAIRMAN IGNATIUS: Thank you.
 4 BY CHAIRMAN IGNATIUS:
 5 Q. Mr. Fromuth, you've a couple of times referred to the
 6 difference between companies like yours and PSNH, that
 7 you had investors, you had people you had to answer to,
 8 regarding profit for their investment. But PSNH also
 9 has shareholders, does it not?
 10 A. True.
 11 Q. So, is the difference, in your mind, that some of the
 12 other costs of PSNH's operations are being picked up
 13 through the standard Default Service rate, and that
 14 dropping some of those costs out of the ADA rate -- ADE
 15 rate -- you've got me doing it now -- the ADE rate is
 16 what's unfair?
 17 A. Well, my simple understanding of this, and I'm
 18 certainly open to being clarified, is that there is no
 19 revenue that would be forthcoming from the ADE rate
 20 that would be to the benefit of stockholders. So, it's
 21 essentially a -- hard-wired to simply be a recovery of
 22 costs that have been already expended. And, if there's
 23 an effort to try and find a way to bring those costs
 24 back in to recover the spend on the Scrubber.
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1 A. Well, my experience in a number of other states is that
 2 there is a trajectory that the other states are on, to
 3 a large degree. In which there is a point in the
 4 future, at some point, the hope is that there will be a
 5 end to the process of floating a standard offer. And,
 6 that all customers will eventually find a competitive
 7 provider for whom then we'll will supply their energy.
 8 That, obviously, has a model that harkens back to 15,
 9 20, 25 years ago with telecom. And that, of course,
 10 was something that you had to hasten on us, I say
 11 "you", I mean the Commission, had to hasten in many
 12 states because they had to go and sort of set up a --
 13 sort of a forced exit, if you will, from the host
 14 utility. And, when folks didn't respond to that, then
 15 they were simply migrated over to random suppliers, who
 16 were -- obviously, met a certain standard in the state.
 17 And, they took them on. And, at the same time as
 18 taking them on, they were, in some measure, guaranteed
 19 that the poor credit folks would pay their bills for a
 20 period of time. That is not a bad example, in my view,
 21 to what could be applied here. Now that we've got
 22 companies out there that are proving themselves, the
 23 concept is no longer innovative or new. It's in place,
 24 and it's operating, I think, in some 14 or 15 states.
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1 And, my comparison to that is that, when
 2 you have, obviously, a market that is full of folks,
 3 like myself, who have investors that have set up these
 4 businesses to do this, then there's a whole different
 5 metric involved in accounting for the return on one's
 6 investment. And, I don't feel that that's the case
 7 with Public Service, as it is for the private players
 8 that are in the market.
 9 Q. You understand that the opening of this docket grew out
 10 of concerns raised in a prior docket addressing
 11 customer migration, that there was an increasingly
 12 small pool of customers left to absorb all of the fixed
 13 costs of the Company, correct?
 14 A. Yes.
 15 Q. And that, if competitive offerings continued to grow,
 16 as we've hoped that they do, that problem would be
 17 exacerbated, correct?
 18 A. Yes.
 19 Q. Do you have any experience in the other states you've
 20 worked in or your knowledge of the industry of how to
 21 get through the transition that we're seeing here, in a
 22 way that's both good for competition, with some
 23 mindfulness of the realities of those customers who are
 24 left with fewer and fewer of them to share those costs?
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1 That could be the way in which the credentials of those
 2 companies could be verified and ascertained. And, some
 3 standard could be applied to make sure that they were
 4 all equipped to take on migrated customers. And, the
 5 incumbent utilities all settled into a role of being a
 6 sort of pipes and wires outfit only.
 7 Another mechanism that I think is a fair
 8 one, is that, when folks leave a competitive provider,
 9 and go back to the host utility, and that largely is
 10 done for reasons of price, and price alone. Then, that
 11 should not be something that is done without a cost to
 12 that customer. And, that customer could be induced to
 13 either rethink that move, by having to pay a re-entry
 14 fee to the host utility, or to pay a per kilowatt-hour
 15 rate in excess of the normalized rate for the duration
 16 of the time that they were back with the utility.
 17 In this state, it's largely a non-cost
 18 event, in fact, it's a cost advantage for many
 19 customers to return to the host when the price is
 20 advantageous to do so, if they have a contract open
 21 they can do that. That, to me, seems to be also a
 22 reversal of a good common sense policy, because, if the
 23 intent is to move customers into a total relationship,
 24 without looking back to the host utility, a total
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1 relationship where they're buying their power from a
2 competitive provider, then there should be a
3 disincentive to go back to the host. And, I know it's
4 referred to as "gaming" here. But, you know, whether
5 it's pejorative or not, it goes on. And, I think that
6 that's a process that someone should be assessed a
7 cost, and, probably, appropriately, it should be the
8 customer.

9 Q. You mentioned a moment ago that there were -- I wrote
10 down 14 or 15 states, I think you were saying that are
11 in "some form of this transition", is that what you
12 were saying?

13 A. That's correct. Yes.

14 Q. Do you happen to know if any of them are in the
15 situation we are in New Hampshire, where we have
16 something of a hybrid, of movement to competitive
17 supply for some of our electric utilities, and not
18 taking that step for PSNH through the Legislature?

19 A. I'm pretty familiar with the other scenarios in the
20 other states. And, I have to say, this is a very
21 unique situation.

22 CHAIRMAN IGNATIUS: All right. I have
23 no other questions. I have a million questions, but I
24 have no other questions now. Thank you. Appreciate it.
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1 don't know if people could stay a bit late to be able to
2 work our way around the room. And, you know, if we were
3 able to finish by 5:00, is that -- would that work for
4 everyone? We've got a conference call starting at 5:00.
5 So, we would have to end by then. And, we've got a court
6 reporter who can't go on forever.

7 Let's go off the record.

8 (Brief off-the-record discussion
9 ensued.)

10 CHAIRMAN IGNATIUS: All right. Then,
11 we're back on the record. We will now then go to closing
12 arguments. And, we'll stay a bit late to be able to
13 finish by 5:00, when we have another commitment. If
14 people can try to limit their remarks to 5-7 minutes, that
15 would be helpful, in order to give a chance for everyone
16 to have an opportunity.

17 Because, although it's not a total
18 Settlement, it's a Partial Settlement, I think what I'd
19 like to do is have the non-settling parties go first, then
20 have the settling parties bearing the burden to go last.

21 So, I'd begin either with Mr. Rodier or
22 Ms. Miranda, I don't care between the two, if you have a
23 preference among yourselves?

24 MR. RODIER: May Mr. Fromuth come back?
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1 Any redirect, Mr. Rodier?

2 MR. RODIER: Well, there's a lot of
3 things I'd like to do, madam Chairman. But, in view of
4 the hour, *etcetera, etcetera*, I'm very happy to just drop
5 it right here.

6 CHAIRMAN IGNATIUS: All right. Then,
7 you're excused. Thank you, Mr. Fromuth. Well, actually,
8 you can sit there while we figure out what we're still
9 doing this afternoon. But you're done being a witness, so
10 you can relax.

11 We have no other witnesses, as far as I
12 know. Is there anyone I'm missing?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: Seeing nothing, then
15 do we have any procedural matters, other than addressing
16 the exhibits?

17 (No verbal response)

18 CHAIRMAN IGNATIUS: Is there any
19 objection to striking the identification of the exhibits
20 and making them full exhibits in the docket?

21 (No verbal response)

22 CHAIRMAN IGNATIUS: Seeing no objection,
23 then we'll do so. I had anticipated we would go to
24 closings, oral closings at this point. It's 4:20. I

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1 CHAIRMAN IGNATIUS: Oh, certainly.

2 MR. RODIER: Well, thank you very much.

3 I'm going to keep my comments very brief here. I really
4 think it's a well-trying issue, if you want to call it
5 that, I think. All the facts are out there. So, I just
6 want to kind of stick to the law. But I do want to begin
7 by pointing out that Mr. Estomin -- Dr. Estomin, or
8 whatever he is, he did say clearly that "Rate ADE is
9 antithetical to the basic premise of industry
10 restructuring." Now, we got a pilot program here that's
11 on a short-term leash, but this was a very capable
12 witness, and, you know, that was his view.

13 Mr. Fromuth did concede, this is *sui*
14 *generis*, this state. And, we acknowledge that, that it
15 sort of complicates things.

16 Now, one of the key issues is the
17 definition of "Default Service", which is -- it's
18 available if you would not otherwise be without a
19 supplier, migrating customers would not otherwise be
20 without a supplier. That's what default service is all
21 about. If you read RSA 374-F, I won't bother with the
22 cite. That's about provider-of-last-resort service, now
23 that's what default service is. Default service should be
24 designed to provide a safety net, to ensure universal

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1 access. That's what Default Service is. Is to make sure
 2 nobody goes without -- goes without electricity.
 3 To make my argument as brief as
 4 possible, I'm just saying that, in this case, with Rate
 5 ADE, how can you possibly say, when the purpose of ADE is
 6 to lure customers back to PSNH, that they're otherwise
 7 without a supplier. The customer has a supplier, they're
 8 going to leave them and go to Public Service. They have a
 9 supplier. This has got -- so, ADE has got nothing to do
 10 with one of the purposes of 374-F, which is safety net,
 11 universal access.

12 Now, I've always felt that Rate ADE
 13 encourages the long-term use of Default Service, which
 14 would be wrong, unlawful, to encourage long-term use of
 15 Default Service. In this case here, when we get this
 16 three year pilot program, I would have to concede that,
 17 probably premature or untimely maybe to push too hard on
 18 that, but, certainly, the statute is very clear. You
 19 know, it says you "may discourage" -- "may discourage
 20 misuse". There's nothing in there that says you may
 21 "encourage long-term use".

22 Now, one of the arguments here, halfway
 23 through already, Rate ADE does not include the operating
 24 costs of the Scrubber. 125-O:18 says "the costs of the
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1 boy, this is a really awkward citation, and I won't even
 2 give it, but it's in RSA 363-B:3, IV [369-B:3, IV?], "PSNH
 3 shall apply all" -- "shall supply all transition service
 4 and default service offered in its retail electric service
 5 territory from its generation assets and, if necessary,
 6 through supplemental power purchases." They are not --
 7 this is the law. They are not -- ADE is not being
 8 supplied through PSNH's generation assets.

9 Finally, one of the key points here is
 10 that there's been a couple of -- Commissioner Harrington
 11 raised this issue, and it came up again today, I think
 12 it's a fairly key aspect of this proceeding, where we've
 13 heard at least twice, maybe three times, that the law says
 14 that "as competitive markets develop, the Commission may
 15 approve alternate means of providing transition or default
 16 services." Let me continue. The Commission may do that.
 17 Which are designed to minimize customer risk, not unduly
 18 harm the development of competitive markets, and mitigate
 19 against price volatility. Those are what the purposes
 20 are. If you're going to do an alternate means here of
 21 providing default service, there's only three permissible
 22 purposes: Minimize customer risk, not unduly harm the
 23 development of competitive markets, and mitigate against
 24 price volatility. So, this is not an open-ended loophole
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1 Scrubber should be recovered", "must" or "shall be", it's
 2 mandatory, it "shall be recovered through Default Service
 3 rate". ADE is a Default Service rate. You've got to
 4 recover the costs of the Scrubber. That just doesn't mean
 5 non-operating costs, we don't have operating costs in
 6 there, because we'd have to do some allocations and
 7 analysis, okay? So, by law, I think the operating costs
 8 have to be included in that adder, as well as the
 9 non-operating costs.

