

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

November 26, 2012 - 1:10 p.m.
Concord, New Hampshire

DAY 2

RE: DE 11-216

NHPUC JAN09'13 PM12:09

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Alternative Default Energy Service Rate.

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Michael D. Harrington
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:
Matthew J. Fossum, Esq.

Reptg. PNE:
James T. Rodier, Esq.

Reptg. Retail Energy Suppliers Association:
Joey Lee Miranda, Esq. (Robinson & Cole)
Jonathan H. Schaefer, Esq. (Robinson & Cole)

Reptg. Residential Ratepayers:
Susan W. Chamberlin, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Suzanne G. Amidon, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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1 P R O C E E D I N G

2 CHAIRMAN IGNATIUS: We are back with
3 Docket DE 11-216. When we were last together, we had
4 gotten through the evidence of PSNH and OCA's witnesses.
5 We had had Mr. Mullen go through his direct, if I'm
6 correct?

7 MR. MULLEN: Yes.

8 CHAIRMAN IGNATIUS: And, still have
9 cross-examination of Mr. Mullen, and Mr. Fromuth's direct
10 and cross-examination, I believe.

11 So, why don't we begin with appearances,
12 and, then, if there's any other procedural matters to get
13 oriented, it's always a little hard for me to remember
14 where we left off. So, anything we have to go back over,
15 if there's any other matters, before we get into the
16 evidence, we'll do so. But let's first take appearances.

17 MR. FOSSUM: Good afternoon. Matthew
18 Fossum, on behalf of Public Service Company of New
19 Hampshire.

20 CHAIRMAN IGNATIUS: Good afternoon.

21 MR. RODIER: Good afternoon. Jim
22 Rodier, for PNE. Mr. Fromuth is with me.

23 MS. MIRANDA: Good afternoon,
24 Commissioners. Joey Lee Miranda, from Robinson & Cole,

1 along with my colleague, Jon Schaefer, on behalf of the
2 Retail Energy Supply Association.

3 CHAIRMAN IGNATIUS: Good afternoon.

4 MS. CHAMBERLIN: Good afternoon,
5 Commissioners. Susan Chamberlin, Consumer Advocate, for
6 the residential ratepayers.

7 CHAIRMAN IGNATIUS: Good afternoon.

8 MS. AMIDON: Good afternoon. Suzanne
9 Amidon, for Commission Staff.

10 CHAIRMAN IGNATIUS: Good afternoon,
11 everyone. So, are we right that we pick up with Mr.
12 Mullen's cross-examination, unless is there anything we
13 should take up first?

14 MS. AMIDON: If I may, madam Chairman.
15 What I would like to do is ask Mr. Mullen to summarize his
16 direct testimony, just to give a context for the
17 cross-examination that will follow. And, as you know,
18 there is a Settlement Agreement that's been -- a Partial
19 Settlement Agreement that's been filed in this docket,
20 Exhibit 9. The transcript was available to the parties,
21 and I'm assuming they took advantage of that in order to
22 prepare for today.

23 I think that is all that I have at this
24 point.

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1 CHAIRMAN IGNATIUS: Is that acceptable
2 to everyone to, although I know Mr. Mullen summarized
3 testimony before, to kind of get reoriented here to start
4 off the afternoon?

5 MR. FOSSUM: Yes.

6 CHAIRMAN IGNATIUS: All right. Then,
7 unless there's anything else, are we good to go?

8 (No verbal response)

9 (Whereupon **Steven E. Mullen** was recalled
10 to the stand, having been previously
11 sworn.)

12 CHAIRMAN IGNATIUS: Mr. Mullen, you were
13 sworn before. You remain under oath.

14 WITNESS MULLEN: Yes.

15 CHAIRMAN IGNATIUS: Thank you. Please
16 proceed.

17 **STEVEN E. MULLEN, Previously sworn**

18 **DIRECT EXAMINATION (resumed)**

19 BY MS. AMIDON:

20 Q. And, Mr. Mullen, please, if you will, summarize the
21 testimony that you filed in this docket.

22 A. Okay. Bringing us back to a few weeks ago, we heard
23 significant testimony from PSNH and from the OCA
24 witness about the Partial Settlement Agreement and the

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1 workings of the ADE rate, "ADE" standing for
2 "Alternative Default Energy Service". And, in my
3 testimony, when I was on the stand, I highlighted
4 what's essentially the one difference between my
5 position on the term of service and the position of
6 PSNH and OCA. PSNH and the OCA support a 24-month term
7 of service. And, in my prefiled testimony, I
8 recommended a 12-month term of service.

9 And, to summarize the main reasons for
10 that: One, I think just on simplicity terms, it's a
11 better match for the eligibility criteria. If we
12 recall, in order to be able -- to be eligible for
13 service under Rate ADE, a customer must be served by a
14 competitive supplier for at least 12 consecutive
15 months. So, there, by having a term of service for
16 Rate ADE of 12 months, I think it's just a better
17 match. Also, in Mr. Hall's rebuttal testimony, he had
18 mentioned that, with relation to the term in the
19 Settlement Agreement that this -- actually, this came
20 -- the Settlement Agreement came later, the term that I
21 had recommended in my original testimony, about this
22 being looked at on a pilot basis, he said, "yes, you
23 know, it's probably a good idea, and I think we should
24 look at this on an annual basis." So, I think that

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1 12-month term of service that I recommended is also a
2 better match for the annual assessment of the rate.

3 Also, I think it helps mitigate -- the
4 shorter term of service helps mitigate any potential
5 concerns about this being anti-competitive, because the
6 shorter term of service would limit the amount of time
7 any eligible customer could be served under this rate.

8 As another reason, it gives a better
9 idea, you can see more action, especially with this
10 being a 36-month pilot, you can see more in terms of
11 how customers react to the term of service ending and
12 fulfilling their full term of service. If you were to
13 go with a 24-month term of service, under a 36-month
14 pilot, there could be a number of customers still being
15 served by the rate at the end of the 36-month pilot
16 period, that you wouldn't be able to see their full
17 reactions during that entire term of service.

18 Let's see. Also, if for some reason, at
19 the -- if the Commission were to terminate this rate,
20 and say "well, you know, it's not really -- this isn't
21 really working right", my position would be that the
22 customers should serve their remaining term of service.
23 So, if a customer had just recently started being
24 served under Rate ADE, and it was a 24-month term of

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1 service, they could have a significant period of time
2 left, if, for some reason, the rate was terminated.

3 So, I think, if you take all those into
4 account, I just think that the 12-month period is my
5 preference for what the term of service for this rate
6 should be.

7 Q. Mr. Mullen, did you find anything in the Settlement
8 Agreement that you felt needed to be corrected?

9 A. Yes. I just found a typo when I was going through
10 this. If you look at -- this is Exhibit 9, Page 5. In
11 Section 2.2.3, at the end of that section, there's a
12 reference to -- it says "and for the reasons set out in
13 Section 2.3.3 or 2.3.4, below", those really should be
14 "2.3.3.1 or 2.3.3.2". And, I think, if you look at the
15 Settlement, there is no "2.3.4", as was originally
16 referenced in the Settlement.

17 CMSR. HARRINGTON: Could you give us
18 those again please?

19 WITNESS MULLEN: Sure. The references
20 should be to "2.3.3.1 or 2.3.3.2".

21 BY MS. AMIDON:

22 Q. Thank you. Finally, Mr. Mullen, in connection with
23 discovery, PSNH provided a response that's identified
24 as "TECH-001". Do you have a copy of that response in

[WITNESS: Mullen]

1 front of you?

2 A. Yes, I do.

3 Q. And, it consists of a one-page -- I think, maybe a
4 two-sentence answer and a diagram which depicts various
5 situations, depending on when a customer chooses to --
6 the ADE, and what various things will happen to reset
7 the 24-month clock, for example, and is that correct?
8 How would you characterize this?

9 A. It's a flow chart, that, essentially, it's a decision
10 tree. And, it shows whether a customer would be served
11 under Rate ADE or Rate DE, other things like whether
12 the clock has started again or is it continuing? I
13 just think that it -- it's a good pictorial view of
14 what lots of words of the text might say.

15 MS. AMIDON: May I offer this as an
16 exhibit? I think we're up to -- mark it for
17 identification as "Exhibit 15", is that correct? I think
18 it might be helpful to the Commission, and the other
19 parties have copies of it. But it offers a flow chart
20 that's easier to follow, because it's in color and shows
21 the various decision points.

22 CHAIRMAN IGNATIUS: Is there any
23 objection to marking it as an exhibit? Mr. Rodier.

24 MR. RODIER: Madam Chairman, could I

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1 just look at it --

2 CHAIRMAN IGNATIUS: Please.

3 MR. RODIER: -- just for five seconds?

4 (Atty. Amidon handing document to Atty.
5 Rodier.)

6 MR. RODIER: I notice this is nothing
7 recent then. So, on that basis, we have no objection.

8 CHAIRMAN IGNATIUS: All right. Then,
9 we'll mark it for identification as Exhibit?

10 MS. DENO: Fifteen.

11 CHAIRMAN IGNATIUS: Fifteen. Thank you.
12 (The document, as described, was
13 herewith marked as **Exhibit 15** for
14 identification.)

15 MS. AMIDON: Thank you.

16 WITNESS MULLEN: And, if I could just
17 add something in relation to this?

18 MS. AMIDON: Yes, please.

19 WITNESS MULLEN: PSNH provided this
20 response with respect to the 24-month term of service that
21 they support. So, there are a few spots on here where it
22 says "24 months", that the only difference in how I would
23 look at it would be the "12 months", it would substitute
24 "12 months" for those. But the decisions, the "yes" or

[WITNESS: Mullen]

1 "noes" and all that won't change.

2 BY MS. AMIDON:

3 Q. Okay. For example, if you go to the first triangle
4 that's green, it says "is 24-month clock running?"
5 Under Staff's position, it would be "is 12-month clock
6 running?"

7 A. Correct.

8 MS. AMIDON: Thank you. The witness is
9 available for cross-examination.

10 CHAIRMAN IGNATIUS: Thank you. Why
11 don't we continue with other signatories to the Settlement
12 Agreement. So, PSNH.

13 MR. FOSSUM: Thank you.

14 **CROSS-EXAMINATION**

15 BY MR. FOSSUM:

16 Q. Mr. Mullen, I just wanted to ask, since it's been a
17 while since the first part of this hearing, and I know
18 that you've given a quick summary of your direct, I
19 just wanted to ask a few questions that would, I think,
20 help clarify where we are.

21 Regarding eligibility for Rate ADE, just
22 very briefly, how does a customer become eligible to be
23 served under Rate ADE?

24 A. The customer must have been receiving service from a

[WITNESS: Mullen]

1 competitive supplier for a period of at least 12
2 consecutive months.

3 Q. And, are there circumstances under which Rate ADE can
4 close to new customers?

5 A. Yes.

6 Q. And, what circumstances would those be?

7 A. And, if I could refer to, give the right direction
8 here, if you look at the Settlement Agreement, the
9 description starts on Page 5, in Section 2.2.4. But
10 the technical workings of that are described in
11 Section 2.3.3.1, on Page 7. To summarize that, PSNH
12 will be looking at the projected marginal costs on a
13 monthly basis. And, if, in one of those monthly
14 reviews, it's comparison of the marginal costs at that
15 time for the remaining months of the period are more
16 than 75 percent -- have increased by at least
17 75 percent of the amount of the adder, as compared to
18 the projections of marginal costs for those same
19 periods at the initial setting of the rate. If that
20 occurs, then the rate could be temporarily closed to
21 new customers.

22 Q. You said that's what happens when the rate increases.
23 Does the same thing happen if the forward prices would
24 decrease?

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1 A. Well, the rate wouldn't close, but PSNH will file a
2 request for a authorization to decrease the rate.

3 Q. And, during any time that the availability of Rate ADE
4 is closed, what happens to customers returning for
5 Default Service?

6 A. They would be assigned to Rate DE.

7 Q. Now, as for -- so, you -- I'm sorry, you spoke about
8 the price, how the price of Rate ADE is set.
9 Currently, as you understand it, is the proposed price
10 for Rate ADE below Rate DE?

11 A. Yes.

12 Q. Even at a price that's below Rate AD -- that is below
13 Rate DE, does Rate ADE provide an opportunity for PSNH
14 to recover on its fixed costs?

15 A. No.

16 Q. Could you explain that. Does it provide any
17 opportunity for PSNH to recover on its fixed costs?

18 A. It's just the adder -- the rate itself is the marginal
19 cost of providing power. That's the bulk of the rate.
20 And, so, that's not a fixed cost to PSNH, that's
21 essentially the market price of power. The adder is
22 calculated on the non-operating costs of the Scrubber.
23 So, --

24 Q. So, does the adder then provide an opportunity for PSNH

[WITNESS: Mullen]

1 to recover on its fixed costs?

2 A. Actually, yes, it does. Yes.

3 Q. Thank you.

4 A. Sorry.

5 Q. Is it possible that Rate ADE can be above the rate for
6 Rate DE?

7 A. That's possible.

8 Q. So, the price available to a customer under Rate ADE
9 will depend or could depend upon the market prices at
10 the time the customer returns to PSNH for Default
11 Service?

12 A. Yes.

13 Q. Have you reviewed the transcript from the first day of
14 this hearing?

15 A. Briefly.

16 Q. Either through that review or your own recollection, do
17 you recall questions from Commissioner Harrington about
18 whether a customer could leave for a competitive supply
19 and keep Rate ADE as an insurance policy?

20 A. Do you have a reference?

21 Q. Yes. The transcript, at Page 170.

22 A. Okay. I'm there.

23 Q. Now, this wasn't a question to you. I was just
24 wondering whether you recall the question being asked.

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1 Nevertheless, for purposes of refreshing your
2 recollection, the question asked to Mr. Estomin that --
3 Dr. Estomin, excuse me, on Page 170, at Lines 14
4 through 18, regarding an "insurance policy". Do you
5 have that in front of you?

6 A. Yes, I do.

7 Q. Does that refresh your recollection?

8 A. Yes.

9 Q. So, in light of -- so, in light of the fact that you
10 have said that Rate ADE could be above Rate DE, do you
11 think it's likely that a customer would leave for a
12 competitive supply and believe that, for 12 consecutive
13 months, and believe that Rate ADE would remain as an
14 insurance policy?

15 A. Well, I think -- I think, under various circumstances,
16 you know, there's lots of different -- there's lots of
17 different outcomes. And, so, I think, to view it as an
18 insurance policy kind of ignores the working -- the
19 movements of the market prices that can happen and the
20 changes in the rates that could happen.

21 Q. Thank you. I want to turn now to the issue that you
22 had said that there's some disagreement among the
23 signatories about on the term of service. And, you do
24 agree that there should be a term of service, is that

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1 correct?

2 A. Yes.

3 Q. And, we only -- the only disagreement is the length of
4 that term?

5 A. Correct.

6 Q. In the first part of this hearing, do you recall
7 stating that you understood the arguments of PSNH and
8 the OCA about the benefits of a 24-month term of
9 service?

10 A. Yes.

11 Q. Would you agree that PSNH -- that PSNH's argument for a
12 24-month term of service was that it would avoid an
13 extended term of customers being on a discounted rate,
14 and to avoid having customers pay a higher rate for an
15 extended period?

16 A. Yes, I recall that.

17 Q. And, do you recall Dr. Estomin's testimony that he
18 believed the 24-month term would be more attractive to
19 returning customers?

20 A. Yes, I recall.

21 Q. Okay. And, despite those arguments, you still believe
22 12 months is the preferred term?

23 A. That's correct.

24 Q. Now, going to the issues that you had raised in your

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1 summary of your direct, the first issue that you had
2 raised for in favor of a 12-month term of service was
3 that it matched, essentially, the eligibility term, is
4 that correct?

5 A. I said it was "a better match", yes.

6 Q. A better match. What is the purpose of the 12-month
7 eligibility requirement that is the purpose of
8 requiring a customer to be on competitive supply for 12
9 consecutive months before qualifying for Rate ADE?

10 A. The purpose of that is to, if I'm following your
11 correction -- your question correctly, is to ensure
12 that there's not a lot of going back and forth.

13 Q. In other words, to use a term that's come up previously
14 in this case, would it help avoid "gaming"?

15 A. Well, that's one thing that can happen with people
16 going back and forth. I might say that there might be
17 people that move back and forth, and it's not
18 necessarily gaming.

19 Q. You had also mentioned a better match with the annual
20 review. What would the purpose be for the annual
21 review?

22 A. To see how the rate is working and to see if there's
23 any adjustments that need to be made.

24 Q. So, if I follow you correctly, the purpose of the

[WITNESS: Mullen]

1 eligibility requirement is, and I'll use my word, and
2 if you don't agree with it, please say so, is to help
3 avoid gaming, and the annual review is just to provide
4 an opportunity to make sure that the Rate ADE is
5 providing the benefits that it's intended to provide.

6 Is that an accurate summary?

7 A. Sure.

8 Q. Now, are either of those purposes the same as the
9 purpose of the term of service?

10 A. Are they the same as the purpose for the term of
11 service?

12 Q. Well, I guess, in other words, what is -- I'll start
13 this way. What is the purpose of the term of service?

14 A. The term of service is provided so that there -- again,
15 it's to avoid -- well, I was going to say -- I was
16 going to say "it's to avoid people moving back and
17 forth", however, people aren't required to stay on Rate
18 ADE. However, what it does is, it avoids a lot of
19 back-and-forth with Rate DE.

20 Q. The term of service avoids a back-and-forth with Rate
21 DE, is that --

22 A. Well, sure. Because, if there's a term of service
23 under Rate ADE, returning customers aren't served by
24 Rate DE, assuming Rate ADE is open.

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[WITNESS: Mullen]

1 Q. Would you agree with Mr. Hall's previous testimony that
2 the -- that the purpose of the term of service is to
3 provide benefits -- or, is to ensure that customers do
4 not receive an extended period of discount rates or an
5 extended period of excessively high rates?

6 A. Well, I think that's one of the things. There's also
7 the -- the whole point of ADE is to provide, for those
8 returning customers, what it does is it, especially
9 through the adder, provides some benefit to other
10 customers on Rate DE.

11 Q. So, and I guess what I'm trying to get at is that the
12 term of service and the eligibility criteria and the
13 annual review all serve essentially somewhat different
14 purposes. Would you agree with that?

15 A. Yes.

16 Q. So, there's no particular underlying purpose that
17 requires those terms to match, it just sounds better?

18 A. Well, that's your characterization. But I think that,
19 yes, they all have their purpose.

20 Q. Now, you also mentioned in your direct that it would
21 help "mitigate concerns about being anti-competitive".
22 Could you explain that?

23 A. Well, yes. And, I think there's, you know, there's
24 been some concern from, I think, competitive suppliers

[WITNESS: Mullen]

1 that this rate will keep people out of the competitive
2 market for an extended period of time. Now, whether
3 those concerns are valid or not, I think a shorter term
4 of service helps alleviate those concerns.

5 Q. Now, and you're not an attorney, Mr. Mullen?

6 A. That's correct.

7 Q. But are you familiar with the terms of the
8 restructuring statute, RSA 374-F?

9 A. Generally.

10 Q. Would you agree that the primary purpose of the
11 restructuring law is to reduce costs for all consumers
12 of electricity?

13 A. I think that's one of many that are stated in the
14 statute.

15 Q. Well, could the implementation of Rate ADE have the
16 effect of reducing the costs for consumers of
17 electricity?

