

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

2010 Core New Hampshire)
Electric Energy Efficiency “CORE” Programs) Docket No. DE 09-170

SETTLEMENT AGREEMENT ON PSNH RSA 125-O ISSUES

This Settlement Agreement (the “Settlement Agreement”) is entered into by and among Public Service Company of New Hampshire (“PSNH”), the Office of Consumer Advocate (“OCA”), and the Staff of the New Hampshire Public Utilities Commission (Staff) (all collectively referred to as “the Settling Parties and Staff”). Approval of this Settlement Agreement by the New Hampshire Public Utilities Commission (“Commission”) will resolve the issues related to PSNH management of funds pursuant to RSA 125-O:5 as identified in the earlier phase of this Docket.

I. PROCEDURAL HISTORY

The underlying proceeding began with the joint filing on September 30, 2009 of a document entitled “2010 Core New Hampshire Energy Efficiency Programs” (“2010 Core Proposal”), setting forth the electric utilities’ proposed system benefit charge (SBC)-funded energy efficiency programs for 2010. The filing was made jointly by Granite State Electric Company d/b/a National Grid (“National Grid”), New Hampshire Electric Cooperative, Inc. (“NHEC”), Public Service Company of New Hampshire (“PSNH”) and Unitil Energy Systems, Inc. (“Unitil”) (collectively, “the Electric Utilities”).

During the investigation of the 2010 Core Docket, the Commission Audit Staff performed a financial audit of each of the Electric Utilities’ financial management of the

Core programs. Among the Audit findings was one related to PSNH's management of funds it is authorized to utilize for energy efficiency projects at PSNH facilities pursuant to RSA 125-O:5.¹ Audit Issue #5 related to what the Audit described as a "Violation of RSA 125-O:5." That finding stated:

Issue

According to PSNH, the Company began to "accumulate" the funds in 2003, and completed the first project in 2006.

Audit does not know the total amount of unencumbered funds and/or the 2% of the SBC retained from 2003 forward. Information provided in reconciliation indicates that for the years 2006, 2007, and 2008 2% of the SBC was withheld for PSNH allocated projects.

The statutory requirement to provide reports of the fund utilization to both the PUC and the DES has not been met.

Recommendation

PSNH must comply with the statute, or face enforcement described in RSA 125-O:7 which includes, among other penalties, injunction issued by the superior court, forfeiture of not more than \$25,000 for each violation, and administrative fines not to exceed \$2,000 for each offense, without precluding further penalties. (Refer to RSA 125-O:7, I RSA 125-O:7, II, and RSA 125-O:7, III.)

¹ 125-O:5 Energy Efficiency, Renewable Energy, and Conservation and Load Management Incentive.

I. In order to encourage energy efficiency, energy conservation, renewable energy, and the reductions in local emissions which result, the integrated multi-pollutant strategy shall promote energy efficiency and conservation through conservation and load management programs.

II. Public Service Company of New Hampshire (PSNH) may utilize SBC funds equivalent to the unencumbered amount, if any, rolled over from the prior program year for energy efficiency projects at facilities owned and operated by PSNH, provided that the company made a good faith effort in the prior program year to meet the goals approved by the public utilities commission for its core energy efficiency programs, and provided that the SBC funds used by PSNH shall not exceed 2 percent of all SBC funds collected in the prior program year. PSNH may utilize these funds to implement approved core energy efficiency initiatives or measures at PSNH's facilities that are cost effective and which enhance the efficient use of energy at PSNH facilities. Any energy savings resulting from the use of these funds by PSNH at its facilities will not be included in the calculation of PSNH's energy efficiency program goals, any shareholder incentive, or any other incentive program. In any year that PSNH utilizes SBC funds, PSNH shall submit a report to the public utilities commission and the department detailing how these funds were utilized, and will make the report available to interested parties. Any party may request that the public utilities commission schedule a hearing to review these reports and the expenditure by PSNH of rolled over SBC funds at its facilities.

The statute also states that “any party may request that the public utilities commission schedule a hearing to review these reports and the expenditure by PSNH of rolled over SBC funds at its facilities.” (Refer to RSA 125-O:5)

See Final Audit Report CORE Energy Programs – Public Service of New Hampshire (PSNH) DE 07-106 Final Audit Report, October 29, 2009, p. 22.

