

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 12-295

PNE ENERGY SUPPLY LLC D/B/A POWER NEW ENGLAND

**Petition for Review of the Reasonableness and Appropriateness  
of Certain Charges for Services to Competitive Electric Power Suppliers**

**MOTION TO COMPEL PSNH TO RESPOND TO  
PNE DATA REQUESTS NOS. 2 THROUGH 11**

NOW COMES PNE Energy Supply, LLC (“PNE”), by and through its undersigned counsel, and, pursuant to Rule Puc 203.09(i), respectfully submits this Motion to Compel PSNH to Respond to PNE Data Requests Nos. 2 through 11, and in support hereof says as follows:

1. The Commission has already determined that “[t]he scope of this docket is to investigate whether PSNH’s charges for customer selection, billing and collection are just and reasonable.” *Order No. 25,528* at 5 (June 25, 2013). Thus, facts pertaining to and foundation for PSNH’s “charges, billing and collection” are plainly and expressly within the scope of discovery in this matter.

2. PNE submitted a set of 11 data requests to PSNH on August 1, 2013. On August 12, 2013, submitted its responses to PNE. PSNH did not object to PNE Request No. 1. PSNH objected to each of the other 10 data requests on the ground that they are beyond the scope of the current docket without any further explication.

3. In addressing motions to compel discovery responses, the Commission considers whether the information being sought is relevant, or reasonably calculated to lead to the discovery of admissible evidence. *Order No. 25, 439* (December 7, 2012) at 2. In general, discovery that seeks irrelevant or immaterial information is not something that the Commission will compel a party to provide. *Id.* New Hampshire law favors liberal discovery and discovery is regarded as an important procedure for proving in advance of trial the adversary’s claims and his possession or knowledge of information pertaining to the controversy between the parties. *Id.* at 3 (quotation omitted).

4. Accordingly, the issue before the Commission in this Motion is whether PNE’s data requests, given the scope of this proceeding established by the Commission in *Order No. 25, 439*, seek information that is relevant, or are reasonably calculated to lead to the discovery of

admissible evidence. There is no question that PNE's data requests are relevant and reasonably calculated to lead to the discovery of evidence that will be admissible in this proceeding.

5. PNE Requests Nos. 2 through 8 seek information related to PSNH's Selection Charge. Order No. 25,439 establishes the scope of this proceeding as an investigation of "whether PSNH's charges for customer selection... are just and reasonable." Section 2(a) of PSNH's Tariff governs the assessment of Selection Charges by PSNH to PNE and other competitive suppliers.

6. The applicability of PSNH's Selection Charge is a matter that was discussed extensively at the behest of the PUC Staff at the Technical Conference held in this proceeding on May 7, 2013. PNE's understanding – and, upon information and belief, the understanding of all other competitive electric suppliers – is that the \$5.00 selection charge may be assessed either on the "new Supplier" on an enrollment request from that supplier, or on the "existing Supplier" when the change to a new Supplier or to the default service provider is the result of a "drop transaction" by the existing Supplier.

7. There appears to be a compelling and substantial difference of opinion between PNE and PSNH over the interpretation of Section 2(a) of the PSNH's Tariff regarding the assessment of Selection Charges by PSNH "to the supplier that is to be dropped."

### **PNE Data Request No. 2**

8. In Data Request No.2, PNE asked:

Is PSNH entitled to bill the Selection Charge in only the following three circumstances:

For customers who are currently taking Supplier Service, Default Service or Self-Supply Service, the Selection Charge will be assessed to the new Supplier at the time the Company receives an enrollment transaction from the new Supplier.

For Customers who are currently taking Supplier Service, the Selection Charge will be assessed to the existing Supplier at the time the Company receives a drop transaction from the existing Supplier.

The Selection Charge will be assessed to the Customer if the Customer terminates Self-Supply Service and receives Default Service or initiates Self-Supply Service when receiving Default Service or Self-Supply Service.

9. In its Response, PSNH stated:

Objection: PSNH objects to the question as being beyond the scope of the current docket, thus the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. To the extent the question seeks information about the operation of PSNH's tariff, the document speaks for itself.

10. PNE requests the Commission to order PSNH to respond to Data Request No.2 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

**PNE Data Request No. 3**

11. In Data Request No. 3, PNE asked:

If the response to Request No. 2 is anything other than "Yes," please explain in detail.

12. In its Response, PSNH stated:

Objection: PSNH objects to the question as being beyond the scope of the current docket, thus the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. To the extent the question seeks information about the operation of PSNH's tariff, the document speaks for itself.

13. PNE requests the Commission to order PSNH to respond to Data Request No.3 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

**PNE Data Request No. 4**

14. In Data Request No. 4, PNE asked:

Are there any other circumstances other than those listed in Request No. 2 in which PSNH is entitled to assess the Selection Charge? If the answer is "Yes," please describe said circumstances in detail and also quote the exact Tariff language upon which PSNH relies as a basis for the assessment.

15. In its Response, PSNH stated:

Objection: PSNH objects to the question as being beyond the scope of the current docket, thus the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. To the extent the question seeks information about the operation of PSNH's tariff, the document speaks for itself.

16. PNE requests the Commission to order PSNH to respond to Data Request No. 4 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

**PNE Data Request No. 5**

17. In Data Request No. 5, PNE asked:

Please provide a copy of all notes taken by PSNH at the Technical Conference held in Docket No. DE 12-295 on May 7, 2013, that relate to the assessment of the Selection Charge by PSNH.

18. In its Response, PSNH stated:

Objection: PSNH objects to the question as seeking information that is irrelevant to this proceeding. In addition, the information requested may be subject to the attorney-client and/or attorney work-product privileges. Moreover, the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding.

19. PNE requests the Commission to order PSNH to respond to Data Request No.5 on the basis that PNE's Request is within the scope of this proceeding since it seeks non-privileged information and documents on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

#### **PNE Data Request No. 6**

20. In Data Request No. 6, PNE asked:

When a competitive energy power supplier enrolls a customer currently taking Supplier Service from another competitive electric power supplier and the transfer in Supplier Service is made at the next scheduled meter read date, what party or parties are assessed a Selection Charge by PSNH and how much is the Selection Charge assessed to each party or parties?

21. In its Response, PSNH stated:

Objection: PSNH objects to the question as being beyond the scope of the current docket, thus the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. To the extent the question seeks information about the operation of PSNH's tariff, the document speaks for itself.

22. PNE requests the Commission to order PSNH to respond to Data Request No.3 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

#### **PNE Data Request No. 7**

23. In Data Request No.7, PNE asked:

If the answer to Request No. 6 is that both the competitive electric power supplier providing Supplier Service at the time the new enrollment is submitted and the competitive electric power supplier submitting the new enrollment are assessed a Selection Charge, when did PSNH initiate that practice?

24. In its Response, PSNH stated:

Objection: PSNH objects to the question as being beyond the scope of the current docket, thus the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. To the extent the question seeks information about the operation of PSNH's tariff, the document speaks for itself.

25. PNE requests the Commission to order PSNH to respond to Data Request No.7 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

### **PNE Data Request No. 8**

26. In Data Request No. 8, PNE asked:

If the answer to Request No. 6 is that both the competitive electric power supplier providing Supplier Service at the time the new enrollment is submitted and the competitive electric power supplier submitting the new enrollment are assessed a Selection Charge, please quote the exact Tariff language upon which PSNH relies as a basis for both assessments.

27. In its Response, PSNH stated:

Objection: PSNH objects to the question as being beyond the scope of the current docket, thus the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. To the extent the question seeks information about the operation of PSNH's tariff, the document speaks for itself.

28. PNE requests the Commission to order PSNH to respond to Data Request No. 8 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

### **PNE Data Request No. 9**

29. In Data Request No. 9, PNE asked:

Do the following utility companies – Connecticut Light & Power, Western Massachusetts Electric Company, NSTAR – charge competitive electric power suppliers fees or charges similar to the \$5.00 Selection Charge, \$0.50 per bill billing and payment service charge, and 0.252% collection service charged by PSNH to competitive electric power suppliers in NH?

30. In its Response, PSNH stated:

PSNH objects to the question as seeking information that is irrelevant to this proceeding and beyond the scope of the current proceeding. Moreover, the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding.

31. PNE requests the Commission to order PSNH to respond to Data Request No. 9 on the basis that PNE's Request is within the scope of this proceeding since it seeks information related to whether and how PSNH's affiliates (Connecticut Light & Power, Western Massachusetts Electric and NSTAR) charge competitive electric power suppliers fees or charges similar to the \$5.00 Selection Charge, \$0.50 per bill billing and payment service charge, and 0.252% collection service charged by PSNH to competitive electric power suppliers in New Hampshire.

The scope of this docket is to investigate whether PSNH's charges for customer selection, billing and collection are just and reasonable. Accordingly, the corresponding practices and procedures in place at PSNH's affiliates would be highly relevant and informative in determining

whether PSNH's practices and procedures for customer selection, billing and collection are just and reasonable.

**PNE Data Request No. 10**

32. In Data Request No. 10, PNE asked:

If the response to Request No. 9 is "yes," please identify those charges and their current rates or amounts.

33. In its Response, PSNH stated:

Objection: PSNH objects to the question as seeking information that is irrelevant to this proceeding and beyond the scope of the current proceeding. Moreover, the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding.

34. PNE requests the Commission to order PSNH to respond to Data Request No. 10 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge. PNE Requests Nos. 9 through 11 seek information related to whether and how PSNH's affiliates (Connecticut Light & Power, Western Massachusetts Electric and NSTAR) charge competitive electric power suppliers fees or charges similar to the \$5.00 Selection Charge, \$0.50 per bill billing and payment service charge, and 0.252% collection service charged by PSNH to competitive electric power suppliers in New Hampshire.

PSNH's expert witness in this proceeding, Charles R. Goodwin, is Director of Rates and Forecasting for Northeast Utilities Service Company which provides centralized services to the Northeast Utilities operating subsidiaries. Mr. Goodwin has revenue and rate design responsibility for Connecticut Light & Power, Western Massachusetts Electric and NSTAR

The scope of this docket is to investigate whether PSNH's charges for customer selection, billing and collection are just and reasonable. Accordingly, the corresponding practices and procedures in place at PSNH's affiliates would be highly relevant and informative in determining whether PSNH's practices and procedures for customer selection, billing and collection are just and reasonable.

**PNE Data Request No. 11**

35. In Data Request No. 11, PNE asked:

If the response to Request No. 10 is "no," please identify the charges or cost recovery mechanisms used by those utilities, if any, to recover the additional costs to those utilities of providing Supplier Services to competitive electric power suppliers.

36. In its Response, PSNH stated:

Objection: PSNH objects to the question as seeking information that is irrelevant to this proceeding and beyond the scope of the current proceeding. Moreover, the question is not reasonably calculated to lead to the production of evidence admissible in this proceeding. In addition, a response to this question would require PSNH to undertake a special study or analysis on behalf of the requestor.

37. PNE requests the Commission to order PSNH to respond to Data Request No. 11 on the basis that PNE's Request is within the scope of this proceeding since it seeks information on what circumstances PSNH believes that it is entitled to bill the Selection Charge.

PSNH's expert witness in this proceeding, Charles R. Goodwin, is Director of Rates and Forecasting for Northeast Utilities Service Company which provides centralized services to the Northeast Utilities operating subsidiaries. Mr. Goodwin has revenue and rate design responsibility for Connecticut Light & Power, Western Massachusetts Electric and NSTAR

The scope of this docket is to investigate whether PSNH's charges for customer selection, billing and collection are just and reasonable. Accordingly, the corresponding practices and procedures in place at PSNH's affiliates would be highly relevant and informative in determining whether PSNH's practices and procedures for customer selection, billing and collection are just and reasonable.

38. PNE has made a good-faith attempt to informally resolve this matter with PSNH.

WHEREFORE, for all of the foregoing reasons, PNE Energy Supply, LLC respectfully requests the Commission to:

- A. Compel PSNH to respond to PNE Data Requests Nos. 2 through 11; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,  
PNE Energy Supply, LLC

By its Attorney  
**/s/ James T. Rodier**  
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Dated: August 20, 2013

CERTIFICATION OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this Motion to Compel on each person identified on the Commission's service list for this docket.

/s/ James T. Rodier