10 Along the same line, there's nothing in
 11 there for the costs of marketing and implementation and
 12 promotion and customer service, and impact to customer
 13 service here I think is going to be large. I think
 14 there's going to be a lot of incoming calls. In any
 15 event, there is nothing in this rate, okay? And, I think
 16 that what it comes down to is the employees, they're not
 17 sitting around with nothing to do, I'm sure they're
 18 productively occupied. They're going to be transferred
 19 over to work on ADE, and they're going to be getting paid
 20 out of base rates. I think this is what Mr. Fromuth has
 21 in mind by saying, you know, this is really unfair. He's
 22 got to recover all of those costs, and Public Service
 23 isn't.

24 Two more things. The statute, the laws,
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1 that you can drive a truck through. There's very limited
 2 purposes for which you can have an alternative default
 3 service rate. Thank you.

4 CHAIRMAN IGNATIUS: Thank you.
 5 Ms. Miranda.

6 MS. MIRANDA: Thank you. PSNH's
 7 Alternative Default Energy rate is both inconsistent with
 8 this Commission's Order 25,230 [25,320?] and the
 9 restructuring act principles. In particular, in Order
 10 25,230 [25,320?], the Commission indicated that the
 11 alternative Alternative Default Energy rate that would be
 12 proposed by PSNH must be cost-based, non-discriminatory,
 13 and avoid an adverse effect on competition.

14 First of all, it is not cost-based.
 15 "Cost-based" is actual, prudent and reasonable costs.
 16 Well, what is the cost? PSNH testified that the marginal
 17 cost is the only cost associated with serving these
 18 customers. However, they're charging these customers for
 19 the non-operating costs of the Scrubber, a cost that they
 20 incur whether they have Rate ADE customers or not. So,
 21 it's not cost-based from that perspective. The cost
 22 associated with the Scrubber, as indicated today and
 23 earlier, is an embedded fixed cost, that applies whether
 24 there are ADE customers or not. And, it's just simply
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1 being reallocated to those customers. So, it's not
2 cost-based.

3 The costs associated with marketing and
4 outreach, modifying the billing system, tracking
5 customers, tracking costs, none of those costs are
6 included in Rate ADE. Now, PSNH argued "well, we're going
7 to use our current employees. So, there's really no added
8 cost." But every mailing that they send out, every piece
9 of media that they do with respect to providing
10 information to customers about Rate ADE is a cost they're
11 not currently incurring. In addition, there are the costs
12 associated with allocating current employees to use -- to
13 be providing marketing and administrative services for
14 Rate ADE that are not accounted for in the cost of Rate
15 ADE.

16 In addition, they're using an average
17 forecasted annual price. Forecast prices distort price
18 signals to customers. And, they do not provide accurate
19 price signals. In addition, at the last hearing day, PSNH
20 testified that they're basing Rate ADE on forward market
21 prices, but they're not making forward purchases. They're
22 purchasing on the spot market. So, that the forecast is
23 already going to be off, because they're basing that
24 forecast on something they're not even going to purchase,
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1 are paying different rates. All customers are eligible to
2 choose competitive suppliers, as was testified here today.
3 Why should customers, who remain on competitive supply for
4 11 months and 29 days, pay a different rate than those who
5 remain on competitive supply for 12 months and one day.
6 And, in fact, as the witness for the OCA testified, that
7 it was absolutely a non -- it was a discriminatory rate
8 that was being imposed.

9 Everyone seems to say "well, yes, we
10 understand there's potential negative effects on
11 competition. Yes, we understand that it's a potentially
12 discriminatory rate. But it's a pilot. So, you know,
13 three years from now you can figure out if there was
14 really a problem." Three years from now, as testified to
15 today, those effects on competition will be long-term
16 effects, where suppliers have exited the market, and you
17 will have difficulty bringing them back, if you ever can.

18 The last was that Order 25,230 [25,320?]
19 said that it should not have a negative effect on
20 competition. And, there will be negative customer choice
21 effects. The stated benefit to this Rate ADE by PSNH is
22 to mitigate migration. They have testified that it's
23 partly to reverse migration. There's no migration back
24 under today's circumstances, and the amount of the
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1 they're not making forward purchases.

2 There's a further distortion of the
3 price to customers through the reconciliations. First of
4 all, reconciliations in and of themselves distort the
5 price the customers receive. But, in this case, PSNH is
6 not even going to reconcile the costs to the customers
7 that created them. They're going to violate cost
8 causation principles and take costs associated with
9 forecasts, inaccurate forecasts, whether they be under
10 recoveries or over recoveries, and reconcile them back to
11 an entirely different customer base, the Rate DE
12 customers. Therefore, violating cost causation
13 principles. And, further distorting the price that
14 customers on Rate ADE are seeing from what the actual
15 price would be.

16 In addition to violating the cost
17 causation principles, inaccurate price signals distort
18 customer behavior. Customers react to the appropriate
19 price signal. If a customer is not given the appropriate
20 price signal, they can't make accurate energy conservation
21 and energy efficiency choices.

22 Order 25,230 [25,320?] also said that
23 the PSNH Alternative Default Energy rate had to be
24 non-discriminatory. However, similarly situated customers
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1 benefit, as Commissioner Harrington correctly pointed out
2 today, is largely dependent on the amount of load that
3 returns. If load doesn't return, there is no benefit.
4 So, the whole premise behind this is to reverse migration.
5 Therefore, by its very nature, it's going to have a
6 negative effect on customer choice.

7 In addition, as Attorney Rodier pointed
8 out, Default Service is the -- the restructuring act calls
9 for the discouragement of the long-term use of Default
10 Service. And, again, the thought is "Well, it's a pilot.
11 It's 36 months. Or, the customer can only remain on the
12 rate for 24 months. Therefore, there's really no
13 long-term use of Default Service."

14 However, if the long-term effects on
15 competition, permanent, irreversible effects on
16 competition are felt today, or over the time of this
17 pilot, and those suppliers don't return, what are the
18 customer's choice? The customer's choice then is
19 long-term use of Default Service.

20 In addition, it's an unnecessarily
21 complex process. As Exhibit 15 shows in the flow chart,
22 there are a variety of choices a customer has to make and
23 understand before they can determine the value of the
24 choice. Now, Section 374-F:3, III, says the customers are
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1 supposed to be provided "clear price information". And,
 2 PSNH claims that Rate ADE creates a new benchmark that
 3 will benefit the competitive market. But it's not really
 4 a benchmark if a customer doesn't know which rate it will
 5 be paying, so -- or how much that rate will be. So, when
 6 a customer is coming back or potentially deciding whether
 7 to leave a competitive supplier for PSNH, it has to figure
 8 out "was it on ADE previously? For how long? How long
 9 was it on competitive supply? Is Rate ADE open? If it is
 10 open, what is that rate?" If it's closed, then the
 11 customer actually has to know what Rate DE is, because
 12 that's where they're going first, and then understand what
 13 Rate ADE will be when it reopens in the future. So,
 14 there's not really a benchmark, because they won't know
 15 that pricing for a very long time potentially into the
 16 future.

17 And, PSNH also claims that it's the same
 18 as an interim rate from a supplier. And, as was testified
 19 here today, that is not true. Customers who are choosing
 20 an introductory rate from a supplier will -- are not
 21 required to stay out on PSNH service for some particular
 22 time, required to be on a competitive supply for some
 23 particular time. They know what rate they're going to be
 24 charged after the introductory rate is over. They just do
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1 the parties liked our witness and found him credible.
 2 And, I would say that it's on the basis of his testimony
 3 that the OCA entered into this Settlement Agreement.
 4 Residential customers will be better off under the terms
 5 of this Settlement Agreement than they would be without
 6 it.

7 It is important to note that this is a
 8 stopgap measure. We are not saying that this is a pure
 9 policy implementation that should go on for indefinitely.
 10 We have a situation where residential customers are the
 11 last to migrate. That's consistent everywhere that
 12 competition has been introduced. It's only recently,
 13 perhaps within a year, that residential customers have had
 14 any options at all. And, so, the fact that they have not
 15 switched has certainly not been their choice up to this
 16 point.

17 Now, all of the policy arguments that
 18 have been made today assume full information, a
 19 sophisticated customer, market analysis. This may be true
 20 for large industrial customers, it may be true for some
 21 small commercial customers; it simply is not true for
 22 residential customers.

23 Residential customers have been directed
 24 by law to be the source -- or, the default customers have
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1 not need to know as much information to make a decision
 2 about an introductory rate. And, lastly, the
 3 restructuring act, in particular Section 374-F:3, II, says
 4 that "customers should be responsible for the consequences
 5 of their choices."

6 However, through Rate ADE, what's
 7 happening is, DE customers, who decide not to make a
 8 choice, are benefiting from over recoveries from customers
 9 who do make a choice, and they're paying for under
 10 recoveries for those same customers. So, Rate DE
 11 customers are not taking the consequence of their own
 12 choice not to choose, and, to the extent ADE results in an
 13 under recovery, they're paying that cost, even though they
 14 chose not to go on competitive supply.

15 Thus, we ask that -- RESA asks that the
 16 Commission deny PSNH's request for approval of Rate ADE,
 17 not approve the Settlement Agreement that's been put
 18 forth, and send PSNH back to the drawing board, to come up
 19 with a alternative rate that is not counter to the
 20 restructuring act principles and satisfies the
 21 requirements of Order 25,230 [25,320?]. Thank you.

22 CHAIRMAN IGNATIUS: Thank you. Office
 23 of Consumer Advocate.

24 MS. CHAMBERLIN: Thank you. I'm glad
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1 been directed by law to be the source of recovery for
 2 these rather large fixed costs. That is not a policy that
 3 can withstand scrutiny. It happened over time, it
 4 happened through a coincidence of events, but it cannot
 5 last. And, I fully expect that actions will overtake this
 6 Rate ADE, that this will not be a permanent rate. This is
 7 simply something to put into place, protect customers,
 8 residential customers a little bit more during the
 9 transition. There needs to be a final settlement of these
 10 issues that is simply outside the purview of this
 11 particular case.

12 There was a Rate ADE that was proposed
 13 previously. The Commission had some concerns with it.
 14 This proposal addresses those concerns. I would be happy
 15 if this rate was very temporary, that we did other things
 16 that would move the market forward. But that takes time.
 17 There's regulatory lag. There's -- we have a new
 18 legislature coming in, a new governor, all sorts of things
 19 are going on. Whatever's going to happen is not going to
 20 happen as fast as January 1, which is when this rate will
 21 take effect. And, even if one customer takes it, for
 22 whatever reason, that's a little bit of a benefit to the
 23 residential customers, because they have not switched.

24 Now, it may, as Mr. Rodier has pointed
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1 out, cause residential customers to go get a supplier,
2 because they will now suddenly have knowledge about their
3 options that they didn't have before. It's not -- it
4 doesn't unduly burden competition. It is not a purely
5 competitive rate, as has been pointed out, but it's not an
6 undue burden to protect residential customers during the
7 transition. Thank you.

8 CHAIRMAN IGNATIUS: Thank you. Ms.
9 Amidon.

10 MS. AMIDON: Thank you. Staff
11 participated in the development of the Partial Settlement
12 Agreement. And, we believe it is a just and reasonable
13 resolution of the issues it addresses, and it is in the
14 public interest. We also believe that the Commission can
15 enact this rate pursuant to the authority to approve an
16 alternate means of providing default service, under RSA
17 374-F:3, V(e).

