

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Docket No. DM 13-____

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
OBJECTION TO PUBLIC UTILITY ASSESSMENT

NOW COMES Public Service Company of New Hampshire ("PSNH" or "the Company") and, pursuant to RSA 363-A:4, hereby objects to its assessment of the costs of the New Hampshire Public Utilities Commission ("Commission"). In support of its objection, PSNH states as follows:

1. On September 17, 2012, Northern New England Telephone Operations d/b/a FairPoint Communications ("FairPoint") filed an objection to its assessment of the Commission's expenses. That objection was docketed as Docket No. DM 12-276. In broad terms, FairPoint objected on the bases that: recent legislative changes decreased the Commission's regulatory authority over telecommunications companies, such as FairPoint, and accordingly, the assessment should be likewise decreased¹; and the certain of its revenues upon which the assessment is based are regulated at the federal level by the Federal Communications Commission ("FCC") and, therefore, they should not be counted in determining the level of FairPoint's assessment. FairPoint's objection was made to its then-current assessment.

2. Following the intervention of various parties and a prehearing conference, the Commission issued Order No. 25,451 and found, among other things, that FairPoint's objection was not ripe for consideration because RSA 363-A:4 did not permit a utility to object to its

¹ FairPoint raised the same argument relative to the expenses of the Office of Consumer Advocate.

current assessment, but only a prior one. *See* Order No. 25,451 (Jan. 7, 2013) at 10-11. The Commission, therefore, dismissed FairPoint's objection without prejudice. *Id.* at 11.

3. In dismissing FairPoint's petition the Commission also concluded that a stakeholder process for a more thorough review of assessment practices was in order. *Id.* at 12. Accordingly, on January 7, 2013, the Commission opened Docket No. IR 13-038 for conducting that stakeholder process.² Though the Commission Staff and numerous parties have participated in that process, no resolution has been reached and it has been determined that a longer-term resolution would require legislative actions.

4. During the pre-hearing conference in Docket DM 12-276 held on November 6, 2012, Commission Staff took the position that utilities that failed to timely challenge the Commission's assessment were statutorily precluded from being granted relief in the event that any other utility subject to the Commission's assessment process filed such a timely assessment challenge of its own. *See* Transcript of November 6, 2012 Pre-Hearing Conference at 24-25. In that there have been no changes to the assessment system or method, on August 15, 2013, PSNH received an invoice from the Commission dated August 8, 2013 for its share of the total assessment expense, consistent with prior assessments. Pursuant to RSA 363-A:4, PSNH has 30 days from the date this assessment to raise any objections in writing to the assessment for the prior fiscal year. PSNH hereby objects to its assessment for the prior fiscal year and, as set out below, states "the grounds upon which it is claimed that said assessment is excessive, erroneous, unlawful." RSA 363-A:4. PSNH, however, does not at this time request any particular relief, but only requests that the Commission grant relief in the event that any other changes to the assessment method are made as a result of any other objections. PSNH requests relief in this

² PSNH notes that it, and others, have publicly filed extensive comments on the Commission's assessment method and process in Docket No. IR 13-038. PSNH hereby requests, pursuant to N.H. Code Admin. R. Puc 203.27, that the Commission take administrative notice of that docket and the comments filed therein.

manner to protect its rights in the event the Commission may conclude in response to other potential objections that the assessment structure should be amended in a manner that results in PSNH, and its customers, being obligated to pay a greater amount.

5. As was noted by FairPoint in its initial filing in Docket No. DM 12-276, the New Hampshire Supreme Court has described the Commission's assessments as "license fees," and has held that to be valid, charges made as license fees must bear a relation to and approximate the expense of issuing the licenses and of inspecting and regulating the business licensed. *See Appeal of Association of New Hampshire Utilities*, 122 N.H. 770, 772-73 (1982) and *Laconia v. Gordon*, 107 N.H. 209, 211 (1966). Therefore, the fees "must be incidental to regulation and not primarily for the purpose of producing revenue." *Gordon*, 107 N.H. at 211.

6. In its February 15, 2013 comments in Docket No IR 13-038, PSNH noted that in establishing the amounts to be assessed to various entities, the Commission did not include the revenue of various entities regulated by the Commission, specifically, competitive electric power suppliers. As PSNH noted there, the Commission is the regulatory authority responsible for overseeing these entities and enforcing the requirements for them to operate in New Hampshire, and, therefore, they should be required to reimburse the Commission for its expenses. Further, these entities provide a service, the provision of electric power, that is identical to a service provided by PSNH. However, while PSNH's revenues from that service are included when calculating its assessment obligation, the revenues collected by competitive suppliers are not. Failing to include those entities in the assessment calculation when they are regulated by the Commission, and failing to treat revenue from substantially similar services in a substantially similar manner, raises significant question about whether the current assessment system comports with equal protection under state and federal law.

7. Furthermore, in recent years competitive suppliers have availed themselves of the processes and protections of the Commission on numerous occasions, for matters both complex and routine. As noted above, if the Commission's assessment is to be considered a license fee, the fee must be incidental to the regulation. In that these entities are regularly subject to the regulatory authority of the Commission in much the same manner as public utilities, there must be a fee that is incidental to the regulation of those entities for the assessment to be valid. In that there is not, PSNH objects to its assessment.

8. In addition to the above, PSNH notes that it is not clear how the Commission treats revenues received from sources not regulated by the Commission in the assessment calculation. In dismissing FairPoint's petition in DM 12-276, the Commission noted that its assessments had been challenged previously by an interstate gas pipeline, but that following those previous challenges the Commission had concluded that basing an assessment on revenues regulated by another entity was not duplicative. *See* Order No. 25,451 (Jan. 7, 2013) at 11-12. Nevertheless, it appears from the Commission's most recently available assessment booklet that the Commission does not include the revenues of all interstate pipelines in calculating its assessment. Presently, however, certain revenues received by PSNH from sources regulated by federal authorities are included in the assessment calculation. To the extent the Commission has concluded that it may use the revenues from certain sources not regulated by the Commission to calculate an assessment, it should include all sources of such revenue. Failing to do so again raises questions about equal protection under state and federal law.

9. Despite the above, PSNH notes that it does not object generally to paying an assessment to fund the operations of the Commission and that PSNH will continue to do so. PSNH does, however, object to an assessment that treats similarly regulated entities and revenue

sources differently in calculating an assessment amount. Accordingly, PSNH objects to its assessment, but does not request that the Commission amend PSNH's assessment specifically, or the assessment method generally, at this time.

WHEREFORE, PSNH respectfully requests that the Commission:


- A. Accept this Objection; and
- B. Grant such further relief as is just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

By Its Attorney

Dated: 9/9/13

By:  _____

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