18 A. It could.

19 Q. So, if it does have that effect, and would that be a
20 basis to limit it to 12 months?

21 A. I'm not sure I'm following your question.

22 Q. Well, if it has the effect of lowering costs for
23 consumers of electricity, wouldn't that be a basis to
24 extend it to 24 months, to ensure that those benefits

[WITNESS: Mullen]

1 are provided?

2 A. Well, that assumes (a) that people stay on the rate for
3 the entire period, which they're not required to.

4 Sorry, I lost my train of thought.

5 Q. If I might ask about that. That may be for an
6 individual customer, and you said this is a concern
7 about competitive suppliers. So, I was wondering if
8 this could have the effect of lowering costs in the
9 marketplace for all consumers of electricity, as
10 opposed to, say, an individual consumer?

11 A. Well, I think that, where the rate is calculated based
12 on marginal costs, I would think that those are
13 basically reflective of the market price. So, whether
14 you have a longer term of service or a shorter term of
15 service, I think that, you know, those same market
16 prices should be available. Again, I support the
17 shorter term of service for a variety of reasons, not
18 just for one in particular.

19 Q. Yes. And, one of the other reasons that you had raised
20 is that, if a customer is on Rate ADE at the time that
21 the pilot period ends or that the rate is terminated,
22 the customer should remain on, in your opinion, the
23 customer should remain on Rate ADE until the end of
24 their term of service?

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1 A. Yes, that's correct.

2 Q. Now, why would the -- what do you believe would be the
3 most likely reason that the rate would be terminated
4 prior to the end of the pilot period?

5 A. Well, you know, I wasn't thinking of anything in
6 particular. I was just trying to cover potential
7 outcomes that could happen. I mean, there's a variety
8 of things that could happen, you know. Now, whether it
9 requires a termination or whether it requires some
10 adjustments to the rate, you know, I haven't really
11 thought through every scenario that could happen, but I
12 was trying to cover different potential outcomes.

13 Q. Is it possible that Rate ADE could be terminated
14 because few or no customers take it?

15 A. That could happen.

16 Q. So, in that case, would there be a significant impact
17 for having to continue few or no customers till the end
18 of the term of service?

19 A. In that particular circumstance, no.

20 Q. And, Mr. Mullen, also in the first day of this hearing,
21 you had mentioned, but I didn't hear you mention today,
22 the possibility that "a longer term of service could
23 limit customer options". Do you recall saying that?

24 A. Yes. That's right.

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[WITNESS: Mullen]

1 Q. Currently, customers have the option of having
2 competitive service for PSNH's Default Service, is that
3 essentially the case?

4 A. Yes.

5 Q. So, once Rate -- assuming Rate ADE is implemented,
6 would that choice change?

7 A. The choice of returning to Default Service?

8 Q. Would customers still have the choice of obtaining
9 competitive supplier service or PSNH's Default Service?

10 A. Depending on how long they were being served by a
11 competitive supplier, they would -- if they wanted to
12 return, they would still have the competitive supply
13 option, and, if they wanted to return to PSNH, they
14 would either be served under Rate DE or Rate ADE.

15 Q. Either of which is a default service option, is that
16 correct?

17 A. That's correct.

18 Q. So, in that customers would have the choice to remain
19 on competitive supplier service or return to PSNH's
20 Default Service, have those choices changed? Would
21 those choices change with the implementation of Rate
22 ADE?

23 A. With the implementation of Rate ADE, the only thing
24 that changes is the amount of time somebody would be

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1 served under -- a returning customer would be served
2 under the Alternative Default Energy Service, rather
3 than the standard Default Energy Service.

4 Q. But the choice of who would supply the energy is
5 essentially the same under -- whether Rate ADE exists
6 or does not exist?

7 A. Customers would still be served -- could still be
8 served by competitive suppliers or by PSNH.

9 MR. FOSSUM: Thank you. I don't have
10 anything further.

11 CHAIRMAN IGNATIUS: Thank you.
12 Ms. Chamberlin, questions?

13 MS. CHAMBERLIN: I have a few questions.
14 Thank you.

15 BY MS. CHAMBERLIN:

16 Q. Mr. Mullen, it's true that this is the second time that
17 PSNH has made a Rate ADE filing, correct?

18 A. Yes.

19 Q. And, the first time it was rejected by the Commission
20 for a variety of policy reasons, is that correct?

21 A. Yes.

22 Q. On Page 3 of the Settlement Agreement, PSNH summarized
23 those reasons. It's in Paragraph 1.3. Is it your
24 recollection that that correctly summarizes the

[WITNESS: Mullen]

1 original concerns of the Commission?

2 A. Yes.

3 Q. With this second filing, this is PSNH's attempt to meet
4 those concerns, correct?

5 A. Yes.

6 Q. And, the terms of the Settlement Agreement -- would you
7 agree with me that the terms of the Settlement
8 Agreement meet those concerns of the Commission?

9 A. Yes, they do.

10 Q. And, the question before the Commission is which
11 proposal the term of service is a better
12 implementation, is that correct?

13 A. Yes.

14 Q. So, either one meets the original concerns. And, it's
15 your testimony that 12 months is a better term of
16 service; it's PSNH and OCA's testimony that 24 months
17 is a better term?

18 A. Yes. That's correct.

19 MS. CHAMBERLIN: That's all I have.

20 Thank you.

21 CHAIRMAN IGNATIUS: Thank you. Then
22 let's turn to non-settling participants. Mr. Rodier.

23 MR. RODIER: Thank you. Mr. Mullen, by
24 the way, did you have a good holiday?

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1 WITNESS MULLEN: Yes, I did. Thank you.

2 MR. RODIER: Great.

3 BY MR. RODIER:

4 Q. Do you have the transcript in front of you?

5 A. I do.

6 Q. Would you turn to Page 52.

7 CHAIRMAN IGNATIUS: And, if both the
8 witness and any questioner keep in mind, we don't have the
9 transcript. So, it's --

10 MR. RODIER: Okay.

11 CHAIRMAN IGNATIUS: All right, some of
12 "we" have it, some of "we" don't have it. There's nothing
13 wrong with using it, just don't assume that we're reading
14 along with you.

15 MR. RODIER: All right.

16 BY MR. RODIER:

17 Q. Mr. Mullen, let me know when you get to 52.

18 A. I'm there.

19 Q. Okay. I'm going to just read an excerpt from Lines 5
20 through 10. And, the reason I'm going to read it is,
21 didn't PSNH ask you a few questions related to "gaming"
22 a moment ago?

23 A. Yes, they did.

24 Q. Okay. Well, since you have it in front of you, would

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1 you read into the record 5 through 9, starting with the
2 sentence that begins with "a customer"?

3 A. And, I believe this is a question from you to the PSNH
4 panel at the time?

5 Q. It's Mr. Hall's answer.

6 A. Yes.

7 Q. All right. It's in response to my question.

8 A. Okay. I believe this is your question to Mr. Hall.

9 Q. No. If you look on the previous page, which is 51,
10 isn't it -- you're right, it is my question. Then,
11 given that, would you read that same section that I
12 asked you to, and then read Mr. Hall's answer, which is
13 on Page 10 [Line 10?]. I'm sorry.

14 A. Okay. The section of the question that starts on Line
15 5 reads as follows: "A customer has to be with a
16 competitive supplier for 12 months, I'm very sorry.
17 After that, they can go back to ADE on January 1st,
18 leave again on April 1st, come back again July 1st, and
19 leave again on October 1st?" And, Mr. Hall's answer
20 was "They could."

21 Q. And, do you agree with that?

22 A. Yes.

23 Q. Okay. So, to the extent the impression might have been
24 left that there's no potential for gaming, this might

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1 say otherwise, is that correct?

2 A. What this says is people can -- people aren't required
3 to stay on Rate ADE, and they can move back to
4 competitive supply and come back to Rate ADE.

5 Q. Right. All right. So, like, in the spring, when the
6 supplier's costs are down, they may -- they could jump
7 to a competitive supplier, and then go back in the
8 summer, when the competitive prices are higher. Is
9 that correct?

10 A. They could do that.

11 Q. Okay.

12 A. A lot is going to depend on the market prices at the
13 time, compared to the existing cost of Rate ADE.

14 Q. Absolutely. You're absolutely correct. Now, the
15 Settlement -- a couple questions on the Settlement
16 Agreement. First one would be -- well, I got the wrong
17 copy of the Settlement Agreement in front of me. My
18 notes are -- well, let me just wing it then off the top
19 of my head. There is a provision in here that says
20 that, if the Commission -- the parties are still
21 looking for an agreement by January 1st, correct?

22 A. Looking to have the rate implemented by January 1st.

23 Q. Okay. Now, if the Commission comes out with an order
24 and they change something, there is a provision in here

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1 that says the Settling Parties get together, figure out
2 what to do about it, is that right? Now, I'm actually
3 -- I found it. Top of Page 8.

4 A. I'm there.

5 Q. "Should the Commission approve an implementation date
6 other than January 1, 2013, PSNH, the Staff, and the
7 OCA shall discuss whether to amend the date by which
8 the annual report shall be filed and shall report the
9 results of such discussions to the Commission." Now,
10 "PSNH, the Staff, and OCA shall work cooperatively to
11 develop any recommended changes to the design of ADE to
12 the extent that such changes are necessary." Okay.
13 I'll skip the end of the sentence for sake of brevity.
14 Because my question really goes to, if the Commission
15 orders something here to change, why is it just the
16 PSNH, the Staff, and the OCA get to consult with each
17 other and work cooperative? Isn't it possible that my
18 client sees the decision, and they say "well, this
19 thing is on a pretty short leash. You know, we'd like
20 to get our word in edgewise here as to how to make the
21 recommended changes." Is that precluded?

22 A. I don't think it's precluded, no.

23 Q. Okay. And, what makes you think that? It just says --
24 it doesn't say that explicitly, it just includes the

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1 "PSNH, the Staff, and OCA", but it doesn't mean
2 necessarily that we exclude anybody?

3 A. Well, as I see it, Rate ADE is a tariffed rate. PSNH,
4 the Staff, and OCA can't make changes to tariffed
5 rates. Those get approved by the Commission.

6 Q. Yes. I'm just working on the part that says "PSNH, the
7 Staff, and OCA shall work cooperatively to develop any
8 recommended changes to the design of Rate ADE."

9 A. And, again, those are recommended changes.

10 Q. Right. And, would there be -- I think you're saying
11 there would be an opportunity for input into that
12 process for people like PNE?

13 A. Yes, I believe there would.

14 Q. Okay. That's all I wanted. Now, the other one I want
15 to go to is the annual -- well, first of all, why is
16 this a pilot? And, I'm looking for a very short
17 answer.

18 A. So it can be evaluated as to how it's working, how many
19 people are taking advantage of it. Just to basically
20 get a good view of, you know, whether it -- whether it
21 should be modified in any way, and how customers react.

22 Q. And, so, basically, keep it on a short leash, in case
23 something unanticipated should happen?

24 A. Sure. There's lots of different things that could

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1 happen, marketwise or otherwise. So, it's basically an
2 evaluation period. It's a test period.

3 Q. Well, and do you recall that I suggested, through some
4 questions I believe to Mr. Hall, that, when you tell
5 people "you can get a lower rate from Public Service,
6 but first you've got to go to a competitive supplier
7 for a year", do you recall me suggesting that could
8 open the floodgates?

9 A. It could. There's lots of things that could happen.

10 Q. Yes. Okay. So, there could be some unanticipated
11 consequences? That's probably the third time you've
12 been asked that question, and I apologize.

13 (Court reporter interruption.)

14 BY MR. RODIER:

15 Q. I said "there could be unanticipated consequences."
16 Now, at the end of the pilot period, the Commission has
17 an opportunity to review this, correct?

18 A. Yes.

19 Q. Going back to Section 2.2, "which pilot shall be
20 evaluated by the Commission". Now, I wonder what that
21 means, if the Commission -- it doesn't say "the Staff
22 of the Commission", it means "the Commission". So, are
23 we talking about there's going to be a hearing,
24 perhaps?

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1 A. If you turn to Page 8, in Section 2.4.3, it says there,
2 "At least 3 months prior to the end of the pilot
3 period, PSNH shall file a request to extend, modify or
4 terminate Rate ADE and shall include information about
5 the historical performance of Rate ADE and support for
6 the requested relief." So, I think that in and of
7 itself would see a hearing.

8 Q. Okay. So, there would be notice, opportunity to be
9 heard, etcetera?

10 A. Correct.

11 Q. Okay. That's good. So, I want to talk to you briefly
12 about the adder. The adder is the non-operating costs
13 of the Scrubber?

14 A. That's correct.

15 Q. And, why are the costs of the Scrubber in there, and
16 let me just add a multi two-part question, isn't it
17 because RSA 125-0:18 says that the costs of the
18 Scrubber "shall be recovered through default service".
19 Does that sound right?

20 A. That's what 125-0:18 says, yes.

21 Q. So, in essence, it says "you must recover the cost of
22 the Scrubber through default service"?

23 A. Correct. Meaning not through any other rate component.

24 Q. Yes. Not on the wires or anything like that?

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1 A. Correct.

2 Q. Okay. Why -- tell me why it's just non-operating
3 costs? Aren't the operating costs costs of the
4 Scrubber?

5 A. Well, and I think you had a discussion with Mr. Hall on
6 this at length during the hearing. And, as he said,
7 first, those, the non-operating costs are readily
8 identifiable, as compared to others that include
9 allocated costs. But, also, the Commission, when PSNH
10 first proposed a Rate ADE, one of the concerns the
11 Commission had was that PSNH proposed a flat penny
12 adder, and said "there was no basis for that." So,
13 what the -- using the non-operating costs of the
14 Scrubber is, is a way that it can be calculated. And,
15 it's based on, you know, actual numbers. It's based on
16 -- you know, so, there is a basis for it. You know,
17 there's nothing that says that the adder has, you know,
18 that there's nothing -- the Commission didn't say
19 "well, it must be part of the Scrubber costs" or
20 anything like that. So, what it does is it gives you a
21 way to, as things change over time, say "here's what
22 the adder is", rather than just saying "well, it's a
23 penny." This was, again, to respond to one of the
24 Commission's concern about, "well, how do we know what

1 this is based on?"

2 Q. Okay. That's helpful. Well, I thought we agreed that
3 the costs of the Scrubber must be recovered through
4 Default Service?

5 A. Yes. And, they are.

6 Q. Does that mean just part of the costs or would that
7 mean total costs? All of the costs?

8 A. It would be any costs that the Commission finds
9 allowable into the Default Service rates would be
10 included in the Default Service rates.

11 Q. Well, isn't the non-operating -- isn't the operating
12 costs of the Scrubber going to be included in the
13 Default Service rates or is Public Service not going to
14 recover those?

15 A. PSNH will recover whatever the Commission determines
16 are recoverable. And, currently, there's a temporary
17 adder, temporary rate component that's included in
18 Default Service to include what up until this time that
19 the Commission has approved in rates for the Scrubber.

20 Q. That's for Rate DE, isn't that correct?

21 A. Yes. And, that's a Default Service rate.

22 Q. Right. In ADD -- ADE, though, it's not all of the
23 costs of the Scrubber, it's just the non-operating
24 costs?

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1 A. That's correct.

2 Q. So, we have a question here as to whether or not the
3 operating costs must be included as well in ADE? Would
4 you agree with that?

5 A. I think that's your question, yes.

6 Q. Okay. And, you don't think so, and tell me one more
7 time very briefly why?

8 A. I don't think they need to be, because, again, as you
9 pointed out, the statute in 125-0 says that the costs
10 of the Scrubber get recovered through default service
11 rates.

12 Q. Yes.

13 A. Currently, they are being recovered through default
14 service rates. So, I don't see any problem with that.

15 Q. Okay. Now, you're saying ADE isn't a default service
16 rate?

17 A. It is.

18 Q. Okay. And, is there some inconsistency here? You're
19 saying that it must be recovered through default
20 service rates, and then you just agreed that ADE is a
21 default service rate?

22 A. Yes. But, again, the operating costs are included in
23 Rate DE, which is Default Service. It's not that
24 there's any costs that aren't recovered between either

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1 one of those rates.

2 Q. Okay. So, you're saying that the -- here's what it
3 comes down to then, 125-0:18, when it says "the costs
4 of the Scrubber must be recovered through default
5 service rates", what you're saying is not necessarily
6 true for ADE?

7 A. Both operating and non-operating costs are currently
8 included in Rate DE.

9 Q. Right.

10 A. What the adder in Rate ADE does is provide some
11 additional recovery that goes back to the benefit of
12 Default Service customers.

13 Q. Okay. Does 125-0:18, is that applicable to Rate ADE?

14 A. It's applicable to default service rates.

15 Q. Okay.

16 A. And, the Commission can approve whatever it --

17 Q. Yes.

18 A. -- deems appropriate for default service.

19 Q. I'm wondering if you have a response to the question
20 that I asked, which is "does 125-0:18 apply to Rate
21 ADE?"

22 A. And, I believe I just answered that. I said that 125-0
23 applies to Default Service rates. And, the Commission
24 can approve what it deems appropriate for Default

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1 Service rates, including alternative methods of
2 providing Default Service.

3 Q. Okay. I think we've beat that one into the ground.
4 So, thank you for your responses. I'm going to move on
5 at this point.

6 Okay. Well, let's talk about, since
7 we're on this general subject, the marketing -- well,
8 let me just read you the response to one of PSNH's data
9 requests. "PSNH's proposed calculation of Rate ADE
10 admittedly does not include any costs for marketing or
11 outreach programs."

12 MS. AMIDON: Could you please identify
13 the data request?

14 MR. RODIER: I don't have it in front of
15 me.

16 BY MR. RODIER:

17 Q. So, what I will just do is ask Mr. Mullen, are there
18 any costs for marketing, outreach, cost of
19 administration, promotional materials, marketing, sales
20 or customer service included in Rate ADE?

21 A. No.

22 Q. Is that because these costs don't exist?

23 A. No, they exist.

24 Q. Okay. Are they -- the fact of their existence, are

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1 they incurred because of the existence of Rate ADE?

2 A. Again, I think you had a lengthy discussion with Mr.
3 Hall about these types of costs. And, he's basically
4 saying that people that would be performing these tasks
5 are currently employed and being paid. So, to that
6 extent, there's not an incremental cost associated with
7 that. And, they're --

8 Q. Do you agree?

9 A. And, they're not seeking any additional recovery of
10 those costs.

11 Q. Okay. You're not saying there aren't any opportunity
12 costs, are you?

13 A. No.

14 Q. Okay. Because, if they re-deploy people, they're not
15 doing what they have been paid to be doing all along,
16 now they're working on a new program, Rate ADE.

17 A. Well, I hesitate to make a general statement like that,
18 because I think people shift what they're working on
19 all the time, depending on what their job function is.

20 Q. Right. Would you agree with me that the people in
21 question would otherwise be working on other PSNH
22 projects, if they weren't re-deployed to ADE?

23 A. Well, I think, any time you're working on one thing,
24 you can't be working on something else.

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1 Q. That's right.

2 A. But, again, it would depend on the individuals, it
3 would depend on what the nature of their job is anyhow.

4 Q. So, I mean, if somebody is there right now, and they're
5 working on some existing project, their salaries are
6 being recovered through base rates, aren't they?

7 A. Depends on what they're doing, and, right now, it
8 depends on where their time is charged.

9 Q. Well, if the time is charged, it's recovered through
10 base rates, isn't it?

11 A. Well, they also have transmission rates. They also
12 have -- there's other components to their rates.

13 Q. Okay.

14 A. So, when you say "base rates", I assume you're
15 referring to distribution rates, and that might not be
16 the case.

17 Q. With that clarification, I understand. You're correct.
18 So, we could have a situation here where somebody is, I
19 don't know, is in, I don't know, Customer Service, been
20 there for five years. Now, they're working on
21 marketing, outreach, promotion, marketing, sales and
22 customer service for Rate ADE. And, the costs of that
23 are being recovered through base rates?

24 A. Possibly. Again, depending on -- like I say, there's

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1 other rate components.

2 Q. Okay. "Other rate components", meaning "transmission
3 costs" or something like that?

4 A. Yes.

5 Q. Okay. Fair enough. Back to, very quickly, and I know
6 we want to make sure we get out of here at 4:30, so I'm
7 going to try not to belabor this. You heard me
8 question previously about two PSNH customers in
9 Manchester that live next door to each other?

10 A. Yes. I believe it was on Dubuque Street.

11 Q. Exactly. And, so, let's make it North Bay Street this
12 time, to go to a silk stocking district.

13 A. I know where that is, too.

14 Q. I bet you do. Okay. So, we have two customers on
15 North Bay Street. And, one is a loyal PSNH customer,
16 the other flew the coop as soon as they could, these
17 are residential customers, to go to a competitive
18 supplier. Now, there is going to be some kind of
19 marketing and outreach program, is there not, on Rate
20 ADE?

21 A. Yes.

22 Q. Okay. So, isn't the one who has been loyal going to
23 wonder how he can or she can get the new lower rate?

24 A. And, I would assume that would be done through the

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1 outreach program, education.

2 Q. Okay. And, so, the point would be, the prodigal son
3 who left can come back with a much lower rate than Rate
4 DE; the one who is loyal is out of luck?

5 A. That assumes circumstances as they are today. The one
6 who was -- you say is "loyal", would not have yet met
7 the eligibility criteria for the rate.

8 Q. Well, implied in the -- how I was using the word
9 "loyal" is that they stayed with Public Service and
10 resisted the blandishment of companies like PNE, right?

11 A. I understand your characterization.

12 Q. Okay. Do you -- is the PUC training any people to
13 answer calls from people that are complaining that they
14 can't get this rate?

15 A. Not that I am aware of, but Consumer Affairs is not my
16 department.

17 Q. Okay. Could precipitate workload for the Commission,
18 couldn't it?

19 A. We won't be increasing the number of people that are
20 here. They answer questions all the time. And,
21 there's always changes in tariffs.

22 Q. All right. It could precipitate workload for PSNH,
23 couldn't it? People say "what do I got to do to get
24 this?"

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1 A. It could.

2 Q. Do you think the Commission could get angry calls about
3 their neighbor getting a lower rate and they can't get
4 it?

5 A. Well, I think that that goes to the education, in terms
6 of why it's available for some and not for others.

7 Q. Yes.

8 A. But, by the same token, those that would currently be
9 eligible to receive the rate under Rate ADE, those
10 customers already wouldn't be paying the same as a PSNH
11 customer, because they're getting whatever the
12 competitive suppliers have offered.

13 Q. Right.

14 A. So, there's already a difference in what they're
15 paying.

16 Q. Right.

17 A. However much that is depends on what the suppliers are
18 offering.

19 Q. Well, that brings me to my next question. The
20 Commission has expressed an interest in market
21 enhancements, has it not?

22 A. Could you be more specific?

23 Q. Well, like the POR docket?

24 A. The Commission has a docket open on that. I don't

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1 think the Commission has ruled on it one way or
2 another.

3 Q. That's correct. But what precipitated that was the
4 reference in an order of the Commission that they
5 wanted to "consider market enhancements". If you're
6 not aware of that, that's fine.

7 A. No, I'm aware of the docket.

8 Q. Okay.

9 A. And, they said they would open it and take a look at
10 it.

11 Q. Right. Because they were interested in market --
12 considering market enhancements, is that correct?

13 A. They're interested in exploring the idea.

14 Q. Okay. So, do we have a -- do we have some
15 schizophrenia here, where, on one hand, the Commission
16 is looking to go forward here and enhance the market
17 for residential customers, on the other hand, it's
18 considering, to use a phrase that came up earlier, to
19 "reverse the trend"?

20 A. I don't see it that way at all.

21 Q. Why is that?

22 A. Because what I see is, under this rate, I don't see the
23 customers of PSNH are going to be any worse off than
24 they are. If anything, this is a different option, and

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1 it addresses something that was in the Commission's
2 prior docket, DE 10-160. Where it requested that PSNH
3 develop a tariff proposal that would look to mitigate
4 the impacts on those customers who have not migrated,
5 that it's caused -- that the cost impacts, based on --
6 resulting from those that have migrated. What this
7 proposal does is it addresses that.

8 Q. And, that brings me to my last question. Now, it does,
9 but, you know, do you recall in a subsequent order that
10 the Commission issued that they said there were many
11 issues that have to be developed with respect to
12 whether this program is consistent with 374-F and
13 369-B?

14 A. I'm not sure whether that was in relation to this
15 proposal or something else. I have a vague
16 recollection of what you're referring to.

17 Q. Okay.

18 A. But I can't place it in the right docket.

19 Q. Well, --

20 CHAIRMAN IGNATIUS: Mr. Rodier, do you
21 have a citation to that order?

22 MR. RODIER: It was the order that
23 denied my motion to dismiss. And, as a matter of fact,
24 it's mentioned in Mr. Fromuth's testimony. And, if I

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1 could get it. Let me be more specific here. On Order
2 Number 25,372, June 8th, --

3 CMSR. HARRINGTON: Excuse me. Could you
4 give us the exhibit number please?

5 MR. RODIER: Excuse me?

6 CMSR. HARRINGTON: The exhibit number,
7 so we can find what you're reading from?

8 MR. RODIER: No, I'm just reading it,
9 this is Mr. Fromuth's testimony.

10 CMSR. HARRINGTON: Oh. Okay.

11 MR. RODIER: It hasn't been filed yet.
12 And, so, I'm just stating, in response to the question,
13 just make believe I've got this memorized, not reading
14 from anything in particular. Your Order Number 25,372,
15 June 8th, 2012, the Commission stated "Many factual issues
16 will need to be developed in order for the Commission to
17 determine, pursuant to RSA 369-B:3, IV(b)(1)(A), RSA
18 Chapter 374-F, and RSA 377, whether the proposed
19 redesigned ADE is reasonable and serves the public
20 interest."

21 I have no -- I have no further
22 questions, madam Chairman.

23 CHAIRMAN IGNATIUS: All right.

24 MR. RODIER: Do you have any follow-up

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1 to me?

2 CHAIRMAN IGNATIUS: No. I was just
3 curious about which order you were referring to.

4 MR. RODIER: Okay.

5 CHAIRMAN IGNATIUS: So, thank you.

6 MR. RODIER: Okay. You're welcome.

7 CHAIRMAN IGNATIUS: Does that conclude
8 your questioning?

9 MR. RODIER: It does.

10 CHAIRMAN IGNATIUS: Thank you.

11 Ms. Miranda.

12 MS. MIRANDA: Thank you. For the
13 record, Joey Lee Miranda, from Robinson & Cole, on behalf
14 of the Retail Energy Supply Association. Good afternoon,
15 Mr. Mullen.

16 WITNESS MULLEN: Good afternoon.

17 MS. MIRANDA: Just a few questions.

18 BY MS. MIRANDA:

19 Q. In response to cross-examination from PSNH today, you
20 indicated that the Rate ADE allows PSNH to recover for
21 fixed costs associated with the Scrubber, is that
22 correct?

23 A. Yes.

24 Q. And, those costs are incurred by PSNH whether they

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1 serve Rate ADE customers or not, is that correct?

2 A. Yes.

3 Q. Thank you. Also in response to cross-examination from
4 PSNH, you indicated that Rate ADE could lower costs of
5 electricity for customers taking service on that rate,
6 is that correct?

7 A. Yes, it could.

8 Q. But it could also increase the cost of electricity for
9 customers above what customers on DE are paying,
10 depending on the market, is that correct?

11 A. Well, it could. But you'd also have to look at what
12 they're paying to competitive suppliers. Because, if
13 they're on ADE, they're obviously coming from a
14 competitive supply. So, depending on the relative
15 pricing there, it could increase or decrease from that
16 as well.

17 Q. Okay. So, it's possible that there is actually -- a
18 customer, even though ADE is currently lower than DE, a
19 customer returning to PSNH may actually pay more by
20 taking Rate ADE than they would have paid if they
21 stayed with a competitive supplier?

22 A. That's possible. Then, I'd have to question, you know,
23 why they were coming off competitive supply.

24 MS. MIRANDA: Okay. Thank you. Those

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1 are the only questions I have. Thank you.

2 CHAIRMAN IGNATIUS: Thank you. Then, I
3 think we've been around all of the parties. Questions
4 from the Commissioners?

5 CMSR. HARRINGTON: Yes. I have a few.

6 CHAIRMAN IGNATIUS: Commissioner
7 Harrington.

8 BY CMSR. HARRINGTON:

9 Q. Let me see. Mr. Mullen, I guess let me start out with
10 a basic something here. What is the purpose? What is
11 the Rate ADE hoping to accomplish by being established?

12 A. The purpose is to try to mitigate the cost impacts to
13 non-migrating customers, that is the ones who are
14 remaining on PSNH's Default Energy Service, by those
15 who have migrated to competitive supply. Again, this
16 was a subject of an earlier Commission docket, DE
17 10-160. And, in its orders, the Commission requested
18 that PSNH develop a tariff proposal that would address
19 that concern.

20 Q. So, you're saying that, through the use of this rate,
21 it will tend to lower costs associated with people that
22 stay on Default Service, regular Default Service?

23 A. Correct. And, that's essentially through the working
24 of the adder.

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1 Q. Okay. And, that seems to conflict with, and I'm
2 looking at 374-F:3, F:3, II, where it says "The
3 commission should ensure that customer confusion will
4 be minimized and customers will be well informed about
5 changes resulting from restructuring and increased
6 customer choice." And, above that, it says "Customers
7 should expect to be responsible for the consequences of
8 their choices." Now, are there any customers out there
9 that I'm not aware of that are forced to take Default
10 Service, because nobody else offers it to them? Is
11 that still the case in Public Service's territory
12 anyway?

13 A. No, I don't believe that. That's correct.

14 Q. So, a customer should expect to be responsible for the
15 consequences of their choice. Any customer could leave
16 and go on Default -- off of Default Service and get a
17 competitive supplier, or they could stay on Default
18 Service?

19 A. That's correct.

20 Q. Okay. Well, if the customer needs to be responsible
21 for that, why are we trying to come up with a system to
22 make life better for them? Isn't that one of the
23 consequences of their actions, staying on Default
24 Service?

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1 A. Well, that's, you know, that's one. Yes, that's
2 certainly one consequence.

3 Q. And, just so I get this straight, the ADE is broken
4 down into two things. One was the marginal cost of
5 power, which I assume was more or less a pass-through?

6 A. Yes.

7 Q. Okay. And, then, the adder was put onto that, and
8 that's going to be revenue that comes out additional to
9 costs?

10 A. Yes. Well, additional to marginal costs.

11 Q. Additional to marginal costs, okay. And, that's
12 because that they are based on the fixed costs of the
13 Scrubber, which aren't marginal, they're going to be
14 there regardless, correct?

15 A. Yes.

16 Q. Okay. So, what we're doing is taking part of the cost
17 of the Scrubber and assigning it to people who are on
18 this ADE rate?

19 A. Yes.

20 Q. Okay. So, that means some of the costs that would have
21 been with the regular Default Service, they don't have
22 those costs?

23 A. No. Those costs are still figured in the Default
24 Service rate. What this does is this creates a

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1 calculation whereby additional revenue gets recovered,
2 and then gets applied against the Default Energy
3 Service rate through the reconciliation process.

4 Q. So, the people that stay on Default Service will be
5 benefited at the expense of the people that are paying
6 the alternate rate? I'm trying to follow this.

7 A. Yes. There will be additional revenue received from
8 the ADE customers that will go towards lowering the
9 costs paid by Default -- regular DE customers.

10 Q. Okay. So, is the purpose of this then to slow down
11 migration of Default Service customers?

12 A. No.

13 Q. Okay. Then, why are we worried about lowering their
14 costs?

15 A. Well, one thing that came -- that rose in DE 10-160,
16 and, again, that was during -- especially during a
17 period where there were not as many options for
18 customers, especially on the residential and small
19 commercial side, the situation happened that, when
20 customers, primarily large customers left, there was a
21 smaller customer base to recover fixed costs over. So,
22 this proposal was developed in relation to that
23 circumstance.

24 It could be that nobody takes Rate ADE,

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1 and then there won't be any additional benefit to
2 Default Service customers, because there wouldn't be
3 any revenue from an adder.

4 Q. Okay. Can you just help me with this flow diagram a
5 little bit? I know it came from Public Service, but
6 I'm sure you can help address my questions on it. I'm
7 just trying to get how this works. So, we're just
8 starting in the upper left-hand corner with the red
9 box, "Customer is taking supplier service." So,
10 somebody, and since we're dealing with residential
11 customers, somebody used to be a Default Service
12 customer of Public Service, and then they chose to go
13 to a competitive supplier. Is that correct?

14 A. Correct.

15 Q. Okay. And, so, for whatever reason now, they have
16 decided they want to come back to customer service.
17 They don't want to deal with that competitive supplier
18 anymore?

19 A. Back to Public Service, yes.

20 Q. Okay. So, this "24-month" is the next block, "Is
21 24-month clock running?" And, I guess we've been told
22 your position would be "Is 12-month clock running?"
23 Can you explain what that means?

24 A. That is really for the situation where a customer had

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1 previously been served under Rate ADE, and they had
2 gone back to the competitive market.

3 Q. So, this is for somebody who, I don't know, the boxes
4 that aren't on the chart, I guess, Default Service
5 customer of Public Service, left to go to take supplier
6 service, came back to Public Service and took ADE, then
7 went back to a supplier? Do I have that right?

8 A. Well, this -- yes. So, this box, this green box is
9 questioning "do they fit that circumstance or not?"

10 Q. Okay. And, then, going down, if the answer is "no",
11 that means "the clock isn't running." So, what does
12 that imply then? That they aren't eligible for
13 Alternative?

14 A. No. What that means is they were not previously served
15 under Rate ADE. This is their first time coming back
16 from a competitive supply.

17 Q. Okay. So, does that mean the clock's running or not
18 running?

19 A. The clock is not running.

20 Q. Not running. So, you would go to the "no", I mean, is
21 clock not running, you come down to "no". "12 months"
22 -- "12 consecutive months on supplier service?" And,
23 if the answer is "yes", then they go over to "Is Rate
24 ADE open?" And, what exactly does that imply, "open"

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1 or "closed" on Rate ADE?

2 A. That gets to the circumstance that I described before
3 under questioning from Mr. Fossum. And, that's if --
4 Rate ADE is normally open. However, when PSNH looks at
5 the monthly projections of marginal costs, if the
6 change in those projections is more than 75 percent of
7 the adder, the rate could be closed. So, this is
8 referring to the situation "is it open or is it
9 closed?"

10 Q. Okay. So, there would be a -- this is would be a
11 dynamic situation, where customers, based on their
12 individual circumstances of where they have been buying
13 their electricity or how they have been buying it over
14 the past time frame, is there any -- does this go --
15 where does this go back to? Probably would start fresh
16 from January 1st, if it was implemented then?

17 A. Now you've lost me to where you are.

18 Q. Maybe I can reword it. To get to this initial box, the
19 green box, which says "Is 24-month clock running?" It
20 would be -- that's based on what they did previously as
21 a electric customer, correct?

22 A. Correct.

23 Q. Okay. So, does everybody start with a fresh slate on
24 January 1st, if this were to go into effect then, or is

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1 it January 1st, looking backwards two years?

2 A. Everybody starts with a fresh slate. This would be the
3 first time that the tariff is actually available. So,
4 there would be nobody that was previously served under
5 ADE, so nobody would already have a 24-month clock
6 running.

7 Q. So, the fact that they may or may not have been served
8 under DE in the past, then left and came back and left
9 and came back, has no bearing?

10 A. Correct.

11 Q. Only whether they were ADE in the past?

12 A. They wouldn't have been ADE.

13 Q. Yes. But, I mean, that's the only criteria as we go
14 into the future?

15 A. Yes.

16 Q. Okay. All right. I think I have a little better
17 handle on how that works now. Thank you. There's a
18 couple of things on here I'm trying to figure out
19 what's the rationale for. And, the green box that
20 talks about "12 consecutive months on supplier
21 service?" Is there any basis for that "12 months"? I
22 mean, why not 6 months or 13 months or whatever?

23 A. It's, you know, there's no -- there's no magic number.
24 But it's a reasonable number of months in terms of,

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1 well, how long have they been out on competitive
2 supply? You know, if they have been out for a month,
3 do you set up a new tariff proposal for them or, you
4 know, 12 months is, you know, basically, is looked at
5 as a reasonable significant period of time.

6 Q. So, you would have a situation then where some
7 customers were eligible for one rate, some customers
8 weren't?

9 A. Correct.

10 Q. For instance, if someone went with a competitive
11 supplier, and the supplier went out of business. And,
12 at that time, the only option left to them was to come
13 back to Public Service. If they had been with this --
14 both people, two people been with that supplier, one
15 for 14 months, one for 6 months, the one with 14 months
16 would come in and get Rate ADE at a lower rate than the
17 one that came in with the 6 months, because they would
18 have to get the DE rate, is that correct?

19 A. Well, that's possible. But, considering there's other
20 competitive supplier options out there, if one supplier
21 was to go out of business, I would assume there would
22 be others there that they could also look at.

23 Q. And, this is where I get confused. Because you said
24 earlier that the intent of this was not to get

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1 customers back to Public Service. But, if that doesn't
2 happen, what is this rate accomplishing?

3 A. This rate is put in place to, again, to provide benefit
4 to other default -- DE customers through the revenue
5 provided from the adder.

6 Q. So, in order to do that, you've got to attract people
7 to take the ADE rate?

8 A. Well, again, but I don't see the purpose of developing
9 the rate as being done for that purpose. I see it
10 being done to provide benefit to other customers. Now,
11 again, I think I said in my prefiled direct testimony
12 that the number of customers that take it, it's going
13 to basically depend on how the amount of the adder
14 compares to the margin charged by suppliers. Assuming
15 that marginal cost is at the market price will be the
16 same for all players. So, you have to kind of see how
17 that matches up. And, right now, I'm not sure how
18 that's going to match up. It could be that a number of
19 people take advantage of ADE, it could be that nobody
20 does.

21 Q. But, I guess, in order to accomplish the goal of
22 benefiting Default Service customers, somebody has to
23 take the Alternate -- the ADE rate or that won't
24 happen, correct?

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1 A. Correct.

2 Q. Okay. So, maybe it's not what we're trying to
3 accomplish here with this rate, but it's certainly
4 required for it to accomplish that. We have to get
5 customers that are paying the ADE rate, so you can take
6 advantage of that adder to help the DE rate?

7 A. Correct. In order for any benefit to flow to DE
8 customers, customers have to be taking service under
9 ADE.

10 Q. Okay. And, these are the same customers that are
11 supposed to be responsible for the consequences of
12 their choices. So, I get back to that. And, I'm just,
13 again, a little confused as to what we're trying to
14 accomplish with that. But you're saying that you have
15 two customers then could be in the situation where
16 they, for whatever reason, they both decide they want
17 to do business with Public Service, as far as buying
18 Energy Service from them. And, we're supposed to be
19 sensitive to a regulated utility charging, you know,
20 actual, prudent and reasonable costs. And, that would
21 have to be the same, whether it was ADE or DE, and yet
22 they're different. So, how do you reconcile that
23 seemingly confusion?