18 As you know the one issue that we
19 disagree is the -- with the Company is the term of service
20 for the rate. Staff recommends a 12-month term of service
21 for the myriad reasons it referred to in its testimony,
22 and I won't repeat them here. I will say, though, in
23 balance, we believe that the concerns we have that support
24 the 12-month term of service outweighs any rationale
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1 In response to the Commission's concern,
2 PSNH did offer redesigned Rate ADE. And, in its
3 testimony, Staff agreed that the adjustments provided by
4 -- proposed by PSNH, in fact, address the Commission's
5 concerns, and the OCA just a few months ago agreed.
6 Staff, the Company, the OCA presented a settlement of most
7 of the terms relevant to the implementation of Rate ADE,
8 in line with the revised proposal of the Commission,
9 subject to some minor amendments, and PSNH believes that
10 this Settlement presents a fair and reasonable means to
11 implement a new rate, and that the Settlement should be
12 affirmed.

13 As to the one issue outstanding under
14 the Settlement, the length of the term of service,
15 testimony presented, we believe, showed the 24-month term
16 is the more appropriate choice, because it effectively
17 balances the interests and benefiting customers remaining
18 on Rate DE, with the interest in recovering costs to
19 provide service. And, as Dr. Estomin testified, 24-month
20 term of service provides more benefits and prevents -- and
21 presents a term of service more attractive to customers.

22 The 12 months proposed by Staff, while
23 appealing, perhaps, insofar as it might sound right, is
24 simply too short to fully recognize the full benefits of
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1 advanced by the Company to support a 24-month term of
2 service. And, we request that the Commission approve our
3 recommended 12-month term of service. Thank you.

4 CHAIRMAN IGNATIUS: Thank you. Mr.
5 Fossum.

6 MR. FOSSUM: Thank you. The Commission
7 itself laid the groundwork for the proposal that was
8 presented by the Partial Settlement Agreement in this
9 docket. More than a year ago, in Order 25,256, in docket
10 DE 10-160, the Commission concluded, consistent with RSA
11 374-F, that it is "reasonable that PSNH be allowed to
12 charge customers who return to its Default Service an
13 alternative Default Service rate reflecting the marginal
14 cost to serve that load." The Commission then outlined
15 various considerations that would be accounted for in that
16 rate, and directed PSNH to file tariffs and supporting
17 documentation to support that rate.

18 Consistent with the directive of the
19 Commission and its conclusion that an alternative Default
20 Service rate for returning customers is reasonable, PSNH
21 presented its initial proposal for Rate ADE. However, not
22 agreeing with the first proposal for Rate ADE, the
23 Commission did reaffirm its earlier decision to require a
24 proposed alternative default rate.

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1 the rate.

2 As to the issues beyond the Settlement,
3 first, I did want to point out that there was a prior
4 motion to dismiss this filing, as contrary to various
5 provisions of RSA 374-F, RSA 369-B, and RSA 378, and the
6 Commission denied that motion. As noted in PSNH's
7 objection to that motion, this rate has been proposed
8 consistent with multiple Commission orders produced over
9 more than a year, and none of those orders have been the
10 subject of a motion for rehearing or appeal by those who
11 now seek to have the Commission discard it. The
12 Commission has consistently reaffirmed that it directed
13 PSNH to create this rate, and it should not now entertain
14 arguments, such as the one Mr. Rodier just made, that the
15 rate is unlawful on its face.

16 I'd also like to point out that the
17 adoption and implementation of the ADE is supported by the
18 restructuring law. RSA 374-F:1, as the Commission has
19 heard, states clearly that the most compelling reason to
20 restructure is to "reduce costs to customers". To the
21 extent that customers avail themselves of Rate ADE, will
22 be because they perceive it as beneficial to reducing
23 their costs. And, if customers perceive the rate is
24 beneficial and migrate to it, that migration may incent

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1 other suppliers to find a way of reducing costs to their
2 customers. In this way, Rate ADE will be directly serving
3 the purpose of the law, to reduce costs.

4 Importantly, customers are not required
5 to take or remain on Rate ADE, and may depart for
6 competitive supply, just as customers do on Rate DE. And,
7 if customers believe that there is a way to reduce their
8 costs by switching suppliers, they are still free to do
9 so. In this way provides another choice to customers, as
10 anticipated by the Legislature in RSA 374-F:3, II, where
11 it noted that "allowing customers to choose among
12 electricity suppliers will help ensure fully competitive
13 and innovative markets."

14 Further, customers returning to Rate ADE
15 would be contributing to PSNH's fixed costs and providing
16 a means to spread costs over a wider base of customers,
17 plus benefiting the customers who remain on Rate DE.

18 I would also point out that RSA 374-F
19 promotes the development of default service appropriate to
20 the circumstances of each utility. Rate ADE is another
21 option for customers to examine in determining their
22 energy needs, and allows PSNH to provide a default service
23 appropriate to its particular circumstances.

24 I would also note that, in the
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1 contract binding customers to ADD -- ADE, and no penalties
2 for returning to competitive supply. In such
3 circumstances, there is simply no perceptible harm to
4 competition, and it is just another offering in the
5 marketplace, and one that customers are free not to take.

6 For these reasons, we request the
7 Commission accept and approve the Partial Settlement
8 Agreement that was filed here, and set the term of service
9 at 24 months, and permit PSNH to implement the rate as
10 soon as possible.

11 CHAIRMAN IGNATIUS: Thank you. Thank
12 you for everyone's attention in providing very succinct
13 closings. We appreciate that after a long afternoon.
14 Unless there's anything further?

15 (No verbal response)

16 CHAIRMAN IGNATIUS: Seeing nothing from
17 my colleagues and from any parties, we will take all of
18 this under advisement, and issue an order as soon as we
19 can. Thank you. We're adjourned.

20 (Whereupon the hearing ended at 4:53
21 p.m.)

22
23
24 {DE 11-216} [Day 2] {11-26-12}

1 Commission's last order in this docket, it referenced
2 provisions of RSA 369-B:3, IV(b)(1) as applying here. In
3 that statute, in RSA 369-B:3, IV(b)(1)(A), it provides
4 that PSNH is to supply default service to recover on its
5 generation assets in a manner approved by the Commission,
6 and ADE does precisely that. Redesigned Rate ADE, as it
7 is in the Settlement Agreement, provides a Default Service
8 offering allowing PSNH to recover on its generation
9 assets, and does so in a manner acceptable to the
10 Commission, because it addresses the Commission's
11 concerns, as expressed in its orders and in Docket 10-160.

12 As to some of the arguments about the
13 introduction of Rate ADE being harmful to competition, I
14 point out, as did Ms. Chamberlin a few months ago, that an
15 alternative default service offering is appropriate under
16 RSA 374-F:3, V(e), if it -- yes, under (e), if it "does
17 not unduly harm the development of competitive markets",
18 and the term "unduly" is indeed a meaningful term there.
19 By offering Rate ADE, PSNH is providing another option to
20 the marketplace, based on its costs, including the
21 non-operating costs of the Scrubber.

22 No customers are compelled to take
23 service on Rate ADE. Customers remain free to leave Rate
24 ADE and return to competitive supply. There are no

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**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-216

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Alternative Default Energy Service Rate

Order Conditionally Approving Alternative Default Energy Service Rate Pilot Program

ORDER NO. 25,488

April 8, 2013

APPEARANCES: Matthew J. Fossum, Esq. on behalf of Public Service Company of New Hampshire; James T. Rodier, Esq. on behalf of Freedom Logistics, LLC, Halifax-American Energy Company, LLC and PNE Energy Supply LLC d/b/a Power New England; Robinson & Cole, LLP by Joey Lee Miranda, Esq. on behalf of Retail Energy Supply Association; Office of Consumer Advocate by Susan W. Chamberlin, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

On April 27, 2012, Public Service Company of New Hampshire (PSNH or the Company) filed testimony and related exhibits, including illustrative tariffs, describing its proposed alternative default energy service rate (Rate ADE). PSNH designed Rate ADE as a new energy service rate for customers who return to PSNH for energy service after taking energy service from a competitive supplier. PSNH made the filing pursuant to Order No. 25,320 (January 26, 2012) in the instant docket.¹

In Order No. 25,320, the Commission denied PSNH's petition for Rate ADE as filed on September 23, 2011 and directed PSNH to redesign Rate ADE to address: (1) the absence of a mechanism to reflect market price impacts on the rate; (2) the potential for gaming inherent in the proposal; and (3) the lack of an objective basis for the calculation of the proposed "adder" of

¹ See Order No. 25,320 for the procedural history for Docket No. DE 11-216 through January 2012.

one cent per kilowatt-hour (kWh). On April 27, 2012, PSNH filed a revised Rate ADE that, according to the Company, addressed the concerns identified in Order No. 25,320.

In the earlier phase of this docket, the Office of Consumer Advocate (OCA) filed a letter of participation pursuant to RSA 363:28 and the Commission granted a motion to intervene by Freedom Logistics, LLC d/b/a Freedom Energy Logistics (FEL) and Halifax-American Energy Company, LLC (HAEC).

On May 4, 2012, FEL filed a motion to dismiss PSNH's request for approval of its proposed Rate ADE. PSNH filed an objection to the FEL motion on May 14, 2012, to which FEL filed a reply on May 15, 2012. On June 8, 2012, the Commission issued Order No. 25,372 denying FEL's motion to dismiss. On May 24, 2012, the Commission issued Order No. 25,368 suspending PSNH's tariffs and scheduling a hearing.

The Retail Energy Supply Association (RESA) and PNE Energy Supply LLC d/b/a Power New England (PNE) filed motions to intervene on May 25 and May 30, respectively. The Commission granted both motions on June 19, 2012.²

Staff filed a proposed procedural schedule on June 20, 2012. FEL and PNE filed a letter on June 20 asking that post-hearing briefs be added to the schedule. The Commission approved the procedural schedule by secretarial letter on June 29, 2012 and stated that post-hearing briefs were not necessary. The parties engaged in discovery and, pursuant to the procedural schedule, Staff and the OCA filed testimony on August 24, 2012. PNE filed testimony on August 27, 2012 and PSNH filed rebuttal testimony on September 21, 2012.

² The Motion to Dismiss was filed by FEL alone, despite the joint intervention with HAEC. Neither FEL nor HAEC participated in the docket after June 20, 2012.

Following discussions among the parties, PSNH, the OCA and Staff entered into a partial settlement agreement which was filed on October 12, 2012. A hearing on the merits of the partial settlement agreement was held on October 18 and November 26, 2012.

On December 24, 2012, by a letter dated December 20, 2102, North American Power and Gas, LLC (NAPG) filed a petition for late intervention. Also on December 24, 2012, PSNH filed an objection to NAPG's petition to intervene.

II. SUMMARY OF PSNH'S REDESIGNED RATE ADE

PSNH stated that the proposed redesigned Rate ADE builds on its prior proposal with additional enhancements that address the Commission's concerns. Consistent with its initial filing, Rate ADE would initially be available only to its largest customers, those taking delivery service under Primary General Service Rate GV, Large General Service Rate LG, or Backup Service Rate B. To address the OCA's concern about residential customer eligibility for the rate under the initial proposal, PSNH stated it would extend Rate ADE to residential and small commercial customers within nine months from the rate's effective date. PSNH explained that changes needed to bill Rate ADE must be done manually but given the limited number of larger customers it could be done relatively quickly. Due to the high number of smaller customers, however, manual billing is not possible and, according to PSNH, it would need nine months to fully implement automated billing for Rate ADE for all customers.

Consistent with PSNH's initial proposal³, the redesigned Rate ADE would be available to a customer who returns to PSNH for service following at least twelve consecutive months of taking service from a competitive supplier. Once a customer is eligible to take service under Rate ADE, that customer would receive service under Rate ADE rather than PSNH's regular default energy service rate (Rate DE) for a term of 24 months (the "term of service"). The

³ References to PSNH's "initial proposal" are to the proposed Rate ADE that was addressed in Order No. 25,320.

Company said that it proposed a term of service of 24 months to (1) ensure that customers do not receive an extended period of discounted rates when marginal costs are below PSNH's average energy service costs (resulting in Rate ADE being lower than Rate DE), (2) to avoid having customers paying a higher rate for an extended period when marginal costs exceed PSNH's average costs, and (3) to extend the length of time that the benefits of Rate ADE are provided to all other default service customers.

Under PSNH's proposal, a customer eligible for Rate ADE may continue to take service under Rate ADE or move back to a competitive supplier during the 24 month term of service, with no restrictions for transferring from Rate ADE to the competitive market, or *vice versa*. Once a customer is eligible to take service under Rate ADE, that customer would be ineligible to take service under PSNH's standard Rate DE for the 24 month period. It would, however, be able to move back and forth between Rate ADE and competitive suppliers. The Company said appropriate changes would be made to the Rate DE tariff to clarify that Rate DE is not available to customers who are eligible for Rate ADE.

As proposed by PSNH, the Company would determine the pricing under Rate ADE on an annual basis, and that rate would remain in effect for a full year unless there is a significant shift in the market. Consistent with its initial proposal, PSNH's revised Rate ADE would be calculated based on two cost components: (1) PSNH's marginal costs of additional energy requirements necessary to serve the customers who are taking service under Rate ADE; and (2) an adder that is based on the non-operating costs of the wet flue gas desulphurization system (Scrubber) installed at PSNH's Merrimack Station.

Pursuant to RSA 125-O:18, PSNH must recover costs of the Scrubber through the Company's default energy service. In its initial filing, PSNH had proposed a Scrubber cost-

recovery adder of 1.0 cents per kWh but the Commission expressed concern that there was no objective basis for the adder. *See* Order No. 25,230. In the revised filing, PSNH testified that the non-operating costs are now known and, consequently, there is sufficient cost basis to calculate the adder.

According to its pre-filed testimony, the Company would stay current with market prices by monitoring its forecasted marginal costs on a monthly basis and comparing those prices to the prices used to calculate the annual rate. To address the Commission's concern about the importance of reflecting changes in market prices, the Rate ADE proposal now includes a process to adjust the rate. Under the proposal, if new projections of average marginal costs for the remaining months of the annual period have increased by at least 75% of the adder, as compared with the marginal costs for those same months that were used to determine the annual rate, PSNH would seek Commission approval to increase Rate ADE for the remaining six months of the annual period.

With respect to the Commission's concern about the potential for "gaming" under its initial proposal, PSNH proposed that if the marginal costs increased by more than 75% of the adder, then Rate ADE would be closed to new customers until the next adjustment of the rate. Closing of the rate would minimize the risk of any Rate ADE under-recovery occurring and being recovered from standard Rate DE customers. While PSNH said it could design rates that would mitigate risks of such under-recoveries, the resulting rate would be so restrictive that few, if any, migrated customers would actually take service under Rate ADE, resulting in reduced benefits for all other customers. PSNH said its rate design was intended to balance the need to reduce the risk for all other customers with the need to make Rate ADE attractive to migrated customers, thereby producing benefits for all other customers.

In its April 27, 2012 filing, PSNH calculated a proposed Rate ADE for effect July 1, 2012 of 6.40 cents per kWh, and an adder of 1.03 cents per kWh to recover the non-operating costs of the Scrubber.

III. PARTIAL SETTLEMENT AGREEMENT

A. Pilot Program

The Partial Settlement Agreement⁴ (Settlement) executed by PSNH, the OCA and Staff (Settling Parties) proposes the availability of Rate ADE on a pilot basis for a period of 36 months (pilot period) beginning upon the implementation of Rate ADE as ordered by the Commission. Pursuant to the Settlement, the Commission would evaluate the pilot upon conclusion of the pilot period or prior to any change to or extension of the pilot program. The Settling Parties agreed that nothing in the Settlement would limit the authority of the Commission to terminate Rate ADE prior to the end of the pilot.

B. Term of Service

The Settling Parties agreed that a customer would be eligible to receive service under Rate ADE following at least 12 consecutive months of taking service from competitive supplier for a “term of service” (i.e., the period of time under which the terms and conditions of Rate ADE would be applicable to Rate ADE customers) to be set by the Commission. The term of service would begin when a customer is first served under Rate ADE and would end once the term of service period has passed. During the term of service, the customer could return to competitive supply at any time without re-setting the term of service, with one exception—if the customer takes competitive supply for twelve consecutive months, the term of service would reset upon the customer electing to take service from PSNH under Rate ADE. For example, assume a customer has been taking service from a competitive supplier for 14 consecutive

⁴ The signatories to the Settlement did not agree on the length of the term of service.

months. If that customer wishes to return to take supply service from PSNH, that customer would be served under Rate ADE rather than Rate DE. If, four months into the Rate ADE term of service, that customer returns to competitive supply for a period of less than 12 consecutive months and subsequently returns to PSNH before the Rate ADE term of service ends, the “clock” on the Rate ADE term of service would continue to run uninterrupted. If, however, the customer returned to competitive supply for more than 12 consecutive months, then the term of service would rest upon a future election to return to service under PSNH’s Rate ADE.

C. Eligible Customer Classes

PSNH would first make Rate ADE available to customers taking delivery service under Primary General Service Rate GV, Large General Service Rate LG, or Backup Service Rate B. PSNH would make Rate ADE available to all customer classes within nine months of implementation or, if necessary, notify the Commission of any change to the expected date that Rate ADE would be available to all classes.

D. Pricing of Rate ADE

The Settling Parties agreed that the price under Rate ADE would be set on an annual basis at the same time PSNH sets the price for Rate DE, and that PSNH could adjust the rate after six months if there is a significant shift in the market. The ADE price would be based upon PSNH’s forecast of the marginal cost to provide full requirements service to the New Hampshire load zone plus an adder that would be set equal to the non-operating costs of the Scrubber. Pursuant to the Settlement, the forecast of marginal costs would include forward energy market prices, forward capacity market prices, forecasted ancillary service costs, forecasted Independent Service Operator-New England market administration costs and forecasted renewable portfolio

standard compliance costs, all of which would be determined in a manner consistent with its periodic rate filings for Rate DE.

The Settlement provides that the non-operating costs of the Scrubber shall include depreciation, property taxes and return on rate base. Further, PSNH would be required to monitor its forecasted marginal costs on a monthly basis and compare those forecasts to the prices used to calculate the annual rate for Rate ADE and provide reports of the forecasts to the Commission on the 15th day of each month.

E. Mid-Term Adjustments to Rate

Pursuant to the Settlement, if PSNH's projected marginal costs for the remaining months of an annual period have increased by at least 75% of the amount of the adder, Rate ADE would be closed temporarily to all returning customers. If this situation exists at the time of the monthly filing made on or about May 15 of any year, PSNH would file a request for Commission authorization to increase Rate ADE effective July 1. In the event Rate ADE is temporarily closed, customers taking service under Rate ADE at the time of closure would be allowed to remain on the rate; but if a customer were to leave Rate ADE to take service from a competitive supplier, the customer would not be allowed to return to service under Rate ADE until the rate is re-opened. Any customers returning to PSNH during the closure of Rate ADE would be served under Rate DE. In the event Rate ADE is re-opened, those customers taking service under Rate DE who qualify to receive service under Rate ADE would be transferred to Rate ADE. PSNH agreed to work with Staff and the OCA to establish one or more methods to notify customers when Rate ADE is closed and provide a report to the Commission on that notification process.

The Settling Parties agreed that, if the projections of marginal costs for the remaining months of an annual period decrease by at least 75% of the amount of the adder, PSNH would

file a request to decrease Rate ADE. The filing would be made at roughly the same time that PSNH files its request for a July 1 modification of Rate DE.

F. Term and Reporting

Pursuant to the Settlement, PSNH would file a report on or before the 25th of each month depicting the number of kWhs delivered under Rate ADE, and the difference between the revenue received and the marginal cost of serving the load under Rate ADE for the most recently completed month and for the annual period to date.

PSNH would also, on or before December 1 of each year, file a report for the purpose of assessing the value of Rate ADE to customers served under Rate DE. The annual report would contain data, by customer class, on the number of customers served under Rate ADE, the number of kWhs delivered and the annual impact of Rate ADE on costs recovered through Rate DE. The Settlement provides that, in the event the Commission approves implementation of Rate ADE on a date other than January 1, 2013, the Settling Parties would discuss whether to amend the date by which the annual report shall be filed and report back to the Commission. The Settling Parties also agreed to work cooperatively in the development of any recommended changes to the design of Rate ADE as needed to ensure that Rate DE customers benefit from the implementation of Rate ADE.

Finally, the Settlement provided that at least 3 months prior to the end of the pilot period, PSNH would file a request to extend, modify or terminate Rate ADE and describe the historical performance of Rate ADE and support for the requested relief.

IV. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

PSNH opined that the Settlement presents a fair and reasonable means to implement a new rate and that the Settlement should be affirmed. PSNH said that the one issue not resolved by the Settlement is the length of the term that a customer would be served under Rate ADE. PSNH claimed that a 24-month term of service is an appropriate choice because it effectively provides benefits to customers remaining on Rate DE without having customers served under Rate ADE for an indefinite amount of time. According to PSNH, the 12-month term of service proposed by Staff is simply too short to fully recognize the full benefits of Rate ADE.

Regarding the arguments advanced by PNE that Rate ADE is inconsistent with the restructuring statute, RSA 374-F, and Electric Rate Reduction Financing, RSA 369-B, PSNH noted that the Commission previously denied a motion to dismiss based on the same arguments. *See*, Order No. 25,372 (June 8, 2012). Repeating an argument contained in its objection to the motion to dismiss, PSNH said that Rate ADE was proposed pursuant to multiple Commission orders produced over more than a year, none of which has been the subject of a motion for rehearing or appeal by opponents to Rate ADE. PSNH stated that the Commission consistently reaffirmed that PSNH should establish this rate and thus should not entertain arguments that the rate is unlawful on its face.

PSNH also averred that the adoption and implementation of Rate ADE is actually supported by the restructuring statute, RSA 374-F. PSNH stated that one of the principles of restructuring is to reduce costs to customers and, to the extent that customers avail themselves of Rate ADE, they will do so because they perceive it as beneficial to reducing their costs. RSA 374-F:1. PSNH said that Rate ADE is another choice for customers and that customers are not

required to take or remain on the rate and may choose to take service from a competitive supplier. Because Rate ADE is another option for customers for the procurement of electric supply, PSNH argued that Rate ADE does not “unduly harm the development of competitive markets” consistent with RSA 374-F:3, V(e). PSNH claimed that if customers perceive the rate is beneficial and migrate to it, that migration may incent other suppliers to find a way of reducing costs to their customers.

Based on the foregoing arguments, PSNH requested that the Commission accept and approve the Settlement, set the term of service at 24 months, and permit PSNH to implement the rate as soon as possible.

B. Office of Consumer Advocate

The OCA stated that it signed the Settlement and opined that residential customers would be better off with the Settlement than without it. The OCA expressed support for the 24-month term of service because the longer term of service would make Rate ADE more attractive to customers and result in more benefits flowing to all other customers under Rate DE.

The OCA asserted that Rate ADE is a stopgap measure to address the current situation where residential customers are the last to migrate to competitive supply. According to the OCA, the policy arguments made during the proceeding assume full information, a sophisticated customer and market analysis and, while these assumptions may hold for large industrial customers, and possibly for small commercial customers, they are not true for residential customers. The OCA predicted that other actions will overtake Rate ADE and that a resolution will occur outside of this docket, but that Rate ADE will provide an additional option for residential customers during the transition.

C. Commission Staff

Staff stated that it had participated in the development of the Settlement and believes it is a just and reasonable resolution and is in the public interest. Staff asserted that the Settlement is consistent with the Commission's authority to approve an alternate means of providing default service pursuant to RSA 374-F:3, V(e).

Staff said that it supported a 12-month term of service for the following reasons. First, a 12-month term of service is a better match both to the eligibility criteria, where a customer would have to be either served by a competitive supplier or on self-supply for at least 12 consecutive months, and the Settlement's provision for an annual review of the program. Second, a shorter 12-month term of service would mitigate potential concerns that the rate is somehow anti-competitive or will otherwise disrupt the competitive market. Third, assuming that the pilot continues for the full 36 months, at its end there still may be a number of customers who haven't gone through their entire term of service and, presumably, the administration of the rate would have to continue for those customers at some cost. A shorter term of service lessens the number of months customers would continue on Rate ADE beyond the pilot period, in the event the rate is not extended beyond the pilot period. Finally, a shorter term of service would provide more choices for customers. For example, Staff said, if it became more advantageous for customers to receive service under Rate DE than under Rate ADE, which presumably would be due to a change in market conditions, those customers would not be limited from exercising that option for an extended period of time.

Staff recommended that the Commission approve the Settlement and adopt Staff's recommendation to limit the term of service to 12 months.

D. Power New England, LLC

PNE said that the proposed Rate ADE was not required by statute. PNE argued that the purpose of the rate was to lure customers back to PSNH, and not to offer a safety net as contemplated by the restructuring statute. PNE also suggested that a three-year pilot program might encourage long-term use of Rate ADE, which would be inconsistent with the restructuring principle that discourages the long-term use of default service.

PNE claimed that the adder was not correctly designed. PNE pointed out that RSA 125-O:18 states that the costs of the Scrubber must be recovered through the default service rate. Because Rate ADE is a default service rate, PNE argued that the adder should recover all costs associated with the Scrubber, not only the non-operating costs.

PNE disagreed with PSNH's assertion that there are no other incremental costs associated with implementing Rate ADE. PNE claimed that PSNH would incur costs associated with the implementations of Rate ADE even if implementation was undertaken by current employees, and those costs should be added to the rate.

PNE further argued that PSNH's proposal to purchase additional power for Rate ADE customers from the market was inconsistent with RSA 369-B:3, IV, which PNE interpreted as requiring PSNH to provide all transition and default service from PSNH's owned generation.

Finally, PNE recognized that the restructuring statute authorized the Commission to approve alternative means of providing default service, so long as those means minimize customer risk, not unduly harm the competitive market, and mitigate price volatility.⁵ But, according to PNE, the authorization did not constitute an "open-ended loophole."

⁵ See RSA 374-F:3, V(e).

E. Retail Energy Supply Association

RESA asserted that PSNH's proposed Rate ADE is inconsistent with Commission Order No. 25,320 and restructuring principles. RESA claimed that in Order No. 25,320, the Commission held that Rate ADE should be cost-based, non-discriminatory and avoid an adverse effect on competition, but that PSNH failed to meet those requirements.

RESA argued that the proposed calculation of the rate is not cost-based because PSNH includes in Rate ADE an adder for the non-operating costs of the Scrubber, a cost that PSNH incurs whether it has Rate ADE customers or not. Further, PSNH failed to include in the rate the costs associated with (1) marketing Rate ADE, (2) necessary modifications to the billing system, and (3) customer tracking. Although PSNH said it would use its existing employees to perform functions associated with implementation of Rate ADE, RESA claimed that there are costs associated with allocating employees to provide the services associated with Rate ADE but not included in the calculation of Rate ADE, and that those incremental costs should be included in the calculation of the rate.

RESA also expressed concern about PSNH's proposed use of an average forecasted annual price because forecast prices distort price signals to customers. In addition, because PSNH said that the Company would make purchases for power on the spot market, the forecast will not be reliable. RESA also pointed out that the reconciliation process proposed by PSNH, whereby the Company would reconcile over- or under-recoveries through Rate DE, violates the cost causation principles and further distorts the price that customers on Rate ADE will pay. RESA opined that inaccurate price signals also distort customer behavior because, if customers don't receive an appropriate price signal, they can't make accurate energy conservation and energy efficiency choices.

RESA argued that the proposed Rate ADE design is discriminatory because it will result in similarly situated customers paying different rates. According to RESA, the discriminatory effects are not mitigated by use of a pilot program.

RESA also claimed that the proposed Rate ADE design would have negative effects on competition. According to RESA, PSNH posited that the benefit of Rate ADE is to mitigate migration, and in effect to reverse migration from competitive supply to PSNH. RESA argued that reverse migration, by its very nature, has a negative effect on customer choice.

RESA argued that the proposed Rate ADE design is unnecessarily complex and difficult for customers to understand, contrary to the restructuring statute's requirement that customers received "clear price information." RSA 374-F:3, III. In addition, RESA pointed out that RSA 374-F:3, II states that "customers should be responsible for the consequences of their choices." RESA argued that allowing Rate DE customers to benefit from over-recoveries incurred by Rate ADE customers and to pay for under-recoveries incurred by Rate ADE customers violates the principle that customers should bear the consequences of their choices.

RESA concluded by asking that the Commission deny PSNH's request for approval of Rate ADE, deny approval of the Settlement and send PSNH back to the drawing board to develop an alternative rate that is not counter to the restructuring act principles and satisfies the requirements of Order No. 25,320.

V. COMMISSION ANALYSIS

First, we address NAPG's late-filed petition to intervene, understanding that RSA 541-A:32, II, allows the Commission to grant a motion to intervene at its discretion. That NAPG was seven months late in filing its petition to intervene is undisputed. In its petition, NAPG asserts that it shares the views of the competitive suppliers who participated in the docket and opposes

the implementation of Rate ADE. Although NAPG as a competitive supplier stated a right, duty or substantial interest in this proceeding, those concerns by its own admission have been addressed by PNE and RESA. Further, to grant intervention at this very late date, after the close of the evidentiary record, would disrupt the orderly conduct of the proceeding, one of the criteria to be considered when a party files a petition to intervene after the statutory time limit. RSA 541-A:32, II. Based on the foregoing, we deny NAPG's petition to intervene.

Pursuant to N.H. Code Admin Rules Puc 203.20(b), the Commission shall approve disposition of a contested case by settlement "if it determines that the result is just and reasonable and serves the public interest." *See also* RSA 541-A:31, V(a). In determining the public interest, the Commission serves as an arbiter between the interests of customers and those of the regulated utilities. *See* RSA 363:17-a; *see also* *Public Service Co. of N.H.*, Order No. 24,919 (December 5, 2008) at 7-8.

Even when all parties join a settlement agreement, however, the Commission must independently determine that the result comports with applicable standards. We must review the issues and judge them according to standards that provide the public with assurance that a just and reasonable result has been reached. *Concord Electric Company*, 87 NH PUC 694, 708, Order No. 24,072 (2002).

In this instance, our task is to determine whether, pursuant to RSA 369-B:3, IV(b)(1)(A), RSA Chapter 374-F and RSA 378:7, Rate ADE as now proposed is reasonable and serves the public interest, whether the filing satisfies our direction in Order No. 25,256 (July 26, 2011) in Docket No. DE 10-160, *Public Service Co. of N.H. Investigation into Effects of Customer Migration*, requiring PSNH to develop an alternative rate in an attempt to mitigate the effects of

large commercial and industrial migration on small commercial and residential customers; and whether the Settlement meets the requirements of Order No. 25,320 (January 26, 2012).

After review of the Settlement and the testimony of parties to this docket, we find that the Settlement is just and reasonable and in the public interest, as conditioned herein. It is also consistent with prior orders and the relevant statutes. RSA 369-B:3, IV(b)(1)(A) requires PSNH to set the price of default service to be its “actual, prudent, and reasonable costs of providing such power, as approved by the commission.” PSNH proposes to calculate Rate ADE at its marginal cost of providing power to the customers who take service under the rate, plus an adder that reflects the non-operating costs of the Scrubber, the latter of which is now known. We find that the rates as now proposed by PSNH and as set forth in the Settlement addresses concerns reflected in our earlier orders in this proceeding. The calculation reflects PSNH’s incremental or marginal cost of providing service to those customers taking Rate ADE, as required by RSA 369-B:3, IV(b)(1)(A), plus an adder that is designed to provide benefits to Rate DE customers. As customers take service under Rate ADE, the adder would provide a source of additional revenue that will flow through to the Rate DE reconciliation, thereby resulting in a reduction to Rate DE, all else being equal. Under those circumstances, we find that the rates are just and reasonable as required by RSA 378:7.

As noted by the parties, Rate ADE must also comport with the requirements of the electric utility restructuring statute, RSA 374-F, including the mandate that any alternative rate design minimize impacts to the competitive market. We agree with PSNH that Rate ADE is simply another alternative for customers. While we appreciate RESA’s concern about Rate ADE potentially sending the wrong price signal as customers look for alternatives in the competitive market, we note that, as now proposed, the Rate ADE calculation results in a per kWh rate that is

higher than the market cost of power, and presumably an informed customer would opt for the lowest cost energy supply. Further, by establishing Rate ADE as a pilot program pursuant to the Settlement and by closely monitoring the number of customers enrolled and other aspects of the program through annual reports and reviewing the benefits that are expected to be derived from the adder, the Commission will be able to determine if the rate is causing undue harm to the competitive market. RSA 374-F:3, V(e) also provides that any alternative means of providing default service must minimize customer risk and mitigate against price volatility. We find that the structure of Rate ADE meets both of those criteria. As Rate ADE would be calculated initially on an annual basis—subject to an adjustment after six months—customers would have the benefit of known pricing. In addition, if market prices decline after a customer begins taking service under Rate ADE, the customer would be free to return to the competitive market. If market prices increase after a customer begins service under Rate ADE, the customer has the benefit of the known pricing of Rate ADE.

Further, we agree with Staff's recommendation to limit to 12 months the period under which a customer could take service under Rate ADE. As Staff noted, the shorter term more appropriately aligns with the term of the pilot and annual review and its limited duration mitigates any potential harm to the competitive market that may arise.

The availability of competitive electric supply for residential ratepayers is a relatively new and growing market development. Until very recently, competitive suppliers were focused on the commercial and industrial sectors and showed little interest in residential customers. We are now entering a period of robust competition for the residential sector, and both the suppliers and customers are learning the complexities of that new market.

