

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DM 12-075

Power New England

Petition for Declaration that the Financial Security Posted by Electricity N.H., LLC Is Unlawful

**ELECTRICITY N.H., LLC'S
MOTION TO DISMISS
PETITION OF PNE ENERGY SUPPLY, LLC**

Electricity N.H., LLC d/b/a E.N.H. Power (“Electricity NH”) hereby moves the Commission, pursuant to Rule Puc 203.07, to reject the “Petition of Power New England for Declaration that the the [sic] Financial Security Posted by Electricity NH, LLC Is Unlawful” (the “Petition”), dated July 6, 2012, for procedural and substantive deficiencies. In support of this Motion, Electricity NH states as follows:

1. On or about July 10, 2012, PNE Energy Supply, LLC d/b/a Power New England (“PNE”) filed a Petition with the Commission seeking “a declaration that the Financial Security posted by Electricity NH, LLC is unlawful and for other relief.” (Petition at p. 1.) The Petition makes reference to a joint financial surety executed by Noble Group Limited, and filed in Docket DM 11-067, guaranteeing the obligations of Noble Americas Energy Solutions, LLC and Electricity NH (the “Guarantee”), pursuant to Rule Puc 2003.03. (Petition at ¶ 3.) Electricity NH is a registered Competitive Electric Power Supplier (“CEPS”) in New Hampshire. (Docket DM 12-075.)

2. The Petition raises concerns with the form of the Guarantee filed to satisfy the financial security requirement for Electricity NH pursuant to Rule Puc 2003.03, and claims that

the financial security is “patently deficient.” (Petition at ¶¶ 4-7.) The Petition seeks an Order from the Commission that would: (1) declare that the financial security posted by Electricity NH is unlawful; (2) require any future financial security posted by Electricity NH to have an expiration date of not less than 5 years; and (3) require any future financial security posted by Electricity NH to conform with certain instructions provided to PNE by Staff in connection with PNE’s prior filing of financial security. (Petition at p. 3.)

3. The Petition, however, provides no legal authority or other basis for its requested relief and fails to set forth a valid dispute. Electricity NH moves to dismiss the Petition for failure to set forth allegations reasonably susceptible to a construction that would permit the requested relief.

4. As a preliminary matter, the Petition cites no legal or administrative authority establishing that PNE, a registered CEPS, has standing to challenge the Commission’s approval of Electricity NH’s financial security. PNE has not set forth any facts to establish a right or interest in, or an actual or potential injury in fact arising from, the form of Electricity NH’s Guarantee. The purpose of the financial security requirement under Puc 2003.03 is to ensure a financial resource to pay third parties affected by a CEPS’s failure to comply with applicable laws and rules. The Petition fails to allege that PNE is within the protected class of entities that have standing to challenge the adequacy of Electricity NH’s financial security.

5. While the Commission has discretion to determine whether to review its prior decision to approve Electricity NH’s financial security, the Petition fails to set forth any reasonable grounds for the Commission to exercise its discretion in this instance. The Guarantee was reviewed by Staff prior to Staff’s recommendation that Electricity NH’s application for registration as a CEPS be approved by the Commission, and the Commission implicitly approved

the Guarantee when it accepted Staff's recommendation following the Commission's own review of the relevant materials. (Docket DM 12-075.) The Guarantee has not changed since the Commission's initial review and acceptance, and the Petition's alleged technical deficiencies do not render the Guarantee "unlawful."

6. Moreover, there is no allegation that the Guarantee does not satisfy the purpose and intent of the financial security requirements under Rule Puc 2003.03. The Guarantee clearly obligates Noble Group Limited to make prompt payment of any liabilities incurred by Noble Americas or Electricity NH to the Commission as required by the rules. The absence of an allegation that the Guarantee is somehow deficient in satisfying the purpose of the rule demonstrates the Petition's failure to state a valid claim.

7. Instead, the Petition raises two alleged technical deficiencies and then attempts to dictate that specific language be included in the Guarantee. The Petition first asserts that the Guarantee's reference to the Commission "entering into a trading relationship with Noble Americas Energy Solutions LLC and Electricity N.H., LLC" renders the Guarantee unlawful. (Petition at 2.) The Petition, however, cites to no authority for this bald assertion, nor does it explain in what way the referenced language violates Rule Puc 2003.03. Moreover, the reference to a trading relationship is non-binding descriptive prefatory language that does not compromise the Guarantee's central purpose as a valid financial security.

8. The Petition's second allegation is that the Guarantee violates Rule Puc 2003.03(a)(5) because the Guarantee is terminable upon 30-days notice. Again, the Petition cites no authority and fails to explain how a 30-day termination provision violates the requirements of Puc 2003.03(a)(5). In fact, the Guarantee has no set expiration date, and specifically continues until all obligations to the Commission have been satisfied in full. (Guarantee ¶ 4.)

9. Finally, the Petition asserts that the Guarantee is “patently deficient” because it does not use wording substantially similar to an example provided by Staff to PNE in the context of PNE’s application for registration as a CEPS. (Docket DM 11-075.) This argument is baffling in that it lacks any grounding in the actual rules applicable to Electricity NH. The fact that Staff at one time suggested particular wording for a financial security has no bearing on Electricity NH’s compliance with the rules. Even if Staff’s prior communications with PNE were somehow relevant to Electricity NH, the quoted communication states a non-binding suggestion, not a rule or requirement, and was clearly intended as an exemplar to assist PNE in complying with the requirements of Puc 2003.03.

10. The fundamental failing of the Petition is the utter absence of any facts that would support an inference that the Guarantee will not provide adequate financial security to the Commission to satisfy obligations incurred by Electricity NH in its role as a licensed CEPS. Accordingly, the Petition fails to raise any grounds for the Commission to reconsider its prior acceptance of Electricity NH’s financial security or to declare the financial security unlawful.

11. Moreover, the Petition’s request for future relief is improper. The Petition establishes no authority for PNE to dictate what requirements the Commission will impose for future financial securities posted by a CEPS. The applicable requirements are set forth in the rules, subject to amendment by the Commission through rulemaking, and interpreting the rules rests squarely within the Commission’s discretion. The Petition’s attempt to restrict the Commission’s future discretion is improper. Electricity NH is, and will continue to be, obligated to comply with the applicable rules promulgated by the Commission.

12. For all of the above stated reasons, Electricity NH requests that the Commission exercise its discretion and reject the Petition.

WHEREFORE, Electricity N.H., LLC d/b/a E.N.H. Power respectfully requests that the Commission:

- A. Grant this Motion and dismiss the Petition filed by PNE Energy Supply, LLC; and
- B. Grant such additional relief as is just and equitable.

Respectfully submitted,

Electricity N.H., LLC d/b/a E.N.H. Power
By its attorneys
Bernstein, Shur, Sawyer & Nelson, P.A.

Dated: July 20, 2012

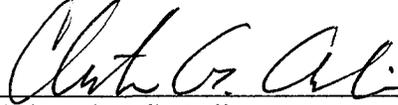


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Certificate of Service

I hereby certify that a copy of this Motion has been served electronically on the persons on the Commission's service list in this docket in accordance with Puc 203.11 on this 20th day of July, 2012.



Christopher G. Aslin