24 A. Well, first, without the proposal for ADE, they would

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1 have just basically one choice, and that would be DE.
2 Second, also in 374-F, I'm looking at 374-F:3, V(e),
3 which also says that "Notwithstanding any decision of
4 subparagraphs (b) and (c), as competitive markets
5 develop, the Commission may approve alternative means
6 of providing transition or default services which are
7 designed to minimize customer risk, not unduly harm the
8 development of competitive markets, and mitigate
9 against price volatility without creating new deferred
10 costs, if the Commission determines such means to be in
11 the public interest." So, I think, it's certainly, you
12 know, this is certainly something that's permitted.

13 Q. Okay. So, what you're saying here is, even though the
14 rates are both held to the same standard, they can be
15 different, and that's acceptable?

16 A. Yes.

17 Q. Okay. And, this section you just read talks about or
18 "not unduly harm the development of competitive
19 markets". What effect do you think this will have on
20 competitive markets, if this rate were to go into
21 effect?

22 A. It's one other option out there. Again, I don't see,
23 you know, I don't see this as something that's going to
24 cause all the competitive marketers -- competitive

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1 suppliers to lose their customers. Again, because this
2 is priced above marginal cost. So, again, you've got
3 to think that the competitive suppliers are, you know,
4 have their market price as their basis. And, now,
5 whatever they do to that price, you know, for any
6 margin or whatever else they add to it, you would think
7 it would be somewhat comparable. What this basically
8 does is it provides another option, which also, to the
9 extent customers take service under it, provides
10 benefit to other customers.

11 Q. Well, I guess, if you look at competitive markets, I
12 look at them and I picture them as Public Service being
13 a cost-based utility, it's not part of the competitive
14 market. They develop their costs and they get recovery
15 through the tariffs for those costs. So, to the effect
16 that, now you've got a different non-competitive
17 market-based option out there, at a lower price than
18 Default Service, I'm finding a hard time saying or
19 figuring out how this doesn't harm the development of
20 competitive markets. It would seem to me it would be
21 directly harmful to it, in that the goal here is to get
22 people to leave competitive suppliers and sign up with
23 Public Service under this new Rate ADE. Because,
24 unless, we already established, unless that happens,

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1 there is going be no benefit to the DE rate customers,
2 which, as you stated, is the whole purpose of this.

3 A. But, by the same token, competitive suppliers will all
4 know how this rate is calculated. So, they can, you
5 know, they will be looking at forward prices, as well
6 as PSNH. And, they will know, they can do a pretty
7 easy calculation of the adder, plus this is set on an
8 annual basis, with some provision for changing it
9 possibly at six months.

10 You know, so, suppliers can alter their
11 offerings, they can, again, they will know how this is
12 set. So, from that perspective, you know, PSNH, I
13 don't believe, knows how competitive suppliers set
14 their rates. So, you know, I think that -- I don't see
15 this as something that's going to cause competitive
16 suppliers to fold up their tent and go home. I just
17 see it as another option that's out there.

18 Q. Okay. But, again, I'm still trying to get back to this
19 then. Where we have retail suppliers out there now,
20 the purpose of this new rate structure is to get funds
21 to flow to the Default Service customers that are
22 presently Default Service customers. And, the only way
23 that happens is if a customer, who used to be with a
24 competitive supplier, switches back to a cost-based

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1 service through Public Service. So, I don't see how it
2 cannot be harmful to the competitive supplier market?

3 A. Well, that could happen.

4 CMSR. HARRINGTON: Okay. All right.

5 That's all the questions I have. Thank you.

6 CHAIRMAN IGNATIUS: Commissioner Scott.

7 CMSR. SCOTT: Thank you.

8 BY CMSR. SCOTT:

9 Q. Following the same stream of questioning. So, I just
10 want to make sure I understood you right, Mr. Mullen.
11 Your thought was, and I don't want to put words in your
12 mouth, so, if I do, please correct me, that the ADE
13 rate will still be higher than the competitive supplier
14 rate?

15 A. I say on that, I'm not sure.

16 Q. Okay. Would you agree that a rational customer would
17 not likely change from a competitive supplier back to
18 PSNH, if the ADE was higher than the rate they were
19 currently paying?

20 A. That would be my assumption, yes.

21 Q. Do you think it's possible that this pricing scheme
22 with ADE would be an inducement for people to leave
23 PSNH Default Service?

24 A. Well, if so, then they have to -- you know, if creating

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1 this rate leads a current Default Service customer to
2 figure "well, 12 months down the road, I'll be eligible
3 for Rate ADE", not knowing what that ADE price is going
4 to be at that time, you know, I think, as more and more
5 competitors come into the market, there will be more
6 options out there as well.

7 So, you know, could there be a customer
8 out there who thinks that way? Possibly. But, I
9 think, doing that, you have to have a pretty good
10 crystal ball, in order to figure out that "12 months,
11 I'm still going to be better off than where I am."

12 Q. Let me ask the question another way. Is it -- if I was
13 a PSNH customer, and I believed that the ADE rate
14 ultimately was going to be less than the competitive
15 supply rate, do you believe that would be an inducement
16 for me to leave PSNH and go to a competitive supplier?

17 A. I think, if you thought that, and actually thought that
18 you had a pretty good handle on that, that's certainly
19 an outcome. However, where, again, the foundation for
20 the rate is on market prices, and competitive suppliers
21 most likely are starting with market prices as well.
22 So, unless there's expected to be a significant
23 difference between the two, again, then I go back to my
24 "crystal ball" comment.

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1 Q. Right now, though, the Default Service rate is higher
2 than the competitive rate, competitive suppliers' rate?

3 A. I'm not sure of what all the competitive suppliers are
4 offering. Right now, PSNH's Default Service rate is
5 7.11 cents. But that's scheduled to change on
6 January 1st. And, right now, PSNH has proposed a rate
7 that's almost 9 cents. Again, I'm not familiar with
8 what competitive suppliers are offering. I'm aware of
9 one that's slightly below 7.11 cents, but I'm not sure
10 what others are offering.

11 Q. In the scenario I presented that, as a customer, I
12 think all this -- I have this crystal ball, and I think
13 this is how I want to go. Do you see that -- would
14 that have the potential to be a windfall for the
15 competitive suppliers, at least in that first year?

16 A. A windfall, in terms of an influx of new customers?
17 That's possible.

18 Q. Okay. Let me go back to the term of service. Just a
19 couple quick questions on that. Do you -- obviously,
20 you've made a good case, I think, for the 12 months.
21 Others have made a case for the 24 months. I'm not
22 suggesting the Commission would do this. What's your
23 opinion if we split the baby and did 18 months, for
24 instance?

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1 A. That's, again, that's a potential outcome. You know,
2 I've supported 12 months for the reasons I've stated,
3 and PSNH and OCA have stated -- supported 24 for their
4 reasons. So, again, you know, the Commission is free
5 to do as it chooses. But, you know, I would still
6 support the shorter 12 months.

7 Q. Or, another alternative, what if we were to split, for
8 instance, residential and non-residential customers,
9 put one at 24 months and the other at 12 months, is
10 there a value to something like that?

11 A. That's nothing that I had looked at before. So, again,
12 I suppose that's a -- that's a potential outcome. It's
13 not something that I had considered.

14 Q. Okay. Thank you. You mentioned, both in your
15 testimony verbally and in your -- I don't remember what
16 exhibit it is, forgive me, the need for a review or the
17 12-month review, and your indication was that was a
18 good thing, I believe. And, some of the things I think
19 were talked about were the impact on competition, is
20 that correct?

21 A. That's one of them, yes.

22 Q. How would we or how do you plan to measure that? How
23 would we know if it's having a negative impact on
24 competition?

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1 A. Well, and I think PSNH is going to be providing
2 information about the number of customers taking
3 service under Rate ADE. So, in looking at that, we'll
4 be able to see some of the movement back from
5 competitive supply. That's one way we can review it.

6 Q. So, help me out then with that a little bit more. So,
7 what would that tell us about the impact on
8 competition? How would we --

9 A. Well, if we saw a significantly large number of
10 customers being served under Rate ADE, we know that
11 they're no longer in the competitive market. Granted,
12 you'd also have to kind of see, well, how many of those
13 customers stay on ADE for the term? Or, maybe stay on
14 for a couple months, then go back to competitive
15 supply. So, you know, there could be some movement
16 from competitive supply, but there also could be
17 movement back to competitive supply from the ADE,
18 depending on what's going on in the marketplace.

19 Q. And, you feel we'll be able to see that, we'll have
20 sight of that?

21 A. Yes.

22 Q. Okay. How about gaming -- well, let me back up. Is
23 gaming necessarily bad?

24 A. Bad for whom?

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1 Q. I guess that's my question. So, I know, in the
2 Commissioners' earlier order, we talked about "gaming
3 could have a negative impact on PSNH", if I remember
4 correctly. Is some gaming okay, though? Is that not
5 just competition?

6 A. Well, you know, some people might look at one customer
7 moving back and forth as "gaming", and others might
8 just think it's a customer taking advantage of
9 opportunities in the marketplace. So, you know,
10 whether it's good or bad, I think, if something is done
11 in a way where it becomes detrimental in one way or
12 another, but you really have to look at -- I think it's
13 hard to paint all customer movement with the same
14 brush, and say "well, all this movement back and forth
15 is "gaming"." Different customers will move for
16 different reasons.

17 Q. So, the proposal is for a 36-month pilot. What do you
18 see as the -- you know, at the end of the day, what
19 does this do for the utility? Where do we end up at
20 the end of this?

21 A. Well, I think, one of the things that's going to have
22 to be assessed is, you know, how's this working? Is it
23 providing benefit to other customers? You also have to
24 look at, you know, what kind of impacts is it having on

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1 the competitive market? And, should it continue?

2 Should it be revised further? You know, there's going

3 to be -- there can be a lot of changes between now and

4 the end of 36 months that could impact this proposal

5 one way or another. So, I think what it provides is a

6 way to reassess everything and say "Okay. Now, knowing

7 what we know, and having this track record of customers

8 that took service under ADE, and how long they stayed?

9 You know, what the impacts were or weren't, I think

10 would just provide a good assessment of all of that.

11 Q. At the end of the day, isn't the Default Service rate

12 going to determine all of that at the end of the day,

13 as far as migration and what competitive suppliers are

14 doing?

15 A. Well, that's -- and that's one indicator, and it's

16 basically the relationship of the Default Service price

17 to what the market price is and what competitive

18 suppliers are offering.

19 CMSR. SCOTT: Okay. Thank you. That's

20 all I have.

21 CHAIRMAN IGNATIUS: Thank you. A few

22 more questions.

23 BY CHAIRMAN IGNATIUS:

24 Q. Mr. Mullen, looking at the Settlement Agreement, there

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1 are a few just mechanical questions I want to be sure I
2 understand. And, following in the order that they
3 appear, if you turn first to Page 6.

4 A. I'm there.

5 Q. Section 2.3.1 requires "forecasting of marginal costs".
6 Then, 2.3.2, addressing the adder, to include
7 "non-operating costs of the Scrubber". It doesn't say
8 if it's "forecasted" or "actual". What's anticipated
9 there?

10 A. That is going to be done in the same manner as PSNH's
11 Energy Service rate is calculated. Let me see if I can
12 refer you to -- for example, if you look at Exhibit 7,
13 which is PSNH's April 27th testimony.

14 Q. I'm sorry, which exhibit?

15 A. Exhibit 7.

16 Q. And, did you give us a page yet or no?

17 A. I did not. And, it's one of the attachments at the
18 very back. It's Attachment 5, which is a three-page
19 attachment.

20 Q. All right.

21 A. If you look at that, you can see that, say on Line 19,
22 it says "Total Forecasted Merrimack Scrubber
23 Non-Operating Cost", then you have "Forecasted Retail
24 Megawatt-Hour Sales". So, it's done on a prospective

1 basis.

2 Q. So, in both cases, you're forecasting -- using
3 forecasted numbers. And, then, at what point do you
4 analyze actuals?

5 A. That all gets done through the DE reconciliation
6 process. Any revenue from the adder, from this rate,
7 gets incorporated into the DE reconciliation. That's
8 done on an annual basis.

9 Q. And, the Rate ADE doesn't get adjusted on the basis of
10 actuals, actuals could tell you whether the rate --
11 whether the class should be closed -- whether the rate
12 should be closed?

13 A. No. The rate should be -- whether the rate is closed
14 or not depends on the marginal costs and the forecast
15 of marginal costs, looked at on a monthly basis each
16 year, compared to what the forecast for those
17 particular months was at the beginning of the process.

18 Q. You're right. I was wrong. So, it's comparing an
19 earlier set of forecasts against a more current set of
20 forecasts?

21 A. Correct.

22 Q. So, there's no reconciliation for Rate ADE as we think
23 of it in Rate DE?

24 A. Correct.

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1 Q. All right. Going back to the Settlement Agreement,
2 Section 2.3.3, at the bottom of Page 6, I think maybe
3 what we were just talking about. Just describe, give
4 me maybe a little more explanation of how that 2.3.3
5 provision would operate.

6 A. Yes. As we just discussed, on a monthly basis, PSNH
7 will take a look at its forecasted marginal costs, and
8 compare those to the prices that were used when the
9 rate -- the annual rate was set at the beginning of the
10 process. So, for instance, when you get to the 15th
11 day of February, PSNH will provide a forecast for the
12 remaining period of March through December, assuming
13 this goes into effect on January 1st. And, it will
14 compare those forecasted marginal prices to the
15 forecasted marginal prices for the months of March
16 through December that were included in its annual
17 forecast at the beginning of the process. To the
18 extent that the new forecasts -- new forecasted
19 marginal prices are more than 75 percent of the adder,
20 then the rate could be closed.

21 Q. And, if you don't hit that 75 percent trigger, you'll
22 just be looking at comparison of the forecast used for
23 the start of the program to what the more updated
24 forecasts are for the completion, the remaining months

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1 of the program?

2 A. Right. And, the rate would remain open, if you did not
3 hit the 75 percent trigger.

4 Q. And, as you get closer to the -- to December, assuming
5 it started January 1st, you'd be comparing fewer months
6 forecast to the original forecasted levels?

7 A. Yes.

8 Q. So, let's assume that's all in place. You get to the
9 following January 1st, the second year for Rate ADE.
10 How is the rate set?

11 A. And, that is set on an annual basis. And, that would
12 be done, again, they would look at a 12-month calendar
13 year, assuming it goes into effect January 1st,
14 forecast the prices for the year, calculation for the
15 Scrubber adder.

16 Q. Is there a docket open, parties to intervene, to
17 evaluate all of that, or is it more of a sort of
18 compliance filing, in your anticipation?

19 A. I believe that would be done through a docket process.

20 Q. So, that would have to come in some number of months
21 before January 1st, --

22 A. Yes.

23 Q. -- in order to be through the process and a resolution?

24 A. Yes. And, I'm just trying to refresh my memory on

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1 here. It would be set at the same time that the price
2 on the Rate DE is set, and that's discussed in
3 Section 2.2.3.

4 Q. So, although it doesn't say a deadline for the Company
5 to make a filing, there will have to be something, if
6 this were approved, as a setup, would have to set some
7 dates for filing of a proposed Rate ADE?

8 A. Yes.

9 Q. In the provision just above that, I had forgotten to
10 ask you about that one, so, I'm glad you flipped back
11 to it. What's the reason for a nine month delay for
12 implementation for smaller customers?

13 A. That is for PSNH to get its computer systems to allow
14 for those changes to those rate classes.

15 Q. Do you anticipate the marketing efforts at the
16 beginning of the program would be designed to include
17 those that, although they can't yet take it, would be
18 aware of how it's going to play out?

19 A. I would assume so, yes. Because it would, even though
20 somebody might not be eligible for nine months from
21 now, until nine months from now, to the extent that
22 they were to make some decisions about whether to stay
23 on Default Service or go to competitive supply in the
24 interim, I think that could help inform their

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1 decision-making process.

2 Q. Also, on the very top of that page, it actually begins
3 on the bottom of Page 4, is the provisions that allow
4 someone to come in and out of service under ADE that
5 Mr. Rodier was asking you about. Tell me if I have
6 this right. There is an eligibility requirement to get
7 involved in the program in the first instance. So, the
8 12 months consecutive service from a competitive
9 supplier, correct?

10 A. Correct.

11 Q. Once you're eligible and a customer opts to get into
12 ADE, leave the competitive supplier and get in on ADE,
13 they can come and go without any consecutive periods of
14 time, as long as they don't go more than -- they don't
15 go a full 12 months off the program. But, if they go
16 in and out every month or a few months, that's okay?

17 A. If they go back to competitive supply for a period of
18 less than 12 consecutive months, and the term of
19 service, whether it be 24 months or 12 months, would
20 continue -- that clock will continue to run. If they
21 go back to competitive supply for a period of more than
22 12 -- at least 12 consecutive months, and they were to
23 come back to Rate ADE, they would start a new clock.

24 Q. What's the logic of requiring a full 12 months to be

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1 eligible for the program, full 12 months off of PSNH's
2 service in order to be eligible? But, once they're in
3 the program, they're able to come and go?

4 A. Well, I think it's, you know, it's -- if you were to
5 keep them -- if you were to restrict them from going
6 back to the competitive market, I think then that
7 certainly could be viewed as "anti-competitive",
8 because now you're restricting what option they
9 previously had even under Default Service.

10 Q. Can you explain that?

11 A. Well, under Default Service, they're free to leave and
12 go to the competitive supply. If somebody were to
13 return to PSNH and be served under ADE, and said "oh,
14 by the way, you're now -- you have to take this rate,
15 you can't go back to competitive supply", that -- I'm
16 sure that would be viewed as "anti-competitive".

17 Q. But what about if you were to allow someone to come
18 back on the service, and if they decide to leave again
19 and go back to a competitive supplier, why not have
20 another eligibility period before they can return to
21 ADE?

22 A. Well, you do, and that's, again, the 12 months.

23 Q. Well, maybe I'm misunderstanding. I thought we were
24 saying that, once you've met the eligibility test and

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1 you opt for ADE, you could stay on it for a few months,
2 and then leave, and come back in a few months after
3 that. And, so, there's no corollary to the 12-month
4 eligibility period once you're in the program. If
5 you're out 12 months, then you reset that clock. But
6 you can come and go in the program for any reason you
7 may choose. And, what's the logic? If we think
8 there's a good reason for requiring a 12-month
9 eligibility period to initially get in the program, why
10 is it no longer important that someone stay put for a
11 while under ADE?

12 A. Well, again, then I think you'd be limiting options
13 that they currently have now to come and go under
14 regular Default Service. So, this is not to be more
15 restrictive than what currently exists.

16 Q. If you turn to Page 8 of the Settlement Agreement, it
17 calls for, in Section 2.4.3, that, at least three
18 months prior to the end of the pilot period, PSNH will
19 have an obligation to make a request to extend or
20 modify or terminate the rate. Is three months adequate
21 time for people to be able to evaluate the program,
22 make sense of its success or lack of success, and
23 whether any modifications should be made or whether it
24 should even be terminated at that point?

