

THE STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION

COMPLAINT AGAINST PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

REPLY OF PNE ENERGY SUPPLY, LLC and HALIFAX AMERICAN ENERGY COMPANY, LLC  
TO PUBLIC SERVICE OF NEW HAMPSHIRE'S (PSNH) RESPONSE TO APRIL 8, 2014  
COMPLAINT

NOW COMEs PNE\_Energy Supply, LLC (“PNE”) and Halifax American Energy Company, LLC (“HAEC”)(Collectively Referred to as the “Complainants”) hereby replies to Public Service of New Hampshire’s (“PSNH”) response to the Complaint filed by PNE on April 8, 2014.

**INTRODUCTION AND SUMMARY**

The Complainants have not misread or misconstrued the meaning of the language in the Tariff. The Tariff offers two clear and unambiguous choices for the initiation of a customer drop at the request of a customer. The term “may” merely references the fact that the customer has a choice and that they may exercise their preference as to which method to select. Nowhere, however, in the PUC rules or the PSNH Tariff does it state that the customer may contact PSNH (otherwise known in the Tarff as the “Company”) and request termination of service from a CEP. The customer has a supply contract with the CEP, therefore it stands to reason that the customer should request termination directly from their supply provider. Such a concept must have made sense to the authors of the Tariff, as evidenced by the provision’s inclusion, yet it has left Mr. Fossum dumfounded.

PSNH’s “act first, find authority later” approach has been well documented and the issue presently before the Commission is simply one more instance of this detrimental, yet consistent, behavior by the State’s largest utility. PSNH treats its Tariff as a mere suggestive template for how they ought to engage in their business practices, thus it falls to the Commission to correct this gross misunderstanding. While PSNH is focused on typos and editing errors, the Complainants are focused on trying to run businesses under the rules and guidelines set forth and approved by the Commission. If these rules are to be as malleable as PSNH treats them, a cost is created for all market participants that, in the end, only harms the customers. The Complainants’ only request before this Commission, simply stated, is to force PSNH’s to follow the rules (i.e. mandate PSNH’s compliance with the current Tariff provisions regarding customer initiated termination of CEP service).

**COMPLAINANTS’ REPLY TO CERTAIN ITEMS IN PSNH RESPONSE**

Although, the Complainants believes that its position was clearly set forth in its original complaint, the Complainants shall address certain items contained in PSNH's May 8, 2014 response.

1. The Complainants take issue with PSNH's characterization of Complainants' understanding of the applicable Tariff provisions as "unreasonable", considering PSNH shared a similar understanding of the Tariff provisions prior to 2013. Prior to the exchange of emails with Ms. Noonan in early 2013, PSNH did not process direct customer initiated drop requests when that customer was taking power from a CEP. PSNH notified customers making such requests that they must contact their current CEP in order to terminate competitive service. PSNH recently changed this policy at some point in 2013 and even created a new EDI code to signify a "customer initiated drop" to standard offer.<sup>i</sup>

2. As for the supposed Commission "authorization" Mr. Fossum states that PSNH received from Ms. Noonan, Mr. Fossum is mistaken. As Ms. Noonan has reminded PNE on numerous instances, her opinion regarding the interpretation of a rule or provision does not constitute an official Commission interpretation or authorization, as she is a Staff member from the Office of Consumer Affairs and not a Commissioner appointed by the Governor. Ms. Noonan's emails constitute a form of unofficial Staff guidance, at best. Despite Mr. Fossum's claims to the contrary, PSNH has received no official authorization from the Commission to engage in customer initiated drops from CEP service nor has PSNH received an official Commission affirmation of PSNH's strained understanding of their powers under the Tariff.

3. PSNH next argues that PUC 1203.01 gives them the necessary authority to drop a customer from competitive supply at the direct request of the customer. On its face PUC 1203.01 clearly relates to the provision of new utility service to customers that previously were without, hence use of the term "service connection" and the section title of "Initiation of Basic Utility Service" (**Initiation** being the key term). 1203.01 has nothing to do with termination of CEP service, oddly enough the relevant and controlling rules can be found under the PSNH Tariff in a section titled "Termination of Supplier Service...".

Interestingly, the full title of the applicable section under the PSNH Tariff is "Termination of Supplier Service or Self-Supply Service". In rendering their decision, the Commission might benefit from a quick review of the guidelines for termination of Self-Supply Service, found on Original Page 12, Section 7 of the PSNH Tariff, which reads in part:

"To terminate Self-Supply Service, a Customer may either provide notice to the Company or request Supplier Service from a Supplier."

The Tariff provides that, for Self Supply Service customers, a direct request for termination may be made directly "to the Company", yet this option is clearly absent from the guidelines for Supplier Service termination. This is not a mere accident or instance of careless omission, this is evidence of intent to remove PSNH from the ability to interfere in the contractual relationships of CEPs and their customers. It is clear from the language of the Tariff, that where there exists a

supply relationship with any party other than when the customer is serving themselves, PSNH is to remain a passive party regarding termination.

4. PSNH states that to “follow the methods promoted by PNE would mean that if a customer called PSNH to begin receiving supply from PSNH, PSNH could not complete the request without first requiring that the customer return to the supplier (a supplier from which the customer wishes to terminate its relationship), convince the supplier to drop the customer and have the supplier complete whatever steps it deemed appropriate before then processing a drop.” PSNH continues on to suggest that if the supplier were to delay the drop in any way and drag out the conversion of the customer to PSNH’s service, that PSNH would be non-compliant with the PUC rules. The Complainants suggest that if PSNH is confused about what would transpire in this alternate universe, PSNH might reference how they handled such situations prior to 2013 when they did not honor customer initiated drop requests. Furthermore, if PSNH’s interpretation is to be accepted by the Commission as accurate, does this mean that between advent of deregulation and early 2013 PSNH was in violation of PUC rules? If so, that would amount to over 10 years of non-compliance, with hundreds, if not thousands, of individual infractions and likely require a Commission investigation into potential redress for throngs of impacted customers.

### CONCLUSION

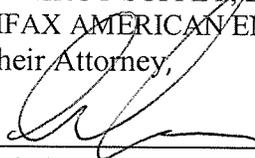
The Complainants are not interested in “proposed” rules, personal emails or the inefficient expenditure of the Commission’s valuable time on sensational and unsupported interpretations of otherwise clear cut and long followed rules regarding the issue of customer initiated drops back to the utility. Rules that PSNH observed and followed for nearly a decade. The Complainants, like all participants in the New Hampshire competitive electric marketplace, does have an interest, however, in PSNH following the current rules as they are set forth under the Tariff.

WHEREFORE, for all of the foregoing reasons, COMPLAINANTS respectfully request the Commission to:

- A. Convene an adjudicative proceeding as provided in N.H. Admin. Rule PUC 2505.13 to allow Complainants an opportunity to prove, after discovery and deposition, the foregoing alleged violations;
- B. Order PSNH to make reparation to Complainants; and
- C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

PNE ENERGY SUPPLY, LLC  
HALIFAX AMERICAN ENERGY CO, LLC  
By their Attorney,



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A. Bartholomew Fromuth, Esq.

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<sup>i</sup> It is worth noting that no advanced notice was given to CEPs, by PSNH, regarding this policy change. Furthermore, it is likely that some CEPs active behind PSNH are still unaware of the change.