THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

New Hampshire Code of Administrative Rules Chapter Puc 2000, Competitive Electric Power Supplier and Aggregator Rules	)))))	DRM 16-853

COMMENTS OF DAVIS, MALM & D'AGOSTINE, P.C.

Introduction

The law firm of Davis, Malm and D'Agostine, P.C., by its undersigned counsel ("Davis Malm") respectfully presents the following written comments on the November 21, 2016 Initial Proposal for the Revised Puc 2000 Rules ("Proposed Rules"). Davis Malm files these comments on behalf of several Competitive Electric Power Supplier ("CEPS") clients that are either licensed in New Hampshire or interested in doing so. These clients are familiar with retail supply requirements in New Hampshire and numerous other states and participated during the Commission Staff's informal stakeholder process leading to the Proposed Rules. Davis Malm presented comments at the January 19, 2017 hearing and hereby supplements its comments.

As noted during the hearing, Davis Malm and its clients view the current Puc 2000 rules as being effective in facilitating significant customer-beneficial competition in New Hampshire while simultaneously protecting consumers. During the hearing, Commission Staff also made clear its view that retail competition has been a success in New Hampshire. Unfortunately, however, the Proposed Rules have the potential to threaten this record of success. They are excessively regulatory, in both large and small ways. It was not surprising that virtually the entire retail competition industry in New Hampshire – the Retail Energy Supply Association

("RESA"), Clearview, Direct Energy, my clients, and Electricity New Hampshire/Provider Power (who monitored the hearing but chose not to speak) – expressed lengthy and detailed concerns with the Proposed Rules. The CEPS made clear their view that numerous revisions should be made in order to preserve the pro-consumer gains achieved since retail competition expanded in New Hampshire. Accordingly, Davis Malm asks the Commission to review closely the oral and written comments and modify many of the Proposed Rules in order to reduce unnecessary or excessive regulation and preserve robust electric competition in New Hampshire.

Additionally, as discussed during the public hearing, Governor Sununu has placed a moratorium through March 31, 2017 on new regulatory obligations from New Hampshire state agencies. *See* Correspondence from Governor Sununu, dated January 5, 2017, <https://htv-prod-media.s3.amazonaws.com/files/governor-memo-1-6-16-1-1483741110.pdf> ("Moratorium"). In preparing final revised Rules, the Commission also should take into account the Moratorium's directive to avoid measures that would interfere with a business-friendly state climate.

I. MAJOR CONCERNS

A. Door-to-Door Prohibition for Residential Customers

As discussed by all supplier parties during the public hearing, Section 2004(11) addresses "Solicitation of Customers" and Subsection (e) of that Section provides that no CEPS or aggregator shall solicit a potential residential customer in person at the customer's residence unless requested by the customer in advance. *See* Section 2004.11(e). All suppliers testifying at the public hearing agreed that this provision amounts to a prohibition on the ordinary form of neighborhood-based mass market door-to-door ("DTD") selling used in every restructured state in the country, including New Hampshire. This position is unprecedented nationally, and it is unwise and will harm existing New Hampshire DTD providers. Moreover, imposing a complete prohibition on an otherwise lawful sales channel implicitly places competitive suppliers on

notice that New Hampshire does not support competition, a message directly contrary to longstanding restructuring principles and the Governor's moratorium. *See* N.H. REV. STAT. ANN. § 374-F:3, II ("Allowing customers to choose among electric suppliers will help ensure fully competitive and innovative markets.... Customers should expect to be responsible for the consequence of their choices"); Moratorium, *supra* (cautioning against imposing "unnecessary burdens and costs on our State's citizens and businesses").

