

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

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

Petition for Review of Public Service Company of New Hampshire's Services and Charges to
Competitive Electric Suppliers
Docket No. DE 12-295

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION TO COMPEL
RESPONSES BY NORTH AMERICAN POWER AND GAS, LLC TO DATA REQUESTS
1-10, 1-22, 1-23 and 1-33**

NOW COMES Public Service Company of New Hampshire ("PSNH" or the "Company") and respectfully requests that the Commission compel North American Power and Gas, LLC ("NAPG") to respond to PSNH's first set of data requests. In support hereof, PSNH says the following:

1. On October 10, 2012, PNE Energy Supply LLC requested that the Commission open a docket for the purpose of reviewing certain charges assessed by PSNH to competitive electric power suppliers operating in PSNH's service territory. In its order of notice in the docket, the Commission noted that "In support of its petition, PNE testified that the charges impede the development of the competitive market for small customers." Order of Notice at 2.

2. On November 21, 2012, NAPG petitioned to intervene in the docket. In its petition to intervene, NAPG stated that it "strongly supports Commission review of the 'reasonableness and appropriateness' of any and all utility charges for services provided to retail electric suppliers." NAPG Petition to Intervene at 1. Further, NAPG stated that "given the relatively limited margins generated by most residential and small commercial accounts, cost inputs require careful review to ensure they do not inappropriately hinder competitive efforts in New Hampshire."

NAPG Petition to Intervene at 2. By Order No. 25,468 (March 5, 2013), the Commission

granted NAPG's petition to intervene. Also by that Order the Commission determined that "PSNH's current competitive supplier charges bear investigation given the developing competitive markets for residential and small commercial customers in the PSNH service territory." Order No. 25,468 at 7.

3. On March 27, 2013, NAPG filed the direct testimony of Taff Tschamler in the docket. As part of that testimony Mr. Tschamler stated that "In the first three months of our operation in New Hampshire, we have acquired approximately 25,000 customers in PSNH service territory." Testimony of Taff Tschamler at 4.

4. On April 18, 2013, PSNH submitted data requests to NAPG based upon its pre-filed testimony. The purpose of certain data requests was to determine the reasonableness and appropriateness of the charges for PSNH's services, and whether, in light of the level of migration to competitive suppliers such as NAPG, PSNH's charges actually inhibited competition in New Hampshire. On April 26, 2013 NAPG timely objected to certain of PSNH's questions and on April 30, 2013 responded to nearly all of PSNH's questions. Consistent with Puc 203.09(i)(4), PSNH contacted NAPG's counsel on May 3, 2013 in an effort to resolve the potential discovery dispute on certain questions not answered. On May 6, 2013, NAPG's counsel responded that NAPG would maintain its objections to the questions. Having reviewed the objections raised by NAPG, PSNH does not agree that there is a sufficient basis to withhold the information and, as a result, files this motion to compel.

5. In addressing motions to compel discovery responses, the Commission considers whether the information being sought is relevant to the proceeding, or reasonably calculated to lead to the discovery of admissible evidence. *Electric Utility Customers*, Order No. 25,439 (December 7, 2012) at 2. In general, discovery that seeks irrelevant or immaterial information is

not something that the Commission will compel a party to provide. *Id.* New Hampshire law favors liberal discovery and discovery is regarded as an important procedure for proving in advance of trial the adversary's claims and his possession or knowledge of information pertaining to the controversy between the parties. *Id.* at 3 (quotation omitted).

6. In its request 1-10, PSNH asked:

Please describe all costs that NAPG would incur, both initially and on a continuing basis, to bill customers if it did not use PSNH's billing and payment services. Please include an analysis of the costs it would incur to bill on its own as well as an analysis of the costs it would incur by using a third party company.

In response, NAPG stated:

NAPG objects to this request as not relevant to the scope of this proceeding, namely, the reasonableness of and legal basis for the PSNH CEPS charges. Moreover, unlike PSNH, who as a regulated monopoly must justify its rates based on reasonableness and cost, NAPG is a competitive electric supplier in a competitive market, and not entitled to recover its costs. Thus, NAPG's costs to provide these services are immaterial. Further objecting, to the extent the request has any probative value to the scope of issues established for this proceeding, which NAPG denies, such limited value is substantially outweighed by the excessive burdens and threats to disclosure of highly sensitive and proprietary business information represented by the instant request.

Similarly, PSNH's question 1-22 asked:

Please describe all costs that NAPG would incur, both initially and on a continuing basis, to conduct collections if it did not use PSNH's collection services. Please include an analysis of the costs it would incur should it conduct collections on its own as well as an analysis of the costs it would incur by using a third party company.

NAPG objected to question 1-22 on essentially identical grounds as question 1-10.

7. Initially, PSNH disagrees with the scope of the docket as defined by NAPG. As noted, the Commission's order of notice and Order No. 25,468 stated that there were claims that PSNH's charges inhibit the competitive marketplace in New Hampshire and that the charges bore investigating in light of their potential impact on this "developing market." Thus, the

docket is not merely about PSNH's charges in the abstract, but whether, or if, PSNH's charges inhibit this developing market.

8. The expenses that may be incurred by suppliers to perform the tasks currently provided by PSNH to those suppliers are relevant to this docket. On information and belief, there are companies operating in New Hampshire that provide billing, payment processing, bookkeeping and collections services similar to those provided by PSNH to competitive suppliers. To the extent that PSNH's services may be priced significantly differently than those of other service providers, requiring PSNH to provide those services at little or no cost may affect the workings of that market. Moreover, to the extent PSNH's services are priced differently, it would be relevant to understand any and all reasons for such price differences prior to rendering a determination on the justness or reasonableness of PSNH's charges. It would also be instructive for the Commission to know what efforts have been undertaken by NAPG to understand the costs of such services in light of its claim that PSNH's costs are not, or cannot be, justified. PSNH also notes that in its testimony, discussed below in relation to PSNH question 1-33, NAPG bases certain of its assertions on comparisons of PSNH's charges to market costs. Accordingly, the market costs for these services are relevant.

9. Further, the fact that PSNH is regulated differently than competitive suppliers is immaterial to the relevance or admissibility of the information sought by this question. Whether the nature of regulation does, or should, have any bearing on the usefulness of the information may relate to the weight to be given to the information, not whether it is relevant or admissible. In addition, and in relation to the contention that it would be burdensome to produce the information, on information and belief NAPG conducts its own billing in other jurisdictions in which it operates. NAPG may also undertake other activities like the ones covered by this

docket in other jurisdictions. As such, NAPG would have available to it information about the costs of performing at least its own billing services, and there would be no substantial burden in producing the information. As to the contention that disclosing the information could compromise NAPG's business or competitive position, PSNH does not agree. Nevertheless, PSNH was, and remains, willing to enter into a non-disclosure agreement to protect this information from further disclosure.

10. In its request 1-23, PSNH asked:

The testimony describes the amounts of the charges at issue in this docket as assessed to NAPG in its first three months of operation, and NAPG's estimate of charges from PSNH going forward. In the three months of NAPG's operation:

- a. What was NAPG's profit and expense per customer of PSNH? Please describe by the relevant rate class.
- b. What portion of the expense is attributable to the charges at issue in this docket?
- c. How does that profit and expense compare to the profit and expense on a per customer basis for NAPG customers who are distribution customers of other New Hampshire utilities?

In response, NAPG stated:

NAPG objects to this request as not relevant to the scope of this proceeding, namely, the reasonableness of and legal basis for the PSNH CEPS charges. Further objecting, to the extent the request has any probative value to the scope of issues established for this proceeding, which NAPG denies, such limited value is substantially outweighed by the excessive burdens and threats to disclosure of highly sensitive and proprietary business information represented by the instant request.

11. The profit and expense of competitive suppliers in New Hampshire is relevant to this docket. As noted above, in the approximately 3 months of operations discussed in NAPG's testimony, it had enrolled approximately 25,000 customers. Given this remarkable expansion of its customer base, PSNH attempted to determine the degree to which its charges for service to suppliers actually impact NAPG's development as a market participant. Knowing the extent to

which PSNH's charges for service to suppliers actually impact the business of NAPG will help the Commission determine whether PSNH's charges have any consequential impact on the competitive market in New Hampshire. The level of PSNH's charges as compared to a supplier's profitability is a significant factor in determining whether such charges impede the development of a competitive market.

