

**THE STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION**

PNE ENERGY SUPPLY LLC

Complaint Against Public Service Company of New Hampshire

PNE Energy Supply LLC (“PNE”) brings this complaint against Public Service Company of New Hampshire (“PSNH”) pursuant to RSA 365:1 and Puc 204.01(a).

INTRODUCTION

Since February 20, 2013, PSNH has withheld \$100,000 in customer payments that belong to PNE and that were directed to PSNH simply by virtue of its role as a host utility billing services provider. Under its Tariff and its supplier agreements, PSNH was required to immediately transmit these funds to PNE and invoice PNE for allowable fees and charges. Instead, PSNH treated these funds as its own, in deliberate and knowing violation of its obligation and with the intention that PNE be denied the \$100,000, as it represents working capital that is very important to PNE’s business.

When PNE demanded the release of the \$100,000, PSNH responded it was applying the funds to cover fees and costs allegedly incurred after former PNE customers were placed on PSNH Default Service on February 20. PSNH, however, simply misappropriated PNE’s customer payments under the pretext of implementing a self-help remedy that is not authorized by its Tariff or its supplier agreements. PSNH delayed until May 8 – nearly three months after it withheld the \$100,000 – before specifying the alleged fees and costs and disclosing how they were calculated. PNE disputes the legitimacy of all but a fraction of the alleged fees and costs. But more important, PSNH’s refusal to pay over the funds constitutes a gross violation of its obligations as a regulated public utility.

PSNH may only assess charges that are “just and reasonable.” RSA 374:1. The PSNH Tariff and supplier agreements strictly regulate the fees PSNH may charge suppliers and establish procedural protections to prevent abuses of the broad powers afforded PSNH as a host utility. PSNH’s position here – that it can unilaterally decide to withhold funds received on behalf of a supplier and apply the funds against unauthorized, unspecified and un-invoiced “charges” – is anathema to the “just and reasonable” standard of RSA 374:1, as well as the protections embodied in the Tariff and the supplier agreements.

PNE now requests that the Commission investigate PSNH’s conduct and order the immediate release to PNE of customer payments improperly held by PSNH, together with such other and further relief as the Commission believes reasonable and just under the circumstances.

PARTIES

1. PNE is a duly registered competitive electric power supplier under Puc 2003.01.
2. PSNH is a New Hampshire electric utility subject to the jurisdiction of the Commission under RSA Chapter 362 and 365, and Chapter Puc 300.

JURISDICTION

3. The Commission has jurisdiction over this matter under RSA 365:1.

FACTS

A. The PSNH Tariff and Supplier Agreements

4. PSNH’s business relationship with PNE (and, importantly, other suppliers) is controlled by the PSNH Electricity Delivery Service Tariff – NHPUC No. 8 (the “Tariff”), authorized by the Commission on June 28, 2010. The Tariff includes “Terms and Conditions for Energy Service Providers” (hereinafter “Tariff Terms and Conditions”), which govern the services PSNH provides

to suppliers, the charges PSNH is permitted to assess PNE and other suppliers for those services, and the manner in which PSNH may assess suppliers for the services.

5. In addition to (and, in a fundamental sense, as part of) the Tariff Terms and Conditions, PSNH has entered into a standard form Electric Supplier Services Master Agreement (“ESSMA”) and Electric Supplier Trading Partner Agreement (“ESTPA”) [collectively “the Agreements”] with PNE and other suppliers. The Agreements require PSNH to provide services to suppliers in accordance with the Tariff Terms and Conditions, and they delineate the manner in which PSNH can charge and collect fees approved by the Tariff Terms and Conditions.

B. Approved Charges to Suppliers

6. PNE utilizes customer billing and payment services provided by PSNH under the Tariff Terms and Conditions and the Agreements.

7. Section 2(f) of the Tariff Terms and Conditions permits PSNH to charge suppliers designated fees for billing and collection services. The ESSMA specifies that these services include reading the customer’s meter, producing a consolidated bill (reflecting both supplier charges and PSNH’s delivery charges), processing payments received from customers, and “transmitting payments allocated to Suppliers on a daily basis.” ESSMA, §VII(A)(emphasis added).

8. Apart from billing and payment services, Section 2(a) of the Tariff Terms and Conditions permits PSNH to assess an approved “Selection Charge” of \$5.00 for effectuating a change in service to a different supplier or to Default Service. Under this Section, the Selection Charge is assessed to the “new Supplier” when the service change is the result of an enrollment request from the new Supplier. The Selection Charge is assessed to the “existing Supplier” when the service change is the result of a “drop transaction” from the existing Supplier.

C. Payment of Approved Charges

9. The Agreements require PSNH to invoice Suppliers on a monthly basis for billing and payment services and other services. See ESSMA, § IX; ESTPA, § IX.

10. The Agreements strictly regulate PSNH's ability to withhold customer payments – which, as noted above, must be transmitted on a daily basis – to pay fees and charges claimed by PSNH.