As recent wholesale activity has shown, there can be substantial and unanticipated price volatility negatively impacting competitive electric power suppliers. If competitive suppliers are unable to meet their obligations, customers are automatically switched to the default energy service rate of their distribution utility so that there is no break in their power supply. When there is a difference between the competitive electric power supplier rate and the default energy service rate, however, customers put back to default service can experience rate impacts. An alternative energy service rate that is lower than the default energy service rate, available for a limited period of time, provides customers an option during the transition to the fully competitive electricity market envisioned in RSA 374-F:3. More specifically, RSA 374-F:3,V(e) states that “as competitive markets develop, 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.”

There may be some customers who through no action of their own find themselves returned to default service because their competitive supplier has defaulted. For this group of customers we believe it would be appropriate for PSNH to enroll them on the lower of standard Rate DE or the alternative Rate ADE, once enrollment of residential customers on Rate ADE can be implemented.⁶ Should the signatories to the Settlement accept this condition, we find that the creation of Rate ADE on a pilot basis to be in the public interest.

In closing, we acknowledge that the proposed Rate ADE, as compared with current market rates, may not prove to be an attractive alternative to customers who migrate from PSNH, especially given PSNH’s testimony that, as customer migration increases and results in lower

⁶ PSNH stated it would require up to nine months to enable its computer systems to accommodate residential customers on Rate ADE. We urge PSNH to make the necessary changes as quickly as practicable, lessening the time frame for residential enrollment.

Rate DE sales, so does the per kWh amount of the adder which uses Rate DE sales in the denominator of the calculation. Under the current circumstances, if the migration trend continues, Rate ADE would increase and, therefore, many customers who would be eligible to take service under Rate ADE may opt not to do so. In such an event, the benefits that are expected for other customers taking service under standard Rate DE would not materialize. Rate ADE also does not provide an immediate alternative for residential customers, as they would have to wait up to nine months to be able to take service under the rate. Nonetheless, given the current pressures on Rate DE that the Company is facing with customer migration, there is value in instituting Rate ADE on a pilot basis to attempt to provide a measure of benefit to Rate DE customers as well as providing potential relief to customers of competitive suppliers who default. Therefore, we will approve the Settlement as conditioned herein and closely monitor the pilot program.

Based upon the foregoing, it is hereby

ORDERED, the Partial Settlement Agreement entered into by Public Service Company of New Hampshire, the Office of Consumer Advocate and Staff is hereby APPROVED, as conditioned herein, upon notification no later than 30 days from the date of this order that the Settling Parties accept our condition regarding customers whose competitive supplier has defaulted; and it is

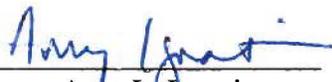
FURTHER ORDERED, that the Rate ADE pilot program shall commence 30 days after such notification by the Settling Parties; and it is

FURTHER ORDERED, that Public Service Company of New Hampshire shall file a compliance tariff within 20 days of such notification; and it is

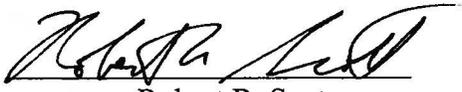
FURTHER ORDERED, that the term of service for Rate ADE shall be 12 months; and
it is

FURTHER ORDERED, that the late-filed petition to intervene by North American
Power & Gas is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this eighth day of April,
2013.

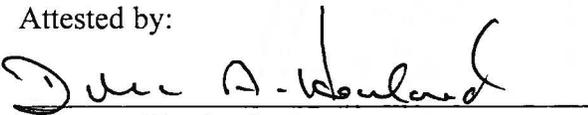


Amy L. Ignatius
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director

Dissenting Opinion of Commissioner Harrington

The proposed ADE rate simply does not make good policy, regulatory, legal or business sense. The fact that PSNH has come up with an arguably rational basis for a new rate does not alone warrant a finding that the proposed rate is just and reasonable. The ADE rate appears to violate a number of statutory provisions as well as policy principles and thus should be rejected.

The proposed rate is designed primarily for the purpose of attracting customers away from competitive suppliers and back to PSNH to address the problem of customer migration and the consequent increased cost to existing PSNH default service customers. The real driving force behind the “need” for an ADE rate is an ever-increasing DE rate that is generally higher than rates offered by competitive suppliers⁷ and the resulting tendency for customers to seek and stay with competitive suppliers. At the same time, the ADE rate could encourage more customers to leave default service and sign up with a competitive supplier, as this would be the only way they could ever be eligible for the lower ADE rate. As long as the competitive rate is lower than the PSNH DE rate, customers will tend to stay with a competitive supplier – thereby making the situation of the DE ratepayers that much worse in terms of bearing a greater share of PSNH’s costs.

In the event the competitive rate becomes higher than the ADE rate - and a customer is otherwise qualified, that customer would tend to opt to return to PSNH for the ADE rate. After 12 months on the ADE (the term limit approved by the majority opinion), the customer will have to make a choice again: to stay with PSNH at the DE rate or go back to a competitive supplier. Since the DE rate likely will always be higher than the competitive supplier’s rate, the cost

⁷ If average wholesale electric prices increased dramatically and PSNH’s DE rate remained stable, it could become more competitive but neither is likely to occur over the next few years. Berlin Bio-Mass which is scheduled to come on line later this year has a Purchased Power Agreement with PSNH that will be paid for through DE rates. This most likely will put additional upward pressure on these rates. Also, Docket No. 11-250 “Investigation of Scrubber Costs and Cost Recovery” could result in additional non market-based increases in PSNH’s DE rates.

conscious customer will tend to go back to a competitive supplier from the ADE discounted rate. This will not only save them money but start the process for them again becoming eligible for ADE rates.

Effectively, what the ADE rate offers customers is the ability to obtain rates from PSNH that are lower than DE rates. By approving the proposed ADE rate, we will be creating a mechanism to enable customers to jump back and forth from the competitive rate to the ADE rate, whichever is lower. Overall, such a result does not help anyone but the customers who have chosen the competitive supplier or ADE options, although a small percentage of revenue will flow from the “adder” element of the proposed ADE rate to partially defray PSNH’s costs and thereby slightly lower the costs charged to DE customers. The proposed ADE rate will establish a new, “intermediate” rate that could encourage even more gaming of the system than the current situation permits.

There are further concerns about the ADE rate that persuade me to dissent from the majority opinion in this case. Our statutes provide that the costs of administering default service should be borne by the customers of such service. RSA 374-F:3, V(c) (“***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.***”). Here, however, it appears that the costs of administering the alternative rate, or ADE, will not be borne by ADE customers at all, but will ultimately be charged to PSNH’s distribution customers, some of whom will be neither ADE nor DE customers – thus in direct conflict with the statute.

By statute, PSNH is obligated to supply default service at actual, prudent and reasonable costs of providing such power, as approved by the commission. RSA 369-B:3, IV(b)(1)(A) (“***The price of such default service shall be PSNH's actual, prudent, and reasonable costs of***

providing such power, as approved by the commission...). In this case, PSNH proposes to offer two separate rates for the same default service: the regular rate for existing customers, and a discounted rate to former customers who come back to PSNH. The provision of two different rates for the same energy default service cannot reflect in both instances the “actual, prudent, and reasonable costs of providing such power”, and therefore should not be deemed reasonable.

In a similar vein, the statute requires that restructuring of the electric industry be implemented in a manner that benefits all consumers equitably without shifting costs unfairly among customers. RSA 374-F:3, VI (“***Restructuring of the electric utility industry should be implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another. Costs should not be shifted unfairly among customers***”).

Again, a rate structure that charges different rates for the same product to the same type of customer cannot be found to “benefit all consumers equitably”. Any under collection of ADE rates that exceed the amount of the adder will be shifted to DE customers. Such an outcome strongly suggests an unfair shifting of costs among customers where DE customers can pay extra so that ADE customers can pay less under PSNH’s discounted rate offer.

The Commission should not be in the business of favoring one energy supplier over others by authorizing discriminatory pricing as a substitute for prudent business planning and management, especially where the cost will be borne by ratepayers. As noted above, the initial justification for developing an ADE rate was to address the increasing number of DE customers leaving PSNH for the competitive market. A rule that provides special treatment to one supplier - in this case PSNH - and attempts to minimize that supplier’s loss of energy service customers to other suppliers is in direct conflict with the statute and contrary to the principles of

restructuring. RSA 374-F:3, VII (“Choice for retail customers cannot exist without a range of viable suppliers. *The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.*”).

The development of customer migration away from PSNH in a market experiencing record low natural gas prices, where regular default service prices are based on PSNH’s cost to generate at their existing facilities plus the cost to purchase power in the market or through purchase power agreements, should not have been a surprise element in PSNH’s business planning efforts – and certainly not one that warrants the introduction of a discounted price to entice customers back from competitive suppliers.

To step in as regulators and authorize an inequitable administrative rate for the same service to similarly situated customers for the purpose of attracting customers away from market competitors is simply contrary to our statutory mandate. As the electric utility restructuring statute states, our goal is to promote a more efficient industry and productive economy – not to develop a multi-tiered administrative pricing scheme that favors certain customers and suppliers over others. RSA 374-F:1 (*The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy* by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment.).

The restructuring statute explicitly states that customers should expect to be responsible for the consequences of their choices in the competitive energy supplier market:

Allowing customers to choose among electricity suppliers will help ensure fully competitive and innovative markets. Customers should be able to choose among options such as levels of service reliability, real time pricing, and generation sources, including interconnected self generation. *Customers should expect to be responsible for the consequences of their choices.* RSA 374-F:3, II.

Existing customers who remain with PSNH and pay a higher rate than that offered in the competitive market are responsible for the consequences of their choice. They should not, however, bear responsibility for those who choose a competitive supplier and then want to return to PSNH. There is nothing in the statute that suggests that customers who opt for a competitive supplier should benefit from a discounted price subsidized by existing customers who choose not to enter the competitive market. Even where a customer returns to PSNH due to a supplier default, that risk is borne by the customer as an element of free choice in a competitive market. And, as noted above, any potential under collection of the marginal costs on which the ADE is based that exceeds the adder is reconciled to the detriment of existing customers – that is, the consequences of choosing an ADE rate are borne not by the ADE customers themselves, but by the customers who choose not to participate in the competitive market.

The statute envisions alternative means of providing default services that are designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility. RSA 374-F:3, V(e) (“...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...”).

When short term market prices spike, as they did in January and February 2013, the proposed ADE rate could result in under collection from existing ADE customers, in the event those spikes exceed the marginal cost on which the ADE rate is based. At the same time, the DE rates will be reconciled to account for the same short term spikes in market prices, so that DE customers will pay for the actual costs of those spikes in “ordinary” DE rates, but will not be

compensated for any under collection in ADE rates. As a result, the introduction of ADE, in effect, will not eliminate price volatility, even with a biannual ADE rate adjustment to reflect market price changes.

This most recent ADE proposal was developed by PSNH in response to the Commission's Order No. 25,320 (Jan. 26, 2012), which directed PSNH to address the following issues: (1) the failure of the initial Rate ADE design to reflect changes in market prices; (2) the potential for gaming inherent to the design; and (3) the lack of support for the calculation of the proposed Rate ADE "add" at one cent per kilowatt-hour (kWh). The new method for determining the ADE rate proposed here complies with only one of the conditions outlined in the prior order: it reflects changes in market rates, albeit not fully. As discussed above, however, the revised ADE does not address the potential for gaming and does not provide a supportable basis for the calculation of the adder.

ADE rates are based on PSNH's forecast of the marginal cost to provide full requirements service to the New Hampshire load zone plus an adder that, under the latest proposal, will be set equal to the non-operating costs of the Scrubber. There is simply no justification for using the non-operating costs of the Scrubber to calculate the adder component of the ADE rate. As in the prior proposal, the identified basis is simply a random subset of costs that PSNH has chosen as a means to allocate some small portion of operating costs to ADE customers. The non-operating costs of the scrubber will not even be collected through the ADE Rate. Those costs, like the scrubber operating costs and the non-operating and operating costs of all other PSNH generating facilities will be collected through the DE rate. In the previous proposal from PSNH the amount of the adder was almost the same as the current proposal. That adder design was rejected by the Commission as without adequate justification. Simply finding

a “basis” that has no connection to the actual rate, other than it just happens to provide the amount PSNH claims is needed for the adder, is still an inadequate justification.

Few, if any, customers would pick the ADE rate in lieu of competitive supplier rates, which appear to be much lower and are being advertised as guaranteed to hold even after a spike in wholesale prices such as occurred this winter. In effect, given PSNH’s continued high costs of operation, the ADE rate would be used primarily by customers who had signed up for a lower rate from a competitive supplier that subsequently failed. Based on the majority opinion, customers in this category would be assigned the ADE rate provided they otherwise qualify for that rate. Once again we need to look at the clause in RSA 374-F:3, II that states that “[c]ustomers should expect to be responsible for the consequences of their choices.” As in the case of a customer who decides to exit the competitive supply market when prices spike, there is no justification for assigning customers who choose to use a competitive supplier that subsequently fails a lower rate than those who choose to stay with normal default service rates.

Unlike competitive suppliers, PSNH is protected from increases in wholesale energy costs. When prices rise much higher than expected, as happened this winter, PSNH’s prudent costs are reconciled such that they should not lose money as a result of the higher market prices. Competitive suppliers, on the other hand, can lose substantial amounts of money from higher than expected energy prices as they have no such mechanism to reconcile their costs. Thus, because PSNH is a public utility, it is protected from unexpected energy cost increases where competitive suppliers are not.

Establishing the ADE rate would provide PSNH protection from lower wholesale energy prices, as well. The proposed ADE rate theoretically would provide PSNH some protection from customer migration when market energy rates fall below the costs of producing electricity at

PSNH's generating stations. There is no justification for the downside protection which can only stifle competition, other than it may help to stem customer migration away from PSNH and lessen the consequent impact on customers who choose to stay with DE rates.

For PSNH to offer a discounted rate to attract customers back from competitive suppliers is anti-competitive, and the fact that existing default service customers may subsidize those returning customers makes the proposed ADE unlawful, unjust and unreasonable. As the Retail Energy Supply Association pointed out in testimony, PSNH has other, viable options for reassessing and revising its business practices that would be lawful and reasonable and much more in line with the purpose of the restructuring statute. There is nothing in the proposed ADE that is logical, much less persuasive or reasonable, to support its approval. I see nothing in the proposal before us that warrants a decision that differs from the Commission's prior rejections of PSNH's alternative proposals. In fact, the conclusions provided in our earlier orders remain applicable here: as suggested above, the rate proposed here "increases the possibility that PSNH will under-recover costs in Rate ADE, resulting in higher costs for Rate DE customers than currently results from existing customer migration" and "there is enough uncertainty in the rate design to suggest that the one cent per kWh may not collect enough revenue to cover unexpected price spikes in the marginal cost of electricity that would be used to supply Rate ADE load." Order No. 25,320 at 16 – and even more to the point, "such [alternative] rates must be cost-based and non-discriminatory and should not have an adverse effect on competition..." Order No. 25,256 at 32 (July 26, 2011).

To approve the rate proposed here would be to violate our statutory authority:

Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or

practices of such public utility affecting such rates are unjust or unreasonable, *or in any wise in violation of any provision of law*, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. RSA 378:7.

Accordingly, if this Commission finds PSNH's proposal to be in any way in violation of any provision of law, the proposal must be rejected. As pointed out in testimony, the proposed ADE is a mere palliative that does not address the underlying issue, which is PSNH's failure to anticipate a changing energy market and adapt its business plan accordingly.

Based on the above I believe the ADE rate proposed by PSNH is in violation of state law and therefore is not in the best interest of New Hampshire or its electric customers and should again be rejected by the Commission. I therefore respectfully dissent from the majority decision.



Michael D. Harrington
Commissioner

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**PSNH Alternative Default Energy Service Rate
DE 11-216**

PNE MOTION FOR REHEARING OF ORDER NO. 25, 488

NOW COMES PNE Energy Supply, LLC (“PNE”), by and through its undersigned counsel, and respectfully submits this Motion for Rehearing of Order No. 25, 488 and in support hereof says as follows:

1. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. On appeal, a party seeking to set aside an order of the PUC has the burden of demonstrating that the order is contrary to law or, by a clear preponderance of the evidence, that the order is unjust or unreasonable.¹ Good reason may be shown by identifying specific matters that were “either overlooked or mistakenly conceived in the original decision and thus invite[] a reconsideration upon the record upon which that decision rested.”²

2. The purpose of this Motion is to seek rehearing or reconsideration by the Commission on rulings in Order No. 25, 488 that are based upon erroneous statutory interpretations. The touchstone for statutory interpretation is the plain meaning of the statute considered as a whole:

In matters of statutory interpretation, we are the final arbiters of the legislature’s intent as expressed in the words of the statute considered as a whole. We interpret statutes not in isolation, but in the context of the overall statutory scheme. Our analysis must start with consideration of the plain meaning of the relevant statutes, construing them, where reasonably possible, to effectuate their underlying policies. Insofar as reasonably possible, we will construe the various statutory provisions harmoniously.

In re Pennichuck Water Works, Inc., 160 N.H. 18, 992 A.2d 740 (N.H. 2010).

A. **The Commission’s Order ignores the plain meaning of RSA 374-F:2, I-a which mandates that Default Service be made available only to retail customers who are otherwise without an electricity supplier.**

¹ *In re Appeal of Pinetree Power, Inc.*, 152 N.H. 92 at 95 (2005) (citation omitted).

² *Lambert Const. Co. v. State*, 115 N.H. 516, 519 (1975) (citation omitted).

3. By law, “Default Service means electricity supply that is available to retail customers who are otherwise without an electricity supplier.”³ Additionally, “[d]efault service should be designed to provide a safety net and to assure universal access and system integrity.”⁴

4. Rate ADE is a proposed default energy service rate that does not comply with the requirements of RSA 374-F. As noted above, default service is only “available to retail customers who are otherwise without an electricity supplier.” In stark contrast, the very purpose of Rate ADE is to entice customers away from an existing competitive supply.

5. PSNH erroneously believes that Rate AD is for any customer who, for whatever reason, elects not to have a competitive supplier supply their energy.⁵ PSNH interprets RSA 374-F:2, I-a as if it reads that default service is available to any customer that does not choose an electricity supplier. This is inconsistent with the plain meaning of RSA 374-F:2, I-a as it was enacted by the Legislature.

6. Moreover, as noted above, the context for and purpose of default service is to provide a safety net and to assure universal access and system integrity. The design of Rate ADE, the only purpose of which is to lure customers back to PSNH, most assuredly has nothing to do with providing a safety net or assuring universal access as envisioned by RSA 374-F and is inconsistent with the words of the statute taken as a whole. A default service rate that is only available to customers who are “otherwise without an electricity supplier” is entirely consistent with the statutory mandate that the purpose of default service is to provide a safety net and to assure universal access and system integrity. The Maine Public Utilities Commission has reached a similar conclusion:

...for customers that have entered the competitive market, standard offer is intended to be a default service or safety net (not another supply option) in the event of inadvertent lapses in competitive supply or when the customer cannot obtain competitive supply.

WPS Energy Services, Order Denying Request for Opt-out Fee Waiver, Docket No. 2001-594 at 2-4 (Nov. 7, 2001).

³ RSA 374-F:2, I-a

⁴ RSA 374-F:3, V, (c)

⁵ PSNH Response to Q-PNE-FEL-001: “Upon approval of Rate ADE, the Availability section of Default Energy Service Rate DE will be modified so that Rate DE will no longer be available to customers who qualify for service under Rate ADE. Therefore, if a customer has not chosen a supplier and does not otherwise qualify for Rate DE, Rate ADE will be the only rate available to such customers.”

A. The Commission’s Order ignores the plain meaning of RSA 369-B:3, IV, (b)(1)(A) which requires that the price of default service shall be PSNH's actual, prudent, and reasonable costs of providing such power.

7. By law, “[t]he price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power... .”⁶

8. PSNH’s proposed calculation of Rate ADE admittedly does not include any costs for marketing or outreach programs, or costs for administration, promotional materials, marketing, sales and customer service.^{7 8} Therefore, PSNH cannot credibly claim that Rate ADE is based upon “actual costs.” There is no margin built into Rate ADE to cover any of these costs which may well be substantial and actually exceed PSNH’s “adder.”

D. The Commission’s Order ignores the plain meaning of RSA 125-O:18 which requires that all of the costs of the Scrubber must be recovered through default service.⁹

9. RSA 125-O:18 requires that “the costs” of the Scrubber must be recovered through default service. Accordingly, all of the costs of the Scrubber are required to be recovered through Rate ADE, not just some of them. PSNH is proposing to recover only the non-operating costs of the Scrubber through Rate ADE.¹⁰

PSNH has conceded that it has not included operating costs because “cost allocations” would have to be made.¹¹ However, cost allocations are an every-day staple of utility ratemaking and hardly constitute an excuse for not including operating costs in the calculation of Rate ADE.

⁶ RSA 369-B:3, IV, (b)(1)(A).

⁷ PSNH Response to Q-PNE-FEL-22: “PSNH has not formulated any marketing or outreach programs... .”

⁸ PSNH Response to Q-PNE-FEL-33: “Please see the response to OCA-02, Q-OCA-002 and PNE-FEL-02, Q-PNE-FEL-002.”

⁹ RSA 125-O:18

¹⁰ PSNH Response to Q-PNE-FEL-55: “Rate ADE is comprised of PSNH's marginal cost and the non-operating costs of the scrubber which are the Company's actual, prudent and reasonable costs of providing such power.

¹¹ PSNH Response to Q-PNE-FEL-55: “Unlike non-operating costs, which are readily identifiable, operating costs associated with the Scrubber cannot be easily determined. Cost allocations would have to be made for plant costs such as labor and administrative and general expenses. Rather than base the adder on allocated cost, PSNH proposes that the adder only include non-operating costs.”

Because the calculation of Rate ADE does not include operating as well as non-operating costs of the Scrubber, it does not comply with the plain meaning of RSA 125-O:18 and it is therefore unlawful.

WHEREFORE, for all of the foregoing reasons, PNE Energy Supply, LLC respectfully requests the Commission to:

- A. Reconsider its Order in this proceeding; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
PNE Energy Supply, LLC

By its Attorney
/s/ James T. Rodier
1465 Woodbury Ave., No. 303
Portsmouth, NH 03801-5918
603-559-9987

Dated: May 7, 2013

CERTIFICATION OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this Motion for Rehearing on each person identified on the Commission's service list for this docket.

