

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. 12-075

REPLY OF POWER NEW ENGLAND TO MOTION TO DISMISS

NOW COMES PNE Energy Supply LLC, d/b/a Power New England (“PNE”), by its attorney, and hereby replies to Electricity NH’s Motion to Dismiss PNE’s Petition. In support of its Petition, PNE says the following:

1. PNE has standing to file its Petition.¹ PNE and Electricity NH are direct competitors in the New Hampshire market for residential and small commercial customers. PNE and Electricity NH have been accorded disparate treatment by the Commission with respect to the requisites for CEPS registration.

2. The Guarantee provided by Noble Americas is expressly “[i]n consideration of Beneficiary [the Commission] entering into a **trading relationship** with Noble Americas Energy Solutions LLC and Electricity N.H., LLC.” (Emphasis added.) . Since it is impossible for the NHPUC to enter into a trading relationship with Electricity NH, there is a complete failure of consideration, rendering the Guarantee a nullity and unenforceable.

3. The financial security posted on behalf of Electricity NH can be terminated upon 30 days’ notice to the Commission. However, pursuant to Puc 2003.03 (a)(5), the financial security posted on behalf of a CEPS must “have an expiration date not less than: 5 years and 150 days after the date the applicant’s application is filed...” Accordingly, the Guaranty is unlawful and invalid.

4. In its Application for CEPS Registration, Electricity NH made the following statement:
Electricity NH LLC is requesting that the Commission grant a waiver modifying the surety requirement from \$100,000 to \$15,000 during the start up year. Electricity NH is a start-up company with no current customers or sales history.²

¹ Any person seeking the action of the Commission shall submit a petition. Puc 202.01(a).

² Letter from Kevin Dean to Commission (April 13, 2012).

5. In stark contrast to the foregoing depiction of Electricity NH's financial resources as being minimal, Electricity NH has embarked upon a massive media and marketing campaign in]New Hampshire.³ Additionally, Kevin Dean has been quoted in the media as proclaiming that "[w]e are not a startup company ..."⁴

6. Pursuant to Puc 2005.01(b)(3), the "Commission shall impose a penalty upon a CEPS" for "providing false information to the Commission in the statements required by Puc 2003."

WHEREFORE, Petitioner PNE respectfully request that the Commission deny Electricity NH's Motion to Dismiss, and to grant such other relief as may be in the public interest pursuant to Puc 2005.01(b)(3).

RESPECTFULLY SUBMITTED,
PNE Energy Supply LLC
by its Attorney,

Dated: July 25, 2012

/s/ James T. Rodier
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Certificate of Service

I hereby certify that a copy of this Motion has been served electronically on the persons on the Commission's service list in this docket in accordance with Puc 203.11.

/s/ James T. Rodier
James T. Rodier, Esq.

³ Staff Letter to Kevin Dean dated July 5, 2012 requesting action plan for revising company's media plan.

⁴ <http://www.seacoastonline.com/articles/20120618-NEWS-206180326>