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1 A. Well, I think, if you go back to the beginning of
2 Section 2.4, on Page 7, in 2.4.1 and 2.4.2, it
3 describes other reports PSNH is going to be filing,
4 either monthly or annually, about activity in the rate,
5 number of kilowatt-hours served, difference between the
6 revenue received and marginal costs. So, I think
7 there's going to be a lot of information filed in the
8 interim, prior to that three-month filing, that would
9 allow for people having a good idea even before that
10 filing comes in.

11 Q. And, that's a good point, if people are evaluating
12 what's being generated regularly over the course of the
13 pilot. But, then, the three-month period is really
14 when the Commission process kicks in to put it out
15 through an adjudicative process for review and parties'
16 participation. You think three months will work?

17 A. I think it's certainly doable. I mean, it wouldn't be
18 a new thing, as it is today. So, you know, I think
19 there would be a decent track record, in terms of
20 what's happened over time. And, that I think -- it
21 says "at least three months", too. So, I mean, it
22 could come in sooner than that.

23 Q. The time period for the reconciliation dockets is -- is
24 it more like six months?

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1 A. For the Default Service reconciliation dockets?

2 Q. Yes.

3 A. Those come in on an annual basis. And, there's not a
4 set time it has to be resolved by. Because, if you
5 recall, we also look at operation of PSNH's plants and
6 outages and all sorts of things, and that takes some
7 time to go through. As a result of those
8 reconciliation dockets, there isn't a rate adjustment
9 at that time. But any adjustments through the
10 reconciliation process take place through the Default
11 Service rate-setting process independent of the
12 reconciliation.

13 Q. How long does the Default Service rate-setting time
14 from filing to our general track record on when the
15 rate changes go into effect?

16 A. The rate is initially set on an annual basis, and it
17 usually comes in during the month of September. And,
18 then, we have hearings in December, for a rate on
19 January 1st. Then, we have a mid-year review, that
20 information is filed around the middle of May for a
21 July 1st rate change.

22 Q. Earlier this afternoon you were asked, I think by Mr.
23 Fossum, that "could the Rate ADE be terminated if few
24 or no customers take it?" And, you said "yes, that's

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1 correct." Is there a provision in the Settlement
2 Agreement that says that that I've missed?

3 A. I believe there is. And, now, you've tested me with
4 finding it. Yes. On Page 4, Section 2.2. The last
5 sentence says that "Nothing in this agreement shall be
6 construed to limit the authority of the Commission to
7 terminate this rate prior to the end of the 36-month
8 pilot period."

9 CHAIRMAN IGNATIUS: All right. Thank
10 you. That's it for questions from me. But, Commissioner
11 Harrington, another question?

12 CMSR. HARRINGTON: Yes. Just still
13 trying to maybe just follow this moving in and out thing,
14 to make sure I've got it correct.

15 BY CMSR. HARRINGTON:

16 Q. I think I understand you have to be with a competitive
17 supplier for 12 months before you're eligible for Rate
18 ADE, that's correct?

19 A. At least 12 months.

20 Q. At least 12 months. Once you meet that, you are then
21 able to come back to Public Service and get the ADA
22 rate?

23 A. ADE, yes.

24 Q. ADE rate. And, then, you could take that for two

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1 months, and then go back to a competitive supplier for
2 two months, and come back and get the ADE rate again?

3 A. Yes.

4 Q. And, is there any -- there was some other clock
5 involved in that. How does that work? You just keep
6 switching every two months?

7 A. You could do that. And, then, your term of service,
8 whether it be 12 months or 24 months, would continue to
9 run. The only time that that clock would be reset is
10 if you went back to competitive supply for a period of
11 at least 12 consecutive months.

12 Q. So, you could do this back and forth for up to that
13 term of service, let's just say it's 12 months, and
14 then, if you stayed with Public Service, you'd go to
15 the DE rates, or you could go back to a competitive
16 supplier?

17 A. Once your term of service runs out, --

18 Q. Yes.

19 A. -- if you stayed with PSNH, you would be assigned to
20 Rate DE.

21 Q. Okay. Fine. That helps. Thank you. Now, one final
22 question. Has there been any analysis done on this? I
23 mean, it appears what we're doing is putting out a
24 proposal, and, you know, as stated by yourself and in

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1 various letters, filings here, it's -- the idea is to
2 help the DE customers, I mean, it's to mitigate some of
3 the costs that they're seeing. So, in order for that
4 to happen, someone just doing a loop, you know, if they
5 were a DE customer, they became a competitive supplier
6 customer, they came back to ADA [ADE?], that really
7 didn't -- they have to get them back, you still haven't
8 created any more customers for Public Service that way,
9 you just stayed even. So, presumably, you're going to
10 have to get customers that would otherwise not come
11 back to use this ADE rate. So, if you bring customers
12 back, then I guess you're saying, because you're
13 covering the marginal cost of power, plus the adder,
14 each customer will be paying that adder, and that's an
15 extra source of revenue that they would get -- Public
16 Service wouldn't receive otherwise, is that correct?

17 A. That's an extra source of revenue that would get
18 applied to the benefit of other Default Service
19 customers.

20 Q. Okay. But that's where the benefit of the program
21 comes from, is bringing back people who otherwise would
22 be using competitive suppliers?

23 A. Yes.

24 Q. Okay.

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1 A. Well, otherwise would be using competitive suppliers
2 or, without this rate, would be served under DE.

3 Q. Okay. And, is there -- this is what I'm trying to get
4 at. Do we have any numbers? I mean, how many
5 customers that have left Public Service, that are on
6 some competitive supplier now, how many would have to
7 come back to make this program successful, because, I
8 mean, was there any estimate? Do we need a thousand
9 customers? Twenty thousand customers?

10 A. I'm not aware of any analysis on that. But, one way to
11 look at it is, any customers that are served under this
12 rate would provide -- any revenue from them would
13 provide some benefit that isn't currently there.

14 Q. Okay. And, after the 12-month clock or whatever period
15 of time runs out, then they have the option of being
16 assigned to Default -- just the regular Default Service
17 rate or going back to a competitive supplier. And, I'm
18 assuming no analysis has been done for that. Because,
19 in other words, if this thing worked fairly well, you'd
20 get people coming back. And, if it was, as
21 Commissioner Scott pointed out, most rational people
22 are not going to say "well, I can get a", making up a
23 number, "a 10 percent rate increase by going with ADA
24 -- ADE rates, go back to Public Service. I'll just

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1 stay with the competitive supplier." And, if their
2 rates were lower than the competitive supplier, then
3 people would come back. Presumably, they're -- I guess
4 the best case would be that it would be lower than the
5 regular Default Service rates, but lower than the
6 competitive supplier, that would induce people to come
7 back, take the ADE rates, which would bring in the
8 extra revenue. But, after 12 months, they lose that.
9 So, then, they're looking at Default Service rates
10 versus competitive supplier rates. So, chances are,
11 they're going to make the same decision they made six
12 months -- or, two years ago, whenever they first left,
13 and say "well, that's still lower, so I'm going to go
14 back and do that again." So, now, there's no more
15 benefit from this program for that -- at least for
16 those people. So, has there been any analysis of how
17 this works in equilibrium, when you're going to have
18 this constant flow of, if the rate attracts people in,
19 at the end of a year, it's more than likely going to
20 have them go back to where they came from?

21 A. Well, there's a lot of scenarios in your question. I
22 can tell you, I haven't performed that analysis. And,
23 I can't speak for the Company or anyone else in this
24 room as to whether they have performed any such

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1 analysis.

2 Q. But you haven't seen any?

3 A. I have not.

4 CMSR. HARRINGTON: Okay. Thank you.

5 CHAIRMAN IGNATIUS: Thank you. Ms.

6 Amidon, do you have redirect?

7 MS. AMIDON: No, I don't. Thank you.

8 CHAIRMAN IGNATIUS: All right. Then,
9 you're excused, Mr. Mullen. Thank you. Let's take a
10 break for ten minutes, let's say 3:15, to resume with
11 Mr. Fromuth.

12 (Recess taken at 3:02 p.m. and the
13 hearing resumed at 3:18 p.m.)

14 CHAIRMAN IGNATIUS: We're back on the
15 record. Mr. Fromuth, I think you are up next. Are you
16 ready, Mr. Rodier?

17 MR. RODIER: Yes, we are. And, if we
18 could have the witness sworn here, before we takes a seat,
19 that would be good.

20 (Whereupon **August G. Fromuth** was duly
21 sworn by the Court Reporter.)

22 MR. RODIER: May I?

23 CHAIRMAN IGNATIUS: Please.

24 **AUGUST G. FROMUTH, SWORN**

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DIRECT EXAMINATION

BY MR. RODIER:

Q. Mr. Fromuth, did you prefile some testimony in this proceeding?

A. I did.

Q. Do you have a copy of it with you?

A. I do.

Q. Is there any errors or anything in there that you would want to correct at this point? Or does it look --

A. No, it's fine.

Q. It's still accurate, okay. And, it's true and accurate to the best of your information, knowledge and belief today, right?

A. It is.

MR. RODIER: Okay. Madam Chairman, could I have that marked for identification please?

CHAIRMAN IGNATIUS: Yes. That would be "Exhibit 16".

MS. DENO: Yes.

(The document, as described, was herewith marked as **Exhibit 16** for identification.)

MR. RODIER: Okay. Thank you. Does anybody need a copy?

1 BY MR. RODIER:

2 Q. Mr. Fromuth, a couple of introductory questions. Let
3 me first just very quickly go to so-called "Freedom
4 Energy Logistics". Does the providence of Freedom
5 Energy Logistics, does that go back to the mid '90s or
6 earlier?

7 A. Yes.

8 Q. And, briefly, the signature accomplishment at that
9 point was the obtaining a decision from the New
10 Hampshire Supreme Court that basically said there's no
11 exclusive franchise for utilities, is that right?

12 A. That's correct.

13 Q. Okay. And, one other thing about Freedom, did you
14 pioneer the market in New England for MPEUs?

15 A. Yes, I did.

16 Q. And, what's an "MPEU"?

17 A. It's a "Market Participant End User". It's an entity
18 that can take power directly from the Grid, from the
19 Power Pool, by conforming to some entry requirements
20 and other stair-step items that it must clear with the
21 various states in which it's located.

22 Q. Is there anybody we've heard of that you can mention
23 here today to give an example of an MPEU?

24 A. Yes. We have a number in New Hampshire that are --

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1 have a commercial relationship with the Power Pool
2 directly, and don't operate with any kind of a supplier
3 middleman, including Saint Anselm's College, High Liner
4 Foods, the Manchester Union Leader.

5 Q. Okay. And, do you provide services to them, managing
6 their accounts?

7 A. We do. We schedule and coordinate their power for
8 them.

9 Q. Okay. Now, I just want to ask you about one of the
10 other companies that you're CEO, PNE Energy Supplier.
11 That's sort of a newcomer to the market, would you say?

12 A. Yes. That's a competitive energy provider.

13 Q. And, you're testifying on behalf of PNE here today, is
14 that right?

15 A. That's correct.

16 Q. And, was PNE the first company to market to residential
17 customers in New Hampshire?

18 A. Indirectly, PNE was -- is a source of supply for an
19 aggregator, Resident Power, that was the first to
20 aggregate households, to combine them to sell power to
21 households.

22 Q. Okay. So, and that's one of your companies as well,
23 Resident?

24 A. Right.

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1 Q. And, working, not exclusively, but working with PNE,
2 they were the first to market with a residential
3 offering in New Hampshire?

4 A. That's correct.

5 Q. Okay. Now, what I want to -- hmm, just trying to --
6 oh. The only other thing in a preliminary I want to
7 ask you is are you active in NEPOOL and ISO-New
8 England?

9 A. Yes.

10 Q. And, what's your capacity with NEPOOL?

11 CHAIRMAN IGNATIUS: Mr. Rodier, before
12 you go on, I'm a little concerned.

13 MR. RODIER: Yes.

14 CHAIRMAN IGNATIUS: As far as I can
15 tell, none of this is in the prefiled testimony. The
16 whole point of prefiled is for everyone to have an
17 opportunity to review and ask discovery questions. It's
18 interesting information, but, if it wasn't important
19 enough to put in the prefiled, why are we going into it
20 now?

21 MR. RODIER: Well, madam Chairman, I
22 think it is, on the top of Page 1, isn't it? It talks
23 about "MPEUs", talks about "Freedom Logistics", talks
24 about how "Mr. Fromuth is Vice Chairman of NEPOOL, Chair

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1 of the End User Sector." I'm just trying to establish his
2 -- refresh the Commission's mind, you know, his
3 credentials. And, I'm almost through. And, certainly, if
4 that's your wish, that we move on, we're going to move on.

5 CHAIRMAN IGNATIUS: Well, we need -- we
6 have.

7 MR. RODIER: Okay. I agree.

8 CHAIRMAN IGNATIUS: -- not a lot of time
9 left. And, we're to focus on the issues --

10 MR. RODIER: I agree.

11 CHAIRMAN IGNATIUS: -- of his testimony
12 regarding ADE. So, --

13 MR. RODIER: So, we'll do that.

14 CHAIRMAN IGNATIUS: Thank you.

15 BY MR. RODIER:

16 Q. Mr. Fromuth, would you please summarize your testimony.

17 A. My testimony focuses on the fact that the offering
18 before the Commission of Rate ADE is, in our view,
19 anti-competitive. It will injure the marketplace from
20 the standpoint of creating, not just confusion, but it
21 will create the perception and, obviously, which is
22 tied very much to the reality, that PSNH is seeking to
23 have customers return to the host utility, with an
24 offering price that's an inducement to do so to lure

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1 them back. And, it will frustrate, I think, almost ten
2 years of marketplace advancement and increased
3 sophistication to have, as the saying goes, the
4 900-pound gorilla re-enter the market with an offering
5 price that will be, obviously, well below where they
6 are right now, or where they will be after the first of
7 the year, according to their forecast. And, my concern
8 is that this will redirect folks away from the notion
9 that they should be, on the whole, migrating away from
10 being dependent upon standard offer service or default
11 energy service. And, they retreat from essentially
12 what's been public policy in New Hampshire for more
13 than a decade, through, I think, three gubernatorial
14 terms, obviously, ten years of PUC rulings, and
15 investment in this state, by not just my firm, but
16 many, many others that have come into this state and
17 have built customer books that are substantial for one
18 reason, and that's because the price advantage to
19 customers for doing so has been evident.

20 My view is that Public Service is, in
21 many respects, acting like a competitive energy
22 provider by undertaking this rate class. And,
23 throughout their testimony, they haven't shied away
24 from the notion that the idea here is to lure customers

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1 back into the fold, so that they can -- so they can
2 gain revenue that would then be applied to the
3 activities that they have described. That's all well
4 and good, but it does completely -- causes a complete
5 juxtaposition of what the role -- I thought the role
6 was of the host utility, which is to be a prior of
7 default service, and not to be and actively campaign to
8 bring new business back to its supply.

9 MR. RODIER: That's all we have, madam
10 Chairman. Are you through, Mr. Fromuth? Is that your
11 summary?

12 WITNESS FROMUTH: Yes, that is my
13 summary.

14 MR. RODIER: Okay.

15 CHAIRMAN IGNATIUS: Thank you.

16 MR. RODIER: You're welcome.

17 CHAIRMAN IGNATIUS: I don't know if
18 there was any discussion of order of witnesses -- I mean,
19 excuse me, order of cross. If not, I think we should
20 first take the non-settling parties, which really is RESA,
21 and then go to the settling parties. So, Ms. Miranda?

22 MS. MIRANDA: Thank you. Good
23 afternoon, Mr. Fromuth.

24 WITNESS FROMUTH: Good afternoon.

CROSS-EXAMINATION

BY MS. MIRANDA:

Q. Wouldn't you agree that, when customers have accurate price signals, they can make better choices about their energy use and management?

A. Yes.

Q. And, the most accurate price signal that a customer can receive is the actual price they're paying for a particular power at a particular time of day or month, correct?

A. Correct.

Q. And, PSNH is planning to base Rate ADE on a forecast of pricing for up to a year in advance, is that correct?

A. That's my understanding.

Q. And, when customers have accurate price signals, can they use those accurate price signals to make conservation decisions and energy efficiency decisions about their power?

A. Yes.

Q. And, if the price during the month of August is artificially low, customers don't have a reason to conserve energy in August, for instance, is that correct?

A. That's correct.

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- 1 Q. You were here on the first day of the hearing, correct?
- 2 A. I was.
- 3 Q. And, did you hear PSNH testify that Rate ADE is no
- 4 different than introductory rates from competitive
- 5 suppliers?
- 6 A. I believe I did.
- 7 Q. And, when a customer is considering an introductory
- 8 rate from a competitive supplier, they aren't required
- 9 to -- typically aren't required to be on, for instance,
- 10 Rate DE from PSNH for some period of time, is that
- 11 correct?
- 12 A. No.
- 13 Q. That's not correct?
- 14 A. You are correct. They are not required to have that
- 15 preface to their deal, right.
- 16 Q. And, they're not required to determine how long they
- 17 were on a particular rate from PSNH, for instance,
- 18 before being eligible for an introductory rate, is that
- 19 correct?
- 20 A. That is correct.
- 21 Q. And, they're not typically required to understand how
- 22 long they were with another competitive supplier before
- 23 they are eligible to take an introductory rate from a
- 24 competitive supplier, is that correct?

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1 A. That's right.

2 Q. And, typically, when an introductory rate is provided,
3 the customer is also told what the rate will be after
4 the introductory rate expires, is that correct?

5 A. I'm sorry, could you repeat that.

6 Q. Assuming a customer takes an introductory rate from a
7 competitive supplier, do they typically know at the end
8 of the introductory period what their rate will be or
9 how that rate will be calculated?

10 A. Yes, they do.

11 Q. Thank you. When PSNH proposed its original Rate ADE,
12 that was rejected by the Commission. Are you familiar
13 with that?

14 A. A bit.

15 Q. And, in that, in that original proposal, they proposed
16 to adjust rates two times per year, is that correct, in
17 January and July?

18 A. That's my recollection.

19 Q. And, now, they're proposing only to adjust the rates
20 once per year, is that correct?

21 A. That's right.

22 MS. MIRANDA: Thank you. I have no
23 further questions.

24 CHAIRMAN IGNATIUS: Thank you. Mr.

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1 Fossum.

2 MR. FOSSUM: Thank you.

3 BY MR. FOSSUM:

4 Q. Mr. Fromuth, I'd like to begin by understanding your
5 role exactly. Your -- the first page of your testimony
6 states that you're the "Managing Director of Freedom
7 Logistics, and CEO of PNE", is that correct?

8 A. That's correct.

9 Q. And, earlier in this docket, Freedom Logistics had
10 petitioned to intervene as a joint petition with
11 Halifax American Energy Company. Are aware of that?

12 A. I believe so, yes.

13 Q. And, in response to Mr. Rodier's question, you
14 testified that you're here only on behalf of PNE today,
15 is that correct?

16 A. That's right.

17 Q. So, as the Managing Director of Freedom Logistics, do
18 you have authority to speak for that entity?

19 A. Yes, I do.

20 Q. Does Freedom have a position that's different from PNE?

21 A. No.

22 Q. So, would it be fair to say that the positions that
23 Freedom has taken at various stages of this docket
24 would be the same as PNE would have taken had PNE been

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1 the entity asserting those positions?

2 A. Correct.

3 Q. And, would the same also be the case for Halifax
4 American Energy Company?

5 A. Yes.

6 Q. Thank you. Do you have a copy of your testimony with
7 you?

8 A. I do.

9 Q. Would you turn to the bottom of Page 2 of your
10 testimony please. Now, in the paragraph at the bottom
11 numbered "1", your testimony states: "The purpose of
12 RSA 374-F is to "harness the power of competitive
13 markets"." Did I read that accurately?

