

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

Docket No. DE 12-093

Power New England

Petition for Order Requiring Modification to PSNH's Terms and Conditions to Ensure that
PSNH's Small Customers Benefit from Retail Electricity Choice

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
OBJECTION
TO PNE'S MOTION TO STRIKE**

Pursuant to Rule Puc 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the Motion to Strike of PNE Energy Supply, LLC, d/b/a Power New England ("PNE") dated April 21, 2012. PSNH files this Objection reluctantly, in order to protect the record, and to ensure that the Commission recognizes that the Company does not concur with the Motion to Strike. In support of this Objection, PSNH states as follows:

1. On April 12, 2012, PNE Energy Supply, LLC, d/b/a Power New England ("PNE") filed a Petition with the Commission seeking "an Order requiring modifications to PSNH's Services and Schedule of Charges for Energy Service Providers... ." The Petition notes that the charges in question are contained in PSNH's "Electricity Delivery Service Tariff- NHPUC No. 8, Original Pages 31 through 40. PSNH's 'Services and Schedule of Charges' are set out in Section 2, original pages 32 through 36."

2. The Petition seeks an Order that would adjust certain of PSNH's tariffed rates; in particular, PNE asks that the following portions of Tariff NHPUC No. 8 contained in the "Terms and Conditions for Energy Providers" be adjusted to a rate level of zero by eliminating them completely: i. the "Selection Charge" at Section 2(a) (Tariff p.32). ; ii. the "Billing and Payment Service Charge" at Section 2(f) (*Id.* at p. 35); and, iii. the "Collection Services Charge" at Section 2(g) (*Id.* at p. 36).

3. The relief sought in the Petition (elimination of certain tariffed charges) would decrease the revenues received by PSNH. Such a reduction, from the current tariffed rates to zero, would unquestionably affect the legal rights, duties, or privileges of PSNH. Hence, the proceeding requested by PNE's Petition would be a "contested case" to which PSNH would be a necessary party, and "entitled as a right" to be such a party. *See* RSA 541-A:1, XII and Rule Puc 102.10. ("Contested case" means a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.) (If deemed necessary by the Commission to act on the Motion to Dismiss, the Company requests that the Commission find that PSNH is indeed a necessary party and "entitled as a right" to be such a party.)

4. As a result of the impact the Petition would have on PSNH's legal rights, duties, or privileges, the Company filed a Motion to Dismiss the Petition on April 20, 2012. That Motion was based on several grounds, including: i. the failure of PNE to comply with the requirements of Rule Puc 203.06(c) (which requires that "All petitions seeking a rate adjustment shall be filed in compliance with Puc 1600 if applicable and shall be accompanied by pre-filed testimony and

exhibits.”); and, ii. that the Petition seeks to have the Commission engage in “single-issue ratemaking,” a practice that the Commission has traditionally rejected.

5. PNE filed a Motion to Strike PSNH’s Motion to Dismiss, dated April 21, 2012, but docketed by the Commission on April 24, 2012. The singular argument set forth in the Motion to Strike is that “PSNH has not been granted intervener status and, accordingly, is not a party. Only a party to a proceeding may file a Motion with the Commission. Rule 203.07(a).” Giving any credence to that argument in a situation where the Petition specifically names PSNH twice in its caption (“Petition of Power New England for Order Requiring Modifications to **PSNH’s** Terms and Conditions to Ensure that **PSNH’s** Small Customers Benefit from Retail Electricity Choice” (emphases added)) would lead to an absurd result.

6. In the past, the Commission has granted a Motion to Dismiss at the same procedural posture as the instant case. *Turner v. PSNH*, 75 NHPUC 643 (1990); *reh. den.* 75 NHPUC 749 (1990); *appeal den.* N.H. Sup. Ct., Docket 91-001, May, 1991 (prior to issuance of any Order of Notice, the Commission granted a Motion to Dismiss filed by PSNH regarding a rate complaint filed against the Company, stating that the subject of the complaint had been fully addressed in a recent proceeding, the petitioner chose not to intervene in that proceeding, and the allegations contained in the pleading do not state any basis for reconsideration of the commission's order in that proceeding).

7. As in *Turner*, the Commission recently concluded a proceeding where the subject of PNE’s Petition (rates and charges set forth in PSNH’s Electric Delivery Service Tariff) was

addressed. That docket was the general rate case regarding PSNH, Docket No. DE 09-035, wherein the Company's overall revenue requirement was set. The revenue requirement established in that recent proceeding took into consideration the revenues received by the Company from the tariffed charges that PNE seeks to eliminate.

8. As in *Turner*, the petitioner (PNE) chose not to intervene in that proceeding.

9. As in *Turner*, the allegations contained in PNE's Petition do not state any basis for reopening and reconsidering the commission's order in the recently concluded PSNH rate case.

10. Thus, Commission precedent supports the consideration, and granting of, PSNH's Motion to Dismiss at this stage of the instant proceeding.

11. As noted above, PSNH's Motion to Dismiss was based in part upon the Petitioner's failure to comply with the Commission's rules which expressly require that all petitions seeking a rate adjustment shall be accompanied by pre-filed testimony and exhibits. Rule Puc 203.06(c). In a footnote, the Motion to Strike states, "Rule Puc 203.06(c) only applies to 'utilities.' See Rule 1600." Rule Puc 1600, with its various appendices and attachments, is over 133 pages long. Contrary to the assertion in the Motion to Strike, nowhere in those 133 pages do those Chapter 1600 regulations state that Rule Puc 203.06(c) only applies to utilities. PSNH and the Commission are entitled to a specific citation to the legal authority claimed in the Motion to Strike, and should not be forced to wade through hundreds of pages of regulations in search of something which apparently does not exist. The requirement set forth in Rule Puc 203.06(c) is

plain, and unequivocal. “Rules shall be valid and binding on persons they affect, and shall have the force of law... .” RSA 541-A:22, II. The unsupported assertion contained in footnote 1 of the Motion to Strike should be summarily disregarded.

WHEREFORE, PSNH respectfully requests that the Commission:

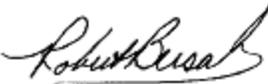
- A. Sustain this Objection, and deny the Motion to Strike;
- B. Grant PSNH’s Motion to Dismiss; and
- C. Grant such other relief as is just and equitable.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By Its Attorneys

Dated: May 1, 2012

By:  _____

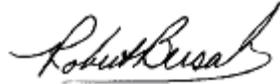
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Certificate of Service

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 this 1st day of May, 2012.



Robert A. Bersak