After testimony was filed and discovery was completed in the 2010 Core Docket, the Core Parties and Staff² entered into a Settlement Agreement, which, among other things, included an agreement by the Settling Core Docket parties that:

With respect to the issues raised in the audits, the Settling Parties and Staff agree that this proceeding did not afford the opportunity to fully review all audit findings, and therefore agree to review these findings in the first calendar year quarter of 2010. The Settling Parties and Staff recommend that a separate proceeding will be opened outside of the Core process to investigate issues regarding PSNH’s compliance with the requirements of RSA 125-O.

DE 09-170 Settlement Agreement, Section II.C., p. 6, December 18, 2009.

PSNH 2% Set Aside of Unencumbered funds pursuant to RSA 125-O PSNH agrees that it will not undertake any new projects with the 2% set aside funds authorized by RSA 125-O:5. In addition, the Company will not transfer any 2009 funds into the set aside until the methodology used to determine such set aside has been reviewed in detail with any interested parties and Staff. PSNH will begin to accrue interest on the set aside funds as of January 1, 2010. The issue of interest prior to that date, and whether penalties should be assessed, will be discussed as described in Section II.C., Audits. All accrued interest will be added to the CORE Programs’ fund balance.

DE 09-170 Settlement Agreement, Section II.I.3, p. 10, December 18, 2009.

The Commission approved the 2010 Core Settlement Agreement in Order No. 25,062 on January 5, 2010 (“2010 Core Order”). Soon thereafter, the Parties and Staff turned their attention to the impact of Senate Bill 300 on the Core programs and budgets. After that process was completed, the Parties and Staff held a regularly scheduled Core monthly

² Office of Consumer Advocate (“OCA”), the New Hampshire Community Action Association (“CAA”), the Office of Energy and Planning (“OEP”), The Way Home organization (“TWH”), the Jordan Institute, US Energy Saver, LLC (“USES”), the Home Builders and Remodelers Association of New Hampshire (HBRANH) and the Staff of the New Hampshire Public Utilities Commission (Staff).

meeting on March 5, 2010. At that meeting the Parties were canvassed for interest in participating in discussions related to RSA 125-O:5. Five parties, including the OCA, US Energy Saver, OEP, The Way Home and PSNH (“the 125-O Parties”), along with Commission Staff stated their intention to participate. On March 26, 2010 the Parties and Staff met to discuss how PSNH had implemented the 125-O set asides in the past, as described in Commission Staff’s March 29, 2010 status letter to the Commission filed in this Docket. The Parties and Staff agreed that time for additional discovery related to 125-O would be necessary, and that a new Docket was not necessary at that time as the Parties and Staff agreed to explore the issues informally.

The 125-O Parties and Staff met in several sessions between April and June of 2010, and exchanged information through discovery and in settlement sessions. Over time, settlement talks were conducted by a smaller group comprised of PSNH, the OCA, and Commission Staff. These Settling Parties kept the original 125-O Parties informed of developments in the settlement process. This Settlement Agreement is a result of discussions that took place during these sessions.

II. SETTLEMENT TERMS

The Settling Parties and Staff agree that it is lawful and consistent with the public interest for the Commission to approve this Settlement Agreement, as described below, to resolve all issues related to PSNH’s management of RSA 125-O:5 funds (“125-O Funds”) as identified in the earlier phase of this Docket.

A. Past Calculation of Set Aside and Management of RSA 125-O Funds

The Parties and Staff believe that there are several possible interpretations of the appropriate way to determine the amount of 125-O Funds available to PSNH under the

statute, including how PSNH determined unencumbered funds from a prior Core program year as required by the statute. Rather than expend the time and resources necessary to fully litigate those issues, the Parties and Staff agree that no further action should be taken regarding the Audit finding related to how PSNH determined the past Set Aside amounts, or how they managed the funds. As discussed below, PSNH has agreed to new processes for both determining what funds, if any, are available for the set aside and use by the Company under the statute, as well as guidelines for choosing RSA 125-O projects beginning in 2010.

B. Starting Point for Calculation of RSA 125-O Funds

The Parties and Staff agree, similar to paragraph A above, that there may be several ways to establish the appropriate starting point for determining future amounts available to PSNH under RSA 125-O. Similarly, rather than expend the time and resources necessary to fully litigate this issue, the Parties and Staff have agreed on an amount for the starting balance of \$737,418. This amount includes the 2009 Core program carryover amount of \$461,749, as well as \$275,669 that PSNH has held for use during 2009 pursuant to RSA 125-O, pending the outcome of this Settlement. The Parties and Staff agree that PSNH will utilize this figure, \$737,418, in its calculation of RSA 125-O funds as described in more detail below in Section C.

C. Future Calculation of Funds Available for RSA 125-O Set Aside

The Parties and Staff agree that starting with the 2010 Core program year (to be calculated in 2011), PSNH will use the spreadsheet provided as Attachment A to determine RSA 125-O funds that may be available for PSNH's use in the future. Attachment A includes an explanatory table which provides information about each part of the spreadsheet.

Importantly, rather than PSNH simply setting aside 2% of the system benefits charge (SBC) collected in a program year,³ PSNH agrees to first calculate unencumbered funds according to Attachment A, and then will compare that amount to 2% of the total SBC collected for energy efficiency programs. PSNH is entitled to set aside the lower of the two amounts.

Among other things, Attachment A notes the funding sources that the Parties and Staff agree are eligible for consideration when PSNH determines the amount available for RSA 125-O projects. Those funding sources include the following amounts from the prior Core program year:

- Carryover (unspent Core funds);
- SBC collected;
- SO₂ proceeds or other proceeds (a placeholder for future miscellaneous funds);
- Forward Capacity Market (FCM) proceeds related to the Core programs net of FCM expenses; and
- Interest.

Should additional funding sources be identified in the future, PSNH will consult with the Parties and Staff to determine whether they are eligible for inclusion in determining RSA 125-O funds available for set aside.

³ It is important to note that the 125-O calculation will be performed for any program year in the *next* calendar year, after all program costs and revenues can be determined. This calculation will therefore typically take place no earlier than June of each year. For example, to determine the 125-O amount available for set aside from the 2010 Core program year, PSNH must wait until the point in 2011 when all program expenses have been paid, including the 2010 shareholder incentive, and then PSNH can determine the amount available from the 2010 Core program year for the 125-O set aside.

The Parties and Staff agree that PSNH will consult with all Core Parties and Staff each year when it is determining funds available for the RSA 125-O set aside. If any Party or Staff disagrees with PSNH's calculation, any Party or Staff may request that the Commission resolve such disagreements. The Parties and Staff agree that PSNH will provide the report "General Ledger Transactions vs. Energy Efficiency Programs Transactions" each year on June 1, as part of its filing of performance incentives. See Attachment B, which illustrates the information that PSNH has agreed to provide in order to demonstrate the reconciliation between the General Ledger and the Core program.

D. Future Management and Use of RSA 125-O Funds

The Parties and Staff agree that PSNH will consult with all Core Parties and Staff when it considers projects to be funded by the RSA 125-O set aside. All projects funded by the RSA 125-O funds must be cost effective pursuant to the statute. If any Party or Staff disagrees with PSNH's use of the funds, any Party or Staff may request that the Commission resolve such disagreements. PSNH also agrees to provide timely reporting of RSA 125-O funded projects as required by the statute. PSNH will provide such reports to the Commissioner of the Department of Environmental Services, the Commission, its Staff, the Office of Consumer Advocate, and to all other Core Parties. Such reports shall be posted on the PUC's webpage for the Core programs.

PSNH agrees that in the future it will limit the accumulation of RSA 125-O funds. The total of these funds will not exceed \$600,000. Funds which have not been expended, but have been committed to specific projects and which have been identified to the Core Parties and Staff under the process described in the previous paragraph, shall not to be counted towards the fund limit. If such funds do accumulate, PSNH shall transfer those funds in

excess of the limit back to the Core Program budget, in consultation with the Parties and Staff.

PSNH also agrees, consistent with the 2010 Core Order No. 25,062, that it will begin to accrue interest on the 125-O set aside funds as of January 1, 2010. All accrued interest will be added to the CORE Programs' fund balance. (*See* Core 2010 Settlement Agreement at page 10).

E. Use of Existing RSA 125-O Funds

PSNH currently holds approximately \$264,000 in the RSA 125-O fund, after transferring \$500,000 to help cover the budget shortfall resulting from Senate Bill 300, as approved by the Commission in Order No. 25,099. PSHN may retain the \$264,000 currently held as RSA 125-O funds for use in RSA 125-O projects, consistent with the methodology described in Section D above.