14 A. Yes, you did.

15 Q. And, you have a footnote there that attributes that
16 quotation to "RSA 374-F:1, I". Is that also correct?

17 A. I believe that -- yes. That's right, yes.

18 Q. Isn't it true that RSA 374-F:1, I, actually begins by
19 stating "The most compelling reason to restructure the
20 New Hampshire electric utility industry is to reduce
21 costs for all consumers of electricity"?

22 A. Well, I don't have the cite here, so I can't react to
23 that.

24 Q. I'm happy to provide you with a copy of the statute, if

[WITNESS: Fromuth]

1 you'd like to read it?

2 A. Sure.

3 MR. FOSSUM: May I approach?

4 CHAIRMAN IGNATIUS: Please.

5 (Atty. Fossum handing book to the
6 witness.)

7 BY MR. FOSSUM:

8 Q. So, I would restate my question. Does RSA 374-F:1, I,
9 actually begin with the phrase "The most compelling
10 reason to restructure the New Hampshire electric
11 utility industry is to reduce costs for all consumers
12 of electricity"?

13 A. It does.

14 Q. Thank you. So, would you agree that the actual purpose
15 of RSA Chapter 374-F is to reduce costs for all
16 consumers of electricity?

17 A. Well, it certainly is one of the stated purposes, yes.

18 Q. Now, if the Commission were to approve Rate ADE, would
19 any customer be forced to take Rate ADE?

20 A. No.

21 Q. Would Rate ADE provide another option to customers for
22 their consideration?

23 A. It would.

24 Q. Now, in RSA 374-F:1, I, about one, two, three, four,

[WITNESS: Fromuth]

1 five six, the seventh line down in the version that
2 I've handed to you, does that read that "increased
3 customer choice and the development of competitive
4 markets for wholesale and retail are key elements of a
5 restructured industry"? Does it begin with that
6 phrase?

7 A. It does.

8 Q. So, you would agree then -- do you agree then with the
9 statute -- do you agree with the statement then that
10 "increased customer choice is a key element in the
11 restructured industry"?

12 A. I would. And, this is the same statute, I believe,
13 that also prescribed for the divestiture of all of
14 PSNH's generating assets, which, as we all know, has
15 not yet transpired. So, there's a number of aspects to
16 the statute that are relevant today, and some that were
17 not fulfilled.

18 Q. Yes, I understand. I was just asking whether you
19 agreed that "increased customer choice is", as the
20 statute says, "a key element of a restructured
21 industry"?

22 A. It does say that.

23 Q. Thank you. Returning to your testimony, near the
24 bottom of Page 3, you state that Rate ADE is a

[WITNESS: Fromuth]

1 "discounted default service rate", do you see that?

2 MR. RODIER: I think you have to be a
3 little more specific, madam Chairman. Even I'm having a
4 little trouble finding it.

5 CHAIRMAN IGNATIUS: Yes. I haven't
6 found it either.

7 MR. FOSSUM: I apologize. There's no
8 line numbers, so -- yes. The very last line in the main
9 text on Page 3.

10 CMSR. HARRINGTON: Is this under "A.
11 Issues with respect to RSA 374-F"?

12 MR. FOSSUM: Yes. So, directly above
13 where the footnotes begin, the very last line -- the last
14 two lines state about "the design of Rate ADE", and "PSNH
15 is proposing...a discounted default service rate", in the
16 last line there.

17 **BY THE WITNESS:**

18 A. Well, the line that I am reading from here, which I
19 think is geographically where you are, it says: "The
20 design of Rate ADE PSNH is proposing to take on the
21 role of a competitive supplier by means of offering a
22 discounted default service rate targeted to customers
23 who have migrated to competitive suppliers." Is that
24 where you are?

[WITNESS: Fromuth]

1 Q. Yes. And, it was the characterization of "a discounted
2 default service rate". Now, as we've read, the very
3 first words of RSA 374-F indicate that "the most
4 compelling reason to restructure the industry is to
5 reduce all costs." So, wouldn't a rate reducing costs
6 meet that compelling reason?

7 A. The marketplace that is anticipated by the
8 restructuring statute is one in which the players in
9 the marketplace were to be competitive providers, and
10 that the PSNH's role would sunset as a supplier. That
11 was the idea 10 or 12 years ago, and here is where we
12 are today. We're talking about re-entering Public
13 Service into the marketplace with a newer rate, a lower
14 rate as of today, and it takes on all the appearances
15 of a competitive energy provider.

16 Q. Okay. Thank you. On the next page of your testimony,
17 on Page 4, there's a section of your testimony, letter
18 "A" there, and there is, in the third paragraph under
19 letter "A", your testimony states: "There cannot be
20 two very different definitions under RSA 369-B for the
21 term "actual costs"; one based on booked costs", and
22 then, in parentheses, "(Rated DE), and then the other
23 based upon estimated marginal costs", and then, in
24 parentheses, "(Rate ADE)." Did I read that accurately?

[WITNESS: Fromuth]

1 A. You did.

2 Q. Is it your testimony that marginal cost is not an
3 actual cost?

4 A. No.

5 Q. In the very next sentence of your testimony, it reads
6 "An "actual" cost is a booked cost as utilized in the
7 calculation of Rate DE for over ten years." Did I read
8 that accurately?

9 A. You did.

10 Q. So, does your testimony say that "an actual cost is a
11 booked cost"? Is that an accurate characterization of
12 your testimony there?

13 A. That is what is said, yes.

14 Q. So, is it your testimony then that marginal costs are
15 not actual costs?

16 A. No, it is not.

17 Q. Then, perhaps you could help me understand why your
18 testimony states that "actual cost is a booked cost"
19 and that marginal costs are not. That I don't -- could
20 you explain that apparent inconsistency?

21 MR. RODIER: Excuse me. That
22 mischaracterizes his testimony. He says "actual costs
23 are". He's saying -- the question was "tell me why they
24 aren't?"

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[WITNESS: Fromuth]

1 CHAIRMAN IGNATIUS: I think it's a
2 question of what the "aren't" was qualifying.

3 MR. RODIER: Oh. I'm sorry.

4 CHAIRMAN IGNATIUS: But why don't you go
5 ahead and rephrase the question Mr. Fossum.

6 BY MR. FOSSUM:

7 Q. In your testimony, it seems to state that "actual costs
8 are booked costs", and that "Rate DE is based on booked
9 costs", which are actual costs, but that there is
10 another cost, marginal costs, that are not permitted to
11 be included under the term "actual" costs. Is that
12 correct?

13 A. The marginal cost is a cost that is not included under
14 the booked costs, that's right.

15 Q. So, I guess to phrase it very simply, is marginal cost
16 an actual cost?

17 MR. RODIER: That question has been
18 answered at least twice already.

19 CHAIRMAN IGNATIUS: No, I'd like to hear
20 the answer.

21 MR. RODIER: Okay.

22 WITNESS FROMUTH: Your question is what
23 again?

24 BY MR. FOSSUM:

[WITNESS: Fromuth]

1 Q. Are marginal costs an actual cost?

2 A. Marginal costs are an actual cost, certainly.

3 Q. Thank you.

4 A. They're incurred costs.

5 Q. Turning to Page 5 of your testimony, in the third
6 paragraph under section, the V, "Summary and
7 Conclusion". That third paragraph states: "Moreover,
8 the PUC does not appear to have any authority to
9 implement a default service option to encourage
10 long-term use of default service." Is that correct?

11 A. That's what it says, yes.

12 Q. Now, do you still have the statute book in front of
13 you?

14 A. I do.

15 Q. Could you turn to RSA 374-F:3, V, please. And, more
16 specifically, to subpart (d), 80 percent of the way
17 down the page. Now, that section reads: "The
18 commission should establish transition and default
19 service appropriate to the particular circumstances of
20 each jurisdictional utility." Did I read that
21 accurately?

22 A. You did.

23 Q. So, the Commission has the -- would you agree that the
24 Commission has the authority to establish default

[WITNESS: Fromuth]

1 service appropriate to the particular circumstances of
2 PSNH?

3 A. It would certainly make reference to that here, yes.

4 Q. Thank you. And, I apologize. Going back a couple of
5 pages in your testimony, and I apologize, to Page 3.
6 At the very top of the page, the paragraph numbered
7 "2". The testimony states that "By law, Default
8 Service means electricity supply that is available to
9 retail customers who are otherwise without an
10 electricity supplier." Did I read that accurately?

11 A. Yes.

12 Q. To the best of your knowledge, does the law provide any
13 reason for a customer to be "otherwise without a
14 supplier"?

15 A. Does the law provide any what?

16 Q. Any reason for a customer to be "otherwise without a
17 supplier"?

18 A. I'm not sure I understand what your question is.

19 Q. Well, could you turn please to RSA 374-F:2, Paragraph
20 I-a, under "Definitions". There it defines "Default
21 Service" to mean "electricity supply that is available
22 to retail customers who are otherwise without an
23 electricity supplier and are ineligible for transition
24 service." Is there anything in there that asks why a

[WITNESS: Fromuth]

1 customer is "otherwise without an electricity
2 supplier"?

3 A. In other words, the circumstances of why they don't
4 have one is not explored, is that what your point is?

5 Q. Yes. That's what I'm asking.

6 A. Right. That's what -- that doesn't address that, no.

7 Q. So, is it possible that a customer could be without a
8 supplier for pretty much any reason?

9 A. Yes. There are all sorts of reasons.

10 Q. Could it be that the customer doesn't want a supplier?

11 A. It could very well be that, yes.

12 Q. Could it be that a customer, for example, might have
13 poor credit, and that no supplier would be willing to
14 offer service to them?

15 A. True.

16 Q. Now, back to your testimony on Page 3, in the first
17 paragraph under "A", the second to last sentence, it
18 reads: "PSNH erroneously believes that default service
19 is for any customers who, for whatever reason, elect
20 not to have a competitive supplier supply their
21 energy." Did I read that accurately?

22 A. You did.

23 Q. So, because -- since a customer, as we've just
24 discussed, could be without a supplier for any reason,

[WITNESS: Fromuth]

1 isn't your characterization of PSNH's belief, in fact,
2 accurate, and not erroneous?

3 A. Well, I think that PSNH's belief is erroneous, because
4 I view their position is based upon a sense of what the
5 market is -- is or is not offering. And, their view of
6 the market behavior, with respect to what will happen
7 as a consequence of introduction of ADE, that is
8 erroneous. And, they're portraying this as being a
9 choice that does not exist currently. And, my argument
10 is that it very much does exist currently.

11 Q. Could you point me to where that is spelled out in your
12 testimony?

13 A. Well, I think it's spelled out throughout my testimony,
14 but I'm opining on it right now. I'm not citing a
15 particular statement in the testimony. I'm simply
16 elaborating on what I already said in writing.

17 Q. In your direct, you testified that you believe "Rate
18 ADE would be anti-competitive", is that accurate?

19 A. Yes.

20 Q. If a new competitor, a new competitive supplier entered
21 the market tomorrow, say, with prices set exactly at
22 the same level as PSNH's, would that be harmful to
23 competition?

24 A. No.

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[WITNESS: Fromuth]

1 Q. If that new competitor offered prices below those
2 offered by PSNH, would that be harmful to competition?

3 A. No.

4 Q. So, in your opinion, it's only because it's PSNH making
5 this offering that is harmful to competition?

6 A. Well, what goes into making a rate offer, a price offer
7 by a competitive supplier, is not just merely the
8 construct of that rate. That rate has to be arrived at
9 through careful calculations of what the costs are that
10 go into the rate. Not just the energy, but all the
11 other aspects of it. Plus, to offer the rate and to
12 promote it, a competitive provider has to spend a great
13 deal of resources to broadcast that rate offering and
14 has to put it out in the marketplace. So, all of those
15 add up to a war chest that a competitive provider must
16 have to essentially offer -- successfully offer a rate
17 inducement to the market and get people to enroll.

18 In the case of PSNH, I think we've heard
19 here today, on the first day, that there really isn't
20 any value that's been assigned to the marketing budget
21 of PSNH, which we know is immense from past
22 disclosures. And, in the case with my company, whereas
23 sometimes we spend as much as \$10,000 a month on
24 marketing and putting information out into the media,

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1 we could find ourselves having to double down or triple
2 down or spend enormous sums just to keep up with the
3 fact that PSNH, which, as you know, has very, very
4 expansive resources, would be able to spend --

5 Q. Mr. Fromuth, I --

6 A. -- at a much higher rate than we could.

7 Q. I apologize for interrupting. I asked a relatively
8 simple, straightforward question. Is your belief that
9 this is "anti-competitive", is that based upon the fact
10 that it's being offered by PSNH?

11 A. Based upon the fact that it's being offered by a
12 company with a very, very large deep pocket, and the
13 ability to go and market a product that may not be
14 successful financially, but may have other objectives.

15 Q. So, is the answer "yes"?

16 A. Yes, it is.

17 Q. So, is it your testimony then that the relative
18 financial strength of the competitor has something to
19 do with whether they have a competitive offering? Or
20 that whether their competitive offering would be
21 anti-competitive, I'm sorry?

22 A. Well, let's be clear. The offering that's being
23 proposed by PSNH has a cost basis to it, which they,
24 obviously, detailed for us, plus it has a marginal

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1 element that's going to be fully allocated to the
2 operation or the retirement of the Scrubber costs.

3 In a competitive market environment,
4 while we don't have to worry about Scrubber costs, we
5 have to worry about profit margin, we have to worry
6 about cost of capital, we have to worry about labor, we
7 have to worry about the O&A of operating a business.
8 So, all of those things must go into the cost of our
9 recovery in a price, none of which have I heard is a
10 consideration for Public Service. Plus, we have to
11 have a profit margin to return to our investors; also
12 not a concern of Public Service.

13 Q. Okay. I was merely asking a follow-up on your prior
14 testimony that you gave just a few minutes ago, having
15 to do with the relatively financial strength of a
16 company. And, I understood your testimony to be that,
17 because PSNH has, as you put it, I believe, "deep
18 pockets", that is a problem that may be
19 anti-competitive. Is that accurate?

20 A. Well, it's also -- it's also the equivalent of, say, an
21 entity coming in that does not have a profit objective,
22 but merely a market share objective or a cost recovery
23 objective, coming into the market, and competing with
24 other companies. Every other company has a profit

[WITNESS: Fromuth]

1 objective. So, that's an unfair advantage posed by
2 PSNH's entry into this market with this rate.

3 Q. Well, I want to follow up, I guess, on two things.
4 First, you said that other companies entering have a
5 profit motive and a desire to return money to
6 shareholders that PSNH does not have. Is that an
7 accurate summary of what you -- at least one portion of
8 what you said?

9 A. Yes. Because I was comparing the offering, if it was
10 coming from a private company, as you pointed out,
11 versus PSNH. So, in that isolated instance, that is a
12 very, very great advantage for PSNH and a disadvantage
13 for the private actor.

14 Q. Would a "private actor", as you describe it, with
15 substantial funding from some source, coming into New
16 Hampshire and offering prices at or below what PSNH is
17 offering, would that be anti-competitive?

18 A. No. That's the case today with many companies.

19 MR. FOSSUM: Thank you. I have nothing
20 further.

21 CHAIRMAN IGNATIUS: Thank you.

22 Ms. Chamberlin, questions?

23 MS. CHAMBERLIN: I have no questions.

24 CHAIRMAN IGNATIUS: Ms. Amidon?

[WITNESS: Fromuth]

1 MS. AMIDON: We have nothing.

2 CHAIRMAN IGNATIUS: All right.

3 Questions from the Commissioners? Commissioner
4 Harrington.

5 CMSR. HARRINGTON: Yes. I've got a few
6 questions.

7 BY CMSR. HARRINGTON:

8 Q. On -- I'm not quite as organized, so, I'll be jumping
9 around your testimony a little bit more. On Page 4, in
10 the middle of the page, there was a lot of discussion
11 of actual costs versus booked costs and so forth. And,
12 I had read this slightly different, I guess. I thought
13 what you were implying here is that, in the case of the
14 DE rate, that it was based on the actual booked costs
15 versus the estimated marginal costs for the ADE rate.
16 And, that the major difference was one was an actual
17 and one was an estimated cost, is that correct?

18 A. Yes. That's a much better flowing characterization
19 than I had in there.

20 Q. Okay. I just wanted to make sure on that. And, going
21 along that paragraph a little lower, it says:
22 "Moreover, PSNH's proposed calculation of Rate ADE
23 admittedly does not contain any costs for marketing,
24 outreach", etcetera, etcetera. And, so, again, if I'm

[WITNESS: Fromuth]

1 reading this correctly, what you're saying is, because
2 the administration, promotional materials, marketing,
3 *etcetera*, are not in the ADE rate, then that rate
4 cannot be an actual cost, because it's missing some
5 actual costs?

6 A. That's correct.

7 Q. Oh. Well, while we're on that particular page,
8 something that I thought was -- right at the beginning
9 of Paragraph A, the first paragraph -- under "A", I
10 should say, it says concluding "moreover, PSNH must
11 supply all default service Rates DE and ADE in the
12 first instance from its own generation assets." Can
13 you elaborate on that statement? What does the "first
14 instance" mean? Is it before buying power someplace
15 else?

16 A. Well, before resorting to market purchases, they first
17 draw down all available power from their own
18 generation.

19 Q. So, I'm trying to get this straight. So, if the cost
20 of running, say, the Merrimack plant is higher than the
21 real-time price for buying power in the ISO market,
22 they run the plant nonetheless, rather than buying it
23 cheaper?

24 A. Well, Commissioner, I'm not aware of what the practices

[WITNESS: Fromuth]

1 are on a daily basis by PSNH. But it's my, on my
2 information and belief, that they generally operate the
3 power plants when there is, obviously, both regulatory
4 and economic financial reasons for doing so. In the
5 scenario that you pose, I actually don't know what
6 would be the internal policy.

7 Q. Okay. Fair enough. Thank you. Looking at 374-F:2,
8 and it talks about "default service" means electricity
9 supply that is available to retail customers who are
10 otherwise without an electricity supplier and are
11 ineligible for transition service." Do you agree with
12 Mr. Mullen, that there is nobody in New Hampshire that
13 is otherwise without an opportunity to at least select
14 an electric supplier now?

15 A. The abundance of providers out there means that there
16 is virtually a provider for everybody. And, if
17 somebody in his example, and now that I've had it to
18 think about it, was -- had less than desirable credit,
19 then there would probably be an arrangement that could
20 be made to satisfy the credit concerns of the provider,
21 to enable that customer to participate in a non-PSNH
22 source of energy.

23 Q. Okay. And, kind of going along with this availability
24 of options, on Page 1 of your testimony, under

[WITNESS: Fromuth]

1 "Introduction", you quote from a PUC docket. And, on
2 the third line it says -- it talks about "residential
3 and smaller commercial customers who have little choice
4 but to remain on Energy Service even as market price
5 fluctuations above and below Energy Service rates."

6 Would you say that that statement is no longer true
7 then? That there are choices?

8 A. I'm looking here for -- to look at your cite.

9 Q. Yes. But it's --

10 A. Right. And, the choice is much more expansive now than
11 when first written.

12 Q. Okay. And, there was a lot of discussion on what meant
13 competition, what was good for competition and what
14 wasn't. And, there was talk about, if an entity was --
15 had deep pockets or a lot of financial resources, would
16 that be good or bad for how they -- whether they were
17 considered competitive or not. And, you seem to be
18 saying that Public Service is not competitive as, let's
19 say, some other independent non-public utility that
20 came in to sell electricity in New Hampshire, because
21 of their -- and this is the part I'm trying to get, is
22 it because of their rate structure? Or, is it because
23 they're a public utility that has -- you know, is a
24 cost of service basis, as compared to another company

[WITNESS: Fromuth]

1 that doesn't have that?

2 A. Well, first of all, the disadvantage that I posed was
3 one where, certainly, there are companies here in the
4 state who probably have the financial wherewithal and
5 the strength of Public Service just on a value
6 measurement. The problem I have with is the other end
7 of that transaction. Which is that those companies are
8 here for one reason only, and that is that they see an
9 opportunity to make a profit in serving this market.
10 Without that opportunity, of course, they would
11 redirect their efforts elsewhere.

12 The question on the table, though, is
13 "does Public Service have that same motivation?" And,
14 I'm submitting that they don't. And that, without a
15 profit motivation, without a return on that
16 transaction, that goes into the profit bucket, then
17 that is a -- that basically is a -- well, it submarines
18 the market, because what it does is it puts into the
19 marketplace a player of significant financial strength,
20 that has the wherewithal to do these transactions, but
21 whose objectives are not to make a profit, but to
22 retire the cost of an investment that has caused them
23 to look for other ways to do so, other than the
24 traditional mechanism. So, that is a much different

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[WITNESS: Fromuth]

1 set of motivations. It's almost a public policy
2 motivation, not a private market motivation. And, that
3 makes for a very, very screwed up marketplace.

4 Q. And, you said in the beginning of your testimony here,
5 sort of like a mini-resumé, you've been involved in
6 competitive power supply for sometime, and in a number
7 of states. That's correct?

8 A. Yes, sir.

9 Q. Okay. Now, we've also discussed previously that the
10 proposed ADE rate would be approximately seven cents a
11 kilowatt-hour. What will -- if that rate were to be
12 out there and were available to people, what effect
13 would that have on competitive suppliers in New
14 Hampshire?

15 A. Well, we have looked at this. And, we think that the
16 competitive marketplace would have, as a result,
17 pressures that would cause other marketers, whose rates
18 are higher than seven cents, obviously, to have to go
19 and calibrate themselves against that benchmark rate.
20 Now, that in and of itself is a calculation that each
21 one of these marketers must do on their own. The
22 problem with the whole structure of the rate is that,
23 in every case, the private competitive energy providers
24 will be factoring in a profit margin of some value to

[WITNESS: Fromuth]

1 compete with the random seven cents that we're talking
2 about. That is not a factor that goes into PSNH's
3 equation. So, therefore, at the beginning of the day,
4 when the number is set, everybody has to have a rate
5 that's below PSNH, but it does include a profit margin.
6 And, since the rate has been said to have been
7 benchmarked against what the forward price curve is in
8 the marketplace, it's hard for me to see how, over
9 time, competitive energy providers could successfully
10 and continually realize a margin, if continually
11 pressed to price against PSNH's value of what the
12 forward market is telling them.

13 Q. And, the costs that that -- the ADE is made up of is
14 the marginal going-forward cost, I think was the term,
15 marginal cost to provide full requirements of service,
16 plus an adder. Now, is that marginal cost to provide
17 full requirements, is that basically the same cost that
18 competitive suppliers could go out and buy electricity
19 for?

20 A. Well, that is a question that I don't have the answer
21 to, Commissioner. Because, in our business, we
22 obviously have a -- assert the same look, forward look
23 at prices in the energy market that everybody else in
24 the trade does. But what we don't have is we don't

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1 have a very, very good handle on how some of the
2 non-energy costs are priced by Public Service. We know
3 what they are, because we have independent sources.
4 But, Public Service, for instance, will price capacity
5 charges to a particular end-user at a rate that's much
6 different than what we think that capacity charge ought
7 to be. So, we have some -- we feel we have a
8 disadvantage there, because PSNH can have capacity
9 charges associated with a single account, that is less
10 than what we would price that capacity charge at, then
11 there is another source of pricing disadvantage for us
12 that would become much more striking under this
13 scenario.

14 Q. So, you -- I guess it sounds like you're saying their
15 method of coming up with this marginal cost to provide
16 full requirements, plus an adder, is on a completely
17 different basis than a competitive supplier would be
18 doing it?

19 A. It very well could be.

20 CMSR. HARRINGTON: Okay. All right.

21 Thank you. That's all the questions I have.

22 CHAIRMAN IGNATIUS: Thank you
23 Commissioner Scott.

24 CMSR. SCOTT: Good afternoon.

[WITNESS: Fromuth]

1 WITNESS FROMUTH: Good afternoon.

2 BY CMSR. SCOTT:

3 Q. Okay. I'm going to re-ask, I think, something you've
4 already answered, I apologize, from Commissioner
5 Harrington, but just a clarification. So, if the ADE
6 is implemented, and, again, we've been talking about
7 seven cents, is your -- is it correct, effectively, you
8 were suggesting that the competitive electric suppliers
9 would then adjust their prices to accommodate that
10 price?

11 A. Well, with Rate ADE going into force at that level,
12 then your price levels, of course, with competitive
13 providers would have to respond to that and to maintain
14 some pricing advantage to their -- either their
15 incumbent customers or future customers, because,
16 without a pricing advantage, there really isn't any
17 relevance in the marketplace for competitive providers.

18 Q. Thank you. And, do you agree that the availability of
19 an ADE, lower than the DE, could create a windfall for
20 the competitive electric providers? Is that a
21 potential scenario, at least in the short term?

22 A. I think the windfall scenario is one in which people
23 flock to competitive providers, so they can put in
24 their time to become eligible for the ADE. I'm not a

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1 really big believer in that. I think that that all
2 depends upon how well publicized the ADE rate is by
3 Public Service. That's a concern that I've got.
4 Because, if they're going to put it forward, they need
5 to do, obviously, something to get the word out. And,
6 that could consist of a major media campaign, it could
7 consist of sending out their flock of key account reps
8 to pedal it to their markets. It's very, very
9 ambiguous right now, because they have not assigned any
10 value to it, nor have they said what their plan is.
11 But any time you're coming into this market, whether
12 you're a brand new entrant, or you're one that's been
13 around for a while, you have to put a lot of resources
14 into promoting your product, and making sure that
15 there's an distinction understood by the marketplace as
16 to what you're offering. So, if PSNH is going to break
17 new ground here, which, of course, they are, then
18 they're going to have to make sure that it is well
19 publicized that they're doing so. And, that is a --
20 and the effect of that will be it's hard to measure
21 today, until we know what the scale that's going to be.
22 Q. Thank you. If, in the scenario that, again, the ADE is
23 in effect, and, as a competitive supplier, you start to
24 lose customers to that Alternative Default Service, is

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1 there anything that would prevent you from implementing
2 a similar program, for somebody who was a PNE customer,
3 and they wish to come back, they get a lower rate. Is
4 that a possibility or does that make sense?

5 A. Well, it does make sense. But my problem would be that
6 I would -- I have to clear all my costs, then I would
7 also have to clear some sort of a margin to justify the
8 offering. And, in that respect, I'm not competing on a
9 level playing field with PSNH.

10 Q. Thank you. You may recall, when Mr. Mullen was here, I
11 was asking him some questions regarding the annual
12 review. And, maybe you could help me out. One of the
13 things, assuming we went down this road, is we would
14 want to be looking at anti-competitive impacts of ADE.
15 Do you have any suggestions on, if we went down that --
16 if we were to do that, how would we measure that? How
17 would we know that's happening? Are there some metrics
18 we could use?

19 A. Well, I think that, from an absolute numerical
20 standpoint, it would be important to quantify both the
21 number of customers and their size that had undertaken
22 this migration back to ADE from a competitive supplier.
23 Most customers who are engaged in a competitive
24 supplier relationship are under contract. So,

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1 presumably, they would wait till their contracts
2 lapsed, and then they would have to have the
3 information that this was a choice. The fact that it's
4 a choice may not be provided to them by their
5 competitive provider, for obvious reasons. So, there
6 would have to be some sort of an advisement given them
7 by PSNH that this was going to take place. PSNH, to my
8 knowledge, has no information, independent information
9 as to what the duration of independent customer
10 contracts are. So, they would have to do a random
11 notification on an ongoing basis to do this to make
12 folks aware of it. I think that, so, it would take
13 some time, a considerable amount of time for this to
14 come home to roost, because then you have a delay, in
15 terms of how this information is filed, accumulated,
16 and reported. And, the impact over time certainly
17 could be seen in a way that perhaps your migration
18 reports now reveal what's going on with more
19 specificity. But I think that my concern is that, by
20 the time that information reached this body, some
21 serious damage could be done, and the market could be
22 -- the market could be distorted by, frankly,
23 artificially low prices.

24 Q. Is the -- is 36 months enough time to see that result,

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1 that negative result?

2 A. Well, I think 36 months is plenty of time to see that
3 result. But it's also probably enough time to have
4 some harm done to the competitive market that can't be
5 reversed. What I'm focusing on, basically, is that the
6 market has matured and has come a long way in ten
7 years, with basically the helping hand of public
8 policy, which has not reversed itself. This would be a
9 situation in which it would be -- created a great
10 amount of uncertainty, because then private consumers
11 of electricity would always be of the mind that, rather
12 than being told to migrate away from Public Service,
13 which was what the initial intention was, I thought.
14 They're being induced to come back. And, obviously,
15 there being induced to come back with the Commission
16 blessing that action.

17 So, I think it creates a very, very
18 distorted and confused marketplace, where, to date,
19 we've had a single-minded marketplace directionally, in
20 the direction of more competition, welcoming more
21 entrants into the market. And, I think that one thing
22 that could possibly happen would be that marketers, if
23 they weren't successful and saw a lot of migration,
24 might pick up and leave and go elsewhere where this

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1 wasn't going on.

2 CMSR. SCOTT: Thank you. That's it.

3 CHAIRMAN IGNATIUS: Thank you.

4 BY CHAIRMAN IGNATIUS:

5 Q. Mr. Fromuth, you've a couple of times referred to the
6 difference between companies like yours and PSNH, that
7 you had investors, you had people you had to answer to,
8 regarding profit for their investment. But PSNH also
9 has shareholders, does it not?

10 A. True.

11 Q. So, is the difference, in your mind, that some of the
12 other costs of PSNH's operations are being picked up
13 through the standard Default Service rate, and that
14 dropping some of those costs out of the ADA rate -- ADE
15 rate -- you've got me doing it now -- the ADE rate is
16 what's unfair?

17 A. Well, my simple understanding of this, and I'm
18 certainly open to being clarified, is that there is no
19 revenue that would be forthcoming from the ADE rate
20 that would be to the benefit of stockholders. So, it's
21 essentially a -- hard-wired to simply be a recovery of
22 costs that have been already expended. And, if there's
23 an effort to try and find a way to bring those costs
24 back in to recover the spend on the Scrubber.

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1 And, my comparison to that is that, when
2 you have, obviously, a market that is full of folks,
3 like myself, who have investors that have set up these
4 businesses to do this, then there's a whole different
5 metric involved in accounting for the return on one's
6 investment. And, I don't feel that that's the case
7 with Public Service, as it is for the private players
8 that are in the market.

9 Q. You understand that the opening of this docket grew out
10 of concerns raised in a prior docket addressing
11 customer migration, that there was an increasingly
12 small pool of customers left to absorb all of the fixed
13 costs of the Company, correct?

14 A. Yes.

15 Q. And that, if competitive offerings continued to grow,
16 as we've hoped that they do, that problem would be
17 exacerbated, correct?

18 A. Yes.

19 Q. Do you have any experience in the other states you've
20 worked in or your knowledge of the industry of how to
21 get through the transition that we're seeing here, in a
22 way that's both good for competition, with some
23 mindfulness of the realities of those customers who are
24 left with fewer and fewer of them to share those costs?

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1 A. Well, my experience in a number of other states is that
2 there is a trajectory that the other states are on, to
3 a large degree. In which there is a point in the
4 future, at some point, the hope is that there will be a
5 end to the process of floating a standard offer. And,
6 that all customers will eventually find a competitive
7 provider for whom then we'll will supply their energy.
8 That, obviously, has a model that harkens back to 15,
9 20, 25 years ago with telecom. And that, of course,
10 was something that you had to hasten on us, I say
11 "you", I mean the Commission, had to hasten in many
12 states because they had to go and sort of set up a --
13 sort of a forced exit, if you will, from the host
14 utility. And, when folks didn't respond to that, then
15 they were simply migrated over to random suppliers, who
16 were -- obviously, met a certain standard in the state.
17 And, they took them on. And, at the same time as
18 taking them on, they were, in some measure, guaranteed
19 that the poor credit folks would pay their bills for a
20 period of time. That is not a bad example, in my view,
21 to what could be applied here. Now that we've got
22 companies out there that are proving themselves, the
23 concept is no longer innovative or new. It's in place,
24 and it's operating, I think, in some 14 or 15 states.

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1 That could be the way in which the credentials of those
2 companies could be verified and ascertained. And, some
3 standard could be applied to make sure that they were
4 all equipped to take on migrated customers. And, the
5 incumbent utilities all settled into a role of being a
6 sort of pipes and wires outfit only.

7 Another mechanism that I think is a fair
8 one, is that, when folks leave a competitive provider,
9 and go back to the host utility, and that largely is
10 done for reasons of price, and price alone. Then, that
11 should not be something that is done without a cost to
12 that customer. And, that customer could be induced to
13 either rethink that move, by having to pay a re-entry
14 fee to the host utility, or to pay a per kilowatt-hour
15 rate in excess of the normalized rate for the duration
16 of the time that they were back with the utility.

17 In this state, it's largely a non-cost
18 event, in fact, it's a cost advantage for many
19 customers to return to the host when the price is
20 advantageous to do so, if they have a contract open
21 they can do that. That, to me, seems to be also a
22 reversal of a good common sense policy, because, if the
23 intent is to move customers into a total relationship,
24 without looking back to the host utility, a total

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1 relationship where they're buying their power from a
2 competitive provider, then there should be a
3 disincentive to go back to the host. And, I know it's
4 referred to as "gaming" here. But, you know, whether
5 it's pejorative or not, it goes on. And, I think that
6 that's a process that someone should be assessed a
7 cost, and, probably, appropriately, it should be the
8 customer.

9 Q. You mentioned a moment ago that there were -- I wrote
10 down 14 or 15 states, I think you were saying that are
11 in "some form of this transition", is that what you
12 were saying?

13 A. That's correct. Yes.

14 Q. Do you happen to know if any of them are in the
15 situation we are in New Hampshire, where we have
16 something of a hybrid, of movement to competitive
17 supply for some of our electric utilities, and not
18 taking that step for PSNH through the Legislature?

19 A. I'm pretty familiar with the other scenarios in the
20 other states. And, I have to say, this is a very
21 unique situation.

22 CHAIRMAN IGNATIUS: All right. I have
23 no other questions. I have a million questions, but I
24 have no other questions now. Thank you. Appreciate it.

[WITNESS: Fromuth]

1 Any redirect, Mr. Rodier?

2 MR. RODIER: Well, there's a lot of
3 things I'd like to do, madam Chairman. But, in view of
4 the hour, *etcetera, etcetera*, I'm very happy to just drop
5 it right here.

6 CHAIRMAN IGNATIUS: All right. Then,
7 you're excused. Thank you, Mr. Fromuth. Well, actually,
8 you can sit there while we figure out what we're still
9 doing this afternoon. But you're done being a witness, so
10 you can relax.

11 We have no other witnesses, as far as I
12 know. Is there anyone I'm missing?

13 (No verbal response)

14 CHAIRMAN IGNATIUS: Seeing nothing, then
15 do we have any procedural matters, other than addressing
16 the exhibits?

17 (No verbal response)

18 CHAIRMAN IGNATIUS: Is there any
19 objection to striking the identification of the exhibits
20 and making them full exhibits in the docket?

21 (No verbal response)

22 CHAIRMAN IGNATIUS: Seeing no objection,
23 then we'll do so. I had anticipated we would go to
24 closings, oral closings at this point. It's 4:20. I

1 don't know if people could stay a bit late to be able to
2 work our way around the room. And, you know, if we were
3 able to finish by 5:00, is that -- would that work for
4 everyone? We've got a conference call starting at 5:00.
5 So, we would have to end by then. And, we've got a court
6 reporter who can't go on forever.

7 Let's go off the record.

8 (Brief off-the-record discussion
9 ensued.)

10 CHAIRMAN IGNATIUS: All right. Then,
11 we're back on the record. We will now then go to closing
12 arguments. And, we'll stay a bit late to be able to
13 finish by 5:00, when we have another commitment. If
14 people can try to limit their remarks to 5-7 minutes, that
15 would be helpful, in order to give a chance for everyone
16 to have an opportunity.

17 Because, although it's not a total
18 Settlement, it's a Partial Settlement, I think what I'd
19 like to do is have the non-settling parties go first, then
20 have the settling parties bearing the burden to go last.

21 So, I'd begin either with Mr. Rodier or
22 Ms. Miranda, I don't care between the two, if you have a
23 preference among yourselves?

24 MR. RODIER: May Mr. Fromuth come back?

1 CHAIRMAN IGNATIUS: Oh, certainly.

2 MR. RODIER: Well, thank you very much.
3 I'm going to keep my comments very brief here. I really
4 think it's a well-trying issue, if you want to call it
5 that, I think. All the facts are out there. So, I just
6 want to kind of stick to the law. But I do want to begin
7 by pointing out that Mr. Estomin -- Dr. Estomin, or
8 whatever he is, he did say clearly that "Rate ADE is
9 antithetical to the basic premise of industry
10 restructuring." Now, we got a pilot program here that's
11 on a short-term leash, but this was a very capable
12 witness, and, you know, that was his view.

13 Mr. Fromuth did concede, this is *sui*
14 *generis*, this state. And, we acknowledge that, that it
15 sort of complicates things.

16 Now, one of the key issues is the
17 definition of "Default Service", which is -- it's
18 available if you would not otherwise be without a
19 supplier, migrating customers would not otherwise be
20 without a supplier. That's what default service is all
21 about. If you read RSA 374-F, I won't bother with the
22 cite. That's about provider-of-last-resort service, now
23 that's what default service is. Default service should be
24 designed to provide a safety net, to ensure universal

1 access. That's what Default Service is. Is to make sure
2 nobody goes without -- goes without electricity.

3 To make my argument as brief as
4 possible, I'm just saying that, in this case, with Rate
5 ADE, how can you possibly say, when the purpose of ADE is
6 to lure customers back to PSNH, that they're otherwise
7 without a supplier. The customer has a supplier, they're
8 going to leave them and go to Public Service. They have a
9 supplier. This has got -- so, ADE has got nothing to do
10 with one of the purposes of 374-F, which is safety net,
11 universal access.

12 Now, I've always felt that Rate ADE
13 encourages the long-term use of Default Service, which
14 would be wrong, unlawful, to encourage long-term use of
15 Default Service. In this case here, when we get this
16 three year pilot program, I would have to concede that,
17 probably premature or untimely maybe to push too hard on
18 that, but, certainly, the statute is very clear. You
19 know, it says you "may discourage" -- "may discourage
20 misuse". There's nothing in there that says you may
21 "encourage long-term use".