/s/ James T. Rodier

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Alternative Default Energy Service Rate
Docket No. DE 11-216

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO PNE
ENERGY SUPPLY, LLC'S MOTION FOR REHEARING OF ORDER NO. 25,488**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07(f) and RSA chapter 541, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the "PNE Motion for Rehearing of Order No. 25,488" (the "Motion") filed on May 7, 2013 in the above docket by PNE Energy Supply, LLC ("PNE") with the New Hampshire Public Utilities Commission ("Commission"). In support of its objection PSNH states as follows:

1. On April 8, 2013 the Commission issued Order No. 25,488 approving a settlement agreement between Commission Staff ("Staff"), the Office of Consumer Advocate ("OCA") and PSNH, regarding PSNH's proposal to implement an alternative default energy service rate, Rate ADE. That settlement agreement provided that PSNH would implement Rate ADE as a pilot program for a period of 36 months beginning upon implementation of the rate. Upon implementation, a customer who has received service from a competitive supplier for at least 12 consecutive months would return to default service with PSNH under Rate ADE, rather than standard default service under Rate DE. The price of Rate ADE would be based upon PSNH's marginal cost plus an "adder" equal to the non-operating costs of the scrubber in service at Merrimack Station. The price of Rate ADE could be greater or less than the price of Rate DE depending upon the prevailing market prices and would be set semi-annually following Commission approval

of the price. In addition, if market prices rose by an amount defined in the settlement agreement, Rate ADE would close to new customers until the market changed or the Commission set a new price.

2. On May 7, 2013, PNE filed the Motion contending that Order No. 25,488 ignores: (1) the plain meaning of RSA 374-F:2, I-a; (2) the plain meaning of RSA 369-B:3, IV (b)(1)(A); and (3) the plain meaning of RSA 125-O:18. The Motion raises no new arguments or evidence, reargues issues the Commission has already considered and rejected, and should be denied.
3. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.
4. As to the first issue, PNE contends that:

PSNH erroneously believes that Rate AD [*sic*] is for any customer who, for whatever reason, elects not to have a competitive supplier supply their energy. PSNH interprets RSA 374-F:2, I-a as if it reads that default service is available to any customer that does not choose an electricity supplier. This is inconsistent with the plain meaning of RSA 374-F:2, I-a as it was enacted by the Legislature.

Motion at 2. This identical argument was raised in the underlying proceeding and, as such, the Motion only reasserts prior arguments -- arguments which have been rejected by

the Commission. In the May 4, 2012 Motion to Dismiss¹ in this docket it was contended that “The express purpose behind Rate ADE, according to PSNH’s cover letter, is to lure customers away from their existing supplier to a more attractive option, namely, default service. Accordingly, implementation of redesigned Rate ADE would be prohibited by the plain language of RSA 362-F:2, I-a.”² May 4, 2012 Motion to Dismiss at 2. The Commission denied this argument in Order No. 25,372, though it found that certain factual matters remained to be developed. When those factual matters were developed, the Commission approved Rate ADE as consistent with RSA Chapter 374-F. *See* Order No. 25,488 at 17-18. PNE is simply attempting to raise the same argument again.

5. Moreover, PNE’s own witness refuted this argument during testimony in the docket.

During the hearing Mr. Fromuth testified as follows:

Q. Well, could you turn please to RSA 374-F:2, Paragraph I-a, under “Definitions”. There it defines “Default Service” to mean “electricity supply that is available to retail customers who are otherwise without an electricity supplier and are ineligible for transition service.” Is there anything in there that asks why a customer is “otherwise without an electricity supplier”?

A. In other words, the circumstances of why they don't have one is not explored, is that what your point is?

Q. Yes. That's what I'm asking.

A. Right. That's what -- that doesn't address that, no.

Q. So, is it possible that a customer could be without a supplier for pretty much any reason?

A. Yes. There are all sorts of reasons.

Q. Could it be that the customer doesn’t want a supplier?

A. It could very well be that, yes.

¹ The May 4, 2012 Motion to Dismiss was filed by Freedom Logistics, LLC d/b/a Freedom Energy Logistics (“Freedom”), rather than PNE. At the November 26, 2012 hearing on this case, however, August Fromuth, who is both the managing director of Freedom and CEO of PNE, testified that Freedom’s and PNE’s positions on the issues in this docket were the same. *See* November 26, 2012 Transcript (Nov. Tr.) in Docket DE 11-216 at 96-97. Accordingly, not only has this argument been raised previously in this docket, it has been raised, for all intents and purposes, by the same party.

² The May 4, 2012 Motion to Dismiss references RSA 362-F:2, I-a. However, the remainder of that section of the motion is devoted to a discussion of RSA 374-F:2, I-a. PSNH believes the proper reference should be to RSA 374-F:2, I-a.

Nov. Tr. at 105-06 (emphasis added). Thus, not only has the Commission rejected PNE's argument, PNE too has agreed that a customer could be without a supplier, and thus take default service, for essentially any reason – including that a customer chooses not to have a supplier. Accordingly, the foundation of PNE's argument – PSNH's alleged “erroneous” reading of RSA 374-F:2, I-a – has been spurned by PNE's own witness. The Commission should reject outright any attempt by PNE to reargue the issue, particularly in light of the fact that its witness has offered sworn testimony to the contrary.

6. Regarding the second issue, PNE contends that “PSNH's proposed calculation of Rate ADE admittedly does not include any costs for marketing or outreach programs, or costs for administration, promotional materials, marketing, sales and customer service.

Therefore, PSNH cannot credibly claim that Rate ADE is based upon ‘actual costs.’”

Motion for Rehearing at 3. As with the above issue, this issue has already been raised and rejected. As with the argument under RSA chapter 374-F, this argument was raised in the May 4, 2012 motion to dismiss, *see* May 4, 2012 Motion to Dismiss at 3, and was rejected in Order No. 25,372. PNE raised the argument again during the hearing in this matter, and the Commission again rejected it in Order No. 25,488. *See* Order No. 25,488 at 13, 16-17. PNE raises no new evidence, nor does it point to any matters the Commission overlooked or mistakenly conceived, but only seeks a different result upon raising this argument a third time. Rehearing is not justified.

7. Finally, PNE contends that “Because the calculation of Rate ADE does not include operating as well as non-operating costs of the Scrubber, it does not comply with the plain meaning of RSA 125-O:18 and it is therefore unlawful.” Motion for Rehearing at

4. As with the other arguments PNE raises, this too was argued to and rejected by the

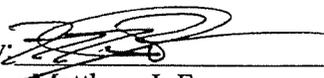
Commission. In Mr. Fromuth's pre-filed testimony it states "Therefore, since the calculation of Rate ADE does not include operating as well as no-operating [*sic*] costs of the Scrubber, it does not comply with the mandate of RSA 125-O:18." August 27, 2012 Pre-Filed Testimony of August Fromuth at 4. The argument made in testimony is a nearly verbatim argument to the one made in the instant motion. Nonetheless, the Commission concluded that Rate ADE should be implemented. PNE points to no new information or evidence justifying rehearing, but only raises the same argument in search of a different result. Such arguments do not support a motion for rehearing.

WHEREFORE, PSNH respectfully requests that the Commission deny PNE's Motion for Rehearing of Order No. 25,488, and order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

5/8/13
Date

By: 
Matthew J. Fossum
Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961
Matthew.Fossum@nu.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

5/8/13
Date


Matthew J. Fossum

James T. Rodier, Esq.
Attorney-at-Law
1465 Woodbury Ave., No. 303
Portsmouth, NH 03801-5918

603-559-9987
jrodier@mbtu-co2.com

May 9, 2013

Debra A. Howland
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

**PSNH Alternative Default Energy Service Rate
DE 11-216**

Dear Ms. Howland:

I am writing on behalf of PNE Energy Supply, LLC to briefly reply to PSNH's Objection to PNE's Motion for Rehearing.

PSNH's objections are easily refuted. PSNH contends that PNE's "Motion raises no new arguments or evidence, reargues issues the Commission has already considered and rejected, and should be denied." PNE's Motion for Rehearing contends that the Commission Order No. Order No. 25, 488 contains three errors of law involving statutory interpretation. The Commission has not explicitly ruled on PNE's contentions at any point during this lengthy proceeding.

PSNH also contends that PNE's legal argument regarding the plain meaning of 374-F:2, I-a is contradicted by PNE's testimony. This is not the case. PSNH's witness was responding to a generic question in the context of availability of Rate DE, not Rate ADE. PNE has not raised any issue with respect to the availability of Rate DE. Rather, PNE has contended that availability of Rate ADE would be unlawful because its very purpose is to lure customers back to PSNH, an unlawful abuse of default service, and has nothing to do with providing a safety net for customers as required by law.

Sincerely,
/s/ James T. Rodier

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-216

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition to Establish an Alternative Default Energy Service Rate

Order Denying Motion for Rehearing

ORDER NO. 25,509

May 14, 2013

I. PROCEDURAL HISTORY

On May 7, 2013, PNE Energy Supply, LLC (PNE) filed a Motion for Rehearing of Order No. 25,488 (April 8, 2013) in the instant docket.¹ Public Service Company of New Hampshire (PSNH) filed an Objection to the Motion on May 8, 2013. PNE filed a letter in response to PSNH's Objection on May 9, 2013.

PNE principally argues that Order No. 25,488 fails to conform to: (1) RSA 374-F:2, I-a, defining default service customers as those without an electricity provider; (2) RSA 369-B:3, IV (b)(I)(A) requiring default service rates to include PSNH's actual, prudent and reasonable costs of providing such power; and (3) RSA 215-O:18 requiring the costs of the PSNH Scrubber to be recovered through default service rates.

PSNH objected to PNE's motion arguing that PNE had made the same arguments in its earlier motion to dismiss and during the hearing in this matter.

¹ For the procedural history in this proceeding, see Order No. 25,320 (January 26, 2012) and Order No. 25,488 (April 8, 2013) in this docket. <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-216.html> on the Commission's website.

II. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief and demonstrates that a decision is unlawful or unreasonable. *See Rural Telephone Companies*, Order No. 25,291 (November 21, 2011) at 9. Good reason may be shown by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal, *Dumais v. State*, 118 N.H. 309, 311(1978), or by identifying new evidence that could not have been presented at the underlying proceeding. *O’Loughlin V. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003).

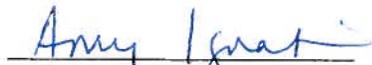
As noted in our prior Orders in this proceeding, PSNH made the filing to establish a Rate ADE at the Commission’s direction. In Order No. 25,256, we specifically directed PSNH to design a Rate ADE that complies with the statutory requirements of RSA 374-F:3, V(c), RSA 369-B:3,IV(b)(1)(A), and the general policy principles of RSA 374-F. *See* Order No. 25,320 at 31-32. In Order No. 25,488, we found that the proposed Rate ADE was consistent “with prior orders and the relevant statutes.” *Id.* at 17.

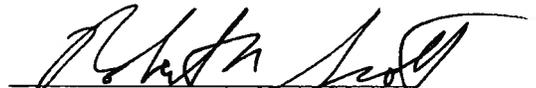
We have reviewed PNE’s motion and PSNH’s Objection. Although the Commission’s rules do not provide for reply to objections, in this case we have also considered PNE’s May 9, 2013 letter. We find that PNE in its motion fails to identify any new facts and merely restates arguments that it had previously made in this docket. Having already addressed these arguments and the record in this case in Order No. 25,488, we will deny PNE’s motion for rehearing.

Based upon the foregoing, it is hereby

ORDERED, that the Motion by PNE Energy Supply, LLC for rehearing of Order No. 25.388 is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of May, 2013.


Amy L. Ignatius
Chairman


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director