

THE STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 11-250  
Investigation of Merrimack Station Scrubber Project and Cost Recovery

Docket No. DE 14-238  
Determination Regarding PSNH's Generation Assets

**TESTIMONY OF SENATORS JEB BRADLEY AND DAN FELTES**

1 **Q. Please state your name, title and mailing address.**

2 A. My name is Jeb Bradley, Senator for NH Senate District 3. My mailing address is State  
3 House, Room 302, 107 North Main Street, Concord, NH 03301.

4 A. My name is Dan Feltes, Senator for NH Senate District 15. My mailing address is  
5 Legislative Office Building, Room 5, 33 North State Street, Concord, NH 03301.

6  
7 **Q. Senator Bradley, please briefly describe your professional background.**

8 A. From 1990 to 2002, I served as a State Representative, including Chairing the House  
9 Science, Technology and Energy Committee. In that capacity, in 1999 and 2000, I  
10 participated in the development of the prior PSNH restructuring settlement, including the  
11 divestiture of Seabrook Station. I also helped author New Hampshire's electric  
12 restructuring and deregulation laws. I then served as U.S. Congressman for New  
13 Hampshire's 1st District for two terms, from 2002-2006. I returned to the New  
14 Hampshire Legislature in 2009 as Senator for the 3rd District in the New Hampshire  
15 Senate. I now Chair the Senate Energy & Natural Resources committee, was the prime

1 sponsor of Senate Bill 221-FN this session, and worked as a member of the so-called  
2 "State Team" helping to negotiate 2015 Public Service Company of New Hampshire  
3 Restructuring and Rate Stabilization Agreement (the "Settlement Agreement"). I  
4 received a Bachelor of Arts in Sociology from Tufts University.

5  
6 **Q. Senator Feltes, please briefly describe your professional background.**

7 A. From 2006 until 2014, I worked as an attorney at New Hampshire Legal Assistance. In  
8 that capacity, I represented low-income clients and senior citizens, including before the  
9 Commission in several dockets involving energy and rate matters. In 2014, I was elected  
10 Senator for the 15th District in the New Hampshire Senate. I serve on the Senate Energy  
11 & Natural Resources committee, helped with the passage of Senate Bill 221-FN this  
12 legislative session, and worked as a member of the so-called "State Team" helping to  
13 negotiate the Settlement Agreement. I received a Bachelor of Arts in Public  
14 Administration and Criminology from the University of Northern Iowa, a Master's  
15 Degree in Public Policy from Georgetown University, with a focus on energy regulation,  
16 and a Juris Doctor from the University of Iowa.

17  
18 **Q. Senator Bradley, have you previously testified before the Commission?**

19 A. Yes, I testified in Docket No. DE 99-099, Public Service Company of New Hampshire  
20 Proposed Restructuring Settlement.

21  
22 **Q. Senator Feltes, have you previously testified before the Commission?**

1 A. No, but as stated above I have represented intervenors in several PUC dockets.

2

3 **Q. What is the purpose of your testimony?**

4 A. The purpose of our testimony is to express our strong support for the Settlement  
5 Agreement, and to urge the Commission to expeditiously review and approve the  
6 Settlement Agreement.

7

8 **Q. How have you been involved in the development of the Settlement Agreement?**

9 A. We were members of the so-called "State Team" that negotiated with PSNH to reach  
10 agreement on the central terms of a settlement, and we worked extensively with the  
11 parties to Dockets DE 11-250 and DE 14-238 to develop the Settlement Agreement. We  
12 also worked together on SB 221-FN, which was introduced to enable the use of  
13 securitization of stranded costs in furtherance of the Settlement Agreement.

14

15 **Q. Senator Bradley, do you have any previous experience related to the restructuring**  
16 **of PSNH?**

17 A. Yes, I was actively involved in development and passage of legislation mandating the  
18 restructuring of New Hampshire's electric utilities, RSA ch. 374-F, and participated in  
19 negotiations between the State and PSNH over the restructuring of PSNH culminating in  
20 the 1999 settlement agreement, which resolved longstanding litigation and was approved  
21 by the Commission in Docket DE 99-099.

