

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

DE 12-295

POWER NEW ENGLAND

**Petition for Review of the Reasonableness of Certain Charges of Public Service
Company of New Hampshire for Services to Competitive Suppliers**

**Objection to Public Service Company of New Hampshire's
Supplemental Motion to Dismiss**

NOW COMES the Retail Energy Supply Association (“RESA”), which has petitioned to intervene in this docket, and objects to Public Service Company of New Hampshire’s (“PSNH”) February 19, 2013 Supplemental Motion to Dismiss. In support of this objection RESA states as follows:

1. On October 1, 2012 Power New England, LLC d/b/a Power New England (“PNE”) filed a petition asking the Commission to review the reasonableness and appropriateness of PSNH’s approved charges for certain services to competitive suppliers. On November 21, 2012 the Commission issued an Order of Notice in the above-captioned docket opening a proceeding to review the reasonableness and appropriateness of those charges. The Order of Notice also noted that the filing raised the issue of whether it would be useful to conduct such a review separate from a review of PSNH’s revenue requirements in the context of a distribution rate case. The Commission set a prehearing conference for January 15, 2013 and established a deadline of January 9, 2013 for the submission of petitions to intervene.

2. RESA submitted a Petition to Intervene in this docket on January 7, 2013 and attended the prehearing conference. Two other entities representing competitive supplier interests timely filed motions to intervene – North American Power and Gas, Inc. (“NAP”) and E.N.H. Power (“ENH Power”). After the prehearing conference and technical session, the Staff submitted a proposed procedural schedule. *Correspondence from Suzanne Amidon to Debra A. Howland* (Jan. 16, 2013). No party objected to the motions to intervene, and the Hearing Examiner’s Report recommends granting intervenor status for all three entities. *Hearing Examiner’s Report*, Docket DE 12-295 (Jan. 22, 2013).

3. On January 4, 2013 PSNH filed a Motion to Dismiss the above-captioned docket on the grounds that the Petition asks the Commission to engage in single issue ratemaking and that it asks the Commission to issue a declaratory ruling involving future situations that are neither definite or concrete. RESA, NAP and ENH Power all filed objections to PSNH’s Motion to Dismiss; the Commission has not acted on this Motion.

4. PