

THE STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

REBUTTAL TESTIMONY OF

STEPHEN R. HALL

Docket No. DE 08-077

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

2 A. My name is Stephen R. Hall. My business address is PSNH Energy Park, 780
3 North Commercial Street, Manchester, New Hampshire. I am Rate and Regulatory
4 Services Manager for PSNH.

5 Q. Have you previously testified before the Commission?

6 A. Yes. I have testified on numerous occasions before the Commission.

7 Q. What is the purpose of your testimony?

8 A. The purpose of my rebuttal testimony is to comment on the pre-filed testimony of
9 Daniel W. Allegretti on behalf of Constellation NewEnergy, Inc. and Constellation
10 Energy Commodities Group, Inc. (hereafter referred to as "Constellation") filed on
11 October 1, 2008. Mr. Allegretti recommended that the Commission reject the
12 contracts between PSNH and Lempster Wind, LLC, and require PSNH to treat them
13 below-the-line, rather than allowing the benefits of the contracts to flow to PSNH's
14 customers. In this testimony, I will discuss why the Commission should closely

1 examine Constellation's motives in this proceeding, and disregard their
2 recommendations. In addition, I will address Constellation's allegation that the
3 contracts have the potential to create new stranded costs, and their recommendation
4 that the Commission require the use of a competitive bidding process for the
5 procurement of RECs. I will also provide comments on some of Mr. Allegretti's
6 gross exaggerations and mischaracterizations regarding the contracts with
7 Lempster, which he makes in an attempt to convince the Commission to reject the
8 contracts and thus preclude customers from receiving the benefits of the contracts.

9 Constellation's Objectives

10 Q. Why do you believe that Constellation is opposing the contracts?

11 A. I believe that Constellation opposes the contracts because they fear that approval of
12 the contracts will assist PSNH in meeting its RPS requirements in a cost-effective
13 manner for customers.

14 Q. What leads you to this conclusion?

15 A. Constellation has long opposed PSNH's efforts to continue to own and operate low-
16 cost generation for the benefit of its customers, and they oppose any increased
17 ownership of generation by PSNH. The reason for their opposition to PSNH's
18 generation ownership is clear: as a competitive supplier, Constellation is in a better
19 position if PSNH's Default Energy Service rate is higher. Mr. Allegretti has
20 admitted this fact in previous testimony:

1 Q. All other things being equal, higher default service prices benefits
2 Constellation NewEnergy, correct?

3 A. All other things being equal? Well, Constellation NewEnergy is
4 always in a better position to sell a product where its cost is below the
5 price it has to beat. To the extent that a higher default price means that
6 there's more of a window there, then that would be an enhanced
7 opportunity¹.

8 Q. Why would Constellation's opposition to PSNH's ownership of generation cause
9 them to be opposed to the contracts with Lempster Wind, LLC?

10 A. I believe that Constellation is concerned that if PSNH is able to obtain energy and
11 RECs at favorable prices, it will allow PSNH to continue to have low Default
12 Energy Service prices relative to the market. PSNH's below-market Default
13 Energy Service prices provide substantial benefits to customers, but the level of the
14 prices makes it difficult for Constellation to sell energy to PSNH's customers.
15 Therefore, Constellation is opposing approval of the contracts as part of what I
16 believe is a much larger effort to require PSNH to exit the generation business.

17 Constellation has publicly stated that it is concerned that PSNH's generation
18 ownership and its corresponding low Default Energy Service prices inhibit the
19 development of a competitive market in New Hampshire. Notwithstanding this
20 pretense of concern for the public good, I do not believe Constellation is operating

¹ Transcript, Docket No. DE 07-096, November 28, 2007, pp. 125 – 126.

1 with customers' best interests in mind. Rather, I believe they are attempting to
2 increase their ability to make a profit in New Hampshire, and higher Default Energy
3 Service prices is the best way to provide them with that opportunity.

4 I believe that Constellation is also attempting to make the approval process as
5 difficult and cumbersome as possible for PSNH. My belief is that they are doing so
6 to discourage PSNH and/or potential developers from entering into any future
7 bilateral negotiations for the sale of power and RECs. If the approval process is
8 lengthy and cumbersome, it provides a disincentive for developers to negotiate an
9 arrangement with PSNH, particularly if consummation of such an arrangement is
10 dependent on regulatory approval. If Constellation is successful in discouraging
11 developers from negotiating with PSNH, it would result in a huge competitive
12 advantage for Constellation in its efforts to obtain low-priced renewable energy.
13 This is especially true in view of Mr. Allegretti's acknowledgement that long-term
14 arrangements can result in lower financing costs for developers, and his statement
15 that Constellation would negotiate directly with a developer if Constellation were
16 approached by a developer seeking a multi-year agreement (see Attachment SRH-1,
17 responses to PSNH Requests 29 and 15).

18 The Commission should see through Constellation's thinly-veiled attempt to thwart
19 PSNH's efforts to provide Default Energy Service to its customers at a low cost. It
20 is not the Commission's job to protect the interests of competitive suppliers. On the
21 contrary, RSA 363:17-a states, "The commission shall be the arbiter between the

1 interests of the customer and the interests of the regulated utilities as provided by
2 this title and all powers and duties provided to the commission by RSA 363 or any
3 other provisions of this title shall be exercised in a manner consistent with the
4 provisions of this section.” This statute makes it clear that the Commission’s
5 primary duty is to balance the needs of the state’s regulated utilities and those
6 utilities’ customers; the interests of unregulated, competitive suppliers are not
7 included in this statute.

8 Creation of New Stranded Costs

9 Q. Mr. Allegretti alleges that PSNH is seeking to have customers accept the risk that
10 the contracts will create new stranded costs. Is this allegation valid?

11 A. No, it is not. Mr. Allegretti’s allegation is based on his conclusion that if the
12 contracts were “in the money,” PSNH would retain the value for its shareholder
13 rather than pass that value along to its customers. He goes on to state that PSNH’s
14 rationale for assigning the contracts to customers is either that the benefits are
15 minimal or that the contracts will result in a net cost over the long run.

16 Mr. Allegretti clearly does not understand PSNH’s business model and its
17 motivations. As a regulated utility, PSNH is focused on providing customers with
18 the lowest possible Default Energy Service rate, even if it means foregoing value
19 that could otherwise be realized if the contracts with Lempster Wind, LLC were
20 treated below the line. The notion of providing that value to customers is
21 apparently foreign to Constellation’s business approach, which would explain the

1 reason that Mr. Allegretti doesn't understand PSNH's rationale. His conclusion
2 that new stranded costs could be created may be due to the fact that he doesn't have
3 the pricing information available to him. However, the Commission has such
4 information available, and can no doubt readily see that Mr. Allegretti's allegations
5 are misplaced.

6 Q. Could new stranded costs be created by the contracts?

7 A. No. There cannot be any "new" stranded costs because the contracts do not fall
8 under any of the categories contained in the statutory definition of stranded costs. I
9 believe that a more accurate term would be "above-market costs." Therefore, the
10 Commission should determine whether the pricing under the contracts has the
11 potential to result in above-market costs.

12 Q. Is there a significant risk of the contracts creating above-market costs?

13 A. No, there is not. With respect to the total price paid for power under the contracts,
14 the only way that the cost could be above market is if the market price is
15 consistently less than the floor price in the contract. The Commission has available
16 the confidential floor price, so it is relatively easy to make a determination as to
17 whether any significant risk exists. A similar determination can be made with
18 respect to the risk of REC prices under the contract being above-market.

19 Q. Mr. Allegretti claims in his testimony that "PSNH's proposal shifts to customers the
20 risk of substantial new stranded costs..." Do you agree with this statement?

1 A. No, I do not. This statement is an example of the gross exaggerations contained in
2 Mr. Allegretti's testimony. In discovery, PSNH asked Mr. Allegretti to define
3 "substantial" in the context of his testimony. His response (PSNH Request 25,
4 included as Attachment SRH-2) was that substantial means significant, as opposed
5 to nominal. A simple example can illustrate why his testimony grossly exaggerates
6 the potential above-market cost.

7 Let's assume that the floor price turns out to be \$30.00 per mWh in excess of the
8 ISO-NE Real-Time Locational Marginal Price for an entire year (which the
9 Commission can easily see is a virtually impossible result). Under that assumption,
10 the contract would result in \$2.1 million of above-market costs for that year.

11 Q. Isn't \$2.1 million per year a significant amount of money?

12 A. No, not if it's put in the perspective of PSNH's annual Default Energy Service costs
13 for a year, which are roughly \$800 million. \$2.1 million translates into a quarter of
14 one percent increase in Default Energy Service cost, or about \$0.00025 per kWh. A
15 similar analysis can be performed for the cost of RECs. To conclude that the
16 contract could create "substantial new stranded costs" is, by any measure, a
17 substantial stretch.

18 Q. Assuming that above-market costs could theoretically be created by the contracts,
19 are there public policy objectives for the Commission to consider in determining
20 whether to approve the contracts?

1 A. Certainly. Even if the contracts could create significant above-market costs, such
2 an analysis fails to consider the public policy benefits that are afforded by the
3 contracts, such as:

4 • “That increased use of renewable resources can provide
5 environmental, economic, and energy security benefits.” 2007 N.H.
6 Laws 26:1, I

7 • The “benefit from the diversity, reliability, and economic benefits that
8 come from clean power.” 2007 N.H. Laws 26:1, III

9 • The goal of “reducing the fossil fuel component of the state’s energy
10 mix and promoting use of renewable energy resources to buffer
11 against global instability.” 2007 N.H. Laws 26:1, IV

12 • The necessity of projects such as Lempster Wind to meet Governor
13 Lynch’s goal of meeting 25 percent of the state’s energy needs from
14 renewable energy resources by 2025. 2007 N.H. Laws 26:1, VI

15 • “The use of renewable energy technologies and fuels can also help to
16 keep energy and investment dollars in the state to benefit our own
17 economy.” RSA 362-F:1

18 Q. In the highly unlikely event that the total cost under the contracts was above
19 market, would PSNH recover those costs through its Stranded Cost
20 Recovery Charge?

21 A. No, it would not. This is a point that Mr. Allegretti apparently does not understand.
22 Attachment SRH-3 is his response to a discovery request (PSNH Request 28)

1 asking about his contention that PSNH is seeking to recover this cost from all
2 customers. In his response, he states his understanding that PSNH is seeking to
3 recover the costs from “captive customers”. As stated in Mr. Wicker’s testimony,
4 PSNH will recover the costs incurred under the contracts through its Default
5 Energy Service rate, which is bypassable. Therefore, Mr. Allegretti misunderstands
6 PSNH’s proposal. Since any such above-market costs would be included as part of
7 the Default Energy Service rate, competitive suppliers such as Constellation would
8 be helped, not harmed, if they did materialize.

9 Use of a Competitive Bidding Process

10 Q. Mr. Allegretti claims that absent an RFP process, there is no adequate way to know
11 that PSNH obtained the most cost-effective resource at the best available terms.
12 Please comment on his recommendation that the Commission require PSNH to use
13 an RFP process.

14 A. An RFP process might be applicable in a situation where there are a large number
15 of potential suppliers. However, in this case (procurement of power and RECs
16 from wind-powered generators), the number of suppliers is very limited, and was
17 even more limited at the time when discussions between PSNH and Lempster
18 Wind, LLC commenced. Even in cases where there are a large number of suppliers,
19 however, the Commission should not require PSNH to rely exclusively on an RFP
20 process. I believe that such a requirement would result in higher costs for PSNH’s
21 customers by precluding PSNH from taking advantage of opportunities that arise
22 when potential suppliers contact PSNH seeking a mutually beneficial agreement, as

1 was the case with Lempster Wind, LLC. If PSNH were required to issue an RFP
2 each time it was contacted by a potential supplier, it would not be able to capitalize
3 on such opportunities. Had this requirement been in effect, it is unlikely that PSNH
4 would have reached as favorable an agreement with Lempster Wind, LLC.
5 Moreover, the project may have never come to fruition, thus depriving New
6 Hampshire of the benefits of the renewable energy that the project will produce.

7 Q. Wouldn't an RFP process result in lower prices?

8 A. Not necessarily. If the Commission examines the pricing in the contracts, they will
9 clearly conclude that the use of an RFP process most likely would not have resulted
10 in lower prices in this instance.

11 Q. Does Constellation use an RFP process for procuring RECs?

12 A. No, Constellation does not use an RFP process in its procurement activities, or if
13 they do, they are unwilling to share that information with the Commission.
14 Attachment SRH-4 is Mr. Allegretti's response to Staff's request (Staff 1-4) which
15 asked whether Constellation relied solely on an RFP process to obtain RECs. His
16 answer was that Constellation does not use an RFP process because Constellation is
17 not subject to regulatory review and does not owe a prudence obligation to
18 customers. Apparently, Mr. Allegretti wants the Commission to believe that it's
19 acceptable to force utilities to utilize an RFP process, yet when Constellation is
20 making decisions to maximize its own profits, and meet its fiduciary duty to its
21 shareholders to run its business in a prudent manner, they do not use such a process.

1 Their actions belie their words. This response is a further demonstration of the
2 need for the Commission to examine Constellation’s motives behind its
3 recommendations in this docket.

4 Q. Does the law require the use of an RFP process?

5 A. No, it doesn’t. Attachment SRH-5 is Mr. Allegretti’s response to PSNH Request 7
6 in which he was asked to cite the statutory requirement for the use of an RFP
7 process. Constellation admits that there is no statutory requirement. Constellation
8 is therefore asking the Commission to adopt a process that is not required by law
9 and that Constellation itself, an entity competing in the market to make a profit,
10 does not use.

11 Constellation’s Mischaracterizations

12 Q. Earlier, you referenced exaggerations and mischaracterizations made by Mr.
13 Allegretti in his testimony. Can you provide more examples of some of the
14 distortions contained in his testimony?

15 A. Yes, I can. One example is the statement he makes on page 7 of his testimony:

16 To the extent that PSNH’s position is that it need not have conducted an
17 RFP because it first committed to this resource on a below-the-line basis
18 and is now transferring it above the line (i.e., is seeking to recover the
19 associated costs through the regulatory process), the Commission should
20 review the contracts under the same standard that it applies to affiliate
21 transactions because the transaction in this case is essentially the same as a
22 transfer from an unregulated affiliate to the regulated company.

23
24 This statement contains three mischaracterizations. First, Mr. Allegretti

25 mischaracterizes PSNH’s rationale for seeking to recover the cost of the contracts

1 through its Default Energy Service rate. He attempts to lead the reader to believe
2 that PSNH made some sort of a commitment to treat the costs below the line when
3 no such commitment was ever made.

4 Q. But didn't PSNH state in a technical session that the costs and benefits of the
5 contracts would be handled below the line?

6 A. Yes, we did, in response to a question that Staff asked. The reason that PSNH did
7 so was the result of previous discussions that PSNH had with Staff and OCA
8 regarding the contracts at the time the contracts were being negotiated. At that
9 time, there was no RPS law and therefore there was no requirement that PSNH
10 obtain renewable power and RECs for its Default Energy Service load. Mr.
11 Allegretti is well aware of this, but he is attempting to distort the facts to make it
12 appear as though PSNH suddenly decided to renege on a commitment that it made.
13 Neither Staff nor the OCA have raised this issue, so it should be clear to the
14 Commission that no such "commitment" ever existed. Moreover, as discussed
15 earlier, by recovering the costs under the contracts through the Default Energy
16 Service rate, the benefits of the contracts will flow through to customers.

17 Q. Does Mr. Allegretti's above statement contain any other inaccuracies?

18 A. Yes, it does. Mr. Allegretti alleges that PSNH is now seeking to transfer the asset
19 to above-the-line treatment. No such transfer is possible because until very
20 recently, there was no power being produced by the project and therefore there
21 was nothing to transfer. The costs associated with the contracts have not yet been

1 recorded on PSNH's books. PSNH asked Mr. Allegretti in a data request (PSNH
2 Request 16) to provide documentation that such a transfer occurred. His response,
3 included as Attachment SRH-6, demonstrates that he has no documentation that a
4 "transfer" has occurred.

5 A third mischaracterization in the above statement is the attempt to compare the
6 alleged "transfer" to a transfer from an unregulated affiliate to a regulated entity.
7 This statement is so far off base that it's almost comical, since PSNH's
8 competitive affiliates are virtually inactive and conduct no new business.
9 Nevertheless, it demonstrates the extent to which Constellation will go in its
10 efforts to prevent the value of the contracts from flowing to customers.

11 Q. Did Mr. Allegretti provide full responses to all of PSNH's data requests?

12 A. No, he did not. Constellation objected to several data requests, and PSNH has
13 filed a Motion to Compel with the Commission, so I won't elaborate on those
14 responses here. However, in other requests, Mr. Allegretti's responses are evasive
15 and non-responsive.

16 Q. Please cite an example of such evasiveness.

17 A. Attachment SRH-7 is Mr. Allegretti's response to PSNH Request 26 asking
18 whether Constellation's objective was to ensure that PSNH's Default Energy
19 Service or Stranded Cost Recovery Charge rates are as low as possible. PSNH
20 asked this question based on his testimony on pages 16 and 17 where he appears to

1 show concern for the interests of customers. His response is very revealing in that
2 he totally avoided answering the question. Rather than directly answering whether
3 or not Constellation’s objective was to ensure that PSNH’s rates are as low as
4 possible (a simple yes or no answer), he side-stepped the question by stating that
5 Constellation wants PSNH to pursue an open and transparent competitive process
6 for resource procurement.

7 Q. Why do you believe Mr. Allegretti did not directly answer this question?

8 A. I believe that he avoided answering the question because the truthful answer would
9 be “no.” I believe that Constellation’s interest is in ensuring that PSNH’s Default
10 Energy Service rates are as high as possible, in order to allow them to compete for
11 Default Energy Service customers. If the Commission were to require PSNH to
12 pursue an “open and transparent competitive process” for energy procurement for
13 all of its purchased power arrangements, a process that Constellation itself does
14 not use, it would result in higher rates, thus benefiting Constellation.

15 Summary and Conclusion

16 Q. Please summarize your testimony.

17 A. The Commission should accept the contracts between PSNH and Lempster Wind,
18 LLC, thereby allowing customers to obtain both the economic and public policy
19 benefits of low cost power and RECs. If the Commission analyzes Constellation’s
20 true motives, they will see that Constellation clearly does not want PSNH to have
21 lower prices for Default Energy Service. Accepting Constellation’s

1 recommendation to reject the contracts would result in harm to customers, to the
2 benefit of Constellation and other competitive suppliers. The contracts are clearly
3 in the public good and the Commission should issue an order approving them.

4 Q. Does this complete your testimony?

5 A. Yes, it does.