Based on its 2009 Program year end figures, PSHN has calculated that it was entitled to set aside approximately \$275,669 from that program year for use as RSA 125-O Funds. Pursuant to the 2010 Core Order (No. 25,062), PSHN has held those funds and has not obligated them to any energy efficiency projects at their own facilities. As part of this Settlement Agreement, PSHN has agreed that it will not set aside those funds and therefore will not add them to the RSA 125-O fund that it currently holds. Instead, PSHN will add the \$275,669 to the Core program budget, and shall utilize these funds for any current needs in the 2010 Core program year, and in developing the 2011 Core program budget if necessary. These funds are already included in the starting balance on Attachment A, as described above in Section II.B.

III. MISCELLANEOUS PROVISIONS

The Settling Parties and Staff agree to support approval of this Settlement Agreement before the Commission as a fair resolution of the issues described herein.

This Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party that any allegation or contention in these proceedings is true or valid. This Settlement Agreement is expressly conditioned upon the Commission's acceptance of all its provisions, without change or condition. If the Commission does not accept this Settlement Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Settlement Agreement, and any of the Settling Parties is unable to agree with the changes, conditions or findings, this Settlement Agreement shall be deemed to be withdrawn and shall not constitute any part of the record in this proceeding and shall not be used for any other purpose.

The Commission's acceptance of this Settlement Agreement does not constitute continuing approval of or precedent regarding any particular issue in this proceeding, but such acceptance does constitute a determination that, as the Settling Parties and Staff believe, the provisions set forth herein are just and reasonable.

This Settlement Agreement is the product of confidential settlement negotiations. The content of these negotiations, including any documents prepared during such negotiations for the purpose of reaching a settlement, shall be privileged and all offers of settlement shall be without prejudice to the position of any party presenting such offer, and are not to be used in any manner in connection with this proceeding, any further proceeding or otherwise.

IN WITNESS WHEREOF, the Settling Parties and Staff have caused this Settlement Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of their principal.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____
Gerald M. Eaton, Esq.
Senior Counsel

Date: _____

**STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

By: 
Suzanne Amidon, Esq.

Date: July 13, 2010

OFFICE OF THE CONSUMER ADVOCATE

By: 
Meredith A. Hatfield, Esq.
Consumer Advocate

Date: 7/13/10

IN WITNESS WHEREOF, the Settling Parties and Staff have caused this Settlement Agreement to be duly executed in their respective names by their agents, each being fully authorized to do so on behalf of their principal.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: Gerald M. Eaton
Gerald M. Eaton, Esq.
Senior Counsel

Date: July 13 2010

**STAFF OF THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

By: _____
Suzanne Amidon, Esq.

Date: _____

OFFICE OF THE CONSUMER ADVOCATE

By: _____
Meredith A. Hatfield, Esq.
Consumer Advocate

Date: _____

**RSA 125-O:5 Multiple Pollutant Reduction Program
Methodology for determining RSA 125-O:5 Set Aside Amounts**

Attachment A

	<u>PY2010</u>	<u>PY2011</u>	<u>PY2012</u>	<u>PY2013</u>	<u>PY2014</u>	<u>PY2015</u>
A Starting Balance/carryover	\$737,418 *	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418
B SBC for EE Collected						
C SO2 Proceeds or Other						
D FCM Included for EE						
E Interest						
F Net Transfers of Funds Into or Out of EE						
G Funds for EE Programs [= Rows A + B + C + D + E + F]	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418
H Spent on EE Programs						
I Shareholder Incentive Earned						
J Unencumbered Funds [= Row G - H - I]	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418
K Maximum possible set aside (= 2% of SBC collections)	\$0	\$0	\$0	\$0	\$0	\$0
L Amount PSNH may set aside						
M Carryover [= Row J - L]	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418	\$737,418

*The starting balance is the sum of \$461,749 (Core 2009 carryover) and the \$275,669 that PSNH has held aside for 2009 125-O funds. See paragraph II. B of Settlement Agreement.

Note: This screening tool is intended for use after the program year results have been finalized, and the shareholder incentive has been calculated, submitted to and approved by the NH Public Utilities Commission and booked.

