

STATE OF NEW HAMPSHIRE

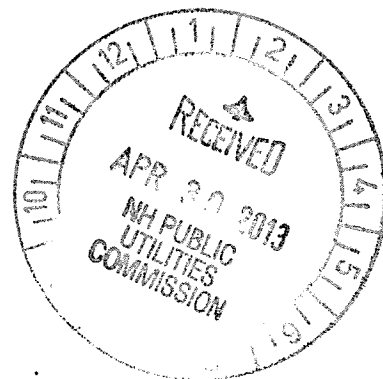
Inter-Department Communication

DATE: April 30, 2013
AT (OFFICE): NHPUC

FROM: *SEM*
Steven E. Mullen, Assistant Director – Electric Division

SUBJECT: DE 13-060, PNE Energy Supply, LLC
Escrow Agreement Pursuant to Order No. 25,492
Staff Recommendation

TO: Debra A. Howland, Executive Director



On April 15, 2013, the Commission issued Order No. 25,492 approving a settlement agreement that, among other things, provided terms by which PNE Energy Supply, LLC (PNE) would be allowed to resume operations as a competitive electric power supplier (CEPS) in New Hampshire. Among those terms was the requirement that PNE establish an escrow account in the minimum amount of \$200,000 pursuant to Puc 2003.01(d)(4) and Puc 2003.03. On April 26, 2013, PNE filed copies of the escrow agreement executed on that date in the amount of \$200,000 and identifying Kevin Devine Law, PLLC as the escrow agent. Accompanying that filing was confirmation of the deposit of the funds into the escrow account at First Colebrook Bank.

Staff has reviewed the escrow agreement and has the following comments. First, Article 2.1, "Payment of Escrowed Funds," reads as follows:

Escrow Agent shall pay the funds from the Escrow Account to the NHPUC if the NHPUC notifies Escrow Agent that PNE has not faithfully performed all its duties and protected the NHPUC and PNE's customers from any damage caused by PNE's non-compliance with or breach of any laws or statutes, or rules or regulations pertaining to the CEPS license or permit issued by the NHPUC.

For purposes of clarity, Staff understands the "has not" to modify both "faithfully performed" and "protected," which would lead to the intended meaning "...that PNE has not faithfully performed all its duties and [has not] protected the NHPUC and PNE's customers..." Staff recommends that the Commission state its understanding of the wording in the secretarial letter to be issued in this matter. Second, the escrow agreement has a footer on pages 2 through 4 that reads "escrow agreement – draft – 4-26.docx." Although the word "draft" is in the footer, Staff notes that the escrow agreement was executed by both PNE and the escrow agent. Staff, therefore, understands the document as filed to be the final escrow agreement. With those understandings, Staff views the

escrow agreement as satisfying the requirements of Order No. 25,492 and the underlying settlement agreement.

Finally, with the filing and verification of the escrow agreement, Staff recommends that the Commission promptly issue a secretarial letter authorizing PNE to resume operations as a registered CEPS in the State of New Hampshire. Further, to remove any potential uncertainty, Staff also recommends that the restrictions included in the order of notice in this proceeding that a) ordered PNE to cease enrolling new customers, and b) suspended any other New Hampshire utilities' obligations to accept or process new customer enrollments from PNE be lifted.

Please let me know if you have any questions or would like to discuss this matter further.

cc: Alexander Speidel
Amanda Noonan
Service List