

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

Docket No. DE 12-295

PNE Energy Supply, LLC d/b/a Power New England

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

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
SUPPLEMENTAL MOTION TO DISMISS
PETITION OF PNE ENERGY SUPPLY, LLC**

February 19, 2013

Public Service Company of New Hampshire ("PSNH" or the "Company") hereby supplements its Motion to Dismiss dated January 4, 2013, which remains pending before the Commission. Pursuant to N.H. Admin. Rule Puc 203.07 PSNH seeks leave to add the lack of standing of PNE Energy Supply, LLC as an additional ground requiring dismissal of its "Petition for Review of the Reasonableness and Appropriateness of PSNH's Approved Charges for Selection, Billing, and Payment and Collection Services to Competitive Electricity Suppliers" ("Petition2") filed by PNE Energy Supply LLC, d/b/a Power New England ("PNE") dated September 27, 2012. PNE lacks standing because on February 14, 2013, its status as a market participant was suspended by ISO-New England. As a result, PNE no longer qualifies to be a competitive electric power supplier ("CEPS") in New Hampshire per Rule Puc 2003.01. In addition, PNE's disqualification requires dismissal of Petition2 pursuant to Rule Puc 207.01(c)(3).

In support of this Supplemental Motion, PSNH states as follows:

1. On February 14, 2013, at 4:38 p.m., ISO-New England ("ISO-NE") notified PSNH electronically that PNE's participation in the New England market had been "suspended effective immediately." The e-mail from ISO-NE stated in full:

Company PNE Energy Supply LLC (51393) has been suspended effective immediately. The customer has waived their possibility to cure. PNE is the Lead Load Asset Owner and has 100% Ownership Share of load asset 39637, PNE_PSNH_LOAD in Metering Domain PSNH NODE (687). Per the RTO Tariff, Section I, Exhibit 1D, "ISO New England Billing Policy", this load asset will need to be retired as soon as practicable, but no later than 00:01, Wednesday February 20, 2013 (3 business days following the date of the suspension). We will be sending you a pre-populated Load Asset Registration Form reflecting the retirement. Please upload a signed version of the Asset Registration Form through Ask ISO with an effective date as soon as practicable. ISO-NE will sign on behalf of the suspended Market Participant. If the asset is not retired prior to Wednesday February 20, the ISO will take action to retire the asset effective on that date. Please let me know if you have any questions.

**Chad Nelson
Generation & Load Administration
ISO New England
(413) xxx-xxxx¹**

2. As a result of PNE's suspension of Market Participant Status by ISO-NE, and as noted in ISO-NE's e-mail, pursuant to the ISO-NE Tariff,² all of PNE's load responsibilities are being retired and transferred to the "host Market Participant,"

¹ Telephone number redacted.

² The "ISO New England, Inc., Transmission, Markets and Services Tariff," (formerly known as FERC Electric Tariff No. 3) ("ISO-NE Tariff").

i.e., PSNH.³ PSNH has been taking all necessary actions required to effectuate this ISO-NE Tariff requirement, as well as the transfer of PNE's nearly 9,000 (nine thousand) retail customers to PSNH's default energy service.⁴

3. Part Puc 2003 of the Commission's rules set requirements for entities to register as a CEPS and to maintain that registration. Rule Puc 2003.01 (d)(2) requires:

(2) Evidence that the CEPS is able to obtain supply in the New England energy market. Such evidence may include, but is not limited to, proof of membership in the New England Power Pool (NEPOOL) or any successor organization, or documentation of a contractual relationship with a NEPOOL member;

4. To fulfill this requirement, on July 29, 2011 in Docket No. DM 11-074, PNE submitted supplemental information regarding its eligibility to participate in the New England energy market.

5. As a result of PNE's suspension by ISO-NE, PNE no longer satisfies the requirements to continue to hold status as a CEPS in New Hampshire. Rule Puc

³ See ISO-NE Tariff, Section I, Exhibit IA "ISO New England Financial Assurance Policy," Section III B. 3. b. This load will accrue to an unmetered load asset assigned to PSNH as the host Market Participant.

⁴ PNE's suspension by ISO-NE came in the midst of a transaction whereby PNE had agreed to assign all of its right, title and interest in certain customer contracts to FairPoint Energy, LLC. See Docket No. DE 13-049, PNE ENERGY SUPPLY, LLC D/B/A POWER NEW ENGLAND AND FAIRPOINT ENERGY, LLC, "Joint Petition for Expedited Waiver of Puc 2004.05(k)." Concurrently, PNE announced to its customers that Resident Power, an affiliate of PNE that was granted status as an "aggregator" by the Commission in Docket No. DM 11-081, would no longer be an aggregator on these customer accounts. See PNE's "Customer Notice of Supplier Change," available on-line at <http://www.powernewengland.com/serviceproviderchange.pdf>. Due to PNE's immediate disqualification of its ability to hold load within the ISO-NE marketplace and its waiver of its right to cure, PNE's wholesale load, constituted of PNE's remaining retail customers, is being transferred to PSNH, as per the requirements of the ISO-NE Tariff, and the retail customers comprising that load are being placed on PSNH default energy service in order to match loads and revenues.

2003.01 (i) mandates that a CEPS must maintain compliance with all the requirements of the Commission's Part 2000 rules:

(i) Following registration, a CEPS shall continue to maintain compliance with the requirements of Puc 2000.

6. The New Hampshire Supreme Court has held that a party must allege a "direct injury" and demonstrate that his rights "may be directly affected" in order to have standing. *Appeal of Richards*, 134 N.H. 148, 154- 56 (1991). That Court has also held that no standing exists without an "immediate or direct injury." *Appeal of Stonyfield Farm, Inc.*, 159 N.H. 227, 229 (2009). To have standing, this Commission has held that a party must make a showing that it will be adversely affected or aggrieved by the matter presented. *Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 558 (1990). The Commission has held, "'Special interest' is not enough to gain standing for appeal." *Id.*, citing to *Sierra Club v. Morton*, 405 N.H. 727, 734-735 (1972).

7. Because PNE's suspension from participation in the New England energy market by ISO-NE renders PNE ineligible to continue as a CEPS, PNE no longer has standing to raise the issues complained of in its Petition2.

8. Moreover, in PSNH's initial Motion to Dismiss, the Company argues that PNE's Petition2 must be considered to be a request for a declaratory ruling. In light of PNE's suspension from participating in the New England energy market, pursuant to Rule Puc 207.01 (c)(3) the Commission must dismiss Petition2. This rule states:

(c) The commission shall dismiss a petition for declaratory ruling that:

(3) Does not implicate the legal rights or responsibilities of the petitioner;

As PNE cannot continue to be registered as a CEPS, Petition2 cannot implicate PNE's legal rights or responsibilities.

WHEREFORE, for the reasons stated herein, PSNH respectfully moves the Commission to:

- a. dismiss PNE's "Petition for Review of the Reasonableness and Appropriateness of PSNH's Approved Charges for Selection, Billing, and Payment and Collection Services to Competitive Electricity Suppliers"; and,
- b. to grant such other relief as the Commission deems appropriate.

Respectfully submitted,

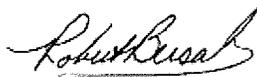
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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 Rule Puc 203.11 this 19th day of February, 2013.



Robert A. Bersak