

STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 12-097

**Investigation into Purchase of Receivables, Customer Referral and Electronic  
Interface for Electric and Gas Distribution Utilities**

**OBJECTION TO PSNH's MOTION TO RESCIND INTERVENOR STATUS OF  
PNE ENERGY SUPPLY, LLC**

NOW COMES PNE Energy Supply LLC d/b/a Power New England ("PNE"), and hereby objects to PSNH's Motion to Rescind Intervener Status of PNE Energy Supply, LLC and in support of its Objection, PNE says the following:

**Introduction**

1. PSNH filed a similar motion to rescind the intervener status of Constellation Energy in Docket No. DE 08-077. Constellation Energy, by and through the McLane Law Firm, responded in part as follows:

... the Public Utilities Commission is a public forum in which interested parties have a right to participate and be heard. If intervention in a proceeding of this nature is allowed to be used as a basis to open competitive suppliers to such invasive discovery, the result will be that the already meager level of supplier participation in Commission proceedings is likely to drop to zero.

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PSNH's tactics in this proceeding have been frequently been designed to attempt to ensure that Constellation will limit or cease its intervention in proceedings at the Commission.<sup>1</sup>

2. PNE is a licensed competitive supplier in New Hampshire and is currently serving a substantial number of PSNH's small commercial and residential customers.

3. On April 13, 2012, Power New England (PNE) filed a petition seeking an order by the Commission requiring modifications to certain tariff provisions of PSNH. Docket No. DE 12-093. Specifically, PNE sought to eliminate PSNH's Selection Charge, Billing and Payment Charge, and Collection Services Charge in order to promote customer choice for smaller customers in order to enhance the competitive market for small customers.

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<sup>1</sup> *Objection to PSNH Motion*, DE-0877(November 14, 2008) at p. 3 and 4 (Emphasis added).

4. A Prehearing Conference Order was issued by the Commission on in this proceeding on July 3, 2012 which stated, *inter alia*, that the Commission will consider on a generic basis how the costs associated with the provision of competitive supplier services by the utilities should be recovered.

5. The scope of PNE's pre-filed testimony was narrowly limited to specific three charges rendered by PSNH to competitive suppliers: Selection Charge, Billing and Payment Charge, and the Collection Services Charge. PNE contends that the problem posed by PSNH's charges are that they impede the development of a competitive market for small customers, rather than enhancing the development of the market, and that similar charges are not levied by PSNH's affiliates CL&P, WMECO and NSTAR nor are they levied by Unitil or Liberty Utilities.

6. The underlying basis for PSNH's Motion is that PNE "has willfully and without adequate reason impaired the orderly and prompt conduct of the proceedings (RSA 541-A:32) by their failure to comply with the Commission's procedural rules and by a lack of candor in their pleadings, testimony and discovery responses."

## **II. PNE's Objections to PSNH's Motion to Rescind**

### **Hard Copy of PNE's Testimony was Filed One Business Day Late**

7. In support of its Motion, PSNH contends that although PSNH's pre-filed testimony was timely sent to the Parties by email on Friday, July 13, it was not docketed by the Commission until Monday July 16 and therefore was not timely filed.

8. PSNH contends that even though all of the parties, and the Commission, were provided with electronic copies in a timely manner, PNE's grant of intervention should be rescinded because the hard copy arrived at the Commission on the next business day. This is an extremely trivial and frivolous basis for PSNH's Motion and demonstrates an inability on the part of PSNH to act in sober, objective and professional manner.

### **PNE 's Testimony does not Name the Filing Party**

9. In further support of its Motion, PSNH contends that "neither the filing cover letter nor the testimony itself clearly establishes the party sponsoring Mr. Fromuth's testimony."

10. PNE is clearly identified as the party sponsoring Mr. Fromuth's testimony on page 1 of the testimony. PSNH well knows which party submitted the testimony. If PSNH truly did not know the party submitting the testimony, it could have easily ascertained such via a phone call or an email.

**Mr. Fromuth's Duties and Areas of Concentration at the  
Commerce Department in the early 1980's**

11. In further support of its Motion, PSNH's chastises PNE for characterizing as "vexatious and an abuse of discovery" the following PSNH data request: "What were Mr. Fromuth's duties and areas of concentration as a Commerce Department Deputy Assistant Secretary?"

12. PSNH's repeated inquiry into Mr. Fromuth's duties and areas of concentration at the Commerce Department in the early 1980's would most assuredly not lead to anything that would have any probative value whatsoever in this proceeding. This is unquestionably an abuse of discovery. It is vexatious in the sense that it appears to looking for something that it could use against Mr. Fromuth at another time and in another place.

**Failure to Attend Technical Conference**

13. In support of its Motion, PSNH contends that PNE's non-attendance at the technical Conference held on August 16 PNE's "has prejudiced the ability of other parties, including PSNH, to utilize that forum as an effective discovery tool. Merely substituting additional data requests (interrogatories) for the interaction of a Technical Session (akin to a deposition) fails to remedy the harm." This is an entirely bogus claim aimed at causing trouble for PNE.

14. No party has been prejudiced by PNE's non-attendance at the prehearing conference. First of all, the only parties that submitted data requests to PNE were PSNH and the Staff. The purpose of Technical Conference is for parties who have propounded data requests to obtain clarifications on technical matters in an informal setting. Technical sessions do not exist to exist to provide a forum for any party to engage in a de novo free-ranging, open ended discovery. According to Puc Rule 102.22, a "Technical Session" is a meeting of the parties at which information is shared on an informal basis ... ." There is no obligation at law to informally "share" information with anyone, and in particular, as here, a bellicose, determined adversary that cannot operate in good faith. Because here is no obligation to voluntarily "share," the Commission's rules do not provide for a motion to compel in connection with a technical session.

Moreover, in the case at hand, PNE and PSNH are engaged in a "raging discovery dispute." PNE should not be require to respond to PSNH except in writing.

15. Notwithstanding all of the foregoing, PNE by email invited all of the parties to submit any questions they had on Mr. Fromuth's testimony to counsel for PNE by phone or email, and a good faith effort would be made to provide responses. No party except the Staff responded. The Staff indicated by email that it had no questions. PSNH did not respond.

16. PSNH now asserts that Mr. Hall did have some questions to ask Mr. Fromuth at the Technical Conference. However, counsel for PNE left the following message for Mr. Hall shortly after the technical conference concluded:

Hey Steve, its Jim Rodier. Just wondering, wanted to speak to you briefly whether you had any questions for me at the technical session this morning. I had absolutely no time to go to that. So would you call me if you got any questions? I mean we have a raging discovery dispute going on here, but if there was something of the technical conference that you wanted to ask, please let me know.

PSNH did not respond. PSNH spurned a good faith effort to resolve issues because it would not play into PSNH's contrived and manufactured narrative to knock PNE out of the proceeding.

**PNE's Supplemental Data Responses were not Filed until August 15  
("for some unexplained reason")**

17. In further support of its Motion, PSNH contends as follows:

By email on August 15, 2012, in response to PSNH's August 9 letter (Appendix A), PNE provided a supplemental response to its data requests correcting some of the various numbering errors contained in its original response. Curiously, the cover letter forwarding that supplemental response was dated August 10, 2012, a full five days prior to the date it was emailed to parties on the discovery service list. For some unexplained reason, the corrected responses (along with the responses to Staff's data requests) were not provided until the day before the scheduled Technical Session.

18. The date on the cover letter was incorrect; PSNH's letter dated August 9 contains the following request: **"PSNH requests that you respond not later than August 15, 2012."**

**PNE's Position on POR is not Accurate and Truthful**

19. PNE has repeatedly explained to PSNH that it does not wish to take position in this proceeding with respect to POR. PNE did not mention POR in its pre-filed testimony. Accordingly, it is highly improper for PSNH to badger PNE over this matter.

20. Freedom Logistics and Resident Power have publicly stated their respective positions on POR, but Freedom Logistics has not filed testimony in this proceeding. Resident Power is not even a party to the proceeding. Accordingly, their positions on POR are not relevant.

**PNE'S Statements on NHEC's Supplier Charges Lack Candor**

21. In support of its Motion, PSNH contends that "NHEC's tariff approved by this Commission does include charges levied on competitive suppliers" and that PNE's "lack of candor should not be tolerated."

22. It appears that PNE made a mistake by including NHEC on its lengthy list of utilities that do not levy supplier charges. Mistakes happen once in a while. PSNH's allegation of lack of candor is truly regrettable.

**PNE's Failure to File Testimony along with its Petition in Docket No. DE 12-093**

23. In support of its Motion to rescind PNE's intervener status in this proceeding, PSNH cites PNE'S "failure to file pre-filed testimony" along with its Petition in Docket No. DE 12-093.

24. PNE has already responded to PSNH on this in an Objection filed in Docket No. DE 12-093. PSNH's inclusion of this matter in its Motion as a ground to rescind PNE's intervener status in this proceeding is a symbolic of the extremely over-the-top nature of its Motion.

WHEREFORE, for all of the foregoing reasons, the Commission should deny PNE's Motion to rescind PNE's intervener status, and to order such other and further relief as may be just and equitable. PSNH's frivolous and vindictive tactics in this proceeding have indeed been designed to attempt to ensure that competitive suppliers such as PNE will limit or cease its intervention in proceedings at the Commission.

Respectfully submitted,  
PNE ENERGY SUPPLY LLC  
By its Attorney,

**/s/ James T. Rodier**  
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Dated: August 28, 2012

**Certification of Service**

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this petition on each person identified on the commission's service list for this docket.

**/s/ James T. Rodier**