

THE STATE OF NEW HAMPSHIRE



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September 27, 2013

HAND DELIVERED

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 S. Fruit Street, Ste. 10
Concord, NH 03301

NHPUC 27SEP'13PM2:31

Re: IR 13-233 Staff Report (Dispute Between PNE Energy Supply, LLC and Public Service Company of New Hampshire)

Dear Ms. Howland:

Staff, as directed by the Commission in a secretarial letter dated August 8, 2013, pursuant to RSA 365:4 and N.H. Code Admin. Rules Puc 204.04(b), hereby files its report regarding its independent investigation of the dispute between PNE Energy Supply, LLC (PNE) and Public Service Company of New Hampshire (PSNH).

A. Introduction

As directed by the Commission, Staff propounded extensive discovery upon PNE and PSNH regarding this matter, timely responses to which were provided by PNE and PSNH to Staff on September 10, 2013.¹ Staff also reviewed PNE's pleadings filed on June 21, 2013 and July 11, 2013, and PNE's supplemental, unsolicited comment letter dated September 26, 2013, together with PSNH's pleading filed on July 8, 2013.

Staff will not attempt, within this report, to summarize "undisputed" facts "assented to" by PNE and PSNH, as no such comprehensive stipulation of facts was undertaken by the parties during the course of this investigation. Instead, in the interest of avoiding inadvertent prejudice against PNE or PSNH, Staff herein generally outlines selected areas of factual and

¹ PSNH, in its pleading filed on July 8, 2013 (Page 8, Footnote 2), appeared to indicate that certain agreements between PNE and PSNH included as unredacted exhibits to its pleading, and later included as unredacted exhibits to its subsequent discovery responses to Staff, were subject to confidential treatment under RSA Chapter 91-A. Pending a motion for confidential treatment from PSNH and/or PNE, and submission of redacted versions of these documents prepared pursuant to N.H. Code Admin. Rules Puc 201.04, Staff will not file PNE's or PSNH's discovery responses on this Docket No. IR 13-233 at the present time.

legal dispute between PNE and PSNH, and urges the Commission to consult the primary-source documents listed above for PNE's, and PSNH's, own perspectives regarding the factual and legal framework for this matter. This is not meant to be an all-inclusive list of disputed issues. Rather, the issues below highlight some of the primary areas of disagreement among the parties.

B. Selected Areas of Factual and Legal Dispute

Without limiting or filtering the arguments and positions of PNE or PSNH, which may be clarified or expanded in the future by the parties, Staff summarizes for the Commission's consideration the following factual and legal matters over which PNE and PSNH have outstanding disagreement:

1. Suspension or Termination of PNE-PSNH Bilateral Agreements

According to PNE, the bilateral PNE-PSNH Electric Supplier Services Master Agreement (ESSMA) and Electric Supplier Trading Partner Agreement (ESTPA), "are, and always have been, in effect." PNE also asserts that PSNH "never suspended or terminated [the ESSMA and ESTPA]."

According to PSNH, after PNE's voluntary default at ISO-New England in February 2013, the ESSMA and ESTPA were "suspended, without necessarily being terminated."

2. Status of \$38,570 in "Recoupment Costs"

PSNH asserts that the approximately \$38,570 in "Recoupment Costs" withheld from PNE's customer payments for certain extraordinary data processing services rendered in connection with the rapid transfer of PNE's customers to PSNH Default Service in February 2013 were chargeable, pursuant to PSNH's exercise of "its common law rights of setoff and recoupment," and properly withheld from PNE.

PNE rejects PSNH's argument, and states that PSNH's withholding of these monies has no basis in the ESSMA, ESTPA, or PSNH's governing Tariff, and is therefore impermissible.

3. Applicability of \$47,735 in Selection Charges

According to PNE, the approximately \$47,735 in Selection Charges withheld from PNE customer payments were not chargeable to PNE under the ESSMA, ESTPA, or governing Tariff, as 90 percent of the transactions charged for were initiated by PSNH or a third-party competitive supplier, thereby making PNE "not liable" for the Selection Charges associated with those transactions.

According to PSNH, the \$47,735 in Selection Charges were properly withheld from PNE pursuant to the governing Tariff.

4. Alternative Dispute Resolution

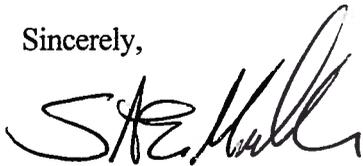
In the view of Staff, there appears to be a disagreement between PNE and PSNH regarding the parties' efforts at alternative dispute resolution. Generally, PNE claims in discovery that PSNH consistently ignored PNE's requests to participate in alternative dispute resolution, while PSNH points in discovery to correspondence between the companies wherein PSNH stated that it made an affirmative effort to participate in such a dispute-resolution process.

C. Staff Recommendations

On the basis of its review of the parties' pleadings, and the discovery responses provided by PNE and PSNH, Staff concludes that material factual and legal disputes exist between PNE and PSNH regarding this matter that implicate substantive interests of PNE and PSNH. Therefore, without making any judgment regarding the relative merits of PNE's and PSNH's positions, and without any prejudice to either party, Staff, under the standard elucidated in N.H. Code Admin. Rules Puc 204.05(a), concludes that PNE's complaint may warrant further action against PSNH, in that the Commission, in its own discretion, could appropriately begin adjudicative proceedings to examine PNE's allegations against PSNH under RSA 365:4.

However, it is Staff's hope that the parties would come to an amicable solution to this dispute in advance of such Commission adjudication, in the interests of administrative and business efficiency. Also, Staff encourages the Commission to consider whether, given the matters of contractual interpretation and common law likely at hand, a discretionary change in this dispute's venue to Superior Court, pursuant to RSA 491:7, would be more appropriate in the interests of administrative efficiency and justice.

Sincerely,



Steven E. Mullen
Assistant Director – Electric Division



Alexander F. Speidel
Staff Attorney

cc: Service List (ELECTRONICALLY)