22

1 **Q. Briefly describe why you support the Settlement Agreement.**

2 A. With an estimated \$380 million in customer savings projected over the first five (5) years  
3 following divestiture, host municipality and worker protections, and a rate design that  
4 fairly allocates the customer savings to promote economic growth and jobs, we believe  
5 that the Settlement Agreement offers a comprehensive and overwhelmingly positive  
6 resolution of the restructuring of PSNH that will prevent drawn out and costly litigation.

7  
8 **Q. Why is this a good time to divest PSNH of its generation assets?**

9 A. For a variety of reasons, now is a good time to resolve lengthy and contentious litigation  
10 and move forward with divestiture of PSNH's generation assets. First, PSNH ratepayers  
11 can take advantage of historically low interest rates through divestiture and securitization  
12 of stranded costs in the bond market. Interest rates are likely to only go up, and it is not  
13 in the best interests of ratepayers (or our economy) to delay any longer. Second, the  
14 value of PSNH's generation assets are likely maximized now, when considering Forward  
15 Capacity Market payments, as well as the current need for generation on the New  
16 England electrical grid. Maximizing the sale value of the generation assets minimizes the  
17 stranded costs on PSNH ratepayers. Third, the uncertainty of higher electric rates only  
18 hurts the economy, it doesn't help it. In order to bring certainty to the market, to our  
19 businesses, and to all PSNH distribution ratepayers, now is the time to finalize the  
20 transition to full competition through divestiture. PSNH is the last remaining electric  
21 utility in New England that has not divested -- it is past time to complete our move to  
22 competition in New Hampshire. Fourth, once a decision is issued in DE 11-250 (the so-

1 called "Scrubber" docket), and without an accompanying divestiture and securitization  
2 process, the full costs of the Merrimack Station Scrubber at the company's full 9.81%  
3 rate of return will most likely be embedded into PSNH's default energy service rates,  
4 almost doubling the amount that the company is currently recovering for the Scrubber.  
5 Fifth, as a consequence, accelerated migration is expected to result from an increasing  
6 PSNH default service rate, driving the so-called "death spiral" (although we believe this  
7 term is inappropriate because PSNH is legally allowed to recover all of its prudently  
8 incurred costs plus its rate of return regardless of the remaining number of customers).  
9 Without divestiture, it will be extremely onerous for the customers who are unable (or  
10 unaware of their option) to switch to a competitive supplier and who would be left with  
11 ever increasing costs, especially for many senior citizens and other residential customers  
12 on fixed incomes. In short, we believe strongly that now is the time to act.

13  
14 **Q. What is the policy rationale for allocating stranded costs differently among**  
15 **customer classes? Is the proposed rate design fair for residential customers who**  
16 **would have to repay a larger proportion of the stranded costs?**

17 A. Under the Settlement Agreement, there is an estimated \$380 million in customer savings  
18 over the first five (5) years following divestiture alone. Typically, all customer classes of  
19 PSNH distribution customers would experience the same stranded cost charge. That  
20 would be consistent with how the prior restructuring finance order was accomplished in  
21 DE 99-099. However, in 2006 the Legislature made the unfortunate decision to  
22 statutorily assign the cost of the Merrimack Station Scrubber only to PSNH default

1 energy service customers. As the scrubber costs were included in default service rates,  
2 more PSNH distribution customers began purchasing their energy service from  
3 competitive suppliers. Much of this so-called "migration" away from PSNH's default  
4 energy service to a competitive energy service occurred in PSNH distribution customer  
5 classes of larger, more sophisticated customers, including the hi-tech and manufacturing  
6 sector, which usually fall in the "LG" customer class of PSNH distribution customers.  
7 While many of PSNH's LG distribution class of customers historically switched back-  
8 and-forth between PSNH default energy service and a competitive energy supplier, in our  
9 view special recognition and treatment to mitigate the rate impact of a nonbypassable  
10 charge to the hi-tech and manufacturing sector is very important to job retention,  
11 economic growth and the future of New Hampshire. Many residential customers and  
12 smaller businesses did not make a "competitive choice" of energy service, and have been  
13 paying some of the cost of the Merrimack Station Scrubber.

14 In constructing a rate design, the goal was to strike a delicate and reasonable balance  
15 between acknowledging the importance of the hi-tech and manufacturing sectors on the  
16 one hand, and ensuring that residential and small business customers still receive a  
17 significant amount of the savings resulting from the settlement on the other. Therefore,  
18 we believe it appropriate and fair to reallocate some of the savings that would otherwise  
19 be attributable to smaller customer classes, like the Residential customer class, to larger  
20 customer classes, like the LG customer class. The agreed-upon revenue requirement  
21 allocated by customer class for the nonbypassable charge is contained on page 10 of the  
22 Settlement Agreement. Moreover, as part of this proposed rate design, the Settlement

1 Agreement requires that "[e]ffective January 1, 2016, the Temporary Rate for recovery of  
2 costs of the Scrubber shall be changed to reflect recovery of all costs of the Scrubber  
3 incurred by PSNH, along with its allowed return on those costs." See Settlement  
4 Agreement, p. 12. This means that, prior to divestiture and securitization, smaller  
5 customer classes will begin paying down the cost of the Scrubber at an even greater rate  
6 than they currently pay, thereby further helping to reduce the overall stranded costs that  
7 will be recovered from all customers.

8 Absent divestiture and securitization pursuant to the Settlement Agreement, the full  
9 Scrubber costs, including the currently accruing deferral, will be recovered from default  
10 service customers at a rate of approximately 1.9 cents/kWh, or \$12.35 per month for the  
11 average residential customer taking default service. Divestiture and securitization under  
12 the terms of the proposed Settlement Agreement actually reduce the existing Scrubber  
13 costs for a residential customer from the current 0.98 cents/kWh to a total Stranded Cost  
14 Recovery Charge of about 0.81 cents/kWh for all generating assets as well as reducing  
15 the higher 1.9 cents/kWh that would begin on January 1, 2016. Additionally, residential  
16 customers on PSNH default energy service will see a reduction in the cost associated with  
17 the over-market cost of the Burgess Biomass power purchase agreement when these costs  
18 are spread to all PSNH distribution customers. All told, smaller customer classes,  
19 including the Residential customer class largely still on PSNH default energy service, do  
20 much better under the terms of the Settlement Agreement as compared with either the  
21 status quo or a litigated divestiture process.

1 **Q. What is the policy rationale behind applying the stranded cost of the Merrimack**  
2 **Station mercury scrubber to all PSNH distribution customers?**

3 A. The power generated by Merrimack Station benefited all PSNH distribution customers,  
4 particularly in the winter, and regardless of whether the customer received PSNH energy  
5 service or switched back-and-forth between PSNH energy service and a competitive  
6 supplier. Moreover, it is clear that an "all-in" securitization strategy is necessary to  
7 secure financing at the lowest rate possible. Indeed, as stated on page 8 of the joint report  
8 of Staff and La Capra submitted in Docket IR 13-020, "(i)f stranded costs are charged to  
9 all PSNH customers through a non-bypassable charge, the likelihood of PSNH being able  
10 to obtain securitized bonds is much higher than if the stranded costs of the generating  
11 assets were only charged to (PSNH's) ES customers." Lastly, it would make little or no  
12 sense to exclude the Merrimack Station Scrubber from a financing order. To do so would  
13 only harm customers by not affording them the value of the Rate Reduction Bonds for the  
14 remaining Scrubber debt, as customers would instead pay PSNH's regulated rate of  
15 return.

16  
17 **Q. Under the Settlement Agreement, how will PSNH's Power Purchase Agreements**  
18 **with Burgess Biomass and Lempster Wind be treated?**

19 A. Senate Bill 221 provided the following Chapter Law provision:

20 Notwithstanding RSA 374-F:3, V(c), the commission may approve recovery  
21 of net over-market costs of purchased power agreements entered into pursuant  
22 to RSA 362-F:9 through a stranded cost charge as part of a comprehensive  
23 restructuring of PSNH's ownership of generation assets.  
24

1 (Emphasis added). The Settlement Agreement calls for Part 2 of the Stranded Cost  
2 Recovery Charge to include all over-market costs or under-market credits resulting from  
3 the two PPAs that were approved by the Commission. See Settlement agreement; p. 11,  
4 pp. 21-22. There are several reasons to include both the under-market savings or  
5 benefits, and any net over-market costs of the purchased power agreements in the  
6 stranded costs calculation. First, if over-market costs are paid by all PSNH customers  
7 through stranded costs, customers should also get the benefit of lower costs when the  
8 PPAs produce under-market costs. Second, the Burgess Biomass PPA received broad  
9 support from across the political spectrum for its significant public benefit (despite being  
10 over-market), including advancing economic development and jobs in the North Country.  
11 See Appendix A, Letters of Support filed in DE 11-184. We recognize the importance of  
12 New Hampshire's forest products industry and the many jobs and businesses dependent  
13 on this industry in the North Country. So did the Commission. We agree with the  
14 observations of the Commission in DE 11-184, a case in which the Commission approved  
15 PPAs with several small existing wood plants. It wrote:

16 ...the public interest affected by the PPAs is broader and encompasses PSNH  
17 ratepayers as New Hampshire citizens and residents, and incorporates public  
18 benefits in terms of economic development, job retention and creation,  
19 community impact related to property tax payments, enhanced energy  
20 security, and potential environmental and health-related impacts.

21  
22 See Order 25,305, December 30, 2011, pp. 34-35.

23 The Commission ultimately allocated a portion of the over-market costs from those PPAs  
24 with the small wood plants to all of PSNH's distribution customers. In doing so, it  
25 provided a general rationale that we agree with here, that:

1 ...the costs that are being recovered from all customers, which are non-  
2 bypassable, are costs associated with public benefits that accrue to all PSNH  
3 customers, whether they take default energy service or competitive supply.  
4 Thus, there is no unfair cost shifting to customers who have taken advantage  
5 of competitive supply.  
6

7 See Order 25,305, December 30, 2011, p. 41.

8 Third, the treatment of both the under-market and over-market calculations of the Berlin  
9 and Lempster PPAs in the stranded costs charge is consistent with the Commission's  
10 treatment of power purchase agreements in the prior restructuring case: DE 99-099. See  
11 Order 23, 443, p. 192, April 19, 2000. Fourth, and perhaps most importantly, in order to  
12 move to a fully competitive electricity market and promote competition, we must do our  
13 best to level the playing field between PSNH default energy service and competitive  
14 energy service. By requiring PSNH default energy service customers to pay the net over  
15 market costs of the Burgess Biomass PPA, we would be unduly providing a competitive  
16 advantage to competitive energy service providers. PSNH has committed to a  
17 competitive procurement process for default energy service in the Settlement Agreement,  
18 and every effort should be made to level the playing field in energy service and promote  
19 competition across the board. The PPA provision in the Settlement Agreement facilitates  
20 competition. Finally, this provision -- like every provision in the Settlement Agreement -  
21 - was the product of much discussion, deliberation and consideration among the  
22 stakeholders, including those representing competitive supplier interests who would  
23 actually get an advantage if the net over market costs were included only in default  
24 energy service.  
25

1 **Q. Do you believe that the proposed rate design should be applied to the over- and**  
2 **under-market costs of the PPAs? Why or why not?**

3 A. Yes. The rate design applicable to other stranded costs should also be applicable to the  
4 PPA stranded costs. This consistency in application promotes administrative efficiency,  
5 customer understanding, fosters competition, and preserves savings that are important for  
6 job retention and economic development.

7  
8 **Q. Do you believe that the provisions of the Settlement Agreement, including the**  
9 **proposed rate design, meets the plain language of the following statutory test in**  
10 **Senate Bill 221 to "...take into account the impact on all PSNH customer classes, and**  
11 **shall consider the impacts on the economy in PSNH's service territory, the ability to**  
12 **attract and retain employment across industries, and whether the proposed rate**  
13 **design fairly allocates the costs of divestiture of PSNH's generation plants among**  
14 **customer classes"?**

15 A. Yes. We believe that an estimated \$380 million in customer savings in the first five (5)  
16 years following divestiture, the rate stabilization as well as certainty in the market will all  
17 help the economy in PSNH's service territory and attract and retain jobs across industries.  
18 As described above, we believe the rate design takes into account all PSNH customer  
19 classes and fairly allocates the costs -- and the savings -- of divestiture. Moreover, the  
20 proposed rate design helps with the ability to attract and retain employment across  
21 industries. The proposed rate design mitigates to a large extent the impact of the  
22 nonbypassable charge on large PSNH distribution customers who purchase energy

1 service from a competitive energy supplier. By mitigating the impact on large users in  
2 the LG customer class -- particularly manufacturers -- we help attract and retain  
3 employment in the manufacturing sector. But by also allowing for some customer  
4 savings in the smaller customer classes, like the Residential class, we keep more money  
5 in people's pockets, promoting consumer spending and reducing costs, which helps attract  
6 and retain jobs in retail and other consumer-driven industries.

7  
8 **Q. What do you think about adding analyses from “REMI” (Regional Economic  
9 Models, Inc.) for this review?**

10 **A.** Under SB 221, the Commission shall:

11 ...consider the impacts on the economy in PSNH’s service territory, the ability to  
12 attract and retain employment across industries...

13  
14 (Emphasis added). See SB 221, p. 3, ll. 21-22; p. 4, ll. 2-3. As a basic principle of  
15 statutory construction, the Commission is bound by the plain language of the words of  
16 the statute. At least one plain meaning of the word “consider” is: “to think about  
17 (something or someone) carefully especially in order to make a choice or decision”. See  
18 <http://www.merriam-webster.com/dictionary/consider> . Sophisticated REMI economic  
19 analyses, albeit potentially helpful to review, is certainly not necessary in order for the  
20 Commission to think carefully in its review.

21 We do, however, note that the wording on page 3 of the June 26, 2015 Order of Notice is  
22 much broader than the plain language of SB 221, in particular the reference to “...our  
23 State’s enterprises...” Unnecessarily broad reviews and analyses could lead to

1 unnecessary delay, and SB 221 specifically requires an “expedited proceeding”. See SB  
2 221, p. 3, ll. 16 & 31.

3  
4 **Q. Does the Settlement Agreement contain protections against detrimental tax impacts**  
5 **for municipalities?**

6 A. Yes. Where a host municipality may incur a reduction in property tax revenues due to  
7 decreased valuation of PSNH generation asset(s) after divestiture, pages 22-24 of the  
8 Settlement Agreement set forth a thoughtful, balanced and comprehensive property tax  
9 stabilization payment program that reasonably protects the interests of municipalities and  
10 property tax payers, balanced against the interests of ratepayers.

11  
12 **Q. Does the Settlement Agreement contain protections for affected PSNH employees?**

13 A. Yes. All purchasers are required to keep the plants in service for a minimum of eighteen  
14 months from the date of financial closing, comply with the provisions of the Collective  
15 Bargaining Agreement as set forth in Appendix B of the Settlement Agreement, and  
16 assume non-represented Affected Employee protections as required by RSA 369-B:3-b.  
17 See Settlement Agreement; p. 17, pp. 26-27. The definition of "Affected Employees" is  
18 reasonable, and defined as: "Employees of PSNH or Eversource whose primary  
19 employment duties included support of PSNH's generation assets and whose employment  
20 is terminated or significantly negatively affected as a direct result of the divestiture of  
21 PSNH's generating assets." See Settlement Agreement, p. 4. Many of these workers  
22 have supported PSNH generation for a very long time and are highly skilled in the energy

1 field but may need retraining in order to transition to other employment. These important  
2 provisions reasonably protect the interests of workers and their families, balanced against  
3 the interests of ratepayers.

4  
5 **Q. In your opinion, are PSNH shareholders bearing an appropriate share of the costs**  
6 **of the scrubber and divestiture?**

7 A. Yes. In the first five (5) years following divestiture alone, PSNH shareholders will forgo  
8 over \$340 million dollars in equity returns. PSNH shareholders will forgo approximately  
9 \$50 million per year in lost earnings on the generation assets; they will forgo a  
10 distribution rate increase for two years estimated to cost around \$70 million; they will  
11 pay \$5 million into a clean energy fund, and they will immediately write-off \$25 million  
12 of deferred equity returns on the scrubber. Overall, in the first five (5) years following  
13 divestiture, PSNH shareholders will forgo about double the amount of the \$172 million  
14 overage on the Merrimack Station Scrubber, as the cost of the Merrimack Station  
15 Scrubber was originally projected at \$250 million, but ended up costing \$422 million.  
16 There are those that argue PSNH should be "punished" more than double the amount of  
17 this overage. We think that the amount of shareholder costs incurred is reasonable,  
18 particularly where a Settlement Agreement has been reached now, resulting in PSNH  
19 shareholders no longer receiving a 9.81% rate of return on generation assets sooner by  
20 avoiding protracted litigation.

21

1 **Q. In your opinion, would approval of the Settlement Agreement be in the public**  
2 **interest?**

3 A. Yes, there are many reasons the Settlement Agreement is in the public interest, many of  
4 which are described above. In summary, the Settlement Agreement has received broad  
5 stakeholder support, and we believe the broad, diverse assemblage of settling parties  
6 should be one of the factors considered by the Commission in approving the Settlement  
7 Agreement. It allows for the resolution of issues relating to stranded costs while  
8 maximizing the value of the facilities and minimizing customer risk. In settling this  
9 matter we avoid protracted and costly litigation that is not in the best interests of the  
10 State, or PSNH ratepayers. The settlement also enables New Hampshire to finally  
11 recognize the full implementation of competition and provides a clear and reasonable  
12 path to significant customer savings (even beyond the traditional divestiture route), while  
13 recognizing and advancing the interests of all customer classes and helping to move the  
14 Granite State economy forward. Finally, it reasonably balances the interests of  
15 municipalities, property tax payers, and workers with the interests of ratepayers, as we  
16 move to full competition.

17  
18 **Q. In your opinion, should the Commission expeditiously review the Settlement**  
19 **Agreement?**

20 A. Yes. We respectfully encourage the Commission to undertake an expeditious review of  
21 the Settlement Agreement. The settling parties have agreed to an expeditious review and  
22 proposed a schedule that we believe is most appropriate for this case, and which provides

1 sufficient time for other parties to participate. See Settlement Agreement, p. 16; see also  
2 Motion of Settling Parties, June 10, 2015, p. 7. Importantly, an expedited proceeding is  
3 required by Senate Bill 221 and in current RSA 369-B:3-a. Moreover, as explained  
4 above, delay costs customers money as it means higher rates until the Settlement is  
5 approved. Delay harms all ratepayers, and the public interest, by decreasing the  
6 likelihood of getting a favorable interest rate in the securitization process and prolonging  
7 PSNH's 9.81% rate of return paid by ratepayers on the company's generation assets. The  
8 prudent approach is to move swiftly and expeditiously in this matter, while conducting a  
9 thorough review that allows all parties to participate, and avoids any unnecessary delay.  
10 Additionally, as mentioned above, the Settlement Agreement strikes a delicate and  
11 appropriate balance on rate design, including calling for all costs of the Scrubber to begin  
12 to be collected on default energy service rates effective January 1, 2016. The longer the  
13 delay, the greater the amount of time PSNH default energy service customers absorb this  
14 cost, and the greater the likelihood the rate design balance may be upset.

15  
16 **Q. Do you think there should be advance planning for the divestiture auction process?**

17 **A.** Yes. While we certainly do not pre-judge the outcome of this proceeding, we recognize  
18 it is an "expedited proceeding", and we respectfully recommend that the prudent course  
19 of action would be to undertake advance planning now, including considering the  
20 allocation and securing of staff and outside experts with experience in electric generation  
21 divestiture in New Hampshire or other states. If such advance planning does not occur,  
22 and the Commission orders divestiture, then many months could be lost in the process,

1 resulting in, among other things: 1.) As mentioned above, a potential upset to the delicate  
2 balance in rate design, and 2.) A failure to take advantage of lower interest rates going up  
3 over time, thereby reducing the customer savings. The Commission may wish to open a  
4 separate docket now specifically for the purpose of advance planning for the divestiture  
5 auction process.

6

7 **CONCLUSION**

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

9 **A. Yes, it does.**