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By Regular and Electronic Mail

NHPUC JUL11'13 PM 3:23

Debra A. Howland
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: PNE Energy Supply, LLC v. Public Service Company of New Hampshire

Dear Ms. Howland:

This letter is respectfully submitted on behalf of PNE Energy Supply, LLC ("PNE") pursuant to Puc Rule 204.04(a). As set forth below, this letter is intended to inform the Commission that PNE is not satisfied with PSNH's response to PNE's Complaint, and the reasons therefor, and to request that the Commission formally docket this case, pursuant to Puc Rule 204.04(b), for an independent investigation under RSA 365:4 and an adjudicative hearing pursuant to the Commission's Rule Puc 204.05.

I.
Introduction

In this proceeding, PNE is seeking immediate disgorgement of improperly withheld customer payments, as well as investigation of certain charges assessed by PSNH against PNE, consisting of: (1) at least $47,735 in improperly billed "Selection Charges," charges unilaterally assessed on PNE in violation of Section 2(a) of the Tariff Terms and Conditions; and (2) $38,570 improperly billed "recoupment costs" allegedly associated with PSNH's assumption of PNE's load asset responsibility at ISO-NE, costs likewise unilaterally assessed by PSNH in violation of express and carefully worded provisions of Section VIII of both the Electric Supplier Services Master Agreement ("ESSMA") and the Electric Supplier

Trading Partner Agreement ("ESTPA"). PNE discusses PSNH's response to each of these allegations below.

As a preliminary matter, however, it should be emphasized that PSNH concedes that it did not comply with the express and very specific requirements of Section VIII of the ESSMA and ESTPA. Instead, it raises certain other provisions of the Agreements as defenses to its misappropriation of PNE customer payments for the first time – that is to say, in all of the correspondence between PSNH and PNE leading up to PNE's demand for recourse from the Commission, the contract provisions discussed in PSNH's Answer and Response were never raised, and the Agreements were never terminated by PSNH. Although PNE addresses each of these new theories of defense below, it is fair to characterize PSNH's response as replete with irrelevancies and based on provisions that were never invoked, which do not apply, and on events or notices that never occurred.

II.
Selection Charges

PNE's Complaint asserts the following:

> ...Section 2(a) of the Tariff Terms and Conditions permits PSNH to assess an approved "Selection Charge" of $5.00 for effectuating a change in service to a different supplier or to Default Service. Under this Section, the Selection Charge is assessed to the "new Supplier" when the service change is the result of an enrollment request from the new Supplier. The Selection Charge is assessed to the "existing Supplier" when the service change is the result of a "drop transaction" from the existing Supplier.

PNE Complaint ¶ 8. In other words, 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 utility receives a request for a "drop transaction" from the existing Supplier.

In stark contrast to this understanding, PSNH asserts in its response that "under PSNH's Tariff, when a new supplier submits a customer enrollment, that supplier is assessed a selection charge **and the supplier that is to be dropped is also assessed a charge.**" PSNH Response, ¶ 25 (emphasis added). Accordingly, there is a compelling and substantial difference of opinion between PNE (and others) 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."

On information and belief, this is a matter that was discussed extensively at the behest of the PUC Staff at the Technical Conference held in Docket No. DE 12-295 on May 7, 2013. At that Conference, PSNH was understood by several market participants to state that Selection Charges are not assessed by PSNH "to the supplier that is to be dropped," which is entirely consistent with the current PSNH Tariff. The Tariff is explicit – only the Supplier requesting action – whether an enrollment or a drop – must pay the Selection Charge. When a new supplier enrolls a customer, the original supplier is automatically dropped at the next meter read date, since a customer can only have one competitive electric power supplier at a time. The existing supplier does not need to request the utility to do anything – that supplier has simply lost a customer and will receive a notice from the utility – a drop transaction – that such action has occurred.

In its answer in this matter, however, PSNH now asserts that it has been assessing the Selection Charge on both the new and old supplier since at least July 2010 – in essence and in fact, a $10.00 fee. It is very clear that the Tariff does not expressly permit recovery of simultaneous $5.00 fees from both the existing and new suppliers where only one Supplier has requested the specific transaction. Although PSNH claims that it has enforced the Tariff that way since July 1, 2010, and further claims that PNE was aware of PSNH's practice of dual assessment, the reality is that the Tariff language does not say what PSNH wishes it says. In short, PSNH is not authorized to charge suppliers for transactions unless it receives a specific request from the supplier to undertake an enrollment or drop transaction.

Accordingly, PNE will be amending its Complaint to recover additional improperly billed Selection Charges since at least July 2010. PNE also believes that this matter – of potentially double-charging for Selection Charges – may well be of substantial interest to many of the other competitive electric power suppliers. The issue thus raised is one of substantial public importance in the operation, management and regulation of the competitive electricity market, and PNE respectfully believes it merits the Commission's attention and resources.

III.
So-Called "Recoupment Costs"

As noted above, PSNH has also improperly billed PNE and withheld $38,570 in "recoupment costs" allegedly associated with PSNH's assumption of PNE's load asset responsibility at ISO-NE. First, PSNH's Tariff does not authorize PSNH to

recoup the cost of carrying out its responsibilities as the host utility under the ISO-NE market rules. PSNH has failed to cite in its Response any provision of the Tariff that authorizes PSNH to impose any charges, much less holdback or retain any PNE customer payments, for alleged costs incurred in performing tasks associated with its role as a host utility and Default Service provider. Lacking any authority under the Tariff to impose such costs, PSNH may not recover any portion of the $38,570 in alleged recoupment costs.

Second, as also noted above, PSNH's response is bereft of any mention of the specific provisions to which the parties actually agreed to give PSNH express authorization to "subtract" fees or other charges from customer payments other than those fees invoiced, due and owing from PNE under the ESSMA or ESTPA. PSNH simply concedes that it deviated from the procedure permitted by the Agreements. Instead, PSNH's response attempts to focus the Commission's attention on other, as yet un-invoked, provisions of the ESSMA and the ESTPA.

For example, PSNH asserts that PNE breached Section VI of ESSMA and corresponding ESTPA provision, which require PNE to register and obtain necessary licensure from the Commission. PSNH's reliance on this provision is misplaced. PNE did register and obtain the necessary licensing from the Commission in a timely manner (that is, at the time of contracting). The fact that PNE subsequently (and temporarily) suspended its own service does not put PNE in breach of this provision. And, of course, PSNH never notified PNE that it was terminating or revoking the Agreements in accordance with the notice provisions of the Agreements or otherwise.

Similarly, PSNH claims that PNE was in violation of Puc 2003.01(d)(2), a regulation requiring competitive energy suppliers to be able to obtain supply in the ISO-NE energy market. Even if, for the sake of argument, PNE could be said to have violated that regulation by its temporary suspension by ISO-NE, PSNH never: (a) terminated the Agreement in whole or in part by formal written notice to PNE, as is required pursuant to Section XI of the Agreements (expressly requiring "written notice to the Breaching party"); or (b) invoked the dispute resolution procedures under Section XV of the Agreements. Consequently, the Agreements remained in full force and effect and PSNH was bound by the very detailed fee "subtraction" provisions in Section VIII of the Agreements.

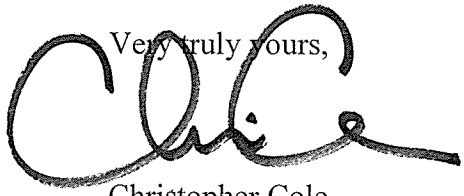
PSNH raises a similar, and similarly misplaced, additional argument. It now asserts PNE breached Section VI of the ESTPA (requiring a Supplier to notify PSNH

48-hours before "an event reasonably within Supplier's knowledge, and of which Supplier has reason to believe [PSNH] has no knowledge," that would render PNE unable to maintain PNE's status with NEPOOL required to serve load). Here again, PSNH never informed PNE in accordance with the Agreements or otherwise that any such "breach" had occurred, that it might be grounds for termination, or that (as is required under the Agreements) PNE had a period of time in which to cure the supposed breach.

Although the foregoing sets forth neither a complete recitation of the issues raised by PSNH in its response, or the replies PNE might make to them, the reality is straightforward: PSNH deviated from or disregarded the provisions of the Agreements that meticulously set forth the procedure by which its fees for services might be subtracted by PSNH from customer payments otherwise allocable to PNE. Even if it had a basis to terminate the Agreements, PSNH never did so. PSNH's arguments that turn on its supposed termination of the Agreements are near ludicrous, particularly where it repeatedly communicated through its counsel with PNE over the subject matter of the withheld $100,000 and never unambiguously stated, for example, "this letter constitutes notice that the ESSMA and ESTPA are terminated," the specific reasons therefor, and notification of the cure period. The examples of "written notice of termination" described in PSNH's Answer instead require PNE to read tea leaves. The Agreements make clear that PNE should not have to guess that its Agreements might have been terminated, or the reasons for such termination. See, e.g., ESTPA at §XI (requiring written notice from the other party "specifying the nature of [the alleged breach]").

For the aforementioned reasons, there is a substantial basis for PNE's dispute with PSNH over both the assessment of so-called Selection Charges and PSNH's unilateral and extra-contractual decision to withhold monies due and owing to PNE under the Agreements. Both issues raise matters of significant public importance for the marketplace. Accordingly, PNE hereby requests the Commission to conduct an independent investigation pursuant to RSA 365:4, and to commence an adjudicative proceeding pursuant to Puc Rule 204.05.

Very truly yours,



Christopher Cole

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