

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DR 95-250

Retail Competition Pilot Program

Order Establishing Final Guidelines  
and Requiring Compliance Filings

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#### EXECUTIVE SUMMARY

The New Hampshire Public Utilities Commission (NHPUC) issues the following Final Guidelines (Guidelines) on the Retail Competition Pilot Program (Pilot) mandated by NH RSA 374:26-a which was enacted by the New Hampshire Legislature on June 19, 1995. The full text of the authorizing legislation is attached as Appendix A. This Report is the fourth in a series of reports beginning with Preliminary Guidelines issued October 9, 1995, followed by First Revised Guidelines issued November 20, 1995 and Second Revised Guidelines issued January 23, 1996.

As stated in the Preliminary Guidelines, the purpose of the Pilot is to create a limited experimental program to examine the implications of retail competition in the electric utility industry. The Pilot will be limited in size and duration in order to achieve the objectives of the Pilot while minimizing the potential financial impact on New Hampshire's electric utilities.

All classes of customers in all areas of the state will be eligible to be selected to participate in the Pilot, although only a small percentage of customers will actually be selected. Competitive suppliers will have access to a minimum of 3% of each electric utility's peak load, for a state-wide total of approximately 50 MW, which will be allocated proportionately among residential, commercial and industrial classes, based on the relative loads of those classes for each utility. The Pilot will commence May 28, 1996 and extend for a period of two years.

Residential and small commercial customers may participate in the Pilot either individually or as part of a "Geographic Area of Choice" (GAC). Individual customers and GACs participating in the Pilot will be selected randomly by their franchised utilities under the oversight of the NHPUC. After customers are selected, the aggregation of customer loads will be permitted to lower entry barriers for small customers.

In order to effectuate retail competition, franchised utilities will be required to file by March 15, 1996 unbundled transmission and distribution tariffs in compliance with these Guidelines as well as charges to recover reasonable incremental administrative costs and recoverable stranded costs. Franchised utilities will not be permitted to impose exit or re-entry fees on participants.

In these Guidelines the NHPUC maintains its position that

it has the legal authority under state and federal law to set the rates, terms and conditions for the provision of intrastate transmission and distribution services. The rates for intrastate transmission and distribution services will be based upon the costs currently embedded in each utility's retail rates.

Participating Pilot customers will be responsible for negotiating the purchase of power from competing suppliers. Unless the Commission orders otherwise, franchised utilities which choose to compete in the Pilot may do so by establishing affiliated power marketing companies .

The NHPUC recognizes that stranded cost recovery is the most important and complex issue facing regulators and other policymakers as they seek to introduce competition into retail electric markets. While recognizing that issues related to stranded costs dominate the debate over retail electric competition, there are many other technical and policy issues which warrant examination prior to a transition to full retail competition. We have determined that in negotiated resolution which sets the level of recovery for each utility, a fifty-fifty division of stranded costs between participating customers and investors is an equitable starting point. The NHPUC will initiate a separate proceeding in order to examine the stranded cost issue fully as it relates both to the Pilot and to restructuring generally.

The NHPUC will hold hearings on the compliance tariffs April 1-5, 1996. The Pilot will commence on May 28, 1996. The full schedule for the remainder of the proceeding is attached to these Guidelines as Appendix B.

## I. INTRODUCTION

In June 1995, the New Hampshire Legislature directed the NHPUC to establish a pilot program (Pilot) to examine the implications of retail competition in the electric industry, provided that it is found to be "fair, lawful, constitutional, consistent with RSA 378:37 and in the public good". NH RSA 374:26-a, Laws of 1995, Chapter 272, effective January 1, 1996, previously referred to as Senate Bill 168-FN-A, 12. See Appendix A.

In response to this mandate, the NHPUC issued Preliminary Guidelines on October 9, 1995, followed by First Revised Guidelines on November 20, 1995. On January 23, 1996, the NHPUC issued Second Revised Guidelines which addressed additional comments submitted by interested parties and the recommendations which emerged from an intensive series of collaborative meetings (the Collaborative) during late December 1995 and early January 1996. Hearings were held on the Second Revised Guidelines January 29, 1996. After considering all of the written comments and those offered at the recent hearings, we issue the following Final Guidelines (Guidelines) for the Pilot.

The purpose of these Guidelines is to prescribe how the Pilot will be implemented in order to accomplish the objectives set forth below. Nonetheless, the revised procedural schedule contained in Appendix B provides for a number of joint working meetings with representatives from Staff, franchised utilities and other Pilot participants to discuss technical questions raised by

these Guidelines. Franchised utilities will be required to make compliance filings on or before March 15, 1996 and we will conduct hearings on those filings April 1-5, 1996. We anticipate issuing a final order on the compliance filings on April 15, 1996 and direct utilities to commence the Pilot on May 28, 1996.

As stated in our Preliminary Guidelines and reaffirmed in the Revised Guidelines, the Pilot is not necessarily a blueprint for industry restructuring; rather, it should be viewed as an opp the implications of and obstacles to competition in retail electric markets. Accordingly, the Pilot is limited in scope, size and duration. For instance, although performance based regulation may be an effective means to regulate certain segments of the industry which remain naturally monopolistic, it is unnecessary to initiate such regulatory reforms in order to implement the Pilot.

We issue these Guidelines with the expectation that stakeholders will take advantage of the opportunity to gain first-hand knowledge of the problems associated with introducing competition into what has previously been a thoroughly regulated industry. We continue to believe that the Pilot should be implemented in a manner which enables policymakers to gather meaningful data without causing an unreasonable financial impact on the state's electric utilities. It is not our intent or purpose to have the Pilot be the battleground for recovery of stranded costs or the future shape of the electric utility industry.

For the above reason, the Pilot can not be expected to yield empirical data which will provide easy answers to all of the complex issues associated with the establishment of full retail competition in the electric industry. While some of the information which the Pilot will generate may be anecdotal in nature, the Pilot will provide an opportunity to encounter first-hand many of the realities competitive markets. As with all NHPUC orders or directives, we reserve the right to revisit the issues discussed herein and to make modifications as appropriate during the term of the Pilot.

Finally, we affirm our belief that consensus-building and cooperative approaches should play an important role in any future restructuring of New Hampshire's electric utility industry. Based upon the success of the Pilot collaborative, we believe that such an approach should play a part in resolving the many difficult and challenging issues which could delay the introduction of meaningful competition and lower rates for New Hampshire's citizens and businesses.

## II. PILOT OBJECTIVES

The Pilot's primary objective is to determine whether retail competition in the electric utility industry can promote lower retail rates for all customers without compromising the reliability and safety of the power supply system. Consistent with this view, we have developed these Guidelines in order to test certain fundamental assumptions which underlie the case for retail competition. For instance, the Pilot should provide information regarding the level of demand among different customer classes for competitively supplied electric services and the corresponding level of interest among competitive generators to supply those

services. The Pilot should also test whether customers of all classes have sufficient bto significantly benefit from a deregulated power market. Such information potentially has great value since it may enable a competitor to determine which markets are the most profitable to serve.

Likewise, we view the Pilot as an opportunity to test certain arguments advanced by those who oppose retail competition or question whether the benefits of competition will be shared by all customer classes. Additionally, the Pilot should provide information relative to the potential financial impact of retail competition on New Hampshire's electric utilities.

Finally, the Pilot will allow the parties to gain experience in a broad range of technical and administrative matters relating to competitive markets including the design and costing of unbundled electric services.

As we stated in our last Report, we have decided that the Pilot is not the appropriate forum to resolve all of the complex economic and legal issues associated with the restructuring of the electric utility industry. Nonetheless, a meaningful Pilot can not be implemented without specifying the initial level of stranded cost recovery. In Section V we define stranded costs and establish a preliminary level of recovery in order to move the Pilot forward. We will address the broad legal and policy arguments associated with the issue of stranded cost recovery for the Pilot and the transition to full competition in a separate proceeding.

### III. LEGAL ISSUES

#### A. Authority to Order Retail Wheeling

In our previous Reports in this proceeding, we set forth the statutory basis for the establishment of a retail electric competition pilot program. The authorizing legislation requires us to establish a pilot program provided that it is found to be "fair, lawful, constitutional, consistent with RSA 378:37 and in the public good". NH RSA 374:26-a. We believe that, if properly implemented by the state's franchised utilities, these Guidelines are consistent with these conditions.

In addition to the express statutory authority to establish the Pilot, we believe that the NHPUC has the existing legal authority to introduce competition into the retail electric markets within this state if we find it to be in the public good. See, NHPUC Order No. 21,683, Re Freedom Electric Company, DE 94-163 (June 6, 1995). Moreover, unlike issues related to retail transmission services, it is undisputed that the FERC has no legal authority to prevent states from ordering retail wheeling. Any disagreement with our position on this issue of state law will be resolved when the New Hampshire Supreme Court issues its decision in the Freedom Electric appeal.

#### B. Stranded Cost Recovery

In our previous Reports relative to the Pilot, we discussed the considerations which led to our preliminary conclusion that utilities should not be entitled to 100% recovery of their stranded costs in a transition to retail competition. We continue to hold this view and believe that it is legally justified and premised upon sound public policy. Nevertheless, for the reasons set forth below, our discussions in

previous Reports do not represent a final determination of this important and contentious issue.

Not surprisingly, in response to our Preliminary Guidelines relative to this issue, we received comments from stakeholders which reflected either strong opposition or abundant support for our position. Clearly, the issue of stranded cost recovery in a full transition will present significant and complex challenges for policy-makers. In light of the important interests involved in such a debate, the Pilot could be delayed indefinitely if any of the many stakeholders in this proceeding attempted to use it as the forum to set precedent for the eventual restructuring of the industry. After carefully considering our statutory mandate to establish a Pilot which examines the "implications" of retail wheeling, we have elected to reserve our final determinations relative to stranded cost recovery until the conclusion of a separate, generic restructuring proceeding. In that proceeding, we intend to fully explore the legal and policy considerations relative to stranded cost recovery and develop principles which will guide our decisions concerning industry restructuring. For those utilities that participate in the Pilot under the fifty-fifty mechanism, that proceeding will provide an opportunity for the reconciliation of stranded costs and revenues.

#### C. Jurisdiction over Intrastate Transmission

In order for Pilot customers to benefit from competition, it is necessary for competing suppliers to have equal access to transmission services in order to deliver power supplies to the distribution systems of franchised utilities. While it is clear that states have the requisite jurisdiction to regulate the rates, terms and conditions of distribution services, the jurisdictional boundaries are less clear relative to the transmission component. As noted in our previous Reports, we continue to believe that states maintain exclusive jurisdiction over the rates, terms and conditions of the intrastate transmission, distribution and sale of electric power to retail customers - whether those services are provided in bundled or unbundled form. See, NHPUC Order No. 21,850, Cabletron Systems Inc., and Johnson Controls Inc., DE 95-95 (October 3, 1995).

Although we maintain our position that we have exclusive jurisdiction over mission facilities used to provide electric service to retail customers, it is not our intent to allow participants to convert this proceeding into the forum for resolving the national debate over the respective roles of state and federal regulatory agencies. It is unclear at this time how that debate will proceed and the forum in which it will ultimately be decided, but we do not believe that it is either necessary or in the public interest to delay the Pilot until the jurisdictional lines between state and federal regulators are more clearly delineated. This approach is consistent with the one which we have adopted for stranded costs. We intend to explore alternative solutions to this problem with the FERC in order to implement the Pilot without compelling us to assert our authority in this area. We have established voluntary filing guidelines which are designed to encourage such cooperation.

#### D. Filed Rate Doctrine

Several commenters suggest that the NHPUC lacks the authority to deny utilities with FERC-approved purchase power contracts the right to full recovery of power costs shifted to non-participating customers through the application of fuel and purchase power adjustment mechanisms. According to this argument, the "filed rate doctrine" precludes the NHPUC from interfering with the application of adjustment mechanisms. We disagree.

As we stated in the First Revised Guidelines, fuel and purchased power adjustment mechanisms are designed to track variations in power costs, not to insulate utilities from the risk of financial loss resulting an inability to compete. This position is consistent with the original NHPUC policy considerations which approved fuel adjustment mechanisms. See, *In re Public Service Company of New Hampshire*, 31 N.H.P.U.C. Rep. 83 (1949). Similarly, the New Hampshire Supreme Court has observed that the "adjustment clause is a recognized device, most commonly applied to fuel costs, which shortcuts the time lag between changes in cost and the collection of compensation during periods of rapidly changing costs." *Public Service Company of New Hampshire v State of New Hampshire*, 113 N.H. 497, 502 (1973). Thus, it is clear that fuel and purchased power adjustment clauses are intended to provide utilities with an opportunity to adjust rates for fluctuations in power and not as a means to recover revenues lost as a result of fluctuations in demand. While it has been the NHPUC's practice to adjust rates for variations in supply costs and demand, we will not permit costs to be shifted from Pilot participants to non-participants.

We are setting forth our position relative to this issue for purposes of the Pilot. It should not be viewed as our final determination as to how we will treat the uneconomic costs associated with wholesale power contracts in any transition to full competition. Ases related to stranded costs, we will investigate this issue fully in the context of a separate restructuring proceeding.

E. PSNH Rate Agreement

We reiterate the our belief that the Rate Agreement entered into between PSNH and the State of New Hampshire offers PSNH no greater protection from competition than exists for the state's other electric utilities. The basis for our position is set forth in the First Revised Guidelines which we incorporate herein by reference.

F. APRA

Similarly, we continue to maintain our belief that NHEC's members may participate in the Pilot without causing NHEC to violate the APRA. As we stated in the First Revised Guidelines, nothing in the APRA prohibits NHEC's members from procuring power supplies from alternative competitive sources in order to participate in the Pilot.

IV. UNBUNDLED TRANSMISSION SERVICE

In order to introduce the beneficial forces of competitive markets into the electric utility industry, it is essential to "unbundle" retail electric services. These services consist of three main components: generation, transmission and distribution which have traditionally been provided in bundled form

by one service provider. Generation service provides customers with reliable capacity and energy from a utility's own power plants or from generating facilities owned by other utilities. Transmission is the backbone for the delivery of capacity and energy from generation sources to main load centers and most large customers. Distribution involves the delivery of capacity and energy from the transmission network to most small and medium sized customers.

By unbundling the three components of electric service, customers gain access to alternative sources of generation at market prices. Under this scenario, competing suppliers who are located in or outside of the state must utilize the networks of transmission-owning utilities in order to deliver power to the main load centers where transmission interconnects with distribution. Accordingly, the market price of power delivered to main load centers will probably include the costs of such transmission service.

A necessary condition for fair competition in electric generation markets is non-discriminatory transmission access and pricing. In simple terms, this means that all suppliers must have an equal right and opportunity to utilize the transmission network and pay the same rate to wheel power across it. In the absence of such a policy, or a failure by regulators to implement it, transmission-owning utilities would adopt restrictive transmission practices which would in fact increase the value of the bulk power market and unfairly increase the value of their excess generation resources.

In light of our intention to resolve the jurisdictional problem cooperatively, we request that our jurisdictional utilities voluntarily file retail transmission tariffs both at the FERC and the NHPUC. Such tariffs shall be non-discriminatory and shall be available to competing suppliers on the same terms and conditions which the utility extends to itself. To the extent that the FERC requires approval of those tariffs before they are made available to competing suppliers, we ask that the utilities seek the FERC's expedited approval.

#### V. STRANDED COST RECOVERY

As we stated above, we intend to investigate the issue of stranded cost recovery generically and within a separate proceeding which relates to industry restructuring. Nevertheless, as a practical matter utilities will need some guidance on this issue in order to develop unbundled rates which provide customers the necessary incentives to participate in the Pilot. Such guidance must begin with a definition of stranded costs.

##### A. Definition of Stranded Costs

Stranded costs can be calculated in several ways, some of which are more complex than others. For the purposes of the Pilot, stranded costs will be defined and calculated by projecting the difference between the revenue which a utility would have had an opportunity to collect at current rates, in the absence of the Pilot, and the revenue which the utility expects to collect during the term of the Pilot, including projected revenue from power sales at market prices and from transmission and distribution services. The assumed market prices to be used in these calculations will be

issued following our consideration of the recently filed Joint Recommendation between PSNH and the Staff. This definition means that a cost already on the books but not approved for ratemaking purposes during the term of the Pilot will not qualify as a stranded cost. In this calculation, no adjustment is made for variable cost savings associated with lost load since we assume that a franchised utility or its power marketing affiliate will continue to sell to its Pilot customers at prevailing market rates.

#### B. Stranded Cost Recovery

After estimating the magnitude of stranded costs, the next step is to set the level of recovery for the purposes of developing unbundled rates. We have determined that in the absence of a negotiated resolution which sets the level of recovery for each utility, a fifty-fifty division of stranded costs between participating customers and investors is an equitable. The participating customers' share of these costs shall be recovered via a usage-based surcharge on distribution service during the term of the Pilot.

#### C. Separate Stranded Cost Docket

As stated in the First Revised Guidelines, we expressed our intent to open a separate docket to determine on a utility-specific basis the appropriate level of stranded cost recovery. As set forth above, utilities which fail to submit or receive approval of an alternative stranded cost recovery mechanism are required to develop unbundled rates which recover 50% of their stranded costs. In order to minimize price uncertainty for participating customers, the difference, if any, between the initial 50% recovery level and the level ultimately found to be appropriate shall be shared among all customers.

#### D. Mitigation Issues

We expect significant and aggressive efforts to mitigate above market costs during the Pilot and in any transition to full competition. We recognize, however, that costs incurred by a utility in the process of mitigating strandable costs must receive different treatment. We believe the appropriate way to address such costs is on a project specific basis. Along these lines, full recovery of power costs associated with any small power producer agreements which are subject to RSA 362-A:4-b shall be contingent upon the outcome of our ongoing inquiry into those arrangements.

### VI. RATES FOR UNBUNDLED SERVICES

As noted above, in order to allow customers to benefit from the forces of competitive markets, franchised utilities must unbundle retail electric services. While some argue that unbundling should simply be the functional separation of generation from the remaining industry functions, we believe that approach would result in the loss of valuable information regarding the cost structures of jurisdictional utilities. We will require utilities to disaggregate their bundled retail services into the following minimum functions: customer service, transmission, distribution, C&LM and power supply. The power supply function should be further disaggregated into a market price component and a stranded cost component that reflects the extent to which a utility's generation resources are uneconomic. The overriding policy objectives governing this unbundling are: (i) the provision of accurate market

price signals for power supply services; (ii) nondiscriminatory transmission and distribution access and pricing; and (iii) the avoidance of cost shifting among classes or among customers within a class.

Because transmission and distribution, and to a lesser degree customer service, continue to exhibit natural monopoly characteristics, these rates should be based on cost rather than the value of those open market. We will require an embedded cost approach to pricing customer service, transmission, distribution and C&LM. Rather than update embedded costs to a recent test year, the rates for such services shall reflect the embedded costs in existing bundled retail rates. While this approach results in embedded costs of different vintages, it levels the playing field by ensuring that unbundled and bundled service customers in the same franchised area and class pay the same rates for equivalent services. Finally, while the costs embedded in existing bundled rates will be used as the basis of unbundled rates for the Pilot, utilities will be permitted to revise those rates during the life of the Pilot provided they are successful in gaining rate relief in a general base rate case.

Because the purpose of the Pilot program is to obtain information to help determine whether retail competition is in the public interest, we will require that reasonable incremental costs incurred as a result of the Pilot be recovered from all customers rather than participating customers alone.

#### VII. RESPONSIBILITIES OF PILOT CUSTOMERS

Under retail competition, customers will have increased opportunities to lower their power costs by selecting among competing power suppliers. However, commensurate with the opportunity for lower costs, customers also will assume full responsibility and risk for the consequences of their choices. For example, power may be offered as a discrete commodity without transmission and distribution deliverability, at an apparent low cost. However, under this option, customers must also secure and pay additional amounts for the delivery of that commodity over transmission and distribution systems. The aggregate cost and reliability of the delivered commodity will be the customers' responsibility.

To avoid some of the decisions and risks involved in acquiring unbundled generation, transmission, and distribution services, customers may opt to purchase generation, transmission, and distribution services as a package from a single broker, marketer or aggregator.

Under either approach, it is essential to recognize that the customer bears all financial and reliability risk. As each customer addresses the decision to secure resources from alternate suppliers, the customer must develop a strong understanding of his economic decision-making function, including an understanding of all needs, costs and risks.

Based upon these considerations, any customer selected to participate in the Pilot will be responsible for the following:

##### A. Negotiation for Supply of Electric Power

The negotiation of a competitive supply of electric power may be done directly by the customer or through an energy broker,

marketer or othricity may also be purchased from a power marketer affiliated with a franchised utility. The customer will pay for electric power at the negotiated price. The NHPUC will not set or approve that price.

B. Back-Up and Emergency Service

Because of the requirement that competitive suppliers either be NEPOOL members or contract with members for back-up bulk power service, there is no need for Pilot customers to purchase, and utilities to offer, back-up and emergency services. Those services will be bundled in firm power supplies purchased from competitive suppliers.

C. Negotiation and Payment for Delivery of Power

Pilot customers their representatives must negotiate with competitive suppliers for the delivery of electric power. Out-of-state power supplies will be transmitted to the New Hampshire border under FERC-approved transmission rates. Transmission and distribution within New Hampshire will conducted under tariffs approved by both the FERC and the NHPUC.

VIII. PILOT DESIGN

A. Size and Duration

1. Franchised utilities under our jurisdiction shall permit competitive suppliers non-discriminatory access to 3% of their 1994 peak retail load for purposes of the Pilot. This load shall be distributed among the classes in approximate proportion to the estimated peak load for each class including load served under approved special contracts.

2. Any franchised utility seeking to designate a larger percentage of load for the Pilot may make such a request in its March, 15, 1996 compliance filing.

3. In addition to the 3% of existing load, competitive suppliers will also be permitted to access the loads of new large commercial and industrial customers. New large commercial and industrial customers are customers who locate in a franchised utility's service territory on or after March 1, 1996 and who would otherwise be served under the applicable rate schedules listed in Appendix D. Large commercial and industrial customers switching from one New Hampshire service territory to another are not eligible to participate in the Pilot under the new load category.

4. The approximate existing or old load to be allocated to the Pilot for each franchised utility is as follows:

Concord Electric Company	2.75 MW
Connecticut Valley Electric Company	0.86 MW
Exeter and Hampton Electric Company	3.00 MW
Granite State Electric Company	3.75 MW
New Hampshire Electric Cooperative	5.25 MW
Public Service Company of New Hampshire	35.13 MW
Total	50.74 MW

5. The Pilot shall be implemented on May 28, 1996 and shall extend for a period of two years from the date of implementation, unless further ordered by the NHPUC.

6. At the conclusion of the Pilot, all negotiated terms and rates with competitive suppliers shall terminate.

B. Customer Selection

The following guidelines shall control how customers will

be selected to participate in the Pilot.

#### Individual Selection

1. Consistent with RSA 374:26-a, customers in all electric utility franchised areas and in all classes shall be eligible to be considered for participation in the Pilot, unless they are contractually prohibited from doing so as explained below.

2. Customers with existing contractual obligations to franchised utilities may participate in the Pilot only if by doing so they will not violate their obligations under such contracts, or if they are able to renegotiate the terms of those contracts. Those contracts fall into the category of "special contracts" and contracts associated with approved C&LM programs.

3. Individual customers who wish to participate in the Pilot must first express this interest to their franchised utility. All eligible customers should be afforded an opportunity to express such an interest before the actual participants are selected. Although we are inclined to require interested customers to submit some form of written expression of interest to their franchised utility, we are cognizant of the potentially high administrative costs associated with such a process. Accordingly, we will entertain specific proposals from each utility relative to this aspect of the selection process. We strongly encourage utilities to expeditiously submit their preferred methods for customers to apply for participation in the Pilot.

4. The selection of individual participating customers shall be conducted by each utility under the oversight of the NHPUC Staff. We will not specify how customers should be selected, although we have stated in previous Reports that the process must be fair and random. Once a sufficient number of customers has been selected to fill the requisite 3% load requirement, utilities shall be under no further obligation to select additional customers in the event that customers who are initially selected continue to take bundled service.

5. The customers of municipal electric utilities may participate in the Pilot provided that their utility provides access by developing unbundled rates. A participating municipal electric non-jurisdictional New Hampshire utility which currently provides bundled retail electric service and which voluntarily allows its customers to participate in the Pilot. If any such municipal utility elects to facilitate the participation of its customers in the Pilot, it must agree to develop non-discriminatory transmission and distribution services.

#### Group Selection

6. Approximately one half of the existing residential and small commercial customer load earmarked for the Pilot shall be eligible to participate in the Pilot through Geographic Areas of Choice (GACs). GACs are defined as groups of residential and small commercial customers within a defined geographic area.

7. GACs should be nominated by an appropriate government authority.

8. In order for a GAC to be considered for selection, there must be a written expression of interest submitted to the franchised utility which currently serves the geographic area by a date to be determined by the NHPUC. The written expression of

interest must include the following information:

- o location and geographic boundaries of proposed GAC
- o estimated aggregate load of the GAC, broken down by customer class;
- o demographic profile of the GAC;
- o number of potential participating customers by class

9. The selection of GACs shall be conducted in a random and fair manner from a pool of volunteer GACs. As with individual selection, utilities should expeditiously submit their preferred methods for GACs to apply for participation in the Pilot. The minimum number of GACs per franchised utility are as follows:

Connecticut Valley Electric	- 1
Concord & Exeter Electric	- 1
Granite State Electric	- 1
New Hampshire Electric Coop	- 2
Public Service of New Hampshire	- 4

#### C. Supplier Eligibility

1. The potential array of suppliers who are eligible to participate in the Pilot include generators, aggregators, marketers and brokers who seek to supply electricity directly or indirectly to participating customers. Such suppliers may include exempt wholesale generators, qualifying facilities, non-jurisdictional utilities, jurisdictional utility marketing affiliates and non-affiliated power marketers, all located both within and outside the State of New Hampshire.

2. Competitive suppliers must obtain NEPOOL membership or contract with a NEPOOL member in order to participate in the Pilot. This requirement will ensure that competitive suppliers with firm load obligations have adequate power supply resources to meet both their firm load and their apportioned share of the NEPOOL required reserves. This requirement will also ensure suppliers will gain access to NEPOOL scheduled and unscheduled outage service.

3. Competitive suppliers are eligible to participate in the Pilot only after registering with the NHPUC. Such suppliers must include the following information in their registration:

- (a) Name, business organization, principal place of business, and registered New Hampshire agent;
- (b) Evidence of eligibility to conduct business in New Hampshire;
- (c) Evidence that supplier has obtained NEPOOL membership or has contracted with a NEPOOL member for back-up power supply service.

Only after receiving confirmation of the receipt of such information from the NHPUC may competing suppliers transact to sell power to participating customers.

#### D. Load Aggregation

1. Pilot participants shall be allowed to aggregate their loads only for the purpose of negotiating the purchase of power from competitive suppliers.

2. Given its unique circumstances, we will allow NHEC's management to perform the role of a load aggregator/supply negotiator on behalf of member participants who request this service.

E. Usage and Other Customer Data

To develop winning marketing strategies, competing suppliers must obtain good information about the needs and usage patterns of customers. The following guidelines will govern the release by franchised utilities of customer-specific load and usage data to competitive suppliers.

1. Authorization must be obtained before customer-specific load and usage data is made available to competitors. The nature of the required authorization will differ depending upon the selection process used.

- o Random individual selection - Authorization to release load and usage data is assumed to be given when a customer is selected to participate in the Pilot unless the customer indicates otherwise in writing to its franchised utility. In that instance, the customer's name and address will be released to competitive suppliers but only the participant will receive his or her usage data.

- o GAC selection - Authorization is automatically given to release the names and addresses of customers located within the boundaries of a chosen GAC. The availability of all other information shall be subject to customer explicit authorization.

2. Customer-specific load and usage data released by a franchised utility shall include:

- (i) Customer's name, billing address, and location (if different).
- (ii) The customer's kWh and kW (if applicable) consumption history which is readily available on the franchised utility's computer system.
- (iii) Load management or other equipment (if any) installed at customer's location.

3. Data for a prescribed area may be obtained from the franchised utility upon request. Such data may include:

- (i) Number of customers by class.
- (ii) Typical load shapes.
- (iii) Approximate kWh sales and kW load.

4. The incremental cost of producing and communicating customer specific or area specific data may be recovered from competitive suppliers through NHPUC approved charges.

F. Metering

1. In order to avoid the expense of installing hourly recording meters for the Pilot we will allow participating customers to utilize currently installed equipment. Bills for transmission, distribution and power supply services should be calculated based on monthly metering data.

2. Franchised utilities will be required to estimate the hourly loads of Pilot customers using load profiles for the relevant customer class, and shall make this information available to competing suppliers. A description of how one utility currently proposes to use load profiles to estimate hourly loads is contained for informational purposes in Appendix E.

3. Franchised utilities will be responsible for meter

reading and transferring data expeditiously to competitive power suppliers.

4. Franchised utilities may levy separate NHPUC approved charges to recover reasonable incremental metering and data transfer costs not provided for in unbundled rates.

5. Franchised utilities may separately bill a competitive supplier for additional metering and communications expenses associated with the use of more sophisticated metering equipment requested by supplier.

6. Although we are not requiring the installation of hourly metering as a condition for participation in the Pilot, in order to assess the accuracy of load estimates, we direct the franchised utilities to cooperate in a collective effort to install the necessary metering and communications equipment to provide statistically valid hourly load data.

#### G. Billing

1. Competitive se option to bill separately for power supply services.

2. Franchised utilities may provide billing services to competitive suppliers if they so desire. If a franchised utility provides billing services to an affiliate power marketer, it must also offer the same or comparable services to non-affiliated competitive suppliers.

3. If a franchised utility provides billing services, the charge for such services shall not exceed the incremental costs incurred.

4. Any bill submitted to a Pilot participant shall include the supplier's name, phone number, and business address.

#### H. Ancillary Services

Ancillary services are services which may or may not be necessary for the reliable and safe delivery of power from competing suppliers, including but not limited to, voltage control, operating reserves, and power factor adjustment.

1. Because of the requirement that competitive suppliers must be members of or contract with members of NEPOOL, generation-related ancillary services such as voltage and frequency control and operating reserves will be supplied at the bulk power level and the costs recovered through power supply prices. Consequently, we will not require franchised utilities to offer unbundled generation-related ancillary services.

2. To the extent that there are ancillary services related to the transmission and distribution functions, these services will continue to be provided in a bundled form by the operators of the transmission and distribution systems.

3. Unbundled charges for generation, transmission or distribution related ancillary charges will not be permitted during the term of the Pilot unless already provided under generally available tariffs.

#### I. Responsibilities of Pilot Customers and Franchised Utilities

1. It shall be the responsibility of Pilot customers to negotiate with competing suppliers and other service providers. A franchised utility shall not interfere with the negotiations between Pilot customers and competing suppliers, but it shall be

permitted to compete in the Pilot on the condition that it establish an affiliate company for that purpose. Although this requirement will ensure that appropriate inter-affiliate pricing arrangements are instituted for the sale of goods and services by jurisdictional utilities, we recognize that it does nothing to curb possible anti-competitive abuses by non-jurisdictional utilities. We anticiregulators, both state and federal, will exercise their authority to prevent market abuses. That limitation notwithstanding, the requirement is consistent with our position that franchised utilities must aggressively mitigate their stranded costs since revenues received from the sale of utility goods and services can be applied against such costs. The guidelines governing the pricing of inter-affiliate transactions are detailed in Section VIII(L) of these Guidelines.

#### J. Rates and Charges

1. A utility shall not impose an exit fee on Pilot customers and shall not impose a re-entry fee when those customers return either during or at the termination of the Pilot. Reasonable incremental costs, approved by the NHPUC, which are directly related to serving Pilot customers may be recovered from participants.

2. Rates for unbundled services, calculated in accordance with Section VI of these Guidelines, shall be submitted for NHPUC approval. Workpapers shall be presented identifying by account number the embedded costs allocated to each service for each customer class and the corresponding billing determinants used in the development of rates.

3. While transmission and distribution charges shall be based on individual rather than aggregated customer loads, such charges may be collectively billed to an agent authorized to act on behalf of an aggregated group of customers.

4. A utility shall be entitled to levy a surcharge on all customers to recover reasonable administrative costs, approved by the NHPUC, associated with the establishment and implementation of the Pilot.

5. To the extent that a utility believes that it will incur stranded costs as a result of the Pilot, it may seek recovery of those costs consistent with Section V of these Guidelines. That is, prior to the implementation of the Pilot, the utility shall estimate for each rate class its projected stranded costs and, based on those estimates, develop usage-based, stranded cost charges that recover from participating customers 50% of those costs. The assumed market prices to be used in the calculation of stranded costs will be issued following our consideration of the recently filed Joint Recommendation and Staff.

6. Franchised utilities offering billing services in accordance with Section VIII(G) of these Guidelines shall submit for approval applicable rates and terms and conditions.

#### K. Customer Protection

1. Existing rules designed to protect customers who receive bundled electric services shall continue to apply, where appropriate, to unbundled transmission and distribution services offered by franchised utilit. Existing rules relating to the winter termination of

certain residential customers shall be applied to all competitive suppliers in the Pilot.

3. The resources of the NHPUC will be available to resolve disputes between customers, utilities and competitive suppliers.

L. Pricing of Inter-affiliate Transactions

We are indifferent as to the effect affiliated agreements have on utility affiliates. Our interest and concern extends only to the effect these agreements have on franchised utilities and their customers. The most common approaches to pricing affiliate transactions are: (a) transfer at cost where cost is defined to include an allowance for a return on capital; (b) transfer at the market rate; and (c) a multiple of cost. All these approaches recognize that affiliates, whether regulated or non-regulated, must conduct their affairs in a businesslike manner and should have an opportunity to earn a fair profit for services provided.

This basic business principle must be reflected in the pricing of any inter-affiliate transaction. Transactions which take place at out of pocket cost violate this principle. Transactions at out-of-pocket cost may be adequate for transactions between divisions or cost centers of the same company but not between independent companies supposedly engaged in arms length negotiations.

We will require that the pricing of inter-affiliate transactions be free of all subsidies. Goods and services traded in competitive markets, such as power supply, will be priced at fair market value. For goods and services purchased from the franchised utility or an affiliated service company, such as internal accounting, preparation of records, financial services, data processing, legal advice, and wages and salaries of employees assigned to Pilot activities, prices shall be set on a cost plus basis including administrative and general overhead.

In order to verify compliance with this guideline, franchised utilities shall file pursuant to RSA 366:3 affiliate agreements which specify in detail the goods and services to be provided and the related pricing provisions. Such agreements shall be submitted no later than March 15, 1996.

IX. MONITORING AND EVALUATION

1. The NHPUC will monitor the progress of the Pilot and evaluate the development of competitive retail electric markets.

2. In connection with this monitoring process, franchised utilities, competing suppliers and Pilot customers shall make certain information available to the NHPUC. Such information, which we detail below, shall have confidential treatment as appropriate under RSA 91-A, New Hampshire's Right to Know Law.

3. Franchised utilities shall report by class the number of customers and customer groups that request to participate in the Pilot. The names and addresses of customers actually selected, including those within participating GACs, shall be provided to the NHPUC no later than May 1, 1996.

4. Franchised utilities shall record all expenses which relate to the Pilot in separate accounts and shall submit monthly reports to the NHPUC which itemize these expenses. These reports shall also include by class the number of participating customers,

monthly kWh and kW sales and associated unbundled revenue based on approved tariffs. Additional revenue related to the provision of metering, billing or data processing services, to recover approved administrative costs, or for goods and services sold to power marketing affiliates shall be separately identified.

5. Franchised utilities subject to the NHPUC's fifty-fifty stranded cost sharing mechanism shall calculate actual net lost revenues by class and submit monthly reports summarizing that information.

6. Competitive power suppliers, including power marketing affiliates, shall file quarterly reports detailing by customer account number the prices and quantities associated with each transaction. To the extent that a customer makes more than one power purchase during a reporting period, the price and quantity data for that customer shall be provided on an average or aggregate basis. In addition, in order to verify the reasonableness of inter-affiliate power supply transactions, franchised utilities shall file each month a quantity-weighted average wholesale price for short-term sales and purchases. Short-term transactions are defined as a month or less in duration.

7. We will also require franchised utilities to analyze the customer load data from the sample of participants fitted with hourly recording meters and report their findings in semi-annual reports.

8. Information about competitive power suppliers will be publicly available through the Pilot registration process.

#### X. COMPLIANCE FILINGS

1. Pursuant to these Guidelines, franchised utilities shall file compliance tariffs incorporating unbundled rates and general terms and conditions for customer, distribution and transmission services. The compliance filings must also specify or contain the following:

- (a) workpapers supporting 3% retail load requirement;
- (b) breakdown of 3% retail load requirement by rate class and by individual/GAC participation;
- (c) adjustments to fuel and purchase power adjustment mechanisms to ensure non-participating customers burdened with un-recovered power costs;
- (d) workpapers supporting unbundled rates;
- (e) method of estimating hourly loads for NEPOOL billing purposes;
- (f) time period to transfer metering data to competitive suppliers;
- (g) miscellaneous charges and associated workpapers relating to billing, data processing and transfer, and administrative services;
- (h) pricing arrangements for power and non-power related goods and services transacted between franchised utilities and affiliated companies;
- (i) plans to install hourly load meters for state-wide sample.

Based upon the foregoing, it is hereby  
ORDERED, that the foregoing Final Guidelines are

APPROVED;

FURTHER ORDERED, that all New Hampshire electric utilities shall implement a retail electric pilot program consistent with these Final Guidelines unless alternative proposals are approved by this Commission; and it is

FURTHER ORDERED, that all New Hampshire electric utilities shall file compliance tariffs and all other information described in Section X on or before March 15, 1996; and it is

FURTHER ORDERED, that for the purposes of making the above-described compliance filings, Granite State, CVEC and PSNH shall file tariffs consistent with their recommended unbundled rates pending our consideration of the Joint Recommendation filed by PSNH.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 1996.

Douglas L. Patch  
Chairman

Bruce B. Ellsworth  
Commissioner

Susan S. Geiger  
Commissioner

Attested by:

Claire D. DiCicco  
Assistant Secretary

#### APPENDIX A

New Hampshire Revised Statutes Annotated (RSA) 374:26-a, mandating creation of a pilot program, provides as follows:

374:26-a Retail Competition Pilot Program. The commission shall establish a pilot program, under such terms and conditions as the commission shall deem appropriate, for the purpose of determining the implications of retail competition in the electric industry, provided that the commission determines that such program is fair, lawful, constitutional, consistent with RSA 378:37 and in the public good. This pilot program shall be open to all franchised areas and to all classes of customers.

APPENDIX B  
Procedural Schedule for  
Implementing Final Guidelines

Final Guidelines  
Compliance Filings

February 28, 1996  
March 15, 1996

Technical Sessions  
Hearings on Pilot Implementation  
Final Commission Report  
Pilot Commencement

March 18-29, 1996  
April 1-5, 1996  
April 15, 1996  
May 28, 1996

#### APPENDIX C

The following organizations submitted written comments on the Preliminary and Revised Guidelines:

Associated Power Services Inc., Business and Industry Association of New Hampshire, Cabletron Systems Inc., Central Illinois Light Company, Connecticut Valley Electric Company, Conservation Law Foundation, Office of Consumer Advocate, City of Dover, EnerDev, Inc., The Flatley Company, Freedom Energy Company, Funspot, Granite State Electric Company, Granite State Hydropower Association, Great Bay Power Corporation, KCS Power Marketing, Inc., Rep. Jeffrey C. MacGillivray, City of Manchester, New England Cogeneration Association, New Hampshire Charitable Foundation, New Hampshire Community Action Program, New Hampshire Department of Environmental Services, New Hampshire Electric Cooperative, Inc., New Hampshire Energy Management, Public Service Company of New Hampshire, George E. Sansoucy, Save Our Homes Organization, Suncook Energy Corporation, Sweetheart Cup Company Inc., UNITIL System Companies, UtiliCorp United Inc., Wheeled Electric Power Company, and Certain Wood-Fired Qfs. In addition, several residential customers filed comments.

#### APPENDIX D

New Load Criteria

al and industrial customers who locate in a franchised utility's service territory on or after March 1, 1996 and who would otherwise be served under the following rate schedules may participate in the Pilot.

Concord Electric Company - G1, G2, G4, QRWH and Off-Peak WH  
Connecticut Valley Electric - GV, and G-T  
Exeter & Hampton Electric - G1, G2, G4, QRWH and Off-Peak WH  
Granite State Electric - G1, T and V  
New Hampshire Electric Coop - G, PG, PGI  
Public Service of New Hampshire - GV, LG

#### APPENDIX E

Determination Of Hourly Loads For  
NEPOOL Billing

In the event that hourly recording meters are uneconomic or cannot be installed prior to the initiation of the Pilot, existing meters may be utilized and the hourly loads calculated in the following manner:

Supplier shall be required to include the load at each account it serves, including losses, in its own-load dispatch at NEPOOL. The reporting of loads for own-load dispatch purposes will be accomplished by the following:

- 1) Each account will be assigned to a customer class. A customer class would consist of a group of customers with similar load shape characteristics.
- 2) Each customer class will have an assigned load profile which is based on historical load profile data for customers in the class. For the Pilot, this load profile will be approved for its accuracy by the NHPUC.

The load profile for each class shall consist of 24 separate profiles which represent average hourly load profiles for typical day types of the week for each month of the year (e.g, average weekdays in March).

3) Each account will be assigned a Usage Factor which represents the relative usage of the account versus the customer class. The Usage Factor would equal the quotient of (i) the actual total energy consumption of the account for the previous twelve months, expressed in kilowatt-hours divided by (ii) the total energy from the load profile for the customer class for a twelve month period, expressed in kilowatt-hours. For example, if a Non-Electric Heat Residential account had actual usage of 5,986 kWh for the past twelve months and the load profile for the class shows an average twelve month usage of 6,000 kWh, then the Usage Factor for this account would equal 0.998.

4) Each day the distribution utility (Disco) shall read the meter at the Transmission Delivery the hourly loads (TDPL). These loads will then be divided between each supplier based on the customers they serve to determine own-load responsibilities at NEPOOL.

5) For customers with direct access metering equipment, Disco shall remotely access the meter for each account once per day and read the hourly load data for the previous day (Monday's load will be accessed on Tuesday, Tuesday's load will be accessed on Wednesday, Wednesday's load will be accessed on Thursday, Thursday's load will be accessed on Friday, and loads for Friday, Saturday and Sunday will be accessed on Monday);

The adjusted load value at the Transmission Delivery Point shall equal the product of: (i) the demand at the meter as measured in kilowatts; and (ii) the Metering Voltage Adjustment Factor expressed as a decimal; and (iii) the Distribution Loss Factor expressed as a decimal.

The Metering Voltage Adjustment Factor shall equal 1.00 if meter is located on the secondary side of customer's transformer and shall equal 0.99 if meter is located on the primary side of the Customer's transformer.

6) Disco shall determine the total load allocated to each supplier at the Transmission Delivery Point from direct access meters.

$$\text{DAMLs} = \sum_{c=1}^n \text{DAMRs}_c * (1 + \text{Distr. Loss Factor}) * (1 + \text{Meter Adj. Factor})$$

Where DAML means Direct Access Meter Load and DAMR means Direct Access Meter Reading.

7) Disco shall determine the total load at the Transmission Delivery Point from all suppliers from direct access meters.

$$\text{DAML} = \sum_{s=1}^n \text{DAMLs}$$

8) Disco shall determine the total load at the Transmission Deliver Point which is to be allocated to non-direct metered loads (NDAML).

$$\text{NDAML} = \text{TDPL} - \text{DAML}$$

9) Disco shall determine the initial total load at the Transmission Delivery Point which is allocated to each supplier from non-direct access meter loads.

$$\text{INDAMLs} = \sum_{k=1}^n \text{Ns}_k * \text{LPk} * (1 + \text{Distr. Loss Factor})$$

