

**THE 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

ORDER OF NOTICE

On November 30, 2015, the Commission received a transmission from the Hillsborough North Superior Court (Court) of the Court's Transfer Order issued on November 25, 2015 (Transfer Order). The Transfer Order transferred to the Commission the Court's Case No. 216-2015-CV-00265, *PNE Energy Supply, LLC and Resident Power Natural Gas and Electric Solutions, LLC v. Public Service Company of New Hampshire d/b/a Eversource Energy* (Court Case). The Court Case involves the claim by plaintiffs PNE Energy Supply, LLC (PNE) and Resident Power Natural Gas and Electric Solutions, LLC (Resident Power), against defendant Public Service Company of New Hampshire, d/b/a Eversource Energy (Eversource), for tortious interference with contractual relations. This claim is based primarily on Eversource's assignment of customer accounts serviced by PNE as a registered competitive electric power supplier (CEPS) to Eversource's default service. The assignment occurred coincident with PNE's suspension from the wholesale power markets administered by ISO New England, Inc. (ISO-NE) in February 2013 and at a time when PNE was seeking to sell its customer accounts to FairPoint Energy, LLC (FairPoint).

In the Transfer Order, the Court referenced the complexity of the tariffs and regulations cited by the parties, and "the fact that interpretation of these tariffs and regulations is integral to the determination of whether defendant's conduct was improper," as the bases for transferring the

Case to the Commission. The Court transferred the Case for determination of the following question:

Considering the tariff and regulatory provisions cited by plaintiffs and defendant, did defendant act "improperly," within the meaning of a tortious interference with contract claim, by: (a) refusing to perform a one-time, offcycle transfer of PNE customer accounts to FairPoint; (b) illegally deleting 7,300 pending electronic enrollments for the transfer of PNE customers to FairPoint; and (c) replacing those enrollments with electronic enrollments for the transfer of PNE customers to Default Service?

The Transfer Order further states that the transfer to the Commission is being made "[f]or reasons more fully explained in the Court's concurrently issued order on defendant's motion to dismiss." The order on defendant's motion to dismiss states that the Court has referred Count I of the plaintiffs' complaint to the Commission "to determine if defendant acted improperly based on the conduct alleged in paragraphs 137(a) through (c)" of the complaint.

The Court's transmittal letter and Transfer Order and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-491.html>.

The Transfer Order raises, inter alia, issues related to (1) the interpretation of relevant provisions of the Commission's Puc 2000 rules applicable to CEPS and electric load aggregators, (2) the interpretation of relevant provisions of RSA 374-F regarding electric restructuring principles and the obligation of electric distribution utilities to provide default service, (3) the interpretation of relevant provisions of Eversource's Electricity Delivery Service Tariff - NHPUC No. 8, (4) the interpretation of relevant provisions of the ISO-NE Transmission, Markets and Services Tariff, and (5) the appropriate assessment of the Commission's costs and expenses to the parties pursuant to RSA 365:37.

PNE, Resident Power, and Eversource shall participate as mandatory parties to this proceeding. Other interested persons may seek permission to intervene, as described in the ordering paragraphs below. Each party has the right to have an attorney represent the party at the party's own expense.

Based upon the foregoing, it is hereby

ORDERED, that a prehearing conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on April 5, 2016 at 2:00 p.m., at which each party will provide a preliminary statement of its position with regard to the Transfer Order and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15; and it is

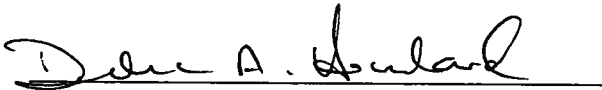
FURTHER ORDERED, that, immediately following the prehearing conference, PNE, Resident Power, Eversource, the Staff of the Commission, and any intervenors hold a technical session to review the Transfer Order and develop a procedural schedule; and it is

FURTHER ORDERED, that, pursuant to N.H. Code Admin. Rules Puc 203.12, the Executive Director shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice on the Commission's website no later than March 7, 2016; and it is

FURTHER ORDERED, that, pursuant to N.H. Code Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene, with copies sent to PNE, Resident Power, and Eversource, on or before March 31, 2016, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities, or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rules Puc 203.17 and RSA 541-A:32, I (b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said
Objection on or before April 5, 2016.

By order of the Public Utilities Commission of New Hampshire this first day of March,
2016.



Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.