The Agreements contain identical provisions that provide as follows:

The Company shall have the right to subtract fees that Supplier owes to the Company, and that are sixty (60) days or more past due, from amounts the Company collects on behalf of Supplier for reimbursement to Supplier, if applicable. Amounts subject to a good faith dispute will not be subject to deduction.

See ESSMA, § VIII (emphasis added); ESTPA, § VIII.

11. These provisions make clear that PSNH may subtract its fees from amounts due a supplier only where (a) the fees have been invoiced and are at least 60 days “past due,” and (b) the amounts claimed are not “subject to a good faith dispute.”

D. PSNH's Withholding of PNE Customer Payments

12. In February 2013, a sudden and unprecedented surge in energy prices due to wholesale power market flaws led to PNE's financial default with ISO-NE and, on February 14, its suspension from the New England power market (though PNE remained financially responsible for its customer load at ISO New England through and until February 20). Weeks before these events, PNE and FairPoint Energy had entered into an account purchase agreement calling for the transfer to FairPoint Energy of approximately 8,500 PNE customer accounts in the PSNH service territory. The agreement guaranteed rate protection for customers, by providing that service from FairPoint Energy was to continue at the same rates charged by PNE.

13. On February 28, the Commission convened two dockets – DE 13-059 and DE 13-060 – to investigate PNE’s financial default and other matters concerning PNE and Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”). On March 27, the Commission Staff, PNE and Resident Power entered into a Settlement Agreement resolving all allegations in DE 13-059 and DE 13-060. The Commission issued an Order approving the Settlement on April 15.

14. PNE cured its financial default at ISO-NE on March 22, and on May 3 it resumed operations as a registered competitive electric power supplier.

15. Since February 20, PSNH has unlawfully retained \$100,000 in customer payments owed to PNE. On February 20, PNE customers that had not been transferred to FairPoint Energy were transferred to Default Service. At that point, PSNH had received, and it continued to receive after that date, customer payments that were owed to PNE for electric energy services provided to PNE customers before February 20. After February 20, however, PSNH stopped transmitting those payments to PNE on a daily basis as required by the Agreements. PSNH took this action without PNE's consent (and later, as set forth below, despite PNE’s repeated demands for return of the customer payments).

16. The withheld customer payments represented working capital that was very important to PNE’s survival, its ability to cure the ISO-NE default and ordinary business operations. As PSNH knew, during this period PNE was working simultaneously to cure the ISO-NE default and address customer complaints arising from former PNE customers being placed on PSNH Default Service. Further, after February 27 and as PSNH was also aware, PNE was forced to divert substantial additional resources to address the issues raised in DT 13-059 and DT 13-060. PSNH was fully and keenly aware of the state of PNE operations and challenges and, on information and belief, withheld the customer payments to exacerbate pressure on its competitor PNE.

17. By February 28, PSNH had withheld a total of nearly a quarter of a million dollars (e.g., \$248,017.47) in customer payments from PNE. At that point and in response to demands from PNE, PSNH released some payments to PNE, but it withheld \$100,000. PSNH alleged it was applying these funds to cover Tariff fees, as well as Selection Charges and other costs allegedly associated with transferring accounts to Default Service. PSNH had not invoiced PNE for the alleged fees and charges, or disclosed with any precision how it calculated the amount allegedly owed.

18. By letters dated April 15 and April 30, 2013, PNE made formal demand for PSNH to release the \$100,000 in customer payments. See Exhibit 1 (4/15/13 letter); See Exhibit 2 (4/30/13 letter). PSNH responded to these demands by letter dated May 8, wherein PSNH alleged it would return only \$7,038.61, and that it intended to keep the \$92,961.39 balance. See Exhibit 3 (5/8/13 letter).

19. With the May 8 letter PSNH produced invoices that disclosed, for the first time, the details used to calculate its alleged fees and costs. According to the invoices, the \$92,961.31 is comprised of: (a) \$38,570 in costs allegedly associated with assuming PNE's load responsibility; (b) \$47,735 in Selection Charges relating to the placement of 9,547 accounts on Default Service; and (c) \$6,656 in Tariff charges for collection and billing services provided in February and March 2013. Although PSNH has returned to PNE \$7,038.61, it retains \$92,961.39 collected by PSNH from PNE customers.

Count I –
PSNH Lacks Authority to Withhold PNE Customer Payments

20. As a regulated public utility, PSNH may only assess charges that are “just and reasonable.” RSA 374:1. The Tariff ensures compliance with this standard by regulating the fees PSNH charges to suppliers. In addition, the Tariff and the Agreements establish procedural

protections to ensure all fees and charges are disclosed and to prevent abuses of the broad power afforded PSNH as a public utility.

21. As referenced above, PSNH must transmit customer payments to suppliers “on a daily basis.” See ESSMA, §VII(A). PSNH also must invoice suppliers on a monthly basis for billing and collection services. See ESSMA, § IX; ESTPA, § IX. Only where invoiced amounts are at least 60 days overdue, and where the amounts claimed are not “subject to a good faith dispute,” may PSNH then resort to “self-help” and pay itself from customer payments received on a supplier’s behalf. See ESTPA, § VIII; ESSMA, § VIII.

22. Here, PSNH stopped transmitting customer payments to PNE as required by the Agreements, and instead applied those payments to fees and charges that PSNH had allegedly incurred and that had not been invoiced or otherwise specified or charged to PNE. PSNH did this even though payment on the un-invoiced fees and charges was not overdue, and a good faith dispute exists over the legitimacy of the fees and charges claimed by PSNH.

23. In its May 8 letter, PSNH conceded it had not invoiced PNE for the fees and charges at issue. PSNH alleged the “bills were held by PSNH and not sent to PNE” as a result of “uncertainty regarding PNE’s continued status as a going concern.” However, alleged “uncertainty” over PNE’s status, even if well-founded (which PNE rejects), would not justify PSNH’s failure to issue monthly invoices as required by the Agreements. This is particularly true given that PNE requested invoices as soon as PSNH first began withholding customer payments on February 20. Further, on information and belief, PSNH knew that PNE cured the ISO-NE default on March 22 and would be resuming operations as a supplier. PSNH had no reason to withhold invoices for its charges, apart from preventing PNE from challenging the legitimacy of the charges.

24. In the May 8 letter, PSNH alleged the “withholding of amounts payable” to PNE was “done as a normal, prudent business measure in light of PNE’s admitted ‘cash flow issues.’” PSNH did not argue this conduct was authorized by the Tariff, the Agreements, or any rule or statute governing PSNH’s operations as a regulated utility. PSNH’s improper conduct simply had the predictable effect of unnecessarily exacerbating any PNE “cash flow issues.”

25. The notion that an electric utility can unilaterally decide to withhold funds owed a supplier and apply the funds against charges that are not invoiced or specified to the Supplier as required under the Agreements or permitted under the Tariff, is anathema to the “just and reasonable” standard of RSA 374:1, as well as the protections embodied in the Tariff and the Agreements.

26. It was unlawful for PSNH withhold any portion of the \$100,000 in customer payments. This entire sum should be returned to PNE, together with interest and restitution of the fees, including attorney’s fees, and costs incurred by PNE in this matter.

Count II
Certain Fees and Charges Claimed By PSNH Are Not Authorized by the Tariff or the Agreements

27. Apart from the unlawful process used by PSNH in appropriating the PNE funds, most of the charges PSNH applied against those funds are not authorized under the Tariff or the Agreements.

28. PSNH contends it may recover \$47,735 in Selection Charges relating to the placement of accounts on Default Service and recoup \$38,570 in costs allegedly associated with assuming PNE’s load responsibility.

29. While the Tariff permits PSNH to assess a single \$5.00 Selection Charge for a change in service – presumably to recoup its costs of carrying out that service, it does not authorize PSNH to recoup the cost of carrying out its responsibilities as the host utility under the ISO-NE market rules.

In demanding Selection Charges and recoupments costs, PSNH in large part seeks, in the first instance, to recover twice for essentially the same service performed relative to the same transactions, i.e., the transfer of PNE accounts to FairPoint Energy or, alternatively, Default Service.

30. Equally significant, however, PSNH failed to cite in its May 8 letter any provision of the Tariff or the Agreements that authorizes PSNH to impose any charges, much less holdback or retain any PNE customer payments, for alleged costs incurred in performing tasks associated with its role as a host utility and Default Service provider – namely, assuming as Default Service customers on February 20 certain PNE customers enrolled by FairPoint Energy that were not successfully transferred to PNE prior to that date. Lacking any authority under the Tariff or the Agreements to impose such costs, PSNH may not recover any portion of the \$38,570 in alleged recoupment costs.

31. Regarding the \$47,735 in Selection Charges, according to the PSNH invoices, this amount represents a \$5.00 charge for 9,547 change transactions in February and March 2013. However, over 90% of these transactions were initiated by FairPoint Energy or PSNH and not PNE. Consequently, PNE is not liable for Selection Charges associated with those transactions.

32. During January and February 2013, PNE in its capacity as the existing supplier requested only 690 drop transactions. Under Section 2(a) of the Tariff Terms and Conditions, as noted above, these transactions result in Selection Charges totaling only \$3,450 (\$5 x 690).

33. As for the balance of the change transactions cited by PSNH, FairPoint Energy initiated EDI enrollments for approximately 8500 accounts covered by the agreement between PNE and FairPoint Energy. Of these, approximately 1188 accounts were actually transferred to FairPoint Energy. Under the Section 2(a) of the Tariff, FairPoint Energy, as the new supplier, and not PNE as the existing supplier, is responsible for the Selection Charges for these transferred accounts.

34. Of the approximately 7312 remaining accounts enrolled by FairPoint Energy, none was transferred to FairPoint Energy because PSNH cancelled the EDI enrollments for them. In any case, PNE never initiated or requested drop transactions for these accounts or any of the other accounts alleged by PSNH other than the 690 drop transactions referenced in Paragraph 32 above – PSNH did that.

35. PSNH lacks authority under its Tariff and the Agreements to assess Selection Charges against PNE for accounts where PNE, as the existing supplier, never requested a drop transaction. Thus, PSNH lacked authority to charge PNE \$44,285 of the \$47,735 in Selection Charges assessed against PNE.

CONCLUSION

In sum, PSNH should be directed to immediately release to PNE the remaining \$92,961.31 in PNE customer payments still held by PSNH. PSNH's decision to withhold these funds – without invoicing PNE and before any amounts claimed were overdue – clearly violated Section VIII of the Agreements. Furthermore, of the \$92,961.39 in charges now claimed by PSNH, only \$10,108 – \$3,450 in Selection Charges (for the 690 drop transactions requested by PNE), and \$6,656 in fees due under the Agreements – are valid. This amount, however, should be further reduced by accrued interest for the period of time that PSNH withheld these customer payments from PNE and the attorneys' fees that PNE has incurred in seeking PSNH's payment of these funds under the Agreements.

WHEREFORE, PNE requests the Commission to:

- A. Order PSNH to immediately pay over \$92,961.31 to PNE;
- B. Order PSNH to make reparation and/or restitution to PNE for attorneys' fees and costs incurred by PNE in securing the return of its customer payments as well as interest on customer payments unjustly withheld by PSNH since February 20, 2013 ; and
- C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

PNE ENERGY SUPPLY, LLC

By its Attorneys,

Sheehan Phinney Bass + Green Professional
Association

Dated:

6/21/13

 for

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April 15, 2013



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CONCORD
TWO EAGLE SQUARE
CONCORD, NH
03301
T 603 223-2020
F 603 224-8899

Re: (i) PNE Energy Supply, LLC/PSNH Improperly Withheld Customer Payments

HANOVER
2 MAPLE STREET
HANOVER, NH
03755
T 603 643-9070
F 603 643-3679

(ii) Notice Pursuant to Section XV of Electric Supplier Trading Partner Agreement dated January 16, 2013

Dear Mr. Bersak:

BOSTON
255 STATE STREET
BOSTON, MA
02109
T 617 897-5600
F 617 439-9363

WWW.SHEEHAN.COM

This letter demands, on behalf of PNE Energy Supply LLC (PNE), the immediate release to PNE of \$100,000 in PNE customer payments retained and withheld by Public Service Company of NH (PSNH). As set forth below, the retention of this amount – which, as PSNH likely understands, imposes a serious financial burden on PNE – is contrary to its tariff and existing agreements with PNE.

Based on our prior communications, PSNH has indicated that these funds are being withheld to cover: (i) a \$5.00 transfer fee that PSNH asserts is due under the tariff for approximately 7,300 PNE accounts that were transferred to PSNH default service on or after February 20, 2013, (ii) other “usual” (but as yet unidentified) fees associated with PSNH’s collection of payments for these accounts, and (iii) extraordinary costs allegedly incurred by PSNH in moving these PNE accounts to default service. As conveyed during our conversations, PSNH is holding back \$60,000 for “fees” and \$40,000 for “recoupment of costs.”

PSNH has acted improperly and inconsistent with the current Electric Supplier Master Services Agreement (ESSMA) and Electric Supplier Trading Partner Agreement (ESTPA) in effect between PSNH and PNE. Under Section VII.A of the ESSMA “[b]asic consolidated billing service includes ... transmitting payments allocated to Suppliers on a daily basis and transmitting all required EDI transactions resulting from such billing and payments in accordance with EDI Standards” Under Section IX of the ESTPA, bills for services provided by PSNH “shall be rendered to Supplier on a monthly basis ...” (emphasis added).

Following the transfer of approximately 7,300 PNE customers to PSNH default service on February 20, 2013 (and, parenthetically, PNE has not received sufficient records of the transfer from PSNH to determine exactly which accounts or how many were transferred), PSNH halted regular daily EDI payments to PNE. Despite PNE requests to resume the regular EDI payments, PSNH withheld approximately \$250,000 of PNE customer payments while it determined the amount of fees and so-called "recoupment costs" that PSNH alleges it is owed as a result of the February 20 transfer of accounts. Finally, on March 1, 2013, PSNH released \$148,017.47 in EDI payments but continues to withhold \$100,000. To date, PNE has not received any invoice for the \$100,000 of PNE customer payments that PSNH has withheld from PNE. On at least three occasions since February 20, by telephone (February 28), email (March 13) and in person (March 14), I have requested that PSNH provide PNE with a written accounting for the \$100,000 of PNE customer payments being withheld by PSNH. Again, no invoice or written accounting for this \$100,000 has been provided to PNE.

Section VIII of the ESTPA states that PSNH may charge fees to the electric power supplier as set forth in the company's approved tariff. For services not delineated in the tariff the Trading Partner Agreement says that the fees shall be negotiated and specified in the Service Agreement. The ESTPA seems to make clear that PSNH's withholding of customer payments to PNE and failure to provide PNE with an invoice for the amounts withheld is a violation of the Agreement. The ESTPA provides as follows:

"The Company shall have the right to subtract fees that Supplier owes to the Company, and that are sixty (60) days or more past due, from amounts the Company collects on behalf of Supplier for reimbursement to Supplier, if applicable. Amounts subject to a good faith dispute will not be subject to deduction (emphasis added)."

As you see, this provision plainly restricts PSNH to subtracting fees from amounts collected on behalf of PNE that are 60 days or more "past due." Accordingly, it is clear under the ESTPA that PNE must be invoiced by PSNH (that is, PNE must be provided with the opportunity to see exactly what charges are being assessed by PSNH, and must be given the opportunity to make payment therefor). Only if PNE fails to make payment within 60 days would PSNH have a right to start withholding PNE customer payments. Providing an invoice of specific charges would then allow the parties to determine whether they needed to engage in the dispute resolution process set forth in Section XV of the ESTPA.

Here, however, PSNH has simply withheld \$100,000; it has completely failed to present an invoice for, or an accounting of, the amount withheld. Under those circumstances, PNE cannot with any degree of precision determine the validity of those charges or properly evaluate which charges warrant invocation of the dispute resolution process.

Robert A. Bersak, Esq.
April 15, 2013
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In light of the foregoing – including PSNH’s apparent breach of the operating agreements between it and PNE – and PSNH’s unilateral, unexplained and improper decision to withhold \$100,000 of PNE customer payments, PNE demands that PSNH pay over to PNE on or before April 19, 2013, the \$100,000 in PNE customer payments being withheld by PSNH, together with applicable interest, and render to PNE a proper accounting and invoice of the amounts it asserts PNE owes relative to the transfer of approximately 7,300 PNE accounts to default service on or about February 20, 2013.

In the event PNE does not receive the \$100,000 by that date, this letter shall constitute PNE’s notice and written demand for dispute resolution, pursuant to Section XV of the ESTPA. The 30-day period referenced in Section XV shall commence on April 20.

Thank you for your prompt attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. Cheney, Jr.", with a stylized flourish at the end.

Robert P. Cheney, Jr.

Cc: Amanda Noonan, OCA
F. Anne Ross, Esquire, General Counsel, NH PUC
PNE Energy Supply, LLC

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April 30, 2013



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MANCHESTER
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Re: **Invoice for Fees/\$100,000 Holdback by PSNH**

HANDLER
2 MARBLE STREET
HANDLER, NH
03223
T 603 884-9177
F 603 884-9879

Dear Mr. Bersak:

BOSTON
100 STATE STREET
BOSTON, MA
02109
T 617 547-8900
F 617 439-4767

This letter is a follow-up to my letter of April 15, 2013. In that letter PNE Energy Supply, Inc. ("PNE") noted its repeated requests for an invoice/accounting of the \$100,000 in PNE customer payments made to and retained by Public Service Company of NH ("PSNH"). PNE continues to demand the immediate release of those funds to PNE and proper invoicing of any proposed fees and charges in accordance with the Electric Supplier Services Master Agreement and Electric Supplier Trading Partner Agreement.

On April 17, 2013, we spoke further on the telephone about the generation of an invoice/accounting by PSNH. You explained that family issues had prevented you from responding earlier, but that you would aim to send us an invoice/accounting by the following Tuesday or Wednesday (April 23 or April 24). Although we are not insensitive to your family issues, that week has now come and gone and another week besides, and PSNH has yet to provide PNE with any information regarding the withheld customer payments. Two issues that appear to elude PSNH's consideration is the relative importance of this considerable amount of money and PSNH's assumed role as the host utility and agnostic gatekeeper between customers and their electric power suppliers in a deregulated environment. Suffice it to say that the issues presented by our repeated demands to PSNH regarding these customer payments held by PSNH are crucial to PNE and are, in a fundamental sense, apparently being totally ignored by PSNH.

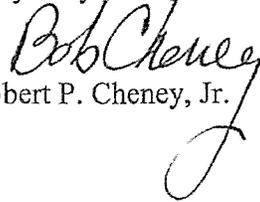
As our April 15 letter indicated, that letter constituted PNE's notice and written demand for dispute resolution pursuant to Section XV of the Electric Supplier Trading Partner Agreement and, if the invoice/accounting was not forthcoming by April 20, the 30-day informal dispute resolution period referenced in Section XV would commence on April

Robert A. Bersak, Esq.
April 30, 2013
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20. Although we have waited a further few days before sending this letter, out of courtesy, at this juncture PNE considers the 30-day period for informal dispute resolution to have been triggered on April 20. PNE continues to demand that PSNH immediately issue an invoice for the claim fees and expenses as contemplated by the Electric Supplier Trading Partner Agreement.

Notwithstanding PNE's willingness to engage in informal dispute resolution as contemplated by the Electric Supplier Trading Partner Agreement, PNE continues to demand that PSNH immediately forward to PNE the PNE customer payments that PSNH continues to withhold contrary to the Electric Supplier Trading Partner Agreement.

Very truly yours,

A handwritten signature in cursive script that reads "Bob Cheney". The signature is written in black ink and is positioned above the printed name.

Robert P. Cheney, Jr.

RPC/lag
Enclosures

Cc: Christopher Cole, Esq.



**Public Service
of New Hampshire**

780 N. Commercial Street, Manchester, NH 03101

Public Service Company of New Hampshire
P. O. Box 330
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(603) 634-3355
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Robert.Bersak@psnh.com

A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary
and Associate General Counsel

May 8, 2013

Robert P. Cheney, Esq.
Sheehan, Phinney Bass + Green PA
Two Eagle Square
Concord, New Hampshire 03301

Re: PNE Energy Supply LLC

Dear Attorney Cheney:

I am writing regarding our prior discussions concerning the issue of monies mutually owed by and between your client, PNE Energy Supply LLC ("PNE") and Public Service Company of New Hampshire ("PSNH").

As you are aware, on February 14, 2013, PNE was the subject of an immediate suspension from market participant status by ISO New England Inc. ("ISO-NE"). Resident Power, PNE's affiliate and business partner, has admitted that PNE's suspension from the ISO-NE market was "voluntary" and that PNE "was not forcibly suspended or removed from the market."

ISO-NE provided notice of the suspension to PSNH, as the "host Market Participant" under the ISO-NE Tariff, via email at 4:38 p.m. on Thursday, February 14. In that notice, ISO-NE stated that PNE had waived its possibility to cure the default leading to the suspension. Pursuant to the ISO-NE Tariff, ISO-NE directed PSNH, as the host Market Participant, that PNE's load responsibilities in the ISO-NE market "need to be retired as soon as practicable, but no later than 00:01, Wednesday February 20, 2013 (3 business days following the date of the suspension)."

PNE's default was a violation of the terms of service contained in PSNH's NHPUC-approved Tariff. That Tariff requires, *inter alia*:

- "At all times, the Supplier must meet the registration and licensing requirements established by law and/or by the Commission and must comply with all applicable

rules promulgated by the Commission.” PNE has failed to comply with this Tariff requirement.

- “The Supplier or the Customer in the case of Self-Supply Service must be either a member of NEPOOL or have an agreement in place with a NEPOOL member whereby the NEPOOL member agrees to take responsibility for all the NEPOOL load obligations, including but not limited to losses and uplift costs, associated with supplying energy and capacity to the Customer’s delivery point.” PNE has failed to comply with this Tariff requirement.
- “The Supplier shall provide the Company with at least 30 days’ notice prior to either the cancellation of an agreement for load responsibility with NEPOOL or a NEPOOL member, or the termination of business in the Company’s Service Area. The Supplier shall accept load responsibility for all its Customers, or have an agreement with a NEPOOL member which provides for accepting load responsibility for all its Customers, until the first meter read date for each respective customer occurring two business days after notice to the Company or transmittal of any Electronic Data Interchange (“EDI”) to the Company.” PNE has failed to comply with this Tariff requirement.

As a result of PNE’s voluntary default at ISO-NE and Tariff violations, PSNH and Northeast Utilities Service Co. (“NUSCO”), its affiliated service company, were required to expend time and resources over a three-day holiday weekend to assume PNE’s load responsibility at ISO-NE and to transfer the retail customers served by that load within PSNH’s billing system. Under the ISO-NE Tariff, these actions had to be completed by the end of the day, Tuesday, February 19. These services and related costs were above and beyond what would have been required had PNE complied with the terms of PSNH’s Tariff, had not voluntarily chosen to default on its ISO-NE obligations, and had allowed customers to transfer from PNE to FairPoint on meter-read dates in the normal course of business as PNE so-informed the NHPUC in its Joint Petition dated February 7 in Docket No. DE 13-049.

PSNH/NUSCO personnel had to work throughout the holiday weekend in order to complete the tasks necessary to deal with PNE’s actions. The cost of the effort by NUSCO IT, customer service, and legal personnel, and for special computer programming accomplished by an outside vendor totaled \$38,570. These costs were incurred strictly to deal with the work necessary for PSNH to assume load responsibility at ISO-NE for PNE’s load responsibilities, and to transfer the related retail customers from PNE to PSNH energy service. The accounting for these costs are limited solely to the approximately one week period when PNE defaulted, and do not include many other costs incurred by PSNH/NUSCO following the load assumption process. A statement itemizing these costs is attached hereto.

In addition to the costs identified above incurred by PSNH/NUSCO to deal with PNE’s voluntary default, in the normal course of business PNE takes certain services from PSNH pursuant to the “Terms and Conditions for Energy Service Providers” included in PSNH’s “Electricity Delivery Service Tariff – NHPUC No. 8”. During the months of February and March, PNE incurred charges totaling \$54,391.39 for these services. Attached are itemized bills detailing the services provided and the related charges for February and March. Due

to PNE's default and the uncertainty regarding PNE's continued status as a going concern, these bills were held by PSNH and not sent to PNE. The normal billing process for these services will resume for charges incurred by PNE in April and beyond.

In light of PNE's default at ISO-NE, and the notification to customers by Resident Power that PNE "suffered from cash flow issues," PSNH deemed it necessary to withhold sufficient payments to PNE to satisfy the payment via setoff and recoupment of costs identified above. To that end, PSNH has withheld \$100,000 from customer payments that would otherwise be paid by PSNH to PNE. Amounts due PNE from PSNH above and beyond this \$100,000 were paid to PNE via wire-transfer initiated on February 28 and subsequent amounts due PNE have been paid in the normal course of business.

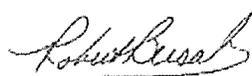
The withholding of amounts payable pending a resolution of PNE's business status and an accounting of what amounts PNE owes PSNH for services rendered or as recoupment for services necessitated by its voluntarily defaulting on its obligations at ISO-NE was done as a normal, prudent business measure in light of PNE's admitted "cash flow issues." Indeed, payments resumed for all but the \$100,000 referenced above just 9 business days from PNE's suspension from the ISO-NE market.

The amounts owed PSNH for tariff services provided in February and March (\$54,391.39) and for the PSNH/NUSCO work required to assume load responsibility from PNE and to make the related retail customer transfers (\$38,570) total \$92,961.39. I have authorized the payment of the excess withholding of \$7038.61 (\$100,000 - \$92,961.39) to PNE.

By letter dated April 30, 2013, on behalf of PNE you have invoked the "Dispute Resolution" provision of the Electric Supplier Trading Partner Agreement. PSNH is willing to implement the terms of that dispute resolution process if PNE not satisfied by the details and actions noted herein. Please let me know what PNE chooses to do.

If you have any questions regarding this, please let me know.

Very truly yours,



Robert A. Bersak
Assistant Secretary and
Associate General Counsel

Attachments

cc: NHPUC
OCA
C. Cole, Esq.

<u>IT</u>	<u>Time Code</u>	<u>Hours</u>	<u>Avg. Rate</u>	<u>Payroll Direct</u>	<u>61% Payroll Overhead</u>	<u>Total</u>
Rep. A	000	13	\$48	\$624	\$381	\$1,005
Rep. B	020					\$0
Rep. C						
Rep. D	000	7	\$41	\$287	\$175	\$462
Rep. E	020	6	\$41	\$246	\$150	\$396
	000	20	\$48	\$960	\$586	\$1,546
	020	7	\$48	\$336	\$205	\$541
	000	9	\$53	\$477	\$291	\$768
	020	15	\$53	\$795	\$485	\$1,280
	000	3	\$53	\$159	\$97	\$256
	020	6	\$53	\$318	\$194	\$512
Infosys Costs (external programming vendor)						\$3,840
						<u>86</u>
						<u>\$10,605</u>

<u>CSR</u>						
Customer Rep	OT	134	\$35	\$4,690	\$2,860.90	\$7,551
Supervis ors	000	39	\$70	\$2,730	\$1,665.30	\$4,395
						<u>173</u>
						<u>\$11,946</u>

<u>Law Dept.</u>			<u>Rate Loaded</u>			
	000	20	\$193			\$3,860
	000	20	\$193			\$3,860
	000	26	\$193			\$5,018
	000	12	\$193			\$2,316
	000	5	\$193			\$965
						<u>83</u>
						<u>\$16,019</u>
Totals		342				\$38,570

Company:
PSNH

Bill Type Code:
Q7

Sundry ACCT # :
296449880

Billing Date:

Address up to 5 lines:

PNE Energy Supply LLC
497 Hooksett Rd, Suite 179,
Manchester, NH 03104

Phone #: (603) 413-6602

ACTIONS

Initiate invoice

Update existing invoice

Write off account

Billing Information

SELECTION CHARGE OF \$5.00 PER TRANSACTION FOR
ENROLLING OR DROPPING A CUSTOMER DURING

February-13

MONTHLYS: FOR 9,547 ACCOUNTS @ \$ 5.00 PER MONTH = \$ 47,735.00

PLEASE SEE ATTACHED LIST:

MONTHLY SUPPLIER CHARGES BILLED AS FOLLOWS:

1. BILLING AND PAYMENT SERVICE CHARGE	\$.50 PER BILL RENDERED OR \$100.00 MINIMUM	\$	4,092.50
2. RATE MAINTENANCE AND ERROR CORRECTION CHARGE	\$50.00 PER HOUR	\$	-
3. COLLECTION SERVICES - RECEIVABLE DOL	0.252% OF TOTAL MONTHLY	\$	1,477.60
LPB	\$ -		
C2	\$ 586,349.14	SUBTOTAL 1	\$ 5,570.10
	\$ 586,349.14	SUBTOTAL 2	\$ 47,735.00
		TOTAL	<u>\$ 53,305.10</u>

SPECIAL INSTRUCTIONS

Mail a copy of the bill to: Aaron Downing, PSNH, 73 W Brook, Manchester, NH

ACCOUNTING DISTRIBUTION CREDIT

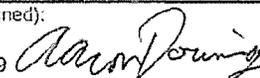
CAU	CCCC	W. O.	ACTIVITY	TASK	RES CD	FACILITY	FERC ACCT	AMOUNT
6D	780		SPCHG		FO		45189	\$ 53,305.10

DESCRIPTION:

Selection and Monthly Supplier Charges

prepared by (printed and signed):

Sent by : Aaron Downing
ext. 720-3629



date:

3-7-13

approved by (printed and signed):

Steve Burnham
Ext. 607-6057

originating ccc:
780

date:

Company: PSNH	Bill Type Code: Q6	Sundry ACCT # : 296461842	Billing Date:
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Address up to 5 lines:
PNE Energy Supply LLC
497 Hooksett Rd, Suite 179,
Manchester, NH 03104

Phone #: (603) 413-6602

ACTIONS		
<input checked="" type="checkbox"/> Initiate invoice	<input type="checkbox"/> Update existing invoice	<input type="checkbox"/> Write off account

Billing Information

INTERVAL DATA SUBSCRIPTION FOR THE MONTH February-13

ANNUALS: FOR 2 ACCOUNTS @ \$ 300.00 PER MONTH = \$ 600.00

NEWMARKET SCHOOL DISTRICT
MILAN LUMBER CO

SUBSCRIBED:
8000777-03 02/05/13
8005224-01 02/05/13

MONTHLYS: FOR 0 ACCOUNTS @ \$ 50.00 PER MONTH = \$ -

SPECIAL INSTRUCTIONS								
Mail a copy of the bill to: <u>Aaron Downing, PSNH, 73 W Brook, Manchester, NH</u>								
ACCOUNTING DISTRIBUTION CREDIT								
CAU	CCCC	W. O.	ACTIVITY	TASK	RES CD	FACILITY	FERC ACCT	AMOUNT
6D	780		MIDFC		FO		45104	\$ 600.00
DESCRIPTION:			prepared by (printed and signed):				date:	
Interval Data Request			Sent by : Aaron Downing ext . 720-3629 <i>Aaron Downing</i>				3-7-13	
approved by (printed and signed): Steve Burnham Ext. 607-6057						originating ccc: 780		date:

Company:
PSNH

Bill Type Code:
Q7

Sundry ACCT # :
296449880

Billing Date:

Address up to 5 lines:

PNE Energy Supply LLC
497 Hooksett Rd, Suite 179,
Manchester, NH 03104

Phone #: (603) 413-6602

ACTIONS

Initiate invoice

Update existing invoice

Write off account

Billing Information

SELECTION CHARGE OF \$5.00 PER TRANSACTION FOR
ENROLLING OR DROPPING A CUSTOMER DURING

March-13

MONTHLYS: FOR 0 ACCOUNTS @ \$ 5.00 PER MONTH = \$ -

MONTHLY SUPPLIER CHARGES BILLED AS FOLLOWS:

1. BILLING AND PAYMENT SERVICE CHARGE	\$.50 PER BILL RENDERED OR \$100.00 MINIMUM	\$	-
2. RATE MAINTENANCE AND ERROR CORRECTION CHARGE	\$50.00 PER HOUR	\$	-
3. COLLECTION SERVICES - RECEIVABLE DOL	0.252% OF TOTAL MONTHLY	\$	486.29
	LPB \$ -		
	C2 \$ 192,973.91	SUBTOTAL 1	\$ 486.29
	\$ 192,973.91	SUBTOTAL 2	\$ -
		TOTAL	\$ 486.29

SPECIAL INSTRUCTIONS

Mail a copy of the bill to: Aaron Downing, PSNH, 73 W Brook, Manchester, NH

ACCOUNTING DISTRIBUTION CREDIT

CAU	CCCC	W O.	ACTIVITY	TASK	RES CD	FACILITY	FERC ACCT	AMOUNT
6D	780		SPCHG		FO		45199	\$ 486.29

DESCRIPTION:

Selection and Monthly Supplier Charges

prepared by (printed and signed):

Sent by : Aaron Downing
ext . 720-3829

Aaron Downing

date:

4-23-13

approved by (printed and signed):

Steve Burnham
Ext. 607-6057

originating ccc:
780

date: