

DE 01-023

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Complaint of Ann and Tim Guillemette

Order Following Hearing

O R D E R N O. 24,070

October 24, 2002

APPEARANCES: James T. Rodier, Esq. for Ann and Tim Guillemette; Christopher J. Allwarden, Esq. for Public Service Company of New Hampshire; and General Counsel Gary M. Epler for the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION

Ann and Tim Guillemette (Complainants), residential customers of Public Service Company of New Hampshire (PSNH) have invoked the jurisdiction of the New Hampshire Public Utilities Commission (Commission) under RSA 365 with regard to voltage fluctuations in the electricity supply at their Bedford home which they allege are the fault of PSNH. In this Order, entered following an evidentiary hearing on the merits of the case, we determine that the Complainants are not entitled to relief with regard to PSNH.

II. BACKGROUND AND PROCEDURAL HISTORY

The extensive history of this case is laid out in Order No. 23,734, entered on June 28, 2001. On July 11, 2000, the Commission's Chief Engineer reported on an informal investigation he had conducted with regard to the Complainants'

electric service, determining that the problems at their home were not the result of improper system conditions or operations on the part of PSNH. He then requested that the Commission open a docket to conduct a formal investigation under RSA 365, which sets forth the statutory mechanism for Commission adjudication with regard to "any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law, or the terms and conditions of its franchise or charter, or of any order of the Commission." See RSA 365:1.

PSNH thereafter responded in writing, as required by RSA 365:2, and, pursuant to an Order of Notice, the Commission conducted a Pre-Hearing Conference on May 8, 2002. Responding to various pleadings filed prior and subsequent to the Pre-Hearing conference, and taking into account the issues raised on the record on May 8, 2002, the Commission made several significant determinations in Order No. 23,734.

Denying a PSNH motion to dismiss the proceeding, the Commission determined that sufficient questions remained unanswered to provide reasonable grounds to conduct a full and formal investigation. Order No. 23,734, slip op. at 10; see RSA 365:4 (authorizing Commission, after notice and hearing, to "take such action within its powers as the facts justify"). However, the Commission concluded that it lacked authority to

award the Complainants civil monetary damages beyond the reparation remedy authorized under RSA 365:29 (limiting such remedy to "payments made within 2 years before the date of filing the petition for reparation"). Order No. 23,734, slip op. at 12. In so holding, the Commission stressed that it had the authority to direct PSNH to take action as a result of formal investigations such as the instant case, if the facts justify. *Id.* at 13.

The Commission further ruled that the Complainants could not, in general, use this docket to vindicate their contention that the Commission's rule governing voltage variation, Puc 304.02, is inconsistent with RSA 374:1, requiring public utilities to furnish service that is safe and adequate. *Id.* at 17. Order No. 23,734 concluded that PSNH was entitled to rely on its compliance with Puc 304.02 in defending itself here. *Id.* at 16-17. However, the Commission stressed that it would entertain evidence that the rule is inadequate, given its authority to take emergency action to guarantee safe and reliable service to the public. *Id.* at 17-18 (citing

Commission's emergency rulemaking authority under RSA 541-A:18).¹

Order No. 23,734 concluded with a directive to the Complainants to advise the Commission within ten days as to whether they intended to continue to pursue their complaint and whether they would permit their premises to be inspected by an independent inspector appointed by the Commission. The Complainants responded in the affirmative on July 2, 2001.

On August 30, 2001, the Commission granted a motion to compel discovery that had been filed by the Complainants, but indicated that no further discovery should take place absent an express order of the Commission to that effect. The Staff of the Commission filed a motion to terminate the investigation and close the docket on February 19, 2002. PSNH indicated its concurrence with the motion, which the Complainants opposed. The Commission denied the motion on May 15, 2002, setting the matter for a full evidentiary hearing and establishing deadlines for the submission of pre-filed direct testimony. The testimony was duly filed by the Complainants and PSNH.

¹ The Commission made certain other rulings, not relevant here, that had the effect of denying PSNH's effort to limit or end the case. The Commission also did not reach certain assertions made by the Office of Consumer Advocate (OCA), which had not entered an appearance in the docket to that date but which had filed a written reply to PSNH's motion papers. See Order No. 23,734, slip op. at 7-8 and 20 n.5. OCA did not participate in the subsequent proceedings in the docket.

Thereafter, on July 10, 2002, the hearing took place as scheduled. As indicated at hearing, the Commission supplemented the record on July 25, 2002 with certain documents from Staff files. The Complainants and PSNH filed post-hearing briefs on August 13, 2002.

III. POSITIONS OF THE PARTIES AND STAFF

A. Ann and Tim Guillemette

The Complainants presented the testimony of Ann Guillemette, who described a history of electricity-related problems at her home dating from their occupancy of the premises in 1993. According to Mrs. Guillemette, an electrician advised that the home was suffering from low-power surging. She described an ensuing series of contacts with PSNH beginning in late 1993, culminating with PSNH's replacement of the meter at the premises on December 31, 1996. According to Mrs. Guillemette, problems persisted after this replacement, although they were less severe. She said that she and her husband were concerned that their house might burn down, but that PSNH repeatedly denied there was any problem. She described efforts to bring the situation to the attention of various public officials, and noted that PSNH made mistakes in monitoring their electric service for trouble. Specifically, she contended that

PSNH placed monitors on the meter connected to their hot water tank, as opposed to the home's master meter.

In their post-hearing brief, the Complainants contend that (1) voltage test data supplied by PSNH to them and to the Commission yielded no useful information, (2) the data shows that certain voltage surges at the home, although less than five minutes in duration, were extreme and thus violative of Puc 304.02, (3) despite PSNH's assertion to the contrary, the report of its own technician reveals that on December 31, 1996 the company's inspection revealed a significant problem - that "one of the phases was only partially installed at the meter socket," (4) the Complainants did not, as suggested by PSNH, deny the company access to their home but only refused to permit PSNH technicians "to be there by themselves . . . without another electrician there," (5) PSNH incorrectly maintained that the Complainants had refused to provide documentation of which of their appliances had failed from 1993 to 1996, (6) contrary to the assertion of PSNH, the Complainants' electrician spoke directly with supervisor Bert Guimond of PSNH on December 31, 1996 to inform him of "deviant voltage readings and the partially installed phase," and (7) PSNH has implied without any basis in fact that Mrs. Guillemette had engaged in fraud by

providing false information about damaged appliances that were actually ruined by a basement flooding incident.

The Complainants present three legal arguments.

First, they contend that PSNH violated RSA 374:1 by failing to provide them with safe service and voltage consistent with the requirements of Puc 304.02. Next, the Complainants contend that PSNH violated its delivery service tariff by failing to provide voltage that is consistent with standard commercial practice. Finally, the Complainants allege that PSNH violated Puc 1203.09 by failing to provide the requisite full investigation and by failing to disclose either to the Complainants or to the Commission all of the material facts of which it had knowledge.

B. Public Service Company of New Hampshire

PSNH offered the testimony of Robert M. Montmarquet, a senior analyst in the Company's marketing support group, and Carol A. Burke, a senior engineer. Mr. Montmarquet testified about certain conversations he had with the Complainants in 1996 and early 1997, and described the results of voltage testing he performed on the premises in January 1997 for which PSNH no longer has records. Ms. Burke described PSNH's investigation generally, noting among other things that PSNH had not received any complaints from other customers who were served via the same transformer as the Complainants.

In its post-hearing brief, PSNH contended (1) that it fully and promptly investigated the complaints at issue, consistent with the applicable rules, (2) that the Company never misled the Complainants or failed to disclose information to them or the Commission, (3) that the service provided to the Complainants complied with the applicable rule concerning voltage and was not deficient, (4) that the evidence adduced at hearing did not establish any improper conditions or operations on the PSNH system that were responsible for the problems alleged by the Complainants, and (5) that the Complainants do not have any existing or continuing service quality problems that require further Commission intervention.

IV. COMMISSION ANALYSIS

Our discussion of the merits of this case begins with the incorporation by reference of our previous determinations with regard to the scope and nature of this proceeding. As we explained in Order No. 23,734, this is an investigation of service quality issues under RSA 365, which is different from a civil damages claim. We are not called upon to assign fault as in a tort case, or to assess monetary damages. Rather, our focus is on whether the evidence adduced at hearing demonstrates that PSNH failed to provide safe and reliable service to the

Complainants - an obligation that is a central aspect of PSNH's responsibility as a public utility.

The present record indicates that the Complainants had electricity-related difficulties in their home. The salient question is whether those difficulties were related to inadequate service by PSNH.

Our enabling statutes, and the Administrative Procedure Act, RSA 541-A, are silent on the question of whether PSNH or the Complainants have the burden of proof in this situation. Although there is no New Hampshire case directly on point, it is a generally accepted principle of administrative law that petitioners bear the burden of proving their allegations in a contested administrative proceeding. See, e.g., B. Schwartz, *Administrative Law* (1976), § 121 at 121 (noting that the term "burden of proof" encompasses both duty of going forward with evidence and burden of persuasion).

It might, in some instances, be appropriate to shift at least the burden of going forward with the evidence to a party other than a petitioner, e.g., a situation in which another party is uniquely in control of the relevant evidence. Here, the Complainants have had full recourse to discovery, and certain facts necessary to a conclusive determination of causation are solely within the control of the Complainants,

i.e., the conditions of their inside wiring, appliances, and usage over time. Thus, there is no basis for imposing on PSNH, rather than the Complainants, the sole burden of proof regarding whether the Complainants' experiences result from a failure by PSNH to provide safe and reliable service.

In the first instance, in the face of a complaint, a utility has a certain responsibility by statute to demonstrate that it is providing adequate service. In fact, that is what occurred in this case as part and parcel of PSNH's response to the petitioner's complaint. Correspondingly, Staff investigates the complaint and company response, which is consistent with Staff's independent investigation in this case. As a result, to the extent the burden becomes the complainant's, it does not become so until a hearing on the issue is required.

Furthermore, the hearing would likely only occur when Staff's investigation does not support the complaint and the complainant presses the issue. Experience demonstrates this occurs infrequently.

We dwell on this issue because the record is inconclusive on the factual matters at the heart of the case. There is record evidence of voltage variations, both before and after PSNH made repairs on January 31, 1996, but nothing that tends to establish conclusively that these variations caused

harm to the Complainants, or that the variations constituted inadequate service. The expert testimony before us was to the effect that some of these voltage variations were traceable to normal system occurrences.

There is insufficient evidence to exclude the possibility that the Complainants' problems are traceable to problems on their side of the meter. On this record, we cannot say that the problems encountered were not caused by wiring or usage at the Complainants' premises, or, for that matter, by other factors for which our rules explicitly hold the utility not responsible. See Puc 204.02(h) (exonerating utilities from responsibility for voltage variations caused by action of the elements, operation of the affected customer's equipment at low power factor, unbalanced operation of the affected customer's equipment or failure of, or maintenance on, utility's equipment).

In addition, we are unable to express a view as to whether any of the voltage variations established in the record were "infrequent fluctuations not exceeding 5 minutes duration," circumstances that exonerate PSNH from responsibility pursuant to PUC 304.02(h)(2). Although the record contains metering data concerning the frequency of the fluctuations and also their duration, the record is devoid of any information to assist us

in determining whether such data is evidence of a violation of industry standards or Commission rules. We determine only that PSNH provided evidence supporting its position that it was providing adequate service, that Staff determined that there was no basis for concluding otherwise, and that the Complainants have failed to establish by a preponderance of the evidence that the voltage variations constitute a violation of the applicable rules or statutes.

As we resolve this case, we are mindful of our obligation to provide "the general supervision of all public utilities," under RSA 374:3, so as to effect the provisions of our enabling statute, including the provision obligating PSNH to provide safe and reliable service. In that regard, we recognize Mrs. Guillemette's expressed concerns about the safety of her family in their home. We cannot guarantee that the wiring in her home, the electrical appliances in her home, or the elements will not cause dangerous situations to arise. We can, however, affirm that the Commission has conducted a thorough investigation of the service presently being provided to the premises by PSNH. Based on the record before us in this docket, the service presently being provided by PSNH is, in our view, safe, reliable and adequate.

Based upon the foregoing, it is hereby

ORDERED, that the investigation of Public Service Company of New Hampshire in this proceeding is closed without any findings adverse to the Company.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of October, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary