

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

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

Petition for Review of Public Service Company of New Hampshire's
Services and Charges to Competitive Electric Suppliers
Docket No. DE 12-295

**Public Service Company of New Hampshire's Motion to Strike the Supplemental
Filings of Competitive Suppliers and PNE**

Public Service Company of New Hampshire ("PSNH" or the "Company"), in accordance with Puc 203.07, hereby moves to strike the Supplemental Filing of the Retail Energy Supply Association ("RESA"); PNE Energy Supply, LLC d/b/a Power New England ("PNE"); Electricity N. H., LLC d/b/a E.N.H. Power ("ENH"); and North American Power and Gas, LLC ("NAPG") (collectively, the "Suppliers") dated November 6, 2013¹ and the individual filing of PNE on November 7, 2013 in this docket. The Suppliers contend that they "recently became aware" of a 2001 order that they believe is relevant to the issues in this docket. Suppliers' Filing at 1. As well as being provided in an untimely manner and in violation of the Commission's rules, the filing contains nothing new, nor relevant, for the Commission to consider. Accordingly, the Suppliers' submission should be stricken from the record in this proceeding. As to PNE, its filing shares the same procedural and substantive infirmities as the Suppliers' filing and should likewise be stricken.

In support of this motion, PSNH states as follows:

¹ The referenced filing dated November 6 was actually docketed by the Commission on November 7.

1. On October 1, 2012, PNE petitioned the Commission to review certain charges assessed by PSNH to competitive suppliers in its service territory, including its selection charge. The parties conducted discovery and engaged in technical sessions and on October 3, 2013 a hearing on the merits was held. Pursuant to a secretarial letter of the Commission, closing briefs of the parties were submitted on October 18, 2013. Now, following a case lasting more than a year, the Suppliers contend that they only recently became aware of an order of the Commission from 2001, and they contend that the order “underscores the concerns” the Suppliers expressed regarding PSNH’s selection charge. Suppliers’ Filing at 2. PNE, though making a separate filing, raises similar arguments as the Suppliers based upon the same documents. PNE, however, also amends its request for relief in this proceeding, following the close of the record.

2. Initially, PSNH notes that both submissions are untimely and do not conform to the Commission’s rules. The submissions are little other than requests to reopen the record for the submission of additional evidence and argument. Pursuant to Puc 203.30, any party seeking to file additional information shall do so orally before the close of the hearing, or by a proper motion after the hearing. The Suppliers’ filing was not made orally at the hearing, and is not a proper motion pursuant to Puc 203.07. The Suppliers and PNE are well aware of the Commission’s rules and requirements and should be expected to abide by them. The filings are deficient and should be rejected by the Commission.

3. In addition, should the Commission not strike the filings as procedurally deficient, they should be rejected as irrelevant. Puc 203.30(a) restricts the reopening of the record to situations where “the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute.” In other words, the additional evidence to be submitted must be

relevant to the present matter. The filings present nothing relevant to the Commission's determination of the issues in this docket.

4. As noted in the Suppliers' filing, in Order No. 23,659 (Mar. 22, 2001) in Docket No. DE 00-269, the Commission approved PSNH's tariff implementing certain restructuring requirements. Within that Order, the Commission stated that it expected to consider the question of the design of the selection charge in PSNH's next rate case, based upon a concern the Commission stated it shared with the Governor's Office of Energy and Community Services, which was later renamed the Office of Energy and Planning. That rate case was filed in 2003, and was docketed as Docket No. DE 03-200. The Suppliers state that PSNH's 2003 filing did not specifically address the matter of the selection charge. The Suppliers also contend that "PSNH was on notice in 2001 that the Commission had concerns" about the selection charge. Suppliers' Filing at 2. PNE similarly contends that PSNH "failed to meet the Commission's stated concern." PNE Filing at 1.

5. Irrespective of whether the Commission had "concerns" about the charge prior to PSNH's 2003 rate case, or that PSNH was "on notice" of those concerns, the Suppliers note that their review of the documents does not reveal that the matter was addressed by any party, or by the Commission itself. Additionally, the issue was not addressed in the final order in that case. Pursuant to RSA 363:17-b, the Commission's final orders are to include the positions of the parties on the issues in the case. In that the Suppliers state that they did not find that the matter was addressed in the context of the docket by any party, and that issue is not included in the Commission's final order, it is evident that no party considered the selection charge as an issue in PSNH's rate case.

6. PSNH notes further that there were numerous intervenors in Docket No. DE 03-200.

As stated in the Commission's order:

APPEARANCES: Robert A. Bersak, Esq. for Public Service Company of New Hampshire; Orr & Reno, P.A. by Douglas L. Patch, Esq. for FPL Energy Seabrook, LLC, Florida Power and Light Company and FPL Energy Maine Hydro, LLC; Orr & Reno, P.A. by Howard M. Moffett, Esq. for Granite State Hydropower Association and Ski NH; Pentti J. Aalto for PJA Energy System Design; Brown, Olson and Wilson, P.C. by Susan M. Chamberlin, Esq. for Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company, LP, and Hemphill Power & Light Company; Gallagher, Callahan & Gartrell, P.A. by Seth L. Shortlidge, Esq. for Wausau Papers of New Hampshire; Office of Consumer Advocate by F. Anne Ross, Esq. on behalf of residential ratepayers; Jack K. Ruderman, Esq. for the Office of Energy and Planning; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

Order No. 24,369 (September 2, 2004) at 1. In fact, one of the named intervenors was the Office of Energy and Planning, the entity that had initially raised the concern noted by the Commission in Order No. 23,659. Had the matter continued to have been of concern in the 2003 rate case, it would have been raised by parties who held such concerns, but it was not. Instead, that 2003 rate case was resolved by a pair of settlements:

ORDERED, that the Revenue Requirements Settlement and the Rate Design Settlement, as proposed in this docket by Public Service Company of New Hampshire, FPL Energy Seabrook, LLC, Florida Power and Light Company, FPL Energy Maine Hydro, LLC; Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company, LP, Hemphill Power & Light Company, Ski NH, the Office of Consumer Advocate and the Commission Staff is hereby
APPROVED

Id. at 20. In essence, the Suppliers and PNE are asking the Commission to rehear and undo the comprehensive rate case settlements that were approved over nine years ago - - far in excess of the 30-day time period contained in RSA chapter 541.

7. To the extent that the Suppliers or PNE are now contending that PSNH or the Commission was in error for failing to address the specific matter of the selection charge in the


2003 rate case, that alleged error should have been raised no later than 2004 when the Commission's final order in Docket No. DE 03-200 was issued. *See* RSA 541:3. The Suppliers have no basis to contend that PSNH should have done something in 2003 or 2004 based upon their contention, in 2013, that the Commission had noted an expectation in an order from 2001, nor that the alleged failure to do it has any bearing on any matter in dispute in the present docket, particularly in light of the fact that none of the parties to the 2003 docket believed that the matter needed to be addressed. PSNH also notes that it has had two additional rate cases since 2003, in 2006 (Docket No. DE 06-028) and 2009 (Docket No. DE 09-035), and the issue was not addressed in either of those instances. Accordingly, both filings have no relevance to the issues here, should be stricken from the record and should be given no weight by the Commission.

WHEREFORE, PSNH requests that the Commission strike the November 6 and 7, 2013 filings from this docket and grant such further relief and may be just and equitable

Respectfully submitted,

Public Service Company of New Hampshire

November 12, 2013
Date

By: 
Matthew J. Fossum
Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961
Matthew.Fossum@nu.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached motion to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

November 12, 2013
Date


Matthew J. Fossum