

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

**PSNH Alternative Default Energy Service Rate
DE 11-216**

PNE MOTION FOR REHEARING OF ORDER NO. 25, 488

NOW COMES PNE Energy Supply, LLC (“PNE”), by and through its undersigned counsel, and respectfully submits this Motion for Rehearing of Order No. 25, 488 and in support hereof says as follows:

1. Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when the motion states good reason for such relief. On appeal, a party seeking to set aside an order of the PUC has the burden of demonstrating that the order is contrary to law or, by a clear preponderance of the evidence, that the order is unjust or unreasonable.¹ Good reason may be shown by identifying specific matters that were “either overlooked or mistakenly conceived in the original decision and thus invite[] a reconsideration upon the record upon which that decision rested.”²

2. The purpose of this Motion is to seek rehearing or reconsideration by the Commission on rulings in Order No. 25, 488 that are based upon erroneous statutory interpretations. The touchstone for statutory interpretation is the plain meaning of the statute considered as a whole:

In matters of statutory interpretation, we are the final arbiters of the legislature’s intent as expressed in the words of the statute considered as a whole. We interpret statutes not in isolation, but in the context of the overall statutory scheme. Our analysis must start with consideration of the plain meaning of the relevant statutes, construing them, where reasonably possible, to effectuate their underlying policies. Insofar as reasonably possible, we will construe the various statutory provisions harmoniously.

In re Pennichuck Water Works, Inc., 160 N.H. 18, 992 A.2d 740 (N.H. 2010).

A. **The Commission’s Order ignores the plain meaning of RSA 374-F:2, I-a which mandates that Default Service be made available only to retail customers who are otherwise without an electricity supplier.**

¹ *In re Appeal of Pinetree Power, Inc.*, 152 N.H. 92 at 95 (2005) (citation omitted).

² *Lambert Const. Co. v. State*, 115 N.H. 516, 519 (1975) (citation omitted).

3. By law, “Default Service means electricity supply that is available to retail customers who are otherwise without an electricity supplier.”³ Additionally, “[d]efault service should be designed to provide a safety net and to assure universal access and system integrity.”⁴

4. Rate ADE is a proposed default energy service rate that does not comply with the requirements of RSA 374-F. As noted above, default service is only “available to retail customers who are otherwise without an electricity supplier.” In stark contrast, the very purpose of Rate ADE is to entice customers away from an existing competitive supply.

5. PSNH erroneously believes that Rate AD is for any customer who, for whatever reason, elects not to have a competitive supplier supply their energy.⁵ PSNH interprets RSA 374-F:2, I-a as if it reads that default service is available to any customer that does not choose an electricity supplier. This is inconsistent with the plain meaning of RSA 374-F:2, I-a as it was enacted by the Legislature.

6. Moreover, as noted above, the context for and purpose of default service is to provide a safety net and to assure universal access and system integrity. The design of Rate ADE, the only purpose of which is to lure customers back to PSNH, most assuredly has nothing to do with providing a safety net or assuring universal access as envisioned by RSA 374-F and is inconsistent with the words of the statute taken as a whole. A default service rate that is only available to customers who are “otherwise without an electricity supplier” is entirely consistent with the statutory mandate that the purpose of default service is to provide a safety net and to assure universal access and system integrity. The Maine Public Utilities Commission has reached a similar conclusion:

...for customers that have entered the competitive market, standard offer is intended to be a default service or safety net (not another supply option) in the event of inadvertent lapses in competitive supply or when the customer cannot obtain competitive supply.

WPS Energy Services, Order Denying Request for Opt-out Fee Waiver, Docket No. 2001-594 at 2-4 (Nov. 7, 2001).

³ RSA 374-F:2, I-a

⁴ RSA 374-F:3, V, (c)

⁵ PSNH Response to Q-PNE-FEL-001: “Upon approval of Rate ADE, the Availability section of Default Energy Service Rate DE will be modified so that Rate DE will no longer be available to customers who qualify for service under Rate ADE. Therefore, if a customer has not chosen a supplier and does not otherwise qualify for Rate DE, Rate ADE will be the only rate available to such customers.”

A. The Commission’s Order ignores the plain meaning of RSA 369-B:3, IV, (b)(1)(A) which requires that the price of default service shall be PSNH's actual, prudent, and reasonable costs of providing such power.

7. By law, “[t]he price of such default service shall be PSNH's actual, prudent, and reasonable costs of providing such power. . . .”⁶

8. PSNH’s proposed calculation of Rate ADE admittedly does not include any costs for marketing or outreach programs, or costs for administration, promotional materials, marketing, sales and customer service.^{7 8} Therefore, PSNH cannot credibly claim that Rate ADE is based upon “actual costs.” There is no margin built into Rate ADE to cover any of these costs which may well be substantial and actually exceed PSNH’s “adder.”

D. The Commission’s Order ignores the plain meaning of RSA 125-O:18 which requires that all of the costs of the Scrubber must be recovered through default service.⁹

9. RSA 125-O:18 requires that “the costs” of the Scrubber must be recovered through default service. Accordingly, all of the costs of the Scrubber are required to be recovered through Rate ADE, not just some of them. PSNH is proposing to recover only the non-operating costs of the Scrubber through Rate ADE.¹⁰

PSNH has conceded that it has not included operating costs because “cost allocations” would have to be made.¹¹ However, cost allocations are an every-day staple of utility ratemaking and hardly constitute an excuse for not including operating costs in the calculation of Rate ADE.

⁶ RSA 369-B:3, IV, (b)(1)(A).

⁷ PSNH Response to Q-PNE-FEL-22: “PSNH has not formulated any marketing or outreach programs. . . .”

⁸ PSNH Response to Q-PNE-FEL-33: “Please see the response to OCA-02, Q-OCA-002 and PNE-FEL-02, Q-PNE-FEL-002.”

⁹ RSA 125-O:18

¹⁰ PSNH Response to Q-PNE-FEL-55: “Rate ADE is comprised of PSNH's marginal cost and the non-operating costs of the scrubber which are the Company's actual, prudent and reasonable costs of providing such power.

¹¹ PSNH Response to Q-PNE-FEL-55: “Unlike non-operating costs, which are readily identifiable, operating costs associated with the Scrubber cannot be easily determined. Cost allocations would have to be made for plant costs such as labor and administrative and general expenses. Rather than base the adder on allocated cost, PSNH proposes that the adder only include non-operating costs.”

Because the calculation of Rate ADE does not include operating as well as non-operating costs of the Scrubber, it does not comply with the plain meaning of RSA 125-O:18 and it is therefore unlawful.

WHEREFORE, for all of the foregoing reasons, PNE Energy Supply, LLC respectfully requests the Commission to:

- A. Reconsider its Order in this proceeding; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
PNE Energy Supply, LLC

By its Attorney
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Dated: May 7 , 2013

CERTIFICATION OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this Motion for Rehearing on each person identified on the Commission's service list for this docket.

/s/ James T. Rodier