

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 12-295

POWER NEW ENGLAND, LLC

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

**OBJECTION OF ELECTRICITY N.H., LLC D/B/A/ E.N.H. POWER
TO PSNH'S MOTION TO DISMISS PETITION OF PNE ENERGY SUPPLY, LLC**

Electricity N.H., LLC d/b/a E.N.H. Power ("ENH Power") respectfully submits this objection to Public Service Company of New Hampshire's ("PSNH") January 4, 2013 motion to dismiss the Petition of PNE Energy Services, LLC in the above referenced docket. ENH Power filed a Petition for Intervention, which is still pending before the Commission, and submits this objection outside the ten-day filing period set forth in N.H. Admin. Rule Puc 203.07(e) subject to a pending oral motion for leave for additional time made at the prehearing conference on January 15, 2013 and January 15, 2013 electronic correspondence from Staff Attorney Suzanne Amidon. In support of its objection, ENH Power states as follows:

1. Power New England, LLC d/b/a Power New England ("PNE") filed a petition dated September 27, 2012, requesting that the Commission review the reasonableness and appropriateness of Public Service Company of New Hampshire's ("PSNH") approved charges for selection, billing, and payment and collection services to competitive electricity suppliers (the "Petition"). PNE alleges that PSNH's competitive supplier charges are unreasonable and do not reflect PSNH's incremental costs in providing the enumerated services.

2. By motion dated January 4, 2013 (the “Motion”), PSNH moved to dismiss the Petition on two grounds: “i. that the Petition seeks the Commission to engage in single-issue ratemaking; and, ii. That the Petition seeks the Commission to issue a declaratory ruling involving future factual situations which are neither definite nor concrete, and which involves a hypothetical situation or otherwise seeks advice as to how the Commission would decide a future case.” Motion at 1.

3. Contrary to PSNH’s arguments, the Petition raises timely and important issues that are ripe for review by the Commission, and PSNH’s motion to dismiss should be denied.

A. The Public Principles of Restructuring Outweigh Any Concern Regarding Single-Issue Ratemaking

4. While PSNH correctly states the Commission’s general approach to single-issue ratemaking, there is no prohibition on review of individual rates or charges where the public interest and statutory directives would be served by such review. Here the public interest strongly favors review and correction of PSNH’s supplier charges, which are inhibiting the full development of competitive retail markets and constitute unjust and unreasonable charges pursuant to R.S.A. 378:7. Furthermore, review would serve the goals of RSA ch. 374-F, which requires the Commission to support the development of competitive markets.

5. The restructuring statute, R.S.A. ch. 374-F, sets forth the state’s strong public interest in developing and “harnessing the power of competitive markets” for energy supply. R.S.A. 374-F:1, I. In recognition of the New Hampshire Constitution’s abhorrence of monopolies, N.H. Const., Pt. II, Art. 83 (“Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it”), the Legislature set forth a series of “policy

principles . . . to guide the New Hampshire public utilities commission in implementing a statewide electric utility industry restructuring plan.” R.S.A. 374-F:1, III.

6. The statutory “policy principles” include the following:

- 1) “Allowing customers to choose among electricity suppliers [to] help ensure fully competitive and innovative markets.” R.S.A. 374-F:3, II;
- 2) Promoting “[n]on-discriminatory open access to the electric system for wholesale and retail transactions.” R.S.A. 374-F:3, IV;
- 3) Recognizing that “[c]hoice for retail customers cannot exist without a range of viable suppliers,” and that the “rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market.” R.S.A. 374-F:3, VII.

7. In addition, the Commission holds broad powers to implement restructuring and facilitate the development of a competitive retail market:

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.

R.S.A. 374-F:4, VIII(a) (emphasis supplied). Accordingly, the Commission is empowered to take action when necessary to eliminate barriers to properly functioning competitive retail markets.

8. PSNH’s arguments are considerably overshadowed by the important public interest in establishing competitive retail markets and restructuring the electric utility industry. As the Commission has stated in other contexts, where utility charges are contrary to the goal of restructuring, such charges should be modified or eliminated. *See, e.g., Investigation into the Effects of Customer Migration*, DE 10-160 (Order No. 25,256, July 26, 2011) (“Moreover, the commission finds that the proposed non-bypassable charge would be contrary to the principles of the state restructuring statute with respect to reducing costs for all consumers by harnessing the

power of competitive markets, encouraging customer choice, minimizing customer confusion, and promoting full and fair competition.”).

9. More than a decade after restructuring was implemented in New Hampshire, residential and small commercial and industrial (“C&I”) retail markets are finally beginning to be established. With growing numbers of PSNH residential and small C&I customers exercising their freedom to choose a competitive supplier, it is a critical time for the Commission to review the charges and other potential impediments to the development and sustainability of robust competitive retail markets.

B. The Commission Has Not Previously Had the Opportunity to Thoroughly Assess the Reasonableness and Appropriateness of PSNH’s Supplier Service Charges

10. PSNH seeks to dismiss PNE’s Petition on procedural grounds, but has not asserted that the supplier service charges are just and reasonable charges. Not once in its motion to dismiss does PSNH claim that it needs the supplier service charges to offset actual costs incurred to switch customers, provide consolidated billing, or perform collections.

11. The recent development of a burgeoning competitive retail market has made this issue more pressing. By contrast, at the time the supplier service charges were approved as part of PSNH’s Distribution Tariff pursuant to the PSNH Proposed Restructuring Settlement approved by the Commission on April 19, 2000 (Order No. 23,443 at 258-259), restructuring was in its infancy, and no competitive retail markets existed in New Hampshire. Not surprisingly, the Commission noted in Order No. 23,443 that “no party commented on the proposed [supplier service charges].” *Id.* at 259. Without data or comment by interested parties, the Commission was forced to rely only on the reasonable assumption that “since these are new services that will impose additional costs on the Company, they are proper for recovery from suppliers taking the services.” *Id.*

12. The challenged charges have been identically retained in PSNH's tariff through each subsequent rate case following initial approval in 2000. However, it appears that the Commission has never had reason to review the charges specifically. There was less of a reason for the Commission to review the charges because even in 2010, when PSNH's tariff was last reviewed, an active competitive small C&I and residential retail market had not developed.

13. With the recent development of these new competitive retail markets, however, sufficient data now exist to measure the cost of such services, and the actual experiences of PSNH and several competitive suppliers can serve to assist in the Commission's analysis of whether PSNH's supplier service charges are just and reasonable.

14. Based on actual experience with PSNH's supplier service charges and the services provided by PSNH, PNE has alleged in its pre-filled testimony that PSNH is recovering far more in supplier service charges than the actual incremental cost of providing the services. If ENH Power's Petition for Intervention is granted, ENH Power will file additional testimony supporting PNE's allegations.

15. In light of the information provided by PNE, the Commission now has evidence before it calling into question whether PSNH's supplier service charges are just and reasonable. Pursuant to the statutory mandate of R.S.A. 378:7, the Commission "*shall* determine the just and reasonable or lawful rates, fares and charges" that PSNH may impose for the provision of supplier services. This is the central issue presented by the Petition and ENH Power strongly supports review by the Commission and relief in the form of an amendment to PSNH's tariff to adjust the unjust and unreasonable supplier service charges.

C. Review and Potential Adjustment to PSNH's Supplier Service Charges Will Not Compromise PSNH's Revenue Requirement

16. In support of its motion to dismiss, PSNH suggests that adjustment to the supplier service charges could alter PSNH's overall balance of revenue and expenses in an unanticipated or undesirable way. *See* Motion at 5 (quoting *In re Connecticut Valley Electric Co., Inc.*, 86 NHPUC 947, 952-53 (2001)). PSNH's assertions do not support a dismissal of PNE's Petition; rather, the Commission may investigate the charges at issue and, on the basis of the facts, determine whether they are just and reasonable.

17. PSNH overlooks two important points that substantially obviate its concerns. First, pursuant to the 2010 Settlement Agreement on Permanent Rates, PSNH is permitted to seek adjustment of its rates "for the impact of an event or series of events that have a net distribution revenue impact in a given year of \$1,000,000 or more." Order No. 25,123 (June 28, 2010) at 38. This so-called "exogenous events" provision ensures that PSNH has an established procedure to pursue corrective rate adjustment in the event that the Commission significantly curtails the supplier service charges to an extent that PSNH suffers a significant revenue impact.

18. Second, in 2010 there was very little small C&I and residential migration to competitive suppliers. With the recent rapid expansion of competitive supply options and customer migration, PSNH has recovered substantial revenue from the supplier service charges. With over 30,000 residential customers taking their energy service from competitive suppliers, PSNH has recovered over \$150,000 in switching fees *alone* just from the residential market. *See PSNH Migration of Customers To and From the Competitive Energy Supply Market*, 2012 Report (Attached as Exhibit A). To the extent these funds far exceed not only PSNH's actual costs of providing supplier services but also the projected revenues and costs PSNH relied upon in its 2009 rate case, PSNH's claims may be moot. It is certainly appropriate for the

Commission to investigate the charges given the recent market changes and the allegations set forth in PNE's petition.

D. The Petition Seeks Review of, and an Adjustment to, Charges Currently Applied by PSNH Against Competitive Suppliers and Does Not Seek a Declaratory Ruling

19. PSNH's second argument is that the Petition seeks a declaration from the Commission of future rates based on "hypothetical facts." Motion at 7-8.

20. Contrary to PSNH's allegations, the Petition seeks review of actual charges currently levied against competitive suppliers. ENH Power, like PNE, has been invoiced by PSNH for the alleged provision of supplier services and has been paying considerable sums to PSNH pursuant to the supplier service charges included in PSNH's tariff. While PSNH is collecting tens of thousands of dollars in supplier service charges, it nonetheless argues that the Petition relies on hypothetical facts that are not sufficiently complete for the Commission to decide the issue. Motion at 8.

21. Competitive suppliers who are paying supplier service charges to PSNH *today* should not be forced to arbitrarily wait for PSNH's next rate case, which will not take place until at least July 1, 2015 pursuant to Order No. 25,123 (De 09-035 at 5), to remedy the current application of unreasonable and inappropriate charges.

22. Further, PSNH's charges contradict the strong public policy, enunciated above, of establishing competitive retail markets and fully implementing restructuring. *See generally* R.S.A. ch. 374-F.

23. Moreover, PSNH's reliance on cases such as *In re New England Electric System*, 84 NH PUC 502 (1999), where the petitioners sought to permanently foreclose the recovery of certain costs by the utility, are unavailing because the Petition does not seek a complete

prohibition on supplier service charges stretching indefinitely into the future. Other cases relied on by PSNH involve express requests for declaratory rulings and are similarly inapposite. *See, e.g., In re Public Service Company of New Hampshire* [Petitioner: 5 Way Realty Trust], 88 NH PUC 98 (2003) (request for declaratory ruling with regard to aspects of the Trust's business plan).

24. Finally, to the extent the Petition fails to explicitly request an amendment to PSNH's distribution tariff to adjust the supplier service charges, the intervenors have requested expansion of the scope of the docket to include such explicit relief. *See* ENH Power Petition to Intervene at 2, ¶6. In light of the important policy interests in supporting the development of a competitive retail market and the current collection of supplier service charges from competitive supplier by PSNH, ENH Power respectfully suggests that the Commission should review the supplier service charges and adjust those charges that are unjust or unreasonable.

Conclusion

25. Electric utility restructuring is at a critical juncture as retail markets are finally developing in New Hampshire and customers are beginning to exercise their option to migrate from PSNH to competitive electric suppliers. PSNH's supplier service charges, and other policies raised by the intervenors, are inhibiting the development and sustainability of the competitive retail market. The issue of supplier service charges, and competition generally, is ripe for review by the Commission, and PSNH's efforts to short-circuit such review through a motion to dismiss PNE's Petition should be denied.

WHEREFORE, for the foregoing reasons, Electricity N.H., LLC d/b/a/ ENH Power respectfully requests that the Commission deny PSNH's Motion to Dismiss Petition of PNE Energy Supply, LLC, and grant such other relief as the Commission deems fair and just.

Respectfully submitted,

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By Its Attorneys
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Dated: January 17, 2013



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Certificate of Service

I hereby certify that a copy of the foregoing Objection has on this 17th day of January, 2013, been sent by email to the service list in DE 12-295.



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