The KEY on following page provides description for values shown in spreadsheet.

A.	Starting Balance - The Starting Balance is the carryover (in Row M) from the prior Core program year, if any. This amount will be \$737,418 for the start of 2010.
B.	SBC for EE Collected - Includes all SBC collected for CORE energy efficiency programs.
C.	SO2 Proceeds or Other . We left this line in in the event that there are any future proceeds to be included in EE Budget.
D.	FCM Included for EE . Forward Capacity Market Payments received during a Program Year net of FCM expenses and included in CORE budget
E.	Interest - Interest earned on the unspent CORE Programs fund balance.
F.	Net Transfers of Funds Into or Out of EE -This row is the net of any transfers into or out of the EE funds. Examples include: moving money from EE to EAP, increasing (or decreasing) the size of the Smart Start Revolving Loan Fund, etc. Transfers Into EE are added to the Funds for EE programs (Row G); transfers Out of EE are subtracted from the Funds for EE Programs.
G.	Funds for EE Programs - the figures in this row are equal to the SBC funds collected in the current program year plus any Carryover of prior year funding plus any FCM available for EE, plus interest, plus or minus any transfers (see Row F).
H.	Spent on EE Programs - the figures in this row represent the program expenditures for the referenced program year. Generally not determined until several months into subsequent calendar year when all expenses have cleared.
I.	Shareholder Incentive Earned - The actual shareholder incentive earned for the current program year.
J.	Unencumbered Funds (UF) - The cumulative amount of funding which remains in any given year after subtracting program expenditures and the shareholder incentive. In any given year, this value must be positive in order for PSNH to set aside any RSA 125:O-5 funds, and it must be greater than the corresponding value in Row K in order to set aside the full 2%.
K.	RSA 125-O:5 2% Maximum Possible Set-Aside (MPSA) - Equal to two percent (2%) of the SBC collected in referenced program year (2% of Row B)
L.	RSA 125-O:5 Allowed Set-Aside Amount - This amount results from Comparing Unencumbered Funds (UF) and Maximum Possible Set Aside (MPSA) Amount. If UF is < 0 then NO 2% set aside is allowed. If UF >= 0 and also < MPSA then allowed set aside is the UF amount. If UF >= 0 and also >= MPSA then the set aside is equal to the MPSA.
M.	Carryover - Equal to the difference between the Unencumbered Funds and the Allowed 2% Set-Aside.

Reconciliation

2009 General Ledger Transactions vs Energy Efficiency Program Transactions
PSNH will use this Template to provide reconciliation for each EE Program Year
(dates are included for illustrative purposes only)

1. General Ledger Balance - 1/1/2009	\$0
2. General Ledger Balance - 12/31/2009	<u>\$0</u>
3. 2009 Net General Ledger Activity	<u><u>\$0</u></u>

	Deduct 2008 Transactions	Add 2009 Transactions not Included in 2009	2009 Program Year
	General Ledger Transactions	GL	
	GL	Year	
FUNDING:			
4. SBC Funding	\$0		\$0
5. FCM Payments	\$0		\$0
6. 2009 Interest: GL Jan-Nov, EE YTD	\$0		\$0
7. 2008 Interest: Jan-Mar 09	\$0	\$0	\$0
8. 2009 Interest true-up: Jan 10	\$0		\$0
9. Dec 2008 interest: Jan 09	\$0	\$0	\$0
10. 2008 Interest true-up: Jan 09	\$0	\$0	\$0
11. Total Funding	\$0	\$0	\$0
EXPENSES:			
12. EE Expenses: Jan-Dec, 09	\$0		\$0
13. SmartStart EE Expenses: Jan-Dec			\$0
14. 2009 EE Expenses: Jan-Mar 10			\$0
15. 2008 EE Expenses: Jan-Mar 09	\$0	\$0	\$0
16. 2009 Shareholder Incentive	\$0		\$0
17. 2008 S. Incentive True-up	\$0	\$0	\$0
18. 2009 2% Set Aside	\$0	\$0	\$0
19. Expenses - PSNH Projects		\$0	\$0
20. 2009 C2 Duplicate Charges to be reversed	\$0	\$0	\$0
21. Total Expenses	\$0	\$0	\$0
22. Net: Funding less Expenses	\$0	\$0	\$0