

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

DE 12-295

POWER NEW ENGLAND

**Petition for Review of the Reasonableness of Certain Charges of Public Service
Company of New Hampshire for Services to Competitive Suppliers**

Closing Statement of Retail Energy Supply Association

NOW COMES the Retail Energy Supply Association ("RESA"), an intervenor in this docket, and submits the following closing statement:

BACKGROUND

On October 1, 2012 Power New England, LLC d/b/a Power New England ("PNE") filed a petition asking the Commission to review the reasonableness and appropriateness of PSNH's charges for certain services it provides to competitive suppliers. The charges at issue here, contained in Section 2 of the PSNH Electricity Delivery Service Tariff, are: (1) the selection charge of \$5 assessed when a customer switches to or from PSNH's default service, and also assessed two times for the same transaction when a customer switches to and from one competitive supplier to another; (2) the charge of \$0.50 per bill on a bill rendered basis for billing and payment services provided to a competitive supplier which has opted for consolidated billing services; and (3) the collection services charge billed at 0.252% of total monthly receivable dollars pursuant to a written agreement with competitive suppliers.

The Commission reviewed and approved these charges approximately 13 years ago, long before the retail market began to develop in New Hampshire. Order No.

23,443 – 85 NH PUC 154 (2000). Those charges were part of a much larger restructuring settlement. The record in that proceeding, DE 99-099, which includes the August 2, 1999 prefiled testimony from Gary Long and Stephen Hall (see Exhibit 2 in this docket, the attachment to Mr. Allegetti's prefiled testimony marked as Exhibit A), clarifies the extent of the analysis that PSNH put into those costs before proposing the charges and what PSNH's expectations were for how long these charges would remain in place. As the prefiled testimony in that docket and more particularly the relevant attachment say, PSNH did not prepare a cost analysis before proposing one of the charges, the \$5 switching or selection charge, but rather adopted the amount that was being used by Granite State Electric Company.¹ At that time PSNH specifically said: "Given the uncertainty of the magnitude of administrative costs and the number of transactions which will occur" the Granite State Electric Company fee "appears reasonable for now and PSNH will revisit the fee in the future when actual costs are better known."

ARGUMENT

PSNH admitted during the hearing it has never revisited these charges in 13 years. Tr. at 135-136. The only basis for charging the \$5 switching charge is that Granite State Electric was charging it in 1999 – the company has nothing else to justify or back up the charge. Tr. at 211. Moreover, PSNH has never tracked or separately recorded the costs or expenses related to these charges, Exh. 7 and Exh. 9, and any other costs identified by PSNH were not "explicitly or exclusively related to switching of customers." Tr. at 145.

PSNH has been before the Commission with rate cases three times (2003, 2006 and 2009) since these charges were instituted in 2000 but has never provided any cost

¹ As the record in this proceeding indicates, Granite State no longer charges the \$5 fee for switching. Transcript of October 3, 2013 Hearing in this docket (hereinafter "Tr.") at 50; Tr. at 77-78; Exhibit 4, p.5.

justification. Exh. 8; Tr. at 140. PSNH has taken the position that the reason the company did not provide any cost justification is that no one intervened in those rate cases or raised any issue about these charges. Because of this, PSNH believes it is not its burden to show that the charges are just and reasonable, though it admits that if the Commission were to open a proceeding PSNH would have the burden. Tr. at 142-143.

The record also shows that PSNH is on track to exceed \$1 million in revenues from these charges in 2013. Exh. 10 and Exh. 11. While the number of transactions has clearly escalated, as these exhibits show, PSNH has not had to hire any additional personnel to handle this increase in transactions. Exh. 12. This is largely because these transactions are automated.

PSNH is asking suppliers and the Commission to wait for the next rate case to do an embedded cost of service study to determine whether these charges are justified, yet the company can not say with any certainty when that next rate case will be, only that it would be very surprising if it were as many as 10 years from now. Tr. at 155-156. PSNH argued that the Commission should not even be looking at these charges except in a rate case because it would constitute single issue ratemaking, something which the Commission frowns upon. As Mr. Allegretti pointed out in his testimony, however, in an earlier order in this docket the Commission did not agree that the single issue ratemaking prohibition should cut off all inquiry.² Tr. at 109. Although PSNH has been taking a hard line on when the cost of service study should be done, i.e. in the context of a rate case, PSNH admitted during the course of this proceeding that it did not "think it's a bad

² "The Commission may investigate any rate for reasonableness at any time on its own motion or on petition of a utility or other party. *See* RSA 378:7 and RSA 374:2. We need not decide whether a rate should be adjusted at this time, nor does the single issue ratemaking prohibition serve to cut off all Commission inquiry into an existing rate." Order No. 25,468 at 7.

idea” for the Commission to open a separate proceeding and evaluate these costs on their own initiative. Tr. at 156. The company also admitted that if the Commission decided that cost recovery in this context is “short run marginal or incremental costs” it would not need to do an extensive study. Tr. at 247-248.³

Some questions from the bench indicated that commissioners found PSNH’s failure to adjust these charges for this period of time troubling, given what PSNH said at the time the charges were instituted: “the fact is, an arbitrary \$5.00 assessment in 1999, should have been adjusted after 13 years of actual cost. That’s what troubles me.” The PSNH witness essentially agreed: “I don’t think that’s unfair.” Tr. at 218.

Commissioners also were troubled that “nobody at Public Service looked and saw the revenues we’re receiving went from 430, to probably a million dollars...Why didn’t you think it was necessary to come in and say we want to address our tariff on this...” Tr. at 222. Questions from the bench and responses from the PSNH panel also made it clear that PSNH customers who switch to a competitive supplier are paying for some of the same services twice; customers who have migrated to suppliers are paying for billing services through distribution rates and also paying for these services because suppliers are being billed separately for some of the same services that are necessary to serve default service customers. Tr. at 225. PSNH admitted that all of these are valid questions and issues. Tr. at 226.

As the testimony in this docket shows, PSNH charges \$5 when a customer leaves default service to go to a supplier, then charges \$5 to the supplier that the customer drops if the customer goes back to default service or moves to another supplier, and if the

³ It is interesting to note that NU testified that it made the business decision to scale back the cost of service department. Tr. at 118.

customer moves to another supplier there is another \$5 charge to the supplier who picks up the customer.⁴ Tr. at 59-61, 105-106. PSNH confirmed this. Tr. at 121-122; 209-210. Another question from the bench of the PSNH panel highlighted an issue with this application of the \$5 charge: why does it cost twice as much to move a customer from one supplier to another (two \$5 charges) as what it costs to move a customer from default service to a competitive supplier (one \$5 charge) ? Tr. at 218.

The norm in the industry is not to charge a switching charge at all. Tr. at 62, 86. No other NU affiliates have these switching or selection charges. Tr. at 63. Moreover, RESA is not aware of any other electric distribution company that assesses a switching charge such as this in any jurisdiction. Tr. at 62. Some suppliers are also charged by their own EDI vendors for bringing on or dropping a customer, but as the record in this docket shows, the typical charge for such a transaction, i.e. the cost to a supplier for an EDI (electronic data interchange) transaction, is roughly \$.05 for one supplier (Tr. at 62) or somewhere between 10 and 15 cents for another (Tr. at 95), or there is no charge at all (Tr. at 96).

The record is replete with references to the fact that PSNH provided no information in response to discovery requests or in testimony to the Commission to justify the charges. The reality is that circumstances have changed substantially over the last 13 years; a process that may have once been done manually has been taken over by technology and is now an automated process. Tr. at 86.

Mr. Allegretti pointed out in his testimony that customer choice is consistent with the principles laid out in the restructuring law, RSA 374-F, and with the state

⁴ Charging two \$5 fees when a customer switches from one supplier to another also raises questions about whether PSNH is complying with the language of its tariff. Tr. at 122-128; 250-252.

constitution. Tr. at 18-19. Since PSNH has a monopoly on consolidated billing (suppliers are not allowed to do consolidated billing, they can only bill for supplier-related charges), the charges for billing services must be just and reasonable. Tr. at 17. RSA 374:2. He also pointed out that PSNH had asked to be relieved of the obligation to provide consolidated billing. Tr. at 17. Since customers want one bill,⁵ however, it would not be fair or conducive to the development of the market to relieve PSNH of consolidated billing but not allow suppliers to do consolidated billing. Tr. at 17. *See also* Mr. Tschamler's testimony on this issue. Tr. at 30. Because of the hybrid situation that exists in New Hampshire PSNH's default service and competitive supplier service compete with each other; PSNH is not a disinterested provider of default service as is the case with all other distribution companies in New England. Tr. at 65.

RSA 374-F:4, VIII(a) provides that "the Commission is authorized to order such charges and other service provisions and to take such other actions that are necessary to implement restructuring and that are substantially consistent with the principles established in this chapter." When this section of law is read in conjunction with the restructuring principles that promote competition and customer choice, RSA 374-F:3, service charges or monopoly services can not be allowed to favor PSNH default service to the detriment of its competitors; to do so would be an exercise of vertical market power that is contrary to RSA 374-F. *See* Mr. Allegretti's testimony, Tr. at 19; Tr. at 65.

RESA also believes that PSNH needs to provide cost justification for the \$.50 billing and payment service charge and PSNH has not provided that.⁶ Tr. at 68. In so far as the collection services charge of \$0.252 percent of the total monthly receivable dollars

⁵ See Mr. Dean's testimony, Tr. at 42.

⁶ PSNH testified that it would provide cost justification if ordered by the Commission. Tr. at 143.

is concerned, the cost of collection activities for the distribution portion of the bill and the supplier portion are exactly the same, yet suppliers are paying for something that their competitor, PSNH default service, does not pay for. Tr. at 72. Moreover, PSNH does not provide collection information to suppliers on a regular basis, only on an ad hoc basis. Tr. at 73-74. It is somewhat unusual for a distribution company to provide this collection service; the trend in the industry is to move toward a purchase of receivables program where the distribution company buys the entire receivable. Tr. at 100-101. The charges should be on an equal footing with charges for default service; they should not give an unfair advantage to the default service business. Tr. at 76-77. Because every electric customer gets a bill, allocating the cost of providing billing and collection service to all customers would seem reasonable. Tr. at 84. Moreover, because processing customer switches requires modifications to the systems that process those transactions, but it is an automated process (Tr. at 88), the cost of providing this service tends to be more of a capital cost, a one-time expense to automate, not an ongoing operating expense. Presumably PSNH has already invested in capital and recovered those costs; it certainly has not provided any information to suggest otherwise. It's unfair for suppliers to pay for a service that the default service company and the largest supplier in the marketplace is getting for free. Tr. at 71. Moreover, as PSNH admitted during the course of the hearing, the costs of the ongoing maintenance and upgrading of these systems are included in distribution rates. PSNH can not say whether it has fully recovered those costs and the company objected to a request for this information. Tr. at 163-166; 182-183. PSNH did admit, however, that these costs are likely recovered to some extent, it just doesn't know how much. Tr. at 244.

There is a question whether the exogenous events provision in the settlement agreement approved by the Commission in PSNH's last rate case, DE 09-035, is applicable to this situation. Since PSNH will likely recover over a million dollars this year that the company did not anticipate in the last rate case it appears from the language of the provision that this would qualify as an exogenous event.⁷ PSNH admitted that this situation is the type of event envisioned by the exogenous events provision in the settlement agreement in the last rate case. Tr. at 158-162. PSNH indicated that if the Commission were to reduce the charges the exogenous events provision would kick in (Tr. at 246-247) but arguably it also should kick in for the opposite reason, i.e. that the company has earned more than \$1 million more than anticipated and therefore this revenue ought to reduce rates as provided in the exogenous events provision.

CONCLUSION

Based on the record in this proceeding, RESA submits that the Commission should determine that without further justification there is no basis for concluding that the rates being charged to competitive suppliers are just and reasonable. Because PSNH has provided no information in this record or at any other time over the last 13 years to support that these charges are just and reasonable and because the evidence in the record in fact shows just the opposite, the Commission should order PSNH to stop collecting

⁷ The exogenous events provision reads in part as follows:
For any of the events defined as a State Initiated Cost Change, Federally Initiated Cost Change, Regulatory Cost Reassignment, or Externally Imposed Accounting Rule Change, during the term of this Settlement Agreement, PSNH will be allowed to adjust distribution rates upward or downward (to the extent that the revenue impact of such event is not otherwise captured through another rate mechanism that has been approved by the Commission) if the total distribution revenue impact (positive or negative) of all such events exceeds \$1,000,000 (Exogenous Events Rate Adjustment Threshold) in any calendar year beginning with 2010.

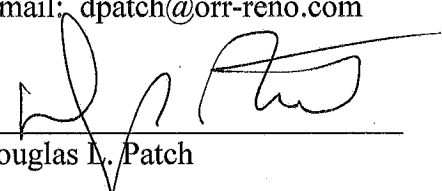
these charges until PSNH puts forth a cost of service analysis, the Commission opens a new proceeding and it conducts a full and fair review.

WHEREFORE, RESA respectfully requests that this honorable Commission:

- A. Direct PSNH to stop collecting the \$5 selection charge, the charge of \$0.50 per bill on a bill rendered basis for billing and payment services, and the collection services charge billed at 0.252% of total monthly receivable dollars; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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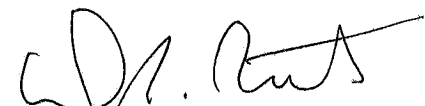


Douglas L. Patch

October 28, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2013 a copy of the foregoing Closing Statement was sent by electronic mail to the Service List.



Douglas L. Patch

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