Instead, the Commission should follow the lead of all other states that have reviewed DTD rules. It should permit DTD sales, conditioned on targeted consumer protection requirements. This approach is straightforward to implement under the Proposed Rules because subsection (g) already specifies the additional requirements that would apply to any DTD sales permitted under the Proposed Rules. These additional protections include the following: (1) complying with all local ordinances; (2) providing visible identification and leaving behind information establishing identification and information confirming that the utility will continue to furnish physical power to the household; (3) clearly stating the sales representative's relationship to the CEPS and that it is not affiliated with the utility; and (4) not marketing to potential customers with insufficient English language skills except with sales staff or translators able to effectively communicate in the non-English language. Additional provisions could be adopted (Direct Energy's comments at the public hearing provide some examples) but the provisions in subsection (g) set a high "bar" for suppliers to meet. Consumer requirements should not be set that much higher that it would burden competition from reputable providers.

Moreover, any prohibition, such as established in the Proposed Rules, would be highly premature. The Proposed Rules include provisions that add authority for the Commission to deter and sanction bad behavior, including at initial licensing, renewal licensing, and

enforcement/sanctions stages. The Commission should let these enhanced provisions do their intended work and directly address any CEPS that consistently or systematically fail to comply with laws and rules applicable to DTD marketing. Accordingly, a prohibition on DTD activities would not be "the least restrictive or intrusive alternative" and would have "an unreasonably adverse effect on the State's competitive business community...." *See* Moratorium, *supra*. It would therefore harm consumers and law-abiding suppliers to preclude all mass market DTD sales at this time.

B. Undue Restrictions on Telemarketing Calls.

1. The Commission Should Reverse Unreasonable Calling Party Limits.

Section 2004.11 also places unreasonable restrictions on telemarketing calls in New Hampshire. Davis Malm likewise requests that these restrictions be modified. Specifically, subsection (c) of Section 2004.11 retains limitations from the current rules that prevent a supplier from initiating a telephone call to various entities, including: "[a] telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call." (Emphasis added.) The wireless telephone calling provision is outdated and anti-competitive, and should be removed.

In contrast to the situation in the early 2000s where wireless service was expensive and more commonly used for business purposes, cell phones are well-embedded into mainstream use among virtually all New Hampshire residents, many of whom have "cut the cord" and now use cell phones as their exclusive or principal voice service. Moreover, virtually all wireless customers have unlimited or nearly unlimited calling plans, so the overwhelming majority of consumers bear no financial costs if they receive a telemarketing call and are not interested.

Caller identification also enables customers to ignore unrecognized numbers, substantially limiting the risk of inconvenience to disinterested customers.

The unintended end result of retaining the outdated wireless prohibition is that suppliers using telemarketing channels would face significant risk of sanctions from any calls to New Hampshire residents. The outdated prohibition will result in some customers with wireless telephone numbers complaining, potentially subjecting suppliers to sanctions from the Commission for noncompliance with Section 2004.11(c)(1)(c) for otherwise lawful calls to wireless users. As a result, suppliers may be deterred from use of this common and critically important sales channel, limiting customer-beneficial competition.

This outdated text should be fixed by deleting the wireless call placement restrictions in subsection (1)(c) of Section 2004.11(c) in their entirety. Consumers remain protected because the supplier must comply with other consumer protection provisions in the Proposed Rules, including the remaining portions of 2004.11. Even for those with limited calling plans, they are able to hang up promptly and not lose significant minutes or incur costs and can protect themselves from further inconvenience by adding themselves to the Do Not Call ("DNC") Registry or supplier-specific lists. *See* Section 2004.11(d)(2).

2. *Telemarketing Should Not Be Barred on Weekends and Holidays.*

Davis Malm also separately supports Clearview's arguments at the public hearing that the Proposed Rules should be modified to permit telemarketing sales on weekends and holidays, albeit potentially with modified sales hours, such as a delayed start by an hour. *Compare* 2004.11(c)(5). Weekends and holidays provide effective selling times for suppliers and interested consumers, as consumers are often home and have time to talk to salespersons, and those not interested can terminate calls quickly and without inconvenience. It would be paternalistic and anti-consumer to categorically bar such calls under the Proposed Rules.

3. Daily Updates to Do Not Call Lists Should Not Be Required.

Section 2004.11(d)(2) requires that suppliers establish a written policy for handling DNC lists and similar requests. At the public hearing, Clearview objected to the proposed requirement of updating DNC lists on a daily basis. *See* Section 2004.11(d)(2)(f). This is excessively burdensome and wasteful of administrative resources. Lists should be required to be updated on a more reasonable basis, such as twice per month or whenever required by Federal Trade Commission telemarketing requirements. *See* 15 U.S.C. § 6102; *see also* Rhode Island Gen. Laws § 39-26.7-6(d) (requiring retail supplier compliance with federal telemarketing laws and not imposing other state law DNC requirements).

C. Variable Rate Price Disclosure Provisions are Excessive

1. The Proposed Rules Have Excessive Variable Product Disclosures.

Section 2004.03 establishes significantly expanded disclosure requirements compared to the current rules, at least in part to seek to address legislative changes enacted in 2015 to address variable rate products. *See* N.H. REV. STAT. ANN. § 374-F:4-b, IV (requiring advance notices before a customer can sign a variable price rate that is not month-to-month in nature).[1] Most of the individual regulatory requirements in Section 2004.03 greatly exceed minimum statutory requirements to describe the "nature" of the variable price product into complicated disclosure requirements that are excessive, burdensome, and ultimately unworkable. As noted by other suppliers and the undersigned during hearing comments, many provisions are also ambiguous

[1] Section IV of the statute as revised reads as follows, in full:

> Unless the contract specifies a month-to-month variable rate, no competitive electric supplier shall charge a residential customer a variable rate, including during a contract term or following the expiration of a contract, without first providing written notification in a form approved by the commission of the nature of such variable rate 45 days prior to the commencement of the variable rate. The residential customer shall select the method of written notification at the time the contract is signed. Such customer shall have the option to change the method of notification at any time during the contract.

and must be clarified before the provisions are finalized. Accordingly, the sections of 2004.03 that apply to variable price products should be rethought, clarified, and streamlined.

Davis Malm supports a variable rate notice that complies with the statute and describes the "nature" of the product. This can be done straightforwardly with an approach adopted from Maine Chapter 305 Retail Supplier rules, at §4(B)(8). Under Subsection (8) of the Maine rules, in cases where there is a variable rate not tied to a published index, disclosures must be made in the terms of service and on the supplier's web site that (1) the rate is not tied to an index; and (2) the rate has no caps (or describe any caps that are placed). The supplier must further disclose on its website the rate that had been applicable over the past 12 months. While Davis Malm's clients question the wisdom of such a backwards-looking price requirement, in Section 2004.03(b)(4) and in the above-cited Maine rules, because past performance does not guarantee future results and might confuse customers, such charts have been used in other states and can be supported.

Davis Malm's clients do not support the multi-variable price disclosures required by Section 2004.03(b) of the Proposed Rules. As one option, the Proposed Rules require that suppliers offering variable rates may provide a detailed disclosure justifying how the variable price is based on a "market price" tied to ISO-New England locational marginal prices or other "identified price index." *See* Section 2004.03(b)(1). Davis Malm's clients are aware of few, if any, variable offerings in restructured markets that make use of a price tied to some market price targeted to residential and small commercial customers. Emphasizing this option as the principal option is trying to force the market to offer a product it does not currently offer, and it is likely to be unworkable in practice.

Alternatively, if the supplier does not accept this market price-based option, the supplier must comply strictly with all of the following requirements under the Proposed Rule: provide a clear statement that its variable rate is not based on such a "market price" and further describe "each applicable component used in determining the variable price offered" and describe the frequency of variation and provide a monthly average price and prepare a graphical display by month of the variable prices and provide both a maximum and a minimum monthly price for a "similarly situated retail customer" over the preceding 12 months and include any applicable price caps and include any applicable price floors and provide a website location showing the current variable price. *See* Section 2004.03(b)(2) – (9). These variable disclosure requirements far exceed similar regulations promulgated in any restructured state to date. They should be substantially reduced into something more reasonable – such as eliminating the artificial market price option and requiring a clear standardized description of a variable rate product coupled with a disclosure whether the rate does or does not have any price caps. If the original text will be substantially retained, the Commission, at a minimum, should eliminate or clarify the requirement in subsection (3) for disclosure of detailed components of the variable price structure. This was also raised as a concern in the Clearview public hearing comments. All supplier terms of service for variable price products include standard language that highlight the various elements that go into setting a rate, such as energy costs, overhead, profit, and market conditions. If left at that level, a components disclosure requirement can be acceptable. If intended to apply at a more specific and detailed level, a rate component disclosure could involve highly competitive and sensitive matters by virtually every supplier and should be exempt from compelled disclosure on the public record. The final Rules should clarify the level of disclosure required if this components disclosure requirement remains in the Rules as promulgated.

For all of the above reasons, the Commission should modify the variable rate disclosure provisions in Section 2004.03. The current version of the Proposed Rules is unworkable, and it may result in suppliers being unwilling or unable to offer variable rate products to New Hampshire customers. This is a denial of choice and will lead to unintended consequences, such as suppliers moving to a fixed-to-fixed price model for renewing fixed price contracts, which is a model that causes concerns for many customers. Suppliers and many customers like an option to use short term variable rate offers following a fixed price contract, as the customer has extra time to make a longer term purchasing decision without auto-renewing to a default long-term arrangement. Offering fixed-to-fixed renewal arrangements are fine for many customers but other customers object and seek to escape such contracts, causing disappointment or anger in the customer and creating additional work and costs for the supplier.

2. *Price Increase Notices are Too Restrictive and Will Have Unintended Consequences.*

Section 2004 of the Proposed Rules separately requires that suppliers provide an advance notice any time that its variable prices increase by 10% or one cent per kilowatt hour, whichever is less. *See* Puc Section 2004.03(d). This is grossly excessive in comparison to nearby states. Massachusetts has no such variable price notice requirements and both Connecticut and Rhode Island have had requirements that suppliers issue price change notices only when prices increase by 25% from the original contract prices. *See* Conn. Gen. Stat. § 16-245o(g)(3); Rhode Island Gen. Laws § 39-26.7-5(n). As noted by undersigned counsel during the public hearing, a 10% or even lower increase notice likely will have the unintended consequence of deterring suppliers from making small decreases to existing variable prices. Having a relatively lower price could set the stage for triggering a burdensome notice requirement the next time they raised prices to

account for wholesale price changes, higher costs or marketplace factors. If such provision is to be retained, it should be at 25%, as argued by other suppliers at the public hearing.

D. The Commission Should Fix Unreasonable Account Transfer Requirements

Provisions regarding the transfer of customer accounts, also addressed in the Section 2004 consumer protection provisions, require revisions. Specifically, Section 2004.13 establishes expanded regulatory requirements governing sales or assignments of customer accounts between suppliers. *Compare* current Puc 2004.05(k)-(r). Most of the transfer provisions are acceptable but two raise concerns.

One excessive provision is subsection (b), which inexplicably and unfairly provides that customers being transferred are free to terminate service prior to the end of the agreed upon contract term, without paying the contractually-mandated early termination fee. That is contrary to principles upholding the sanctity of contract, economic principles underlying a termination fee requirement, and the restructuring principle in § 374-F:3, II that customers should remain responsible for the consequences of their choices. It is also inconsistent with the letter and spirit of the required terms of service disclosure in Section 2004(d)(7) of the Proposed Rules that customers have a right to change CEPS at any time, "subject to any termination fees described in the terms of service." Simply put, in a long-term fixed price contract, prudent suppliers have to pay hedging costs to back up a long-term contract, and the contract allows the assignee supplier to step into the shoes of the current supplier. There is nothing inherently unfair in the exercise of a contractually-reserved transfer of a customer from one licensed provider to another on the same contractual terms that would warrant a customer being permitted to terminate the contract early without paying the contractually-mandated termination fee. Other nearby states that have looked at this issue have allowed termination fee provisions to remain in place. *See* Massachusetts DPU Retail Investigation, Docket No. 14-40 Decision (September 16, 2016), p. 19 (requiring that

