

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 12-295

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**

Order Denying Motion to Dismiss and Granting Interventions

ORDER NO. 25,468

March 5, 2013

I. PROCEDURAL HISTORY

On October 1, 2012, PNE Energy Supply, LLC d/b/a Power New England (PNE) filed a petition and accompanying testimony requesting that the Commission review the reasonableness and appropriateness of the approved charges for selection, billing, and payment and collection services charged by Public Service Company of New Hampshire (PSNH) to competitive electricity suppliers. On December 13, 2012, the Office of Consumer Advocate (OCA) filed a letter with the Commission indicating that it would be participating in the docket pursuant to RSA 363:28. On December 24, 2012, North American Power and Gas, LLC (NAPG) petitioned for late intervention.

On January 7 and 9, 2013, the Retail Energy Supply Association (RESA) and Electricity NH d/b/a ENH Power (ENH Power) filed petitions to intervene, respectively.

In addition to the matters raised in PNE's October 2012 petition, on January 4, 2013, PSNH filed a motion to dismiss PNE's petition, to which PNE objected on January 8, 2013. NAPG, ENH Power and RESA also objected, on January 16, and 18, 2013.

The prehearing conference was held as scheduled on January 15, 2013, followed by a technical session. Following the technical session Staff filed a report on January 17, 2013. The hearings examiner, F. Anne Ross, filed a report on January 22, 2013, and on February 6, 2013, OCA filed a clarification of its position as described in the hearings examiner's report.

On February 19, 2013, PSNH filed a supplemental motion to dismiss, asserting that PNE's status as a market participant in the New England regional electric markets was suspended by the Independent System Operator for New England (ISO-NE) on February 14, 2013. PSNH argued that as a result of the suspension, PNE no longer qualifies as a competitive electric power supplier (CEPS) in New Hampshire and therefore lacks standing to bring this petition. PNE responded to the supplemental motion to dismiss on February 27, 2013, as did NAPG on February 28, 2013 and ENH Power and RESA, both on March 1, 2013.

II. POSITIONS OF THE PARTIES AND STAFF

A. PNE

PNE notes that PSNH's smaller customers are beginning to migrate away from PSNH's default energy service to competitive providers and posits that this trend will continue as PSNH's default energy service rates increase over the next several years. PNE claims that PSNH's charges to competitive suppliers in New Hampshire are out of line with similar charges in other New England states, including charges by PSNH's own affiliates in Massachusetts and Connecticut. PNE asserts that PSNH's \$5.00 selection charge for a customer to choose an alternative supplier is unreasonable, as is the collection services charge of 0.252% of a competitive supplier's total monthly receivables. PNE requests that the Commission review the reasonableness and appropriateness of these charges. PNE further states that any rate adjustment to the rates under investigation would take place in a subsequent PSNH general rate case.

In its objection to PSNH's motion to dismiss, PNE explains that it is seeking the Commission's review of the impact of PSNH's tariffs on the competitive electric market for small customers. PNE claims that it is not proposing an adjustment to PSNH's revenue requirement in this proceeding. Finally, PNE concludes that if the Commission finds such charges to be reasonable and appropriate, PSNH may be allowed to recover those charges through the exogenous changes factors described in its settlement on current distribution rates. *See* Order No. 225,213 (June 28, 2010) at 38.

B. PSNH

PSNH argues that PNE's petition amounts to single issue ratemaking and also presents a hypothetical question or seeks advice on how the Commission might decide a future case. PSNH notes that the competitive supplier charges described in PNE's petition were approved by the Commission in 2000 in connection with the PSNH restructuring settlement. *See* 85 NH PUC 154, 273(2000). PSNH argues that the Commission acknowledged that PSNH would incur additional costs for these services when it approved the rates. PSNH further alleges that PNE has not demonstrated that PSNH no longer incurs such costs.

Further, PSNH posits that the rates in question were arrived at through calculating an overall revenue requirement and cannot be overturned by consideration in isolation. According to PSNH, such single issue ratemaking is forbidden. PSNH claims that PNE's argument that it is not seeking a change to PSNH's tariffed rates at this time avoids the single issue ratemaking pitfall, but creates a different problem because PNE is asking the Commission to decide a future case based upon current facts and circumstances. PSNH takes the position that such a request by PNE amounts to a request for a declaratory ruling which is prohibited by case law, as well as by Commission rule. *See* N.H. Code of Admin. Rule Puc 207.01(c). According to PSNH, PNE has

not sought a legal ruling that would have an effect on a present legal right, but instead seeks a ruling that would pertain to a decision in a future rate case.

On February 19, 2013, PSNH filed a supplemental motion to dismiss in which it claims that PNE's status as a market participant in the New England regional electric markets was suspended by the Independent System Operator for New England (ISO-NE) on February 14, 2013. PSNH argues that as a result of the suspension, PNE no longer qualifies as a CEPS in New Hampshire and therefore lacks standing to bring this petition.

C. NAPG

In its objection to PSNH's motion to dismiss NAPG argues that the Commission should review, and if necessary, modify or eliminate excessive or non-cost based PSNH charges imposed on retail suppliers. NAPG claims that such charges are not imposed in other states and may serve as a barrier to competitive choice in New Hampshire. Nonetheless, NAPG asserts that rates need not be adjusted in this docket. Further, NAPG argues that certain exceptions to the single issue ratemaking argument exist which might allow rate adjustments. According to NAPF, the exogenous change mechanism is such an exception.

D. ENH Power

In its objection ENH Power argues that while PSNH's motion 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. According to ENH Power, in this case "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 RSA 378:7." PNE Power Objection at 2. ENH Power points to various sections of RSA 374-F which

promote competition in retail electric supply and open access to the electric system for wholesale and retail transactions, as well as requirements that rules governing the competitive market be applied in a fair and consistent manner in order to ensure a fully competitive market.

ENH Power points out that with the recent increases in residential and small commercial customers seeking competitive electric supply, it is a critical time for the Commission to review PSNH's supplier charges and other potential impediments to a robust competitive retail electric market. ENH Power claims that in PSNH's pleadings it does not claim that the supplier service charges are just and reasonable. According to ENH Power, PSNH instead relies upon procedural arguments against adjusting the charges. In addition, ENH Power points out that when the rates were established in 2000, no competitive market existed and therefore, no party commented on the proposed supplier charges. According to ENH, even in 2010 when these supplier charges were last reviewed, an active retail market for residential and small commercial customers had not developed. If ENH Power is granted intervenor status in this docket, it commits to filing testimony supporting PNE's allegations in its petition.

ENH Power argues that rate adjustments may be made under the exogenous changes provision of PSNH's 2010 settlement agreement on permanent distribution rates. Further, ENH Power points out that PSNH is receiving additional revenue not present in 2010 as a result of the migration of more than 30,000 residential customers. ENH Power posits that this migration generated \$150,000 in switching charges alone for PSNH, and suggests that the Commission should investigate whether these funds exceed PSNH's actual costs of providing such services.

ENH Power denies that this case presents a hypothetical question, and claims that this case involves actual charges currently levied against competitive suppliers. Further, ENH Power argues that competitive suppliers that are receiving invoices for supplier charges today, should

not have to wait for PSNH's next rate case, after July 1, 2015, to remedy the application of unreasonable and inappropriate charges.

E. RESA

RESA objects to PSNH's motion to dismiss and points out that this is a critical time in the development of competitive markets in New Hampshire, especially for residential customers. RESA urges the Commission to review the charges at issue in this docket as well as other PSNH practices to insure that there are not market barriers for customers and suppliers and that charges related to switching suppliers are reasonable.

RESA points out that RSA 374-F requires the Commission to support customer choice and reduce customer confusion, and observes that much has changed since these PSNH charges were originally approved 13 years ago. Given the stage of development of the competitive electric market and the comparison to how other distribution companies are handling similar customer functions with little or no charge, RESA posits that it is necessary and appropriate for the Commission to review these PSNH charges at this time. RESA claims that PNE has made a prima facie showing that PSNH's customer charges are unreasonable and RESA asks the Commission to direct PSNH to provide cost justification for the charges.

RESA argues that the policy discouraging single issue ratemaking has recognized exceptions, and that the exogenous changes provisions in PSNH's last rate settlement would allow adjustments to these PSNH rates charged to competitive suppliers. In addition, RESA argues that RSA 374-F requires that the Commission review rates charged to competitive suppliers to ensure that they are consistent with a competitive market. RESA dismisses PSNH's argument that the questions presented are hypothetical, based upon the fact that carriers are currently incurring such costs as customers attempt to switch to competitive suppliers.

III. COMMISSION ANALYSIS

A. Interventions

NAPG and ENH Power are both competitive suppliers in New Hampshire and are subject to PSNH's customer switching charges as well as its collections service charges. Therefore, both have interests affected by this proceeding. As a result, we grant NAPG, and ENH Power intervenor status pursuant to RSA 541-A:32, I, (b). RESA is an association that represents competitive electric suppliers in New Hampshire. We grant RESA intervenor status pursuant to RSA 541-A:32, II.

B. Motion to Dismiss

PNE, ENH Power, NAPG and RESA have each made persuasive arguments that PSNH's current competitive supplier charges bear investigation given the developing competitive markets for residential and small electric customers in the PSNH service territory. The Commission may investigate any rate for reasonableness at any time on its own motion or on petition of a utility or other party. *See* RSA 378:7 and RSA 374:2. We need not decide whether a rate should be adjusted at this time, nor does the single issue ratemaking prohibition serve to cut off all Commission inquiry into an existing rate.

PSNH has not alleged that PNE was not a market participant in the regional electric market at the time it filed the petition giving rise to this docket. The fact that PNE's status as a market participant has been suspended by the Independent System Operator for New England (ISO-NE) may well mean that PNE lacks standing to pursue its current petition. Nonetheless, other parties have requested relief in this proceeding similar to that requested by PNE; the tariffed charges imposed on each of them are no different from those imposed on PNE. The Commission finds it in the public interest to continue this investigation into PSNH's competitive

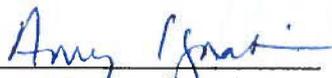
supplier rates identified in the PNE petition with, or without PNE's participation. Accordingly, this investigation will proceed and the parties should propose a procedural schedule assuming that PNE will not participate, unless and until it is reinstated as a qualified market participant in the ISO-NE market.

Based upon the foregoing, it is hereby

ORDERED, that NAPG, ENH Power and RESA are granted intervenor status; and it is

FURTHER ORDERED, that PSNH's Motion to Dismiss is DENIED.

By order of the Public Utilities Commission of New Hampshire this fifth day of March, 2013.



Amy L. Ignatius
Chairman

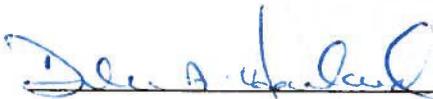


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director

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