

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DM 13-252

ALL UTILITIES

Objections to Public Utility Assessments

ORDER OF NOTICE

On August 8, 2013, and pursuant to RSA Chapter 363-A, the New Hampshire Public Utilities Commission (Commission) issued utility assessments for fiscal year 2014 and invoices for the first quarter to utilities subject to assessment under RSA 363-A. Northern New England Telephone Operations LLC (FairPoint) and Enhanced Communications of Northern New England, Inc. (Enhanced Communications), both of which are affiliates of FairPoint Communications, Inc., and Public Service Company of New Hampshire (PSNH), filed objections to the Commission's assessments.

The first quarter invoices for the fiscal year 2014 assessments issued to FairPoint and Enhanced Communications reflected the Commission's final adjustment to the fiscal year 2013 utility assessments. The fiscal year 2013 assessments and first quarterly invoices for that year were issued by the Commission on August 17, 2012. The August 17, 2012 invoice reflected a fiscal year 2013 assessment in the annualized amount of \$942,999 for FairPoint and \$70,452 for Enhanced Communications, respectively. On September 6, 2013, FairPoint and Enhanced Communications filed an objection to their fiscal year 2013 assessments.

On September 9, 2013, PSNH filed an objection to its public utility assessment asking for relief "in the event that any other changes to the assessment method are made as a result of any

other objections.” PSNH stated that it was requesting this relief “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.” The objections and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission’s website at <http://www.puc.nh.gov/Regulatory/Docketbk/2013/13-252.html>.

The Commission funds its general expenses incurred in the performance of its duties relating to public utilities and the Office of Consumer Advocate through public utility assessments made pursuant to the formula and procedures set forth in RSA Chapter 363-A. RSA 363-A:4 permits a public utility to object, within 30 days of the assessment for the first quarterly payment, to the amount assessed against it for the prior fiscal year on grounds that the assessment is “excessive, erroneous, unlawful or invalid.” If the assessment of one public utility is reduced, it is possible that the assessments of the remaining public utilities will increase, in order to fully reimburse the Commission for its expenses.

FairPoint claims that its fiscal year 2013 assessment should be reset to no more than \$403,229, while Enhanced Communications claims that its fiscal year 2013 assessment should be reset to a maximum of \$5,500. They argue that Excepted Local Exchange Carriers should not be required to fund expenses of the OCA due to the enactment of Laws of 2012, Chapter 177 (SB 48) and, in addition, that the Commission has no statutory authority to levy an assessment on the interstate revenues of either FairPoint or Enhanced Communications. They also argue that the assessments constitute an unlawful and unconstitutional taking of property.

PSNH does not at this time seek a specific adjustment to its fiscal year 2013 assessment. PSNH claims, however, that failing to treat revenue from PSNH's sale of electricity and competitive electric suppliers' sale of electricity in a substantially similar manner does not comport with equal protection under state and federal law. PSNH claims that because competitive electric suppliers are regularly subject to the Commission's regulatory authority in much the same manner as public utilities, there must be a fee imposed on these entities for the Commission's assessment to be valid. PSNH further claims that the Commission does not include revenues of all interstate gas pipelines in the Commission's assessment calculation and that failing to do so does not comport with equal protection under state and federal law. PSNH objects to an assessment that, according to PSNH, treats similarly regulated entities and revenue sources differently in calculating the Commission's assessment.

The filings raise, inter alia, issues related to whether the assessments FairPoint, Enhanced Communications, and PSNH object to are "excessive, erroneous, unlawful or invalid" under RSA 363-A:4, constitute an unlawful and unconstitutional taking of property, violate equal protection under state and federal law, and whether the assessments should be reset. Additionally, the filings raise issues related to the proper revenue basis from which to calculate assessments pursuant to RSA 363-A:2 and whether implementation of SB 48 requires any changes to the method by which utility assessments are calculated. Each party participating in this proceeding has the right to have an attorney represent the party at the party's own expense.

Based upon the foregoing, it is hereby

ORDERED, that a Prehearing Conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on November 14, 2013 at 9:00 a.m., at which each party will provide a preliminary

statement of its position with regard to the petition and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15 shall be considered; and it is

FURTHER ORDERED, that, immediately following the Prehearing Conference, FairPoint, Enhanced Communications, PSNH, the Staff of the Commission, and any Intervenors hold a Technical Session to review the objections and allow FairPoint, Enhanced Communications, and PSNH to provide further information regarding their objections; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.12, FairPoint, Enhanced Communications, and PSNH shall cooperate to notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than October 14, 2013, in a newspaper with general circulation in those portions of the state in which their operations are conducted, publication to be documented by affidavit filed with the Commission on or before November 8, 2013; and it is

FURTHER ORDERED, that the Executive Director of the Commission send a copy of this order of notice forthwith by electronic means to all public utilities that were sent Commission assessment invoices for fiscal year 2013; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to FairPoint, Enhanced Communications, PSNH, and the Office of the Consumer Advocate on or before November 8, 2013, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32, I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before November 14, 2013.

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 2013.

A handwritten signature in black ink, appearing to read "Debra A. Howland", is written over a horizontal line.

Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 13-252-1 Printed: October 08, 2013

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.

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