

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 12-097

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

PNE'S OBJECTION TO PSNH'S MOTION TO COMPEL

NOW COMES PNE Energy Supply LLC, d/b/a Power New England ("PNE") by its attorney, and hereby objects to PSNH's Motion to Compel, and in support hereof, says as follows:

I. INTRODUCTION

1. On August 24, PSNH, *inter alia*, filed a Motion to Compel PNE to Respond to Data Requests and to fully and accurately respond to the data requests 1-1, 1-2, 1-3, 1-4, 1-8, 1-11, 1-12, 1-14, 1-16, 1-18, 1-21, 1-32. and 1-36 propounded by PSNH in Docket No. DE 12-093 [sic].

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.

4. A Prehearing Conference Order was issued by the Commission on in this proceeding [12-097] 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. With respect to the services rendered by PSNH to competitive suppliers, the only issue in this proceeding is how the costs associated with the provision of competitive supplier services by the utilities should be recovered.

II. APPLICABLE LAW

It is well-settled that the standard for discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. **"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.** *Rule 401, NH Rules of Evidence.*

The context for the Commission to apply the foregoing standard is complicated by the fact that the rules of evidence do not apply in proceedings before the Commission. Rule Puc 203.23(c). Moreover, the Commission "has discretion to determine the limits of discovery." *Scarborough v. R.T.P. Enterprises, Inc.*, 120 N.H. 707, 711, 422 A.2d 1304 (1980).

III. PNE'S OBJECTIONS TO PSNH'S MOTION TO COMPEL

PSNH's Motion to Compel "seeks an order overruling the objections made by PNE and compelling PNE to respond to PSNH data request numbers 1-1, 1-2, 1-3, 1-4, 1-11, 1-12, 1-14, 1-21, and 1-36. In addition, PSNH seeks an order from the Commission compelling PNE to provide full and accurate responses to PSNH data request numbers 1-8, 1-16, 1-18, and 1-32."

PSNH Requests 1, 2, 3, and 4

According to PSNH, PSNH's questions 1, 2, 3, and 4 all seek information concerning the background, experience and expertise of PNE's witness, Mr. Fromuth. According to PSNH, PNE's objections remain insufficient. In PSNH's letter to PNE dated April 9, PSNH contended that "questions concerning the background experience, qualifications, credibility, and expertise of a witness are always relevant."

1. Has Mr. Fromuth previously testified before any board, agency, court, legislative body or committee, or the like? If so, please identify the forum, the date, the subject matter, and provide a short description of Mr. Fromuth's testimony.

2. Please provide a listing of the officers, directors, members and managers for Freedom Logistics, PNE, and Resident Power.

3. What were Mr. Fromuth's duties and areas of concentration as a Commerce Department Deputy Assistant Secretary?

4. When did Mr. Fromuth become Managing Director of a) Freedom Logistics, b) PNE, and c) Resident Power?

PNE's Objection to Questions 1, 2, 3, and 4

Mr. Fromuth's Qualifications are prominently set out on page 1 of his testimony: Requests 1, 2, 3, and 4 seek information that is irrelevant to this proceeding and is not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding. Moreover, Mr. Fromuth's background, experience and qualifications are listed on the first page of his pre-filed testimony. The particular information which PSNH seeks is immaterial and would not be of consequence in the Commission's deliberations on the issues in this proceeding.

PNE cannot conceive of how Mr. Fromuth's duties and areas of concentration as a Commerce Department Deputy Assistant Secretary during the early 1980's could make any fact at issue in this proceeding more or less probable.

PSNH Request 8

Paragraph 11 of PNE's Petition alleges "there are at least three charges assessed by PSNH to competitive suppliers, such as Power New England, that are completely out-of-line with the comparable charges assessed by other New England utilities..." Please provide a table listing all "other New England utilities" detailing the "comparable charges assessed by" each such utility

PNE's Objection to Request 8

No such table has been prepared by PNE. However, to the best of PNE's information and belief, such charges are not levied by PSNH's affiliates CL&P, WMECO and NSTAR nor are they levied by National Grid (MA & RI), Unitil or Liberty Utilities.

PSNH Request 11

PSNH's question number 11 asked PNE to "Please provide a chart showing separately the number of residential and the number of small commercial customers served by PNE in each New Hampshire utility's service area on a monthly basis, for the years 2011 and 2012 to the current date."

PNE's Objection to Request 11

This Request it is seeking confidential information that is protected under RSA 91: 5. Moreover, this information with respect to PSNH (i.e, number residential and the number of small commercial customers served by PNE) is available from a more convenient and less burdensome source, namely PSNH. From its own records, PSNH knows precisely how many residential and small commercial customers are served by PNE in PSNH’s service territory.

PSNH Request 12

“You premise footnote 1 of your testimony by stating, “In customary fashion....”

- a) Please detail what your implication is in that footnote.
- b) Please provide references to all occasions upon which you base your testimony that PSNH’s response was done “in customary fashion.”

PNE’s Objection to Request 12

This request seeks information that is irrelevant to this proceeding and is not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding. Without waiving this objection, PNE refers PSNH to footnote 1:

... 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.

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.

PSNH Request 14

PSNH’s question number 14 asks “Does Freedom Logistics, PNE, and/or Resident Power pay PSNH for charges covered by the Selection Charge, Billing and Payment Charge, and the Collection Services Charge identified in your testimony? If so, please detail on a monthly basis from 2010 to present, the amounts paid by each of Freedom Logistics, PNE and Resident Power for each of these individual charges.”

PNE Objection

This Request is seeking confidential information that is protected under RSA 91: 5. Moreover, this Request is an abuse of discovery because PSNH can determine from its own records exactly what payments PNE makes to PSNH for supplier services. Of course, since FEL and Resident are not licensed suppliers in NH, by definition do they not pay PSNH for supplier services.

PNE does not make any such payments to Unitil of Liberty since they do not assess supplier charges of the type at issue in this proceeding.

PSNH Request 16

On p. 3 of your prefiled testimony you testify that “within the past year” there has been a “relatively large increase in the enrollment by competitive suppliers of residential and small commercial customers...” Please explain and quantify what you mean by this statement.

PNE Objection to Request 16

The statement speaks for itself and needs no further explanation. Moreover, PSNH has access to this data from its own records. This data is also publicly available from the Commission.

PSNH Request 18

On page 3 of your prefiled testimony, you state, “Although the \$5.00 charge may sound small, it is a very large percentage of the first month’s profit for a small customer.”

- a) Please quantify “the first month’s profit for a small customer.”
- b) What is the typical contract length for a small customer?
- c) What is the average profit per month for a small customer?
- d) Please provide all documents, reports, studies and analyses supporting this response.

PNE’s response to subparts a), c), and d) of question 18 was, “If hypothetically the profit margin is 1 cent per kwh and the customer uses 500 kwh per month, then the monthly profit would be \$5.00.” PSNH did not ask for a hypothetical mathematics statement, which is what PNE provided. PSNH’s question inquires specifically about PNE’s testimony that \$5.00 is a very large percentage of the first month’s profit for a small customer. PSNH’s specific request was for PNE to quantify “the first month’s profit for a small customer.”

PNE Objection to Request 18

This Request is seeking confidential information that is protected under RSA 91: 5. PNE answered Request 18 using hypothetical but typical data. PSNH’s

confidential information regarding its “profits” are confidential business information and are irrelevant to this proceeding.

PSNH Request 21

PSNH’s question number 21 asks, “Please provide a chart showing the uncollectible rate by customer class for each of Freedom Logistics, PNE, and Resident Power by month for 2010 to the present.”

PNE Objection to Request 21

This request seeks information that is irrelevant to this proceeding and is not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding. PNE did not address POR in its prefiled testimony and has taken no position on POR. PNE’s uncollectible rate by class is irrelevant to PNE’s participation in this proceeding and is not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding. With respect to the services rendered by PSNH to competitive suppliers, the only issue in this proceeding is, if the costs exist, how they should be collected by the utilities.

PSNH Request 32

If the Commission decided to require PSNH to recover any costs of the services in question through base rates:

- a) How would customers who purchase energy service from PSNH be impacted?
- b) What additional benefit would customers who purchase energy service from PSNH receive?
- c) Wouldn’t such assessment of costs to customer who purchase energy service from PSNH amount to a mandatory and unavoidable tax that solely benefits competitive suppliers?

PNE’s response to subpart a) of question 32 was “Additional migration by small customers to the competitive market will force PSNH to take a write-down on the Scrubber costs it seeks to recover through Rate DE. Accordingly, customers who purchase energy service from PSNH may not be impacted at all. See 2011 NU Form 10K at p.18. (http://www.nu.com/investors/reports/2011_NU_Form_10K.pdf)” PNE’s response fails to answer the question asked. The reference to NU’s SEC Form 10-K is not at all responsive, nor does the 10-K state that migration by small customers to the competitive market will force PSNH to take a write-down on the Scrubber costs. Even if it did, PNE’s response is not responsive to PSNH’s question.

PNE’s Petition and testimony both assert that the changes sought would benefit customers. PSNH’s question 32 inquires into this assertion. PNE’s answer to subpart a) and its nonsensical responses to subparts b) and c) are inadequate. Question 32 is

relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence and PSNH requests that PNE fully respond to this question.

PNE Objection to Request 32

PNE has nothing further to add to its Response other than to state that all customers will directly or indirectly benefit from a competitive market consistent with the stated purposes of RSA-F. As noted in NU’s Form 10K, continued migration away from PSNH default service will threaten PSNH’s ability to recover the cost of the Scrubber. Finally, the NHPUC has no taxing authority.

PSNH Question 36

“Does Freedom Logistics, PNE, Resident Power or any affiliated entity provide energy service to any retail customers in the state of Maine? If so, please provide the number of such customers, including the name of each distribution utility that provides delivery service to such customers.”

PNE Objection to Question 36

This data request seeks irrelevant information pertaining to the number of customers served by PNE and its affiliates in Maine. Moreover, this information is confidential in under RSA 91-A. The particular information which PSNH seeks is immaterial and would not be of consequence in in the Commission’s deliberations on the issues in this proceeding.

PNE Questions 37 and 38

Does FEL, PNE or Resident Power have a position regarding whether the Commission should mandate implementation of a purchase of receivables program by the state’s electric utilities? If so, please provide and explain any such position in detail.

Does FEL have a position regarding whether a mandated purchase of receivables program would impact electricity rates? If so, please explain any such position in detail.

PNE’s Objections to 37 and 38

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. 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.

WHEREFORE, for all of the foregoing reasons, the Commission should deny PNSH's Motion to Compel, and to order such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED,
PNE Energy Supply LLC
by its Attorney,

Dated: September 3, 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 this 3rd day of September, 2012.

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