

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 15-491

PNE ENERGY SUPPLY, LLC, ET AL. v. PSNH D/B/A EVERSOURCE ENERGY

Transfer Question from Superior Court

MOTION FOR LEAVE TO FILE SUR-REPLY

PNE Energy Supply, LLC (“PNE”), and Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”), respectfully move for leave to file a brief Sur-reply, of no more than 10 pages, to respond to certain new issues and arguments raised by PSNH in its Reply Brief. In support of this Motion PNE and Resident Power state as follows:

1. In Order No. 25,881, the Commission established a procedural schedule for the parties’ briefing of the question set forth in the Superior Court’s November 25, 2015 Transfer Order. Under that schedule, PSNH filed its Brief on April 29, 2016, PNE and Resident Power filed their Brief on May 13, and PSNH filed a Reply Brief on May 20. *Id.* at 5. A hearing on the merits is scheduled for June 9. *Id.*

2. PSNH’s Reply Brief raises several issues and arguments that it has not raised before. PNE and Resident Power respectfully request an opportunity to respond to these issues in a brief Sur-reply, of no more than 10 pages, to be filed as soon as practicable.

3. For example, PSNH *concedes* that it transferred Milan Lumber, a large former PNE commercial customer, to another CEPS *after* transferring it to default service following PNE’s suspension. *See* PSNH’s Reply Brief at 9. Yet PSNH failed to transfer 7,300 similarly-situated former PNE customers to FairPoint. *See id.* PSNH attempts to explain away this glaring inconsistency by introducing new and unsupported allegations concerning its billing system for large commercial/industrial customers that are not in the Complaint. *See id.* at 9-10. Nothing in

its explanation, however, clarifies why it treated the FairPoint enrollments differently, or why its lengthy recitation on pages 10-11 of the “protocols” expressed by the Commission or either Tariff did not *also* “mandate” that PSNH delete TransCanada’s enrollment for Milan Lumber. *See id.* PNE and Resident Power should have an opportunity to respond to PSNH’s argument concerning this issue.

4. Similarly, PSNH alleges for the first time that the 8,500 customers PNE and Resident Power sold to FairPoint did not request to be transferred to FairPoint. *See* PSNH’s Reply Brief at 2, 9. The facts in the Complaint contradict this assertion. Under their aggregation agreements with Resident Power, these customers “appointed Resident Power as their exclusive agent for the purpose of researching, negotiating, and executing electricity supply agreements with CEPSS whose competitive electricity rate would be lower than the posted utility rate (here, PSNH’s Default Service rate).” Complaint ¶ 51. PSNH has never disputed (nor could it dispute) this factual allegation. In several instances in its Reply Brief, however, it casually dismisses these agreements and Resident Power’s authority to choose these customers’ supplier, most notably in its attempts to defend its deletion of the FairPoint enrollments. *See* Reply Brief at 2, 9. PNE and Resident Power should be provided a brief opportunity to address the unwarranted confusion caused by PSNH’s comments on this issue, and further explain the relationship between their former customers and Resident Power.

5. Finally, PSNH misconstrues PNE and Resident Power’s reliance on an ISO-NE Tariff provision stating that “any load asset registered to a suspended Market Participant shall be terminated, and the obligation to serve the load associated with such load asset shall be assigned to the relevant unmetered load asset(s) unless and until the host Market Participant for such load assigns the obligation to serve such load to another asset.” *Id.* at 12. Although this provision

was addressed in the parties' briefing in the Superior Court, PSNH alleges – again, for the first time – that PNE claims it (PNE) was the “host market participant.” *Id.* This is incorrect; rather, PNE explained that *PSNH* was the “host market participant” and should have, under the provision above, transferred the remaining 7,300 former PNE customer accounts to FairPoint. *See 9/1/2015 Objection to Motion to Dismiss at 30.* PNE and Resident Power should be permitted to address this new assertion and PSNH’s reliance on it to argue the provision above does not apply.

6. PNE and Resident Power believe these and other new issues and arguments can be addressed in a brief Sur-reply of no more than 10 pages. A Sur-reply would address only those issues and arguments that PSNH has raised here for the first time and that PNE and Resident Power did not already address in their Brief filed on May 13. The Commission would not need to modify or postpone the current procedural schedule established in Order No. 25,881; if the Commission is inclined to grant this Motion, PNE and Resident Power would be prepared to file a Sur-reply very soon after the Commission grants the Motion and well before the June 9 hearing.

7. PSNH would experience no harm if PNE and Resident Power are allowed to file a Sur-reply. Counsel for PNE and Resident Power contacted PSNH’s counsel and requested its assent to file a Sur-reply. PSNH did not assent. Nevertheless, in the Superior Court, PSNH *did assent* to a briefing schedule that permitted PNE and Resident Power to file a Sur-reply. *See 8/6/2015 Plaintiffs’ Assented-to Motion to Extend Time to File Objection to PSNH’s Motion to Dismiss and Set Schedule for Further Briefing.* The Court granted that Motion, and the parties proceeded under that schedule.

8. PNE and Resident Power submit that allowing them to file a Sur-reply as described above would contribute to administrative efficiency in that the Commission and the parties would have the benefit of their response to PSNH's Reply Brief prior to the hearing on June 9, 2016, thus saving time and allowing the Commissioners and the parties to better prepare for the hearing.

WHEREFORE, PNE and Resident Power respectfully request that the Commission grant this motion and issue an order permitting PNE and Resident Power to file a brief Sur-reply, of no more than 10 pages, to respond to new issues and arguments raised in PSNH's Reply Brief.

Respectfully submitted,

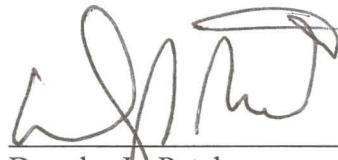
PNE ENERGY SUPPLY, LLC

and

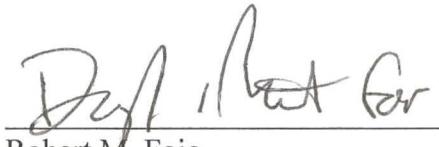
RESIDENT POWER NATURAL GAS
AND ELECTRIC SOLUTIONS, LLC

By Their Attorneys,

Dated: May 24, 2016



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CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing by email to the service list in DE 15-491.

Dated: May 24, 2016



Douglas L. Patch