

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Alternative Default Energy Service Rate
Docket No. DE 11-216

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO PNE
ENERGY SUPPLY, LLC'S MOTION FOR REHEARING OF ORDER NO. 25,488**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07(f) and RSA chapter 541, Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the "PNE Motion for Rehearing of Order No. 25,488" (the "Motion") filed on May 7, 2013 in the above docket by PNE Energy Supply, LLC ("PNE") with the New Hampshire Public Utilities Commission ("Commission"). In support of its objection PSNH states as follows:

1. On April 8, 2013 the Commission issued Order No. 25,488 approving a settlement agreement between Commission Staff ("Staff"), the Office of Consumer Advocate ("OCA") and PSNH, regarding PSNH's proposal to implement an alternative default energy service rate, Rate ADE. That settlement agreement provided that PSNH would implement Rate ADE as a pilot program for a period of 36 months beginning upon implementation of the rate. Upon implementation, a customer who has received service from a competitive supplier for at least 12 consecutive months would return to default service with PSNH under Rate ADE, rather than standard default service under Rate DE. The price of Rate ADE would be based upon PSNH's marginal cost plus an "adder" equal to the non-operating costs of the scrubber in service at Merrimack Station. The price of Rate ADE could be greater or less than the price of Rate DE depending upon the prevailing market prices and would be set semi-annually following Commission approval

of the price. In addition, if market prices rose by an amount defined in the settlement agreement, Rate ADE would close to new customers until the market changed or the Commission set a new price.

2. On May 7, 2013, PNE filed the Motion contending that Order No. 25,488 ignores: (1) the plain meaning of RSA 374-F:2, I-a; (2) the plain meaning of RSA 369-B:3, IV (b)(1)(A); and (3) the plain meaning of RSA 125-O:18. The Motion raises no new arguments or evidence, reargues issues the Commission has already considered and rejected, and should be denied.
3. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.
4. As to the first issue, PNE contends that:

PSNH erroneously believes that Rate AD [*sic*] is for any customer who, for whatever reason, elects not to have a competitive supplier supply their energy. PSNH interprets RSA 374-F:2, I-a as if it reads that default service is available to any customer that does not choose an electricity supplier. This is inconsistent with the plain meaning of RSA 374-F:2, I-a as it was enacted by the Legislature.

Motion at 2. This identical argument was raised in the underlying proceeding and, as such, the Motion only reasserts prior arguments — arguments which have been rejected by

the Commission. In the May 4, 2012 Motion to Dismiss¹ in this docket it was contended that “The express purpose behind Rate ADE, according to PSNH’s cover letter, is to lure customers away from their existing supplier to a more attractive option, namely, default service. Accordingly, implementation of redesigned Rate ADE would be prohibited by the plain language of RSA 362-F:2, I-a.”² May 4, 2012 Motion to Dismiss at 2. The Commission denied this argument in Order No. 25,372, though it found that certain factual matters remained to be developed. When those factual matters were developed, the Commission approved Rate ADE as consistent with RSA Chapter 374-F. *See* Order No. 25,488 at 17-18. PNE is simply attempting to raise the same argument again.

5. Moreover, PNE’s own witness refuted this argument during testimony in the docket.

During the hearing Mr. Fromuth testified as follows:

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

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

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

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

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

A. Yes. There are all sorts of reasons.

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

A. It could very well be that, yes.

¹ The May 4, 2012 Motion to Dismiss was filed by Freedom Logistics, LLC d/b/a Freedom Energy Logistics (“Freedom”), rather than PNE. At the November 26, 2012 hearing on this case, however, August Fromuth, who is both the managing director of Freedom and CEO of PNE, testified that Freedom’s and PNE’s positions on the issues in this docket were the same. *See* November 26, 2012 Transcript (Nov. Tr.) in Docket DE 11-216 at 96-97. Accordingly, not only has this argument been raised previously in this docket, it has been raised, for all intents and purposes, by the same party.

² The May 4, 2012 Motion to Dismiss references RSA 362-F:2, I-a. However, the remainder of that section of the motion is devoted to a discussion of RSA 374-F:2, I-a. PSNH believes the proper reference should be to RSA 374-F:2, I-a.

Nov. Tr. at 105-06 (emphasis added). Thus, not only has the Commission rejected PNE's argument, PNE too has agreed that a customer could be without a supplier, and thus take default service, for essentially any reason – including that a customer chooses not to have a supplier. Accordingly, the foundation of PNE's argument – PSNH's alleged "erroneous" reading of RSA 374-F:2, I-a – has been spurned by PNE's own witness. The Commission should reject outright any attempt by PNE to reargue the issue, particularly in light of the fact that its witness has offered sworn testimony to the contrary.

6. Regarding the second issue, PNE contends that "PSNH's proposed calculation of Rate ADE admittedly does not include any costs for marketing or outreach programs, or costs for administration, promotional materials, marketing, sales and customer service.

Therefore, PSNH cannot credibly claim that Rate ADE is based upon 'actual costs.'"

Motion for Rehearing at 3. As with the above issue, this issue has already been raised and rejected. As with the argument under RSA chapter 374-F, this argument was raised in the May 4, 2012 motion to dismiss, *see* May 4, 2012 Motion to Dismiss at 3, and was rejected in Order No. 25,372. PNE raised the argument again during the hearing in this matter, and the Commission again rejected it in Order No. 25,488. *See* Order No. 25,488 at 13, 16-17. PNE raises no new evidence, nor does it point to any matters the Commission overlooked or mistakenly conceived, but only seeks a different result upon raising this argument a third time. Rehearing is not justified.

7. Finally, PNE contends that "Because the calculation of Rate ADE does not include operating as well as non-operating costs of the Scrubber, it does not comply with the plain meaning of RSA 125-O:18 and it is therefore unlawful." Motion for Rehearing at

4. As with the other arguments PNE raises, this too was argued to and rejected by the

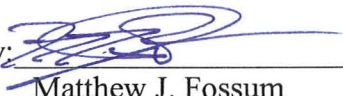
Commission. In Mr. Fromuth's pre-filed testimony it states "Therefore, since the calculation of Rate ADE does not include operating as well as no-operating [*sic*] costs of the Scrubber, it does not comply with the mandate of RSA 125-O:18." August 27, 2012 Pre-Filed Testimony of August Fromuth at 4. The argument made in testimony is a nearly verbatim argument to the one made in the instant motion. Nonetheless, the Commission concluded that Rate ADE should be implemented. PNE points to no new information or evidence justifying rehearing, but only raises the same argument in search of a different result. Such arguments do not support a motion for rehearing.

WHEREFORE, PSNH respectfully requests that the Commission deny PNE's Motion for Rehearing of Order No. 25,488, and order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire


5/8/13
Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

5/8/13
Date


Matthew J. Fossum