The following are Michael Harrington closing comments in Docket 14-238 before the New Hampshire Public Utilities Commission to which he is an intervener.

Commissioners, thank you for this opportunity to present my concerns with the proposed Settlement Agreement (SA) in this docket. My comments are limited to the treatment of the Purchased Power Agreements (PPA's) between Eversource, aka PSNH, and the Burgess Bio-Mass Generating Facility (BBM, note: this facility has had different owners at different times, for simplicity I will refer the bio-mass electric generating facility in Berlin as BBM)) and the Lempster Wind Facility. Due to the much larger size (70 MW with an approximate capacity factor of 90% vs. 24 MW's with an approximate capacity factor of 28%) of the BBM and the generosity of the PPA it received, my comments will be directed at the PPA between them and PSNH. The underlying principles in my comments however, are applicable to the Lempster Wind PPA as well.

To start I would like to address the response to many of my questions to the panel on 2/3/16. The common response regardless of the question was that the SA was global and fair to all with the implication that nothing in it could be modified by the Commission without destroying the entire SA. This is just plain wrong. RSA 369-B:3-a,II specifically requires the Commission to review and if necessary to meet the public interest standard, modify the SA

"II. The commission may approve or reject the 2015 settlement proposal, or condition its approval on any modification of the terms and conditions that it determines to be necessary to meet the public interest standard, so long as any order to divest provides for recovery of stranded costs and such other costs of divestiture as may be approved by the commission."

RSA 369-B:3-a,III even includes provisions on how the Commission should deal with divestiture if their proposed modifications are not acceptable to the settling parties.

"III. Notwithstanding paragraphs I and II, if the commission rejects the 2015 settlement proposal or approves it with conditions that are not acceptable to the settling parties as provided in paragraph II, the commission, as part of the pending expedited proceeding in Docket DE 14-238, Determination Regarding PSNH's Generation Assets, shall order divestiture of all or some of PSNH's generation assets if the commission finds that it is in the economic interest of retail customers of PSNH to do so."

This Commission has a long history of modifying proposed settlement agreements, the overwhelming majority which were accepted by the settling parties. To imply this cannot be done is this case is just plain silly

I would now like to quickly review how we got here with regard to these PPA's. During the Site Evaluation Committee (SEC) hearings for BBM, PSNH entered into discussions and reached an

agreement with BBM on a proposed PPA. This PPA was submitted to SEC as part of the proposed financing of the facility (I was a member of this SEC so I am familiar with the details)

As required by law, this proposed PPA was submitted to this Commission for review and approval. The Commission found the terms too generous to BBM and made modifications as part of its approval. Both parties, PSNH and BBM, accepted the PPA with the modifications imposed by the Commission. (as I said before, this often occurs).

At the time the PPA was approved, all parties understood all costs associated with this PPA would have to be collected through the default service charge.

RSA 374-F:3,V(c) states in part "Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge."

We now jump ahead to last year where SB221 modified this provision for the divestiture process only. It states in part "Notwithstanding RSA 374-F:3, V(c), the commission may approve recovery of net over-market costs of purchased power agreements entered into pursuant to RSA 362-F:9 through a stranded cost charge as part of a comprehensive restructuring of PSNH's ownership of generation assets." Notice it states the Commission "may" not "must" allow over market costs to be placed in stranded costs. The legislature is clearly is deferring to the Commissions judgment on this very complicated issue.

Subsequent to the passage of SB221 this SA was reached which required the net over market costs of the PPA to be placed in a non-bypassible charge imposed on all PSNH distribution customers. This is a major change and a major break with the policy objectives of electric restructuring.

Right now, PSNH distribution customers are allowed to choose their electric supplier. Those who choose not to get their electric supply from PSNH, are not subject to the costs associated with this PPA. In other words they have customer choice.

Almost 20 years ago NH passed electric restructuring. One if its policy objectives was that "Increased customer choice and the development of competitive markets for wholesale and retail electricity services are elements in a restructured industry." (See Testimony of Tom Frantz, page 3, 7/17/2015). Clearly the SA restricts customer choice, requiring all customers pay for what turned out to be a very bad PPA pursued and signed by PSNH.

Another principle of restructuring was that the risk associated with generation should be shifted from ratepayers to stockholders. Again, this PPA does just the opposite.

The SA would now to change the rules. It would to eliminate customer choice. It would eliminate customer's ability to choose not to pay for a bad decision made by PSNH.

So we can clearly see the reasons for not imposing the costs associated with this PPA to all PSNH customers(even those who choose not to take electric service from PSNH), what are the reasons for doing it?