22 Now, one of the arguments here, halfway
23 through already, Rate ADE does not include the operating
24 costs of the Scrubber. 125-0:18 says "the costs of the

1 Scrubber should be recovered", "must" or "shall be", it's
2 mandatory, it "shall be recovered through Default Service
3 rate". ADE is a Default Service rate. You've got to
4 recover the costs of the Scrubber. That just doesn't mean
5 non-operating costs, we don't have operating costs in
6 there, because we'd have to do some allocations and
7 analysis, okay? So, by law, I think the operating costs
8 have to be included in that adder, as well as the
9 non-operating costs.

10 Along the same line, there's nothing in
11 there for the costs of marketing and implementation and
12 promotion and customer service, and impact to customer
13 service here I think is going to be large. I think
14 there's going to be a lot of incoming calls. In any
15 event, there is nothing in this rate, okay? And, I think
16 that what it comes down to is the employees, they're not
17 sitting around with nothing to do, I'm sure they're
18 productively occupied. They're going to be transferred
19 over to work on ADE, and they're going to be getting paid
20 out of base rates. I think this is what Mr. Fromuth has
21 in mind by saying, you know, this is really unfair. He's
22 got to recover all of those costs, and Public Service
23 isn't.

24 Two more things. The statute, the laws,

1 boy, this is a really awkward citation, and I won't even
2 give it, but it's in RSA 363-B:3, IV [369-B:3, IV?], "PSNH
3 shall apply all" -- "shall supply all transition service
4 and default service offered in its retail electric service
5 territory from its generation assets and, if necessary,
6 through supplemental power purchases." They are not --
7 this is the law. They are not -- ADE is not being
8 supplied through PSNH's generation assets.

9 Finally, one of the key points here is
10 that there's been a couple of -- Commissioner Harrington
11 raised this issue, and it came up again today, I think
12 it's a fairly key aspect of this proceeding, where we've
13 heard at least twice, maybe three times, that the law says
14 that "as competitive markets develop, the Commission may
15 approve alternate means of providing transition or default
16 services." Let me continue. The Commission may do that.
17 Which are designed to minimize customer risk, not unduly
18 harm the development of competitive markets, and mitigate
19 against price volatility. Those are what the purposes
20 are. If you're going to do a alternate means here of
21 providing default service, there's only three permissible
22 purposes: Minimize customer risk, not unduly harm the
23 development of competitive markets, and mitigate against
24 price volatility. So, this is not an open-ended loophole

1 that you can drive a truck through. There's very limited
2 purposes for which you can have an alternative default
3 service rate. Thank you.

4 CHAIRMAN IGNATIUS: Thank you.
5 Ms. Miranda.

6 MS. MIRANDA: Thank you. PSNH's
7 Alternative Default Energy rate is both inconsistent with
8 this Commission's Order 25,230 [25,320?] and the
9 restructuring act principles. In particular, in Order
10 25,230 [25,320?], the Commission indicated that the
11 alternative Alternative Default Energy rate that would be
12 proposed by PSNH must be cost-based, non-discriminatory,
13 and avoid an adverse effect on competition.

14 First of all, it is not cost-based.
15 "Cost-based" is actual, prudent and reasonable costs.
16 Well, what is the cost? PSNH testified that the marginal
17 cost is the only cost associated with serving these
18 customers. However, they're charging these customers for
19 the non-operating costs of the Scrubber, a cost that they
20 incur whether they have Rate ADE customers or not. So,
21 it's not cost-based from that perspective. The cost
22 associated with the Scrubber, as indicated today and
23 earlier, is an embedded fixed cost, that applies whether
24 there are ADE customers or not. And, it's just simply

1 being reallocated to those customers. So, it's not
2 cost-based.

3 The costs associated with marketing and
4 outreach, modifying the billing system, tracking
5 customers, tracking costs, none of those costs are
6 included in Rate ADE. Now, PSNH argued "well, we're going
7 to use our current employees. So, there's really no added
8 cost." But every mailing that they send out, every piece
9 of media that they do with respect to providing
10 information to customers about Rate ADE is a cost they're
11 not currently incurring. In addition, there are the costs
12 associated with allocating current employees to use -- to
13 be providing marketing and administrative services for
14 Rate ADE that are not accounted for in the cost of Rate
15 ADE.

16 In addition, they're using an average
17 forecasted annual price. Forecast prices distort price
18 signals to customers. And, they do not provide accurate
19 price signals. In addition, at the last hearing day, PSNH
20 testified that they're basing Rate ADE on forward market
21 prices, but they're not making forward purchases. They're
22 purchasing on the spot market. So, that the forecast is
23 already going to be off, because they're basing that
24 forecast on something they're not even going to purchase,

1 they're not making forward purchases.

2 There's a further distortion of the
3 price to customers through the reconciliations. First of
4 all, reconciliations in and of themselves distort the
5 price the customers receive. But, in this case, PSNH is
6 not even going to reconcile the costs to the customers
7 that created them. They're going to violate cost
8 causation principles and take costs associated with
9 forecasts, inaccurate forecasts, whether they be under
10 recoveries or over recoveries, and reconcile them back to
11 an entirely different customer base, the Rate DE
12 customers. Therefore, violating cost causation
13 principles. And, further distorting the price that
14 customers on Rate ADE are seeing from what the actual
15 price would be.

16 In addition to violating the cost
17 causation principles, inaccurate price signals distort
18 customer behavior. Customers react to the appropriate
19 price signal. If a customer is not given the appropriate
20 price signal, they can't make accurate energy conservation
21 and energy efficiency choices.

22 Order 25,230 [25,320?] also said that
23 the PSNH Alternative Default Energy rate had to be
24 non-discriminatory. However, similarly situated customers

1 are paying different rates. All customers are eligible to
2 choose competitive suppliers, as was testified here today.
3 Why should customers, who remain on competitive supply for
4 11 months and 29 days, pay a different rate than those who
5 remain on competitive supply for 12 months and one day.
6 And, in fact, as the witness for the OCA testified, that
7 it was absolutely a non -- it was a discriminatory rate
8 that was being imposed.

9 Everyone seems to say "well, yes, we
10 understand there's potential negative effects on
11 competition. Yes, we understand that it's a potentially
12 discriminatory rate. But it's a pilot. So, you know,
13 three years from now you can figure out if there was
14 really a problem." Three years from now, as testified to
15 today, those effects on competition will be long-term
16 effects, where suppliers have exited the market, and you
17 will have difficulty bringing them back, if you ever can.

18 The last was that Order 25,230 [25,320?]
19 said that it should not have a negative effect on
20 competition. And, there will be negative customer choice
21 effects. The stated benefit to this Rate ADE by PSNH is
22 to mitigate migration. They have testified that it's
23 partly to reverse migration. There's no migration back
24 under today's circumstances, and the amount of the

1 benefit, as Commissioner Harrington correctly pointed out
2 today, is largely dependent on the amount of load that
3 returns. If load doesn't return, there is no benefit.
4 So, the whole premise behind this is to reverse migration.
5 Therefore, by it's very nature, it's going to have a
6 negative effect on customer choice.

7 In addition, as Attorney Rodier pointed
8 out, Default Service is the -- the restructuring act calls
9 for the discouragement of the long-term use of Default
10 Service. And, again, the thought is "Well, it's a pilot.
11 It's 36 months. Or, the customer can only remain on the
12 rate for 24 months. Therefore, there's really no
13 long-term use of Default Service."

14 However, if the long-term effects on
15 competition, permanent, irreversible effects on
16 competition are felt today, or over the time of this
17 pilot, and those suppliers don't return, what are the
18 customer's choice? The customer's choice then is
19 long-term use of Default Service.

20 In addition, it's an unnecessarily
21 complex process. As Exhibit 15 shows in the flow chart,
22 there are a variety of choices a customer has to make and
23 understand before they can determine the value of the
24 choice. Now, Section 374-F:3, III, says the customers are

1 supposed to be provided "clear price information". And,
2 PSNH claims that Rate ADE creates a new benchmark that
3 will benefit the competitive market. But it's not really
4 a benchmark if a customer doesn't know which rate it will
5 be paying, so -- or how much that rate will be. So, when
6 a customer is coming back or potentially deciding whether
7 to leave a competitive supplier for PSNH, it has to figure
8 out "was it on ADE previously? For how long? How long
9 was it on competitive supply? Is Rate ADE open? If it is
10 open, what is that rate?" If it's closed, then the
11 customer actually has to know what Rate DE is, because
12 that's where they're going first, and then understand what
13 Rate ADE will be when it reopens in the future. So,
14 there's not really a benchmark, because they won't know
15 that pricing for a very long time potentially into the
16 future.

17 And, PSNH also claims that it's the same
18 as an interim rate from a supplier. And, as was testified
19 here today, that is not true. Customers who are choosing
20 an introductory rate from a supplier will -- are not
21 required to stay out on PSNH service for some particular
22 time, required to be on a competitive supply for some
23 particular time. They know what rate they're going to be
24 charged after the introductory rate is over. They just do

1 not need to know as much information to make a decision
2 about an introductory rate. And, lastly, the
3 restructuring act, in particular Section 374-F:3, II, says
4 that "customers should be responsible for the consequences
5 of their choices."

6 However, through Rate ADE, what's
7 happening is, DE customers, who decide not to make a
8 choice, are benefiting from over recoveries from customers
9 who do make a choice, and they're paying for under
10 recoveries for those same customers. So, Rate DE
11 customers are not taking the consequence of their own
12 choice not to choose, and, to the extent ADE results in an
13 under recovery, they're paying that cost, even though they
14 chose not to go on competitive supply.

15 Thus, we ask that -- RESA asks that the
16 Commission deny PSNH's request for approval of Rate ADE,
17 not approve the Settlement Agreement that's been put
18 forth, and send PSNH back to the drawing board, to come up
19 with a alternative rate that is not counter to the
20 restructuring act principles and satisfies the
21 requirements of Order 25,230 [25,320?]. Thank you.

22 CHAIRMAN IGNATIUS: Thank you. Office
23 of Consumer Advocate.

24 MS. CHAMBERLIN: Thank you. I'm glad

1 the parties liked our witness and found him credible.
2 And, I would say that it's on the basis of his testimony
3 that the OCA entered into this Settlement Agreement.
4 Residential customers will be better off under the terms
5 of this Settlement Agreement than they would be without
6 it.

7 It is important to note that this is a
8 stopgap measure. We are not saying that this is a pure
9 policy implementation that should go on for indefinitely.
10 We have a situation where residential customers are the
11 last to migrate. That's consistent everywhere that
12 competition has been introduced. It's only recently,
13 perhaps within a year, that residential customers have had
14 any options at all. And, so, the fact that they have not
15 switched has certainly not been their choice up to this
16 point.

17 Now, all of the policy arguments that
18 have been made today assume full information, a
19 sophisticated customer, market analysis. This may be true
20 for large industrial customers, it may be true for some
21 small commercial customers; it simply is not true for
22 residential customers.

23 Residential customers have been directed
24 by law to be the source -- or, the default customers have

1 been directed by law to be the source of recovery for
2 these rather large fixed costs. That is not a policy that
3 can withstand scrutiny. It happened over time, it
4 happened through a coincidence of events, but it cannot
5 last. And, I fully expect that actions will overtake this
6 Rate ADE, that this will not be a permanent rate. This is
7 simply something to put into place, protect customers,
8 residential customers a little bit more during the
9 transition. There needs to be a final settlement of these
10 issues that is simply outside the purview of this
11 particular case.

12 There was a Rate ADE that was proposed
13 previously. The Commission had some concerns with it.
14 This proposal addresses those concerns. I would be happy
15 if this rate was very temporary, that we did other things
16 that would move the market forward. But that takes time.
17 There's regulatory lag. There's -- we have a new
18 legislature coming in, a new governor, all sorts of things
19 are going on. Whatever's going to happen is not going to
20 happen as fast as January 1, which is when this rate will
21 take effect. And, even if one customer takes it, for
22 whatever reason, that's a little bit of a benefit to the
23 residential customers, because they have not switched.

24 Now, it may, as Mr. Rodier has pointed

1 out, cause residential customers to go get a supplier,
2 because they will now suddenly have knowledge about their
3 options that they didn't have before. It's not -- it
4 doesn't unduly burden competition. It is not a purely
5 competitive rate, as has been pointed out, but it's not an
6 undue burden to protect residential customers during the
7 transition. Thank you.

8 CHAIRMAN IGNATIUS: Thank you. Ms.
9 Amidon.

10 MS. AMIDON: Thank you. Staff
11 participated in the development of the Partial Settlement
12 Agreement. And, we believe it is a just and reasonable
13 resolution of the issues it addresses, and it is in the
14 public interest. We also believe that the Commission can
15 enact this rate pursuant to the authority to approve an
16 alternate means of providing default service, under RSA
17 374-F:3, V(e).

18 As you know the one issue that we
19 disagree is the -- with the Company is the term of service
20 for the rate. Staff recommends a 12-month term of service
21 for the myriad reasons it referred to in its testimony,
22 and I won't repeat them here. I will say, though, in
23 balance, we believe that the concerns we have that support
24 the 12-month term of service outweighs any rationale

1 advanced by the Company to support a 24-month term of
2 service. And, we request that the Commission approve our
3 recommended 12-month term of service. Thank you.

4 CHAIRMAN IGNATIUS: Thank you. Mr.
5 Fossum.

6 MR. FOSSUM: Thank you. The Commission
7 itself laid the groundwork for the proposal that was
8 presented by the Partial Settlement Agreement in this
9 docket. More than a year ago, in Order 25,256, in docket
10 DE 10-160, the Commission concluded, consistent with RSA
11 374-F, that it is "reasonable that PSNH be allowed to
12 charge customers who return to its Default Service an
13 alternative Default Service rate reflecting the marginal
14 cost to serve that load." The Commission then outlined
15 various considerations that would be accounted for in that
16 rate, and directed PSNH to file tariffs and supporting
17 documentation to support that rate.

18 Consistent with the directive of the
19 Commission and its conclusion that an alternative Default
20 Service rate for returning customers is reasonable, PSNH
21 presented its initial proposal for Rate ADE. However, not
22 agreeing with the first proposal for Rate ADE, the
23 Commission did reaffirm its earlier decision to require a
24 proposed alternative default rate.

1 In response to the Commission's concern,
2 PSNH did offer redesigned Rate ADE. And, in its
3 testimony, Staff agreed that the adjustments provided by
4 -- proposed by PSNH, in fact, address the Commission's
5 concerns, and the OCA just a few months ago agreed.
6 Staff, the Company, the OCA presented a settlement of most
7 of the terms relevant to the implementation of Rate ADE,
8 in line with the revised proposal of the Commission,
9 subject to some minor amendments, and PSNH believes that
10 this Settlement presents a fair and reasonable means to
11 implement a new rate, and that the Settlement should be
12 affirmed.

13 As to the one issue outstanding under
14 the Settlement, the length of the term of service,
15 testimony presented, we believe, showed the 24-month term
16 is the more appropriate choice, because it effectively
17 balances the interests and benefiting customers remaining
18 on Rate DE, with the interest in recovering costs to
19 provide service. And, as Dr. Estomin testified, 24-month
20 term of service provides more benefits and prevents -- and
21 presents a term of service more attractive to customers.

22 The 12 months proposed by Staff, while
23 appealing, perhaps, insofar as it might sound right, is
24 simply too short to fully recognize the full benefits of

1 the rate.

2 As to the issues beyond the Settlement,
3 first, I did want to point out that there was a prior
4 motion to dismiss this filing, as contrary to various
5 provisions of RSA 374-F, RSA 369-B, and RSA 378, and the
6 Commission denied that motion. As noted in PSNH's
7 objection to that motion, this rate has been proposed
8 consistent with multiple Commission orders produced over
9 more than a year, and none of those orders have been the
10 subject of a motion for rehearing or appeal by those who
11 now seek to have the Commission discard it. The
12 Commission has consistently reaffirmed that it directed
13 PSNH to create this rate, and it should not now entertain
14 arguments, such as the one Mr. Rodier just made, that the
15 rate is unlawful on its face.

16 I'd also like to point out that the
17 adoption and implementation of the ADE is supported by the
18 restructuring law. RSA 374-F:1, as the Commission has
19 heard, states clearly that the most compelling reason to
20 restructure is to "reduce costs to customers". To the
21 extent that customers avail themselves of Rate ADE, will
22 be because they perceive it as beneficial to reducing
23 their costs. And, if customers perceive the rate is
24 beneficial and migrate to it, that migration may incent

1 other suppliers to find a way of reducing costs to their
2 customers. In this way, Rate ADE will be directly serving
3 the purpose of the law, to reduce costs.

4 Importantly, customers are not required
5 to take or remain on Rate ADE, and may depart for
6 competitive supply, just as customers do on Rate DE. And,
7 if customers believe that there is a way to reduce their
8 costs by switching suppliers, they are still free to do
9 so. In this way provides another choice to customers, as
10 anticipated by the Legislature in RSA 374-F:3, II, where
11 it noted that "allowing customers to choose among
12 electricity suppliers will help ensure fully competitive
13 and innovative markets."

14 Further, customers returning to Rate ADE
15 would be contributing to PSNH's fixed costs and providing
16 a means to spread costs over a wider base of customers,
17 plus benefiting the customers who remain on Rate DE.

18 I would also point out that RSA 374-F
19 promotes the development of default service appropriate to
20 the circumstances of each utility. Rate ADE is another
21 option for customers to examine in determining their
22 energy needs, and allows PSNH to provide a default service
23 appropriate to its particular circumstances.

24 I would also note that, in the

1 Commission's last order in this docket, it referenced
2 provisions of RSA 369-B:3, IV(b)(1) as applying here. In
3 that statute, in RSA 369-B:3, IV(b)(1)(A), it provides
4 that PSNH is to supply default service to recover on its
5 generation assets in a manner approved by the Commission,
6 and ADE does precisely that. Redesigned Rate ADE, as it
7 is in the Settlement Agreement, provides a Default Service
8 offering allowing PSNH to recover on its generation
9 assets, and does so in a manner acceptable to the
10 Commission, because it addresses the Commission's
11 concerns, as expressed in its orders and in Docket 10-160.

12 As to some of the arguments about the
13 introduction of Rate ADE being harmful to competition, I
14 point out, as did Ms. Chamberlin a few months ago, that an
15 alternative default service offering is appropriate under
16 RSA 374-F:3, V(e), if it -- yes, under (e), if it "does
17 not unduly harm the development of competitive markets",
18 and the term "unduly" is indeed a meaningful term there.
19 By offering Rate ADE, PSNH is providing another option to
20 the marketplace, based on its costs, including the
21 non-operating costs of the Scrubber.

22 No customers are compelled to take
23 service on Rate ADE. Customers remain free to leave Rate
24 ADE and return to competitive supply. There are no

1 contract binding customers to ADD -- ADE, and no penalties
2 for returning to competitive supply. In such
3 circumstances, there is simply no perceptible harm to
4 competition, and it is just another offering in the
5 marketplace, and one that customers are free not to take.

6 For these reasons, we request the
7 Commission accept and approve the Partial Settlement
8 Agreement that was filed here, and set the term of service
9 at 24 months, and permit PSNH to implement the rate as
10 soon as possible.

11 CHAIRMAN IGNATIUS: Thank you. Thank
12 you for everyone's attention in providing very succinct
13 closings. We appreciate that after a long afternoon.
14 Unless there's anything further?

15 (No verbal response)

16 CHAIRMAN IGNATIUS: Seeing nothing from
17 my colleagues and from any parties, we will take all of
18 this under advisement, and issue an order as soon as we
19 can. Thank you. We're adjourned.

20 (Whereupon the hearing ended at 4:53
21 p.m.)
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