12. Furthermore, Staff question 1-1 to NAPG asked: "Reference Testimony, page 4, lines 12-22. Please provide details of the costs normalized by number of customers (cost per customer) and total revenue (percentage)." NAPG responded to Staff's question. On its face, Staff's question sought information about NAPG's costs on a per customer basis, as did PSNH's question. Thus, the questions are not substantially different. Though the level of detail required to respond to the question may be different, the underlying information is essentially the same. It is not clear why NAPG could answer Staff's question but not that of PSNH. Given the relevance of this information and Staff's interest in similar information, PSNH requests that the Commission compel NAPG to respond to question PSNH's question 1-23.

13. Lastly, as to PSNH question 1-33, in testimony, NAPG stated:

NAPG typically pays its electronic data interface ("EDI") vendors fees that are much lower than \$5 per enrollment and \$5 per drop. Although the fee structure we pay is not defined on a per-selection event basis, the effective cost for selection events is less than 5 cents per enrollment or drop. NAPG's processes are automated, so the cost beyond the vendor charges is de minimus. Given these very low costs associated with switching customers, PSNH['s] costs cannot be \$5 per enrollment and \$5 per drop, unless their processes are extremely inefficient and/or their vendor charges are well above market costs.

Testimony of Taff Tschamler at 11. In its question 1-33, PSNH asked:

Please describe NAPG's fee structure with its EDI vendors including on what basis it determines what the "effective cost" of various events is.

In its response, NAPG stated:

NAPG objects to this request as not relevant to the scope of this proceeding, namely, the reasonableness of and legal basis for the PSNH CEPS charges. Further objecting, to the extent the request has any probative value to the scope of issues established for this proceeding, which NAPG denies, such limited value is substantially outweighed by the excessive burdens and threats to disclosure of highly sensitive and proprietary business information represented by the instant request.

14. Without knowing the fee structure of NAPG's EDI vendors and the manner in which NAPG has determined what the "effective cost" of selection events is, it is not possible to know whether NAPG's claims are true. NAPG contends that PSNH's charges for certain transactions should not be what they are because they are higher than what its EDI vendor charges for those transactions. Since that is the comparison NAPG has made, PSNH and the Commission must be able to evaluate whether that is, in fact, an accurate and appropriate comparison. It could be that a vendor has a lower fee for a particular event, but a higher fee for another event, or that a vendor's fee structure is based on fixed charges so that comparing such a structure to a "per event" structure is difficult or impossible. NAPG has offered this comparison and should now be compelled to answer PSNH's question on the information underlying the comparison.

15. Furthermore, as noted above, the Commission has indicated that it seeks to know whether PSNH's charges impede the competitive market and NAPG has contended that PSNH's charges may be based upon above-market costs of services for this market (*i.e.*, EDI services relating to enrollments, drops, or other "selection events"). The information is, therefore, also relevant to an evaluation of the various costs of participation in the competitive electric supply market, and the influence PSNH's charges may have on the market. NAPG, in essence, contends that the market for certain services produces rates different than those of PSNH and, as with PSNH's questions 1-10 and 1-22, knowing what the market for these services is will aid the Commission in rendering a determination on the justness or reasonableness of PSNH's charges.

Also, as with questions 1-10 and 1-22, to the extent there are concerns about the disclosure of confidential information, PSNH remains willing to enter into a non-disclosure agreement to protect this information from further disclosure.

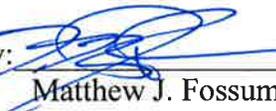
WHEREFORE, PSNH respectfully requests that the Commission:

- A. Grant this motion to compel NAPG's responses to PSNH questions 1-10, 1-22, 1-23 and 1-33; and
- B. Order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

May 13, 2013
Date

By: 
Matthew J. Fossum
Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961
Matthew.Fossum@nu.com

CERTIFICATE OF SERVICE

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

May 13, 2013
Date


Matthew J. Fossum