In his 7/17/15 testimony (page 9 & 10) Ton Frantz is asked the following

"Why do you support the inclusion in stranded costs of the over-market or under-market costs of the Lempster and Burgess Biomass PPAs?"

His response was
"Doing so would result in all of New Hampshire 's regulated electric utilities default energy service pricing be determined on a similar basis from the competitive marketplace. In addition, it is a treatment that the Commission has approved, previously. Specifically, it was how the costs associated with the QFs were recovered in PSNH's 1999 Agreement to Settle PSNH Restructuring (pp. 20-21). The Commission faced this public policy issue more recently in DE 11-184, Joint Petition for Approval of Power Purchase and Sale Agreements and Settlement Agreement. It was a petition to approve a number of contracts with small wood-fired power producers, contracts which I had negotiated with the wood-fired small power producers and PSNH. The Commission approved the contracts *(see* Order No. 25,305, December 20, 2011), but decided to allocate the above-market costs associated with those PPAs to all retail distribution customers of PSNH and not solely to those customers taking Energy Service from the Company. The same sound policy rationale applies here for Lempster and Burgess Biomass. The PPAs were approved because they provided public benefits to the State, including economic and environmental benefits. It is appropriate, therefore, that the above-market costs associated with these two PPAs, post-divestiture, be recovered from all customers of the Company."

I have many issues with this response. First, while it is true it would result in all of NH's regulated utilities default energy service pricing being determined on a similar basis, this is because unlike PSNH, the other utilities chose not to enter into way over market priced PPA's. Also, the competition for providing electric service is not between utilities; it is between utilities and the competitive electric suppliers. Competitive electric suppliers can also enter into PPA's. They do not however, have the ability to transfer any above market costs. They have to deal with the consequences of their decisions. PSNH should also
It has been implied that if the cost of the PPA were to remain in PSNH's default service rates, it would lead to mass migration. This is simply not the case. Dick Norman testified that the average NH LMP for 2015 was $0.41/kw-hr and that PSNH's generation costs for the same time were a little over $0.60/kw-hr. When asked by me, Tom Frantz stated that PSNH presently has retained over 60% of its retail customers on default service (though he later said it could be higher). He also stated that the average LMP in 2015 was one of the lowest since the inception of restructured markets.(It should be noted that the 2014 LMP's were also very low). So in a year with extremely low LMP's which means the over market costs associated with the BBM PPA are about as high as they can get, where PSNH generation costs were much higher than the LMP;

most PSNH retail customers chose to stay with PSNH as their electric service provider. Mass customer migration is just not happening

Mr. Frantz also speaks of how costs associated with other cases, specifically QF's and small wood fired power producers were treated. There are substantial differences between these and the BBM PPA. The QF contracts were mandatory, unlike this PPA, PNSH had no choose but to enter into them. Though the contracts with the small wood fired plants were not mandated, there was extreme pressure put on PSNH to enter into them. Mr. Frantz states he negotiated these contracts but what he does not say is that he did so at the expressed request of Gov Lynch.
He goes on to state that this PPA provides public benefits to the state. I agree with this but whatever these benefits are, they have been and will continue to be realized with the PPA's cost in default service rates.
I asked if some of the above market costs could be absorbed by Eversource stockholders instead of their all their NH ratepayers (after all it was the stockholders management that entered into the PPA and unlike ratepayers, they can choose to sell their stock and disassociate from Eversource). I did not receive an answer other than what do you think? I think that the stockholders who own Eversource stock by choice should deal with the consequences of the company's decisions and not the captive ratepayers. I believe there are millions of shares of Eversource stock and if the entire over market costs of this PPA were to be assessed on them, it would result in less than a penny a year in reduced dividends. I can hear the cries already, this cannot be done! Well it can. Based on what we have seen with LMP's and migration, it is most likely PSNH can leave all the PPA costs in their default service rates and still maintain an adequate customer base to cover these costs. If however, they do not there is no reason that Eversource could not "eat" some of these costs and keep their default service rates competitive

In closing, as I have stated there is simply no reason to move the PPA costs from default service rates to a non-bypassible charge for all PSNH customers. To do so would be unfair to customers who choose not to get their electric service from PSNH, it would be changing the rules which were in effect when the Commission approved the PPA and it would violate the policy objectives of customer choice and compitition of electric restructuring in NH. Leaving these costs in default service rates would require that PSNH deal with the consequences of a PPA which they actively pursued knowing that all costs would be recovered from their default service rate.
It is time for the ratepayers to win one!