assignment notice identify the applicable termination fee, if any, but does not provide for waiver); Maine Chapter 305 Rules at § 4(b)(7) (providing for assignment with no waiver of termination fee). New Hampshire should do the same.

A second unnecessary provision relating to transfers is that subsection (a) requires written notice to be sent not less than 30 days prior to the effective date of the transfer. This notice timeline may be sufficient for transactions in the ordinary course of business, but it is impractical and unfeasible for sales that are completed with time limitations due to a seller's financial distress. Other states that have looked at this issue have generally created exigent circumstances exceptions to minimum notice provisions designed to protect suppliers and customers alike. *See* Massachusetts DPU Retail Investigation, Docket No. 14-40 Decision (September 16, 2016), pp. 15-18 (allowing for shortening notice requirements to as little as one day in exigent circumstances); *see also* Connecticut PURA Docket No. 14-07-20RE01, March 19, 2015 Proposed Joint Marketing Standards (pending docket where retail suppliers and the Office of Consumer Counsel have jointly proposed to shorten notices in exigent circumstances to ten days or even shorter if the nature of the circumstances requiring minimal notice is explained in the filing letter to the agency); *compare* Maine Chapter 305 Rules (providing for a 30-day notice but waiver provision is expressly included in Rules at § 6). New Hampshire should follow Massachusetts and not force customers into disruptive provisions that effectively "slam" customers of failing suppliers by forcing them into utility default service under new Section 2004.17.

E. The Commission Should Modify NOV and Remedy Provisions.

1. NOV Response Dates Should be Lengthened.

Davis Malm's clients strongly support the establishment of a robust Notice of Violation ("NOV") process in Section 2005.01(b) that would require the Commission to issue a detailed

NOV pleading with factual bases, proposed fines and right to challenge the NOV. Nevertheless, the Proposed Rules at 2005.01(c) require that suppliers have only ten business days to either accept the fines or file a "request in writing for a hearing before the commission with respect to the sanctionable event described in the NOV." Ten business days is not sufficient time to review the claims, retain counsel, investigate the potential response, and file a response, especially where the sanction for failing to timely file is to be deemed to have accepted the claims. The deadline should be changed to a more reasonable 15 or 20 business days. This additional time is relatively immaterial to the public interest, but it is of critical importance to a supplier that must assemble facts and law to respond to a NOV. Providing suppliers with additional time would improve the responding process for all parties, as the additional time would allow a supplier to prepare a written submission with greater detail and accuracy to the Commission.

2. Excessive Refund Obligations Should Be Modified.

Section 2004.20(g)'s provision for payment of up to 24 months/two years of refunds for a customer who received an unauthorized switch must be limited and clarified in two respects. First, the length of time for a refund should be shortened substantially, preferably to not more than six months. At some point, a customer bears responsibility for reading or, alternatively, failing to read his or her electric bill and not taking action for being served by the "wrong" supplier. *See* Restructuring Act, at § 374-F:3, II. Suppliers should not be "sandbagged" years down the line and forced to pay a large refund to a customer who had received service for up to two years without any complaints.

Second, the Commission should clarify rules concerning who qualifies as an authorized party on the account. Supplier marketers commonly encounter spouses and adult children who live in the residence, have access to the electric bill account information, and represent during third-party verification processes that they are fully authorized to make changes to the account,

only to learn from a different individual who objects months or years later that the claimed account holder was not, in fact, authorized and therefore seeks a refund. Clarity on this point would be helpful to protect consumers and suppliers alike.

3. Suspension Should Be Clarified to Mean Marketing Suspension Rather Than Suspension of Service to Existing Customers.

Davis Malm's clients agree with the points made by Clearview at the public hearing that the Commission should clarify that "suspension" as a remedy for supplier noncompliance in Proposed Rule 2005.03 refers only to a suspension of supplier marketing efforts for a stated period. Suspension should not mean a suspension of supplier service to existing customers, as that would be tantamount to revocation under Proposed Rule 2005.04, a far more serious and likely fatal remedy for most suppliers that would not be warranted.

F. The Proposed Tying of License Terms to Financial Security Lengths is Unworkable and Should be Discarded.

Clearview and RESA both challenge the reasonableness of new Proposed Rule Sections 2003.01(g), and 2003.02(f), which tie initial and renewal license term lengths to the length of the financial security submitted to the Commission. This approach departs from the straightforward provisions in the current Rules that provide for a five-year initial and renewal terms with the supplier remaining obligated to maintain adequate financial security during the entire period. *See* current Rule Puc 2003.01(g): 2003.02(a). Davis Malm's clients strongly support the existing rule as preferable to the new multi-tiered provision tied to security length. As Clearview correctly points out, it is often hard for suppliers to get security term lengths in excess of one year. In practice, this would mean that under the Proposed Rules, suppliers and Commission Staff would have to devote unnecessary and wasteful resources to an annual or nearly annual license filing and process. The Commission should retain the current rule.

G. Sanctions Based on Out-of-State Complaints Should Be Limited or Modified.

The Proposed Rules include substantially expanded licensing and renewal requirements that include obligations to furnish information on the number and type of customer complaints received outside of New Hampshire. *See* Proposed Rule, Sections 2006.01(o) (out-of-state complaint disclosure requirements) and 2003.01(e)(4) (authorizing enforcement actions based on "number or type" of out-of-state complaints). At the public hearing, Clearview asked the Commission not to take any action against a supplier's license action unless the "number and type" of complaint clearly reflected a need for such action. Clearview cautioned that the mere number of out-of-state complaints may be insufficient to demonstrate a sanctionable problem in New Hampshire, insofar as complaints may be inaccurate or unsubstantiated, and should not be relied upon without verification. Davis Malm's clients agree that caution is warranted with respect to out-of-state complaints, as they may be misleading or inaccurate and should not be acted upon in the absence of substantiation.

In response to Commissioner Bailey's comment at the public hearing that suppliers have an adequate remedy for proposed imposition of sanctions based on out-of-state complaints through filing of an objection to any Commission NOV, Davis Malm's clients submit that post-filing remedy is far from adequate. Under the law of many restructured states, license actions in another state (such as New Hampshire) must be reported promptly to local authorities and often trigger time consuming and resource draining inquiries and investigations across the supplier's footprint. Accordingly, an unsubstantiated decision to begin a sanctions process against a supplier could affect the supplier's activities and regulatory standing outside of New Hampshire, even if the NOV is later withdrawn. Suppliers would strongly suggest that the Commission not undertake license action based on out-of-state complaints of which the Commission lacks direct knowledge, except in the most extreme or compelling of circumstances.

H. The Commission Should Investigate and Develop Supplier Customer Lists.

At the hearing, Clearview raised a point outside of the Proposed Rules that the Commission should investigate developing a list of potential retail supply customers and their key attributes (name, address, usage, whether or not the customer is on subsidized EAP service, etc.) This will allow suppliers to develop more robust and targeted offerings for New Hampshire consumers. As Clearview noted, this type of list is already available in Pennsylvania and Ohio, and is being developed in other states including Maine. *See* Pennsylvania Public Utility Commission Final Order on Interim Guidelines for Eligible Customer Lists, Docket No. M-2010-2183412 (Oct. 23, 2014) and Pennsylvania Public Utility Commission Final Order on Reconsideration Docket No. M-2010-2183412 (Nov. 10, 2011); OHIO ADMIN CODE 4901:1-10-29 (2014); *see also* Maine Public Utilities Commission Docket No. 2014-00369 (Dec. 17, 2014) (ordering Maine utilities to participate in working group with suppliers to develop means for developing and disseminating individual customer usage information, including through a market portal). Davis Malm's clients support this effort and urge the Commission to open a docket to initiate this effort.

II. OTHER CONCERNS AND ISSUES

A. Potential Expansion of Low Income EAP Service to Suppliers.

Suppliers and legal assistance speakers at the public hearing mentioned difficulties associated with customers on low income Electric Assistance Program ("EAP") rates, insofar as the discounted generation rates are not currently available when they receive service from a supplier other than the distribution utility. Unless care is taken by the customer and the supplier, the customer may have its retail supply savings on the generation portion of the bill offset in part or full by the loss of EAP assistance on the generation portion of the bill.

Instead of relying on the creation of new EAP notice requirements that should already be a part of the supplier-customer marketing discussions, as suggested by legal assistance commenters during the public hearing, the Commission should initiate a proceeding to determine the terms and conditions for allowing EAP generation discounts to be retained even if the retail supplier is providing the generation service. This action item was mentioned during the public hearing, and Davis Malm's clients support it.

B. The Commission Should Adjust Supplier Response Dates.

As was noted by RESA at least in part during the public hearing, the Proposed Rules have in several cases significantly reduced the time period for suppliers to respond to customer or Commission actions. The reduction of response time periods include, without limitation, reducing the time period for furnishing terms of service to customers from five business days to three business days in new Section 2004.02(a), reporting corporate changes to the Commission from the current 30 business days down to ten business days in new Section 2003.01(j), and reducing the time period for notifying distribution companies of completed registrations from 30 calendar days down to five calendar days in new Section 2003.01(l).

Davis Malm's clients object to this erosion of supplier response times. The Commission should keep current deadlines in place absent compelling reasons to change them. Reasonable deadlines allow suppliers to comply with information obligations efficiently and in the ordinary course of business. Shorter deadlines often require the supplier to reallocate staff from compelling tasks to less essential but required regulatory compliance activities, impeding service delivery and increasing costs.

C. The Commission Should Clarify Distribution Charge Disclosure Language.

As pointed out by RESA during the public hearing, the required terms of service disclosures in Section 2004.02(d)(4) relative to distribution charges need to be modified for

clarification purposes. In particular, as noted by RESA, the word "separately" is likely to confuse many customers receiving one joint electricity bill from the distribution utilities. The Commission should review the text carefully to avoid customer confusion. It may make sense to delete the word "separately" and to leave the text in Section 2004.02(d)(4) to read that the customer "will be billed by the distribution company" for distribution services.

D. The Commission Should Be More Flexible With Customer Communications.

Again, as RESA noted during the public hearing, the Commission required two options for customer communications, mail and email, at the customer's option, but made no mention of other communications options. Proposed Rules Section 2004.02(c). Davis Malm supports amending the final Rule to authorize flexibility regarding new communication options that may be implemented during the years following implementation of the revised Rules. Suppliers potentially could avail themselves of general Commission authority to waive existing rules, but the preferred route would be to permit other communications options mutually agreed to between the supplier and customer. For example, customers could elect to receive notices by text, provided that the supplier can meet Commission recordkeeping requirements.

Conclusion

For the reasons discussed at the public hearing and presented herein, Davis Malm and its clients appreciate the opportunity to comment on the Proposed Rules, in order to make them more efficient and workable for customers and suppliers. The Commission should make a number of changes to the Proposed Rules in order to preserve the vibrant competitive market in New Hampshire and to comport with new principles articulated in the Governor's Moratorium.

Respectfully submitted,

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