

BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. IR 13-233

PNE ENERGY SUPPLY, LLC

**Investigation Pursuant to RSA 365:4 and N.H. Code Admin. Rules PART Puc 204 Into
Dispute Between PNE Energy Supply, LLC and Public Service Company of New Hampshire**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
OBJECTION TO PNE'S MOTION FOR REHEARING OF ORDER NO. 25,660**

NOW COMES Public Service Company of New Hampshire ("PSNH") and objects to the motion for rehearing of Order No. 25,660 (May 1, 2014) filed by PNE Energy Supply, LLC ("PNE") in the instant matter. PNE contends that the Commission should grant rehearing because the Commission failed to consider certain of PNE's arguments and to properly interpret PSNH's tariff. PNE's motion raises no new issues, nor issues that the Commission misapprehended or overlooked. Accordingly, the motion should be denied. In support of its objection, PSNH states as follows:

1. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Id.* at 4-5. A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Id.* at 5.

2. On May 1, 2014, the Commission issued Order No. 25,660 in this docket and concluded, among other things, that PSNH was entitled to retain certain funds relating to tariff-based charges and that because PNE sought no remedy for PSNH's temporary withholding of

other funds the question of the propriety of withholding those funds was moot. *PNE Energy Supply, LLC*, Order No. 25,660 (May 1, 2014) at 7. Relative to the mootness issue, which PNE describes as “Issue 1,” in its motion for rehearing PNE contends that the Commission erred in its ruling because it “failed to consider PNE’s express and unambiguous request for interest and attorneys’ fees.” PNE Motion for Rehearing at 1. As to the matter of PSNH’s tariff, which PNE describes as “Issue 2,” PNE contends that the Commission failed to interpret the tariff according to “settled principles of tariff and statutory interpretation.” PNE Motion for Rehearing at 2. PNE has not stated adequate grounds for rehearing on either issue.

3. As for the matter of PNE’s claim to interest and fees, PNE contends that although it stated at the hearing that it agreed that the issue of the return of certain funds was moot, it did not agree that its other claims were waived. PNE is now attempting to amend its argument from the one it clearly made to the Commission at hearing. At the February 18, 2014 hearing in this matter, PNE’s counsel stated:

Now, also in this particular proceeding, and the two questions that were raised today, we got the so-called “self-help” recoupment costs back, when they -- shortly after they sent in the December 16th letter, they paid us 38,000 and some dollars, which were the alleged recoupment costs. *So, at least as far as we're concerned, at this point, that issue is moot. What we're looking at now is the invoiced Selection Charges, and not the recoupment charges.* So, this fine point of “can they go off and use set-off under common law, when they’re bound very specifically as to how they’re supposed to proceed in terms of a material breach?” I think they can’t do it. *But, I think, for purposes of today, that discussion is really moot anyway.*

Transcript of February 18, 2014 Hearing at 43-44 (emphases added). PNE clearly stated that “the issue” of the charges for the recoupment of PSNH’s costs was moot and that the Commission was only “looking at” the Selection Charge and not any recoupment charges. PNE did not state that the recoupment charges were moot, except as to a claim for interest, nor did it otherwise state that it had some continuing claim to interest. This is made even more apparent

by PNE's further statement that "I guess, on the last comment, the Staff raised the issue of interest. To the extent that we are -- if we were to be awarded now our somewhat reduced Selection Charges, you know, we just want the statutory rate of interest on whatever that would be, that final award." Transcript of February 18, 2014 Hearing at 45. Therefore, when the issue of interest was raised PNE was clear that its remaining claim to interest related only to the Selection Charge, a charge which was upheld. PNE clearly annunciated its decision not to pursue any further claims regarding the amounts held and subsequently paid by PSNH, and that issue is indeed moot. (*See Public Service Co. of New Hampshire*, 62 NH PUC 127, 129 (1977) (failure to pursue a claim for interest renders the issue moot.) In that the Commission upheld PSNH's collection of the Selection Charge, and that the Selection Charge was the only charge the Commission was "looking at," there is no error in the Commission's conclusion in Order No. 25,660, and there is no cause for rehearing on "Issue 1."

4. PSNH also notes that although PNE initially states that the Commission erred on its mootness finding because it failed to consider PNE's claims for fees and interest, PNE later adds a contention that the finding was in error because the Commission failed to rule on a separate issue. Specifically, PNE later contends that the Commission "erroneously failed to rule" on its arguments regarding PSNH's Trading Partner Agreement. PNE Motion for Rehearing at 4. In that PNE had stated at the hearing that only the Selection Charge -- a tariffed rate -- was in issue, the Commission did not "erroneously fail[] to rule" on an issue separate from the disputed tariff charge. There was no other issue requiring a ruling. PNE's admission, and the Commission's subsequent conclusion, that certain of PNE's contentions were moot were both correct, and PNE has offered no reason for the Commission to amend that determination.

5. As to what PNE describes as “Issue 2,” PNE contends that the Commission erred in its interpretation of PSNH’s tariff¹ and on ISO-NE’s status as PNE’s agent for purposes of the transactions at issue. PNE’s arguments in its motion for rehearing are nothing more than restatements of its prior contentions in this docket, which is not a basis upon which to grant rehearing. *See Public Service Company of New Hampshire, supra* at 5. PNE makes clear that its arguments are simply restatements of prior contentions by noting its “unbending” position on these issues throughout the case. PNE Motion for Rehearing at 5. Therefore, PNE has explicitly stated to the Commission that it is now making an argument unchanged from the arguments it has offered previously. PNE made its case at the hearing, as well as in pleadings before and following the hearing, and the Commission rejected them. Simply restating them now does not provide “good reason” for rehearing.

6. In addition, and relative to PNE’s claim about the Commission’s interpretation of the term “initiate” when concerning ISO-NE’s role in PNE’s voluntary default, PSNH notes, as it did in its February 27, 2014 memorandum, that PNE’s reading of PSNH’s tariff is unreasonable. PNE relies upon a dictionary definition of the term “initiate” as meaning “to start or begin something.” PNE Motion for Rehearing at 5. PNE then claims that “no one initiated” the customer transfers at issue. In other words, PNE contends that no one – not the Commission, not PNE, not ISO-NE, and not PSNH – began or started the process of transferring customers upon

¹ PSNH notes that PNE spends much time arguing for specific interpretations of parts of Section 2(a) of PSNH’s tariff relating to the Selection Charge. As noted on May 22, 2014 at the hearing in Docket No. DE 12-295, PSNH confirmed that it agreed with all parties in that docket that its Selection Charge will be eliminated for “business as usual” selection transactions. To that end, in the proposed tariff pages submitted with its March 12, 2014 cost of service study in that docket PSNH has proposed to delete the entirety of Section 2(a) of its tariff. PNE’s arguments, therefore, address a tariff provision that has been amended by Commission order already, *see PNE Energy Supply d/b/a Power New England*, Order No. 25,603 (December 13, 2013), and that will cease to exist entirely in the near future. Accordingly, in that the Commission already upheld PSNH’s manner of assessing the Selection Charge prior to December 13, 2013, and has amended the manner of assessment by order, and that the provision of PSNH’s tariff including the Selection Charge will soon be eliminated, PSNH contends that there is no basis for the Commission to revisit or reinterpret the terms of PSNH’s tariff in the context of this case.

PNE's default. That simply cannot be the case. Either PNE by its voluntary determination to default, or ISO-NE, acting in PNE's place following that default, began the process by creating the requirement that the customers be transferred. In that either PNE or the entity acting as its agent began that process, PNE was rightly assessed under PSNH's tariff as it existed at the time for those transactions. PNE's unreasonable interpretation leading to a process begun by no one, cannot provide the basis for a claim for rehearing.

7. Finally, PNE points to PSNH's request to amend the Selection Charge in Docket No. DE 12-295 as somehow providing confirmation for its arguments. PSNH's request does no such thing. PSNH's request in that docket was brought about by the circumstances in that docket, including that the section of PSNH's tariff PNE seizes upon has been amended and will likely be deleted. *See* footnote 1 to this objection. That request has no relevance to any issues argued by PNE in its motion.


WHEREFORE, PSNH respectfully requests that the Commission:

1. Deny PNE's Motion for Rehearing; and
2. Order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire


May 28, 2014
Date

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CERTIFICATE OF SERVICE

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

May 28, 2014
Date


Matthew J. Fossum