

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 12-093

PNE ENERGY SUPPLY, LLC D/B/A POWER NEW ENGLAND

**Petition for Modification to Certain Tariff Terms of
Public Service Company of New Hampshire**

Order Granting Motion to Dismiss

ORDER NO. 25,405

August 31, 2012

I. PROCEDURAL HISTORY

On April 13, 2012, PNE Energy Supply, LLC d/b/a Power New England (PNE) filed a petition requesting an order requiring Public Service Company of New Hampshire (PSNH) to modify a tariff identified as Electricity Delivery Service Tariff-NHPUC No. 8, Original pages 31-40, Terms and Conditions for Energy Service Providers (Tariff). PNE requested that the Commission eliminate three charges in the Tariff: 1) the selection charge (Tariff at page 32); 2) the billing and payment service charge (Tariff at page 35); and 3) the collection charge (Tariff at page 36). PNE did not file supporting testimony with the petition. The provisions of the Tariff are as follows:¹

Selection Charge. “The Company will be entitled to make a Selection Charge for any changes initiated by a Customer, Supplier, or authorized agent to a different Supplier or to Default Service or Self-Supply Service. For customers who are currently taking Supplier Service, Default Service or Self-Supply Service, the Selection Charge will be assessed to the new Supplier at the time the Company receives an enrollment transaction from the new Supplier. For Customers who are currently taking Supplier Service, the Selection Charge will be assessed to the existing Supplier at the time the Company receives a drop transaction from the existing Supplier. The Selection Charge will be assessed to the Customer if the Customer terminates Self-Supply Service and receives

¹ PNE’s petition identified the charges but, in some cases, did not include the entire text of the tariff provisions. For ease of reference, this section details the entire referenced tariff provisions as included in PSNH’s tariff.

Default Service or initiates Self-Supply Service when receiving Default Service or Supplier Service.” [\$5.00 per request]

Billing and Payment Service Charge. The Company will provide Billing and Payment Service as an option to Suppliers who have entered into a written agreement for Billing and Payment Service with the Company for a minimum of one year. The monthly Billing and Payment Service Charge, listed below, is for billing arrangements which can be accommodated by the Company’s billing systems without significant programming changes.” [\$0.50 per bill rendered, \$100.00 per month minimum charge]

Collection Services Charge. “The Company will provide Collection Services in conjunction with Billing and Payment Service for suppliers who have entered into a written agreement for such service with the Company for a minimum of one year. The Collection Services provided to Suppliers may be similar to collection activities employed by the Company for its own active and inactive delinquent accounts, except that such collection activities shall not include disconnection of service. Collection Services shall be billed monthly at the following rate:” [0.252% of total monthly receivable dollars]

According to PNE, the selection, billing and payment service, and collection charges contained in PSNH’s Tariff are “completely out-of-line with the comparable charges assessed by other New England utilities, including PSNH affiliates in Massachusetts.” PNE claimed that “no other utility in New England” charges for selection, billing and payment or collection services. PNE said that it proposed elimination of the charges “in an effort to ensure that all of PSNH’s small customers benefit from retail electricity competition.” PNE further stated that “[t]he modifications are simply intended to begin the process of bringing PSNH into line with other New England utilities, most notably PSNH 's affiliates in Massachusetts and Connecticut.”

PSNH filed a motion to dismiss PNE’s petition on April 20, 2012. In is motion to dismiss, PSNH claimed that the petition was both procedurally and substantively deficient. PSNH said that the petition provides no basis for its requested relief other than the unsupported assertion that the identified charges are out-of-line with comparable charges of other New England utilities and does not comply with Commission rules. PSNH referenced N.H. Code Admin. Rules Puc 203.06 (c) which states that all petitions seeking a rate adjustment shall be

accompanied by pre-filed testimony and exhibits. According to PSNH, because the petition seeks a change in PSNH's existing tariffed rates, PNE should have filed testimony in support of the assertion that the established rates were unjust and unreasonable. Further, PSNH said that while the petition claimed that no other utility in New England charged fees to competitive suppliers for the billing and other services, the Maine Public Utilities Commission has approved rules that allow distribution utilities to charge a competitive supplier for the utility's "incremental cost of providing basic bill issuance, bill calculation and collections. . .", citing Code Me. R. 65 407 322 Sec. 3 (2002).

In addition, PSNH stated that the charges at issue were approved by the Commission prior to being included in PSNH's Tariff. (See, Order No. 23,443 (April 19, 2000) 85 NH PUC 154, Docket DE 99-099, *Public Service Company of New Hampshire Proposed Restructuring Settlement*.) In Order No. 23,443, the Commission reviewed PSNH's proposed "Terms and Conditions for Energy Service Suppliers" to address the dealings between the Company and suppliers, including the billing and payment service, the collection service and the customer change of supplier (now called the "selection service"). In approving the new terms, the Commission stated that because "these are new services that will impose additional costs on the Company, they are proper for recovery from suppliers taking the services." 85 NH PUC 154 at 273. PSNH stated that the petition provides no evidence that PSNH no longer bears additional costs for the services at issue, and that requiring PSNH to provide the services without charge does not meet the statutory requirement of RSA 378:7 that services be priced at a just and reasonable level. PSNH claimed that the elimination of the charges would result in a subsidy from PSNH to competitive suppliers that would lower the suppliers' costs of doing business, and unfairly shift those costs to PSNH and its customers who do not take competitive supply,

contrary to restructuring statute's principle that "[c]osts should not be shifted unfairly among customers." RSA 374-F:3, VI

Finally, PSNH argued that the petition asked the Commission to engage in "single-issue ratemaking" which is disfavored by the Commission, citing *Connecticut Valley Elec. Company*, 86 NH PUC 947 (2001) and *Statewide Low-Income Electric Assistance Program*, 87 NH PUC 349 (2002). By focusing on select aspects of PSNH's Tariff, PSNH asserted that the petition ignores the fact that those charges were approved as part of an overall ratemaking process where revenues from those services were considered in light of the Company's overall revenue requirement. PSNH insisted that the Commission could not eliminate the revenues associated with the selection, billing and payment and collection charges without upsetting the overall revenue requirement, and requested that the Commission dismiss the petition.

On April 24, 2012, PNE filed a motion to strike PSNH's motion to dismiss on the grounds that PSNH had not been granted intervenor status in the docket. PNE stated that only a party to a proceeding may file a motion with the Commission pursuant to N.H. Code Admin. Rules Puc 203.07(a). A footnote in PNE's motion to strike stated that Puc 203.06(c) regarding the inclusion of pre-filed testimony and exhibits in a petition seeking a rate adjustment only applies to "utilities".

PSNH objected to the motion to strike on May 1, 2012. PSNH repeated its assertion that the petition was both procedurally and substantively deficient because PNE failed to comply with the requirements of Puc 203.06(c). Regarding the argument that PSNH lacked standing to file a motion, PSNH stated that PNE's petition seeks to decrease the revenues received by PSNH and thus affects the legal rights, duties or privileges of PSNH, thereby entitling PSNH to

intervenor status. PSNH reiterated its request that the Commission grant PSNH's motion to dismiss PNE's petition.

On May 7, 2012, PNE filed a letter in response to PSNH's objection to PNE's motion to strike. PNE's letter focused on PSNH's assertion that PNE should have filed testimony and exhibits with its petition because the petition requested a rate adjustment. According to PNE, the term "rate adjustment" is not defined. In addition, PNE said that the "essence" of its petition was that the Commission examine and determine whether certain of PSNH's charges to energy suppliers are appropriate and reasonable. PNE said that if the Commission determines that PNE's petition is seeking a rate adjustment, PNE would file an amended petition requesting that the Commission examine whether PSNH's charges for services provided to energy suppliers are appropriate and reasonable.

On August 24, 2012, PSNH filed a "combined Motion to Dismiss; Motion to Rescind Intervenor Status; Motion to Compel; Motion to Strike; and Motion to Stay" affecting both the instant docket and DE 12-097. PNE filed objections on August 29, 2012. The Commission will address those motions in a separate order.

II. COMMISSION ANALYSIS

We will first address PNE's motion to strike PSNH's motion to dismiss on the basis that PSNH is not party to the proceeding. As PSNH points out, the PNE petition directly affects PSNH's revenues. It is clear the Commission would grant intervention status to PSNH in connection with this petition, because PSNH qualifies as an intervenor pursuant to RSA 541-A:32, and its participation in the docket would be necessary for the orderly conduct of the proceeding. To grant the Motion to Strike on technical grounds, knowing that after intervention

were granted, PSNH would renew its motion to dismiss, is not an efficient use of the Commission's or the parties' time. Accordingly, the motion to strike is denied.

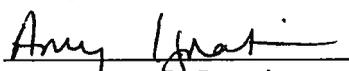
We next address PSNH's motion to dismiss. At the outset, we note that PSNH characterized PNE's petition to eliminate supplier charges as single-issue ratemaking which is disfavored by the Commission. While we agree that single-issue ratemaking is not a preferred mechanism to adjust rates, we will not dismiss PNE's petition on that basis alone. Having reviewed the petition and the responsive filings, we have determined that PNE's request that the Commission eliminate certain charges for services that PSNH provides to competitive electricity suppliers is a request for a rate adjustment. Pursuant to Puc 203.06(c), a petition for rate adjustment "shall be filed in compliance with Puc 1600 if applicable and shall be accompanied by pre-filed testimony and exhibits." (emphasis added). The rule imposes two separate requirements—compliance with Part Puc 1600, which applies to utilities, and the filing of pre-filed testimony and exhibits. That fact that PNE is not a utility does not exempt it from the requirement that a petition requesting a rate adjustment be accompanied by pre-filed testimony and exhibits. PNE's petition fails to comply with this requirement, and on that basis we grant PSNH's motion to dismiss and direct that this docket be closed. In the event that PNE seeks to file a new petition requesting that the Commission review the reasonableness and appropriateness of PSNH's approved charges for selection, billing and payment and collection services to competitive electric suppliers, PNE shall comply with the requirements of Puc 203.06(c) and provide pre-filed testimony and exhibits with its filing.

Based upon the foregoing, it is hereby

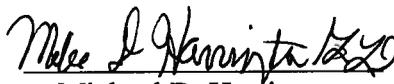
ORDERED, the Motion to Strike filed by PNE Energy Supply, LLC d/b/a Power New England is hereby DENIED; and it is

FURTHER ORDERED, that the Motion to Dismiss filed by Public Service Company of New Hampshire is hereby GRANTED.

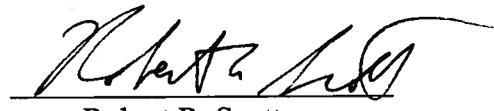
By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 2012.



Amy Ignatius
Chairman



Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director