

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 12-295

PNE POWER SUPPLY, LLC d/b/a/ POWER NEW ENGLAND

**Petition for Review of the Reasonableness and Appropriateness of Certain Tariff Charges
by Public Service Company of New Hampshire upon Competitive Electric Suppliers**

**PETITIONER'S AND INTERVENORS' JOINT OBJECTION TO PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE'S "MOTION TO STRIKE"**

NOW COMES the Petitioner PNE Energy Supply, LLC ("PNE") and the Supplier Intervenor (RESA, NAPG, and E-NH) (collectively, "the Suppliers"), and respectfully object to the "Motion to Strike" submitted by Public Service Company of New Hampshire ("PSNH" and "Motion", respectively). For their Joint Objection, the Suppliers state as follows:

1. The Motion asks the Public Utilities Commission ("Commission") to disregard letters from the retail electric supplier parties dated November 6 and 7, 2013 ("the Letters"), that directed the Commission's attention to its 2001 Order in docket DE 00-269 ("Order") that addressed issues directly pertinent to the issues raised in the instant proceeding. See November 6, 2013 letter from counsel to Retail Energy Supply Association letter on behalf of supplier parties at pp. 1-2 (discussing Commission Order No. 25,659). In pertinent part, the Order (1) expressed concerns that the \$5.00 PSNH Selection Charge is not cost-based, (2) stated that the fee should only recover PSNH costs "and nothing more," (3) stated its intention to consider the issue of the validity of the \$5.00 fee "in the next rate case," and (4) stated its intention also to consider the manner in which the fee is charged. See id. (citing Order). None of these concerns were ever addressed in subsequent dockets by PSNH or the Commission.

2. PSNH's Motion asserts three points, namely, that the Letters: (a) are untimely efforts "to reopen the record for the submission of additional evidence and argument;" (b) consist

of “irrelevant” material; and (c) fail to address that the various parties to the ensuing 2003 rate proceeding did not in fact raise any issue concerning the Selection Charge. See Motion at ¶¶2-3, and 6 (“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”). These arguments are invalid and should be rejected for many reasons.

3. First, the Letters did not request any reopening of the evidentiary record or argument. The Order highlighted by the Suppliers Intervenors and PNE is a lawful Order of the Commission. In the ordinary course of any adjudicative matter, counsel and parties are allowed – and potentially obligated – to bring relevant authority to the attention of the adjudicative body. The 2001 Order is not “evidence” or “argument” in any sense of the words; it merely brings forward the Commission’s prior understanding that the Selection Charge has no basis in a cost-study and the Commission’s then expectation that PSNH would address the cost basis and application in the next post-2001 rate case.

4. The Commission need go no further to deny PSNH’s Motion, as the 2001 Order is the Commission’s own decision that is well within the Commission’s authority to consider when ruling on the substance of the instant Docket. Nonetheless, because PSNH raises additional arguments regarding the relevance and substance of the 2001 Order, the Suppliers feel compelled to respond.

5. With regard to relevance, much of the pre-filed testimony and hearing concerned the history and continued efficacy (or absence thereof), from a cost of service standpoint, of the Selection Charge. The Commission’s concern and the Governor’s Energy Office’s concern as to an absence of cost basis, as shown in the 2001 Order, are relevant to the Commission’s consideration of the issues in the instant Docket. Furthermore, PSNH’s failure to address the

Commission's concerns after being put on notice of them in the Order is plainly relevant to the Commission's consideration of remedies to address the excessive Selection Charge.

6. Moreover, PSNH disingenuously suggests that "concerns" about the Selection Fee should be limited to the parties in the 2003 rate case, which pre-dated substantive competition in New Hampshire. To the contrary, concerns were voiced in the 2001 rate case by the Governor's Energy Office and were echoed in an Order by the Commission itself. The Commission cannot possibly function effectively if it is burdened with the obligation to double check that each and every regulatory directive is carried out by the regulated company in the manner directed by the Commission. Moreover, parties that "win" an issue by getting a favorable order should not be required to intervene again in the ensuing proceeding to make sure that the Commission's order is carried out. The regulated company clearly must shoulder some, if not all, of the responsibility for not squarely raising and addressing the issue in the 2003 rate case. PSNH's failure to comply with the Commission's directive is not excused by the fact that the Commission did not catch them on one of dozens of obligations flowing out of the complex 2001 rate case.

7. What is most striking about PSNH's Motion is the absence of any explanation for why PSNH did not bring the 2001 Order to the Commission's attention earlier in this docket, where the Order is clearly a critical part of the history of the Selection Charge. To suggest, as PSNH has throughout this process, that it is not the regulated company's responsibility to provide a cost basis for this charge when the Commission put PSNH on specific notice to do so in the 2001 Order, is tantamount to shirking its responsibility as a regulated utility.

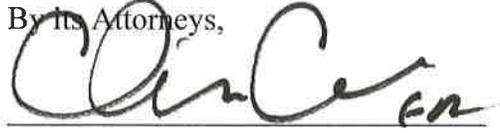
8. For all of these reasons, the Motion to Strike should be denied.

Respectfully submitted,

PNE ENERGY SUPPLY, LLC

Date: November 14, 2013

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Dated: November 14, 2013

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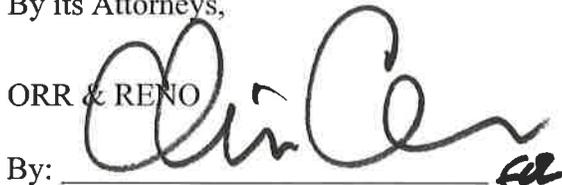
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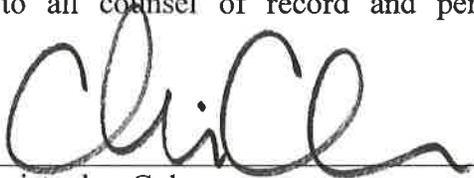
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CERTIFICATION OF SERVICE

I, Christopher Cole, hereby certify that on this 14th day of November 2013 a copy of the foregoing Joint Objection to PSNH's Motion to Strike was hand-delivered to the Public Utilities Commission and sent via electronic mail to all counsel of record and persons on the Commission's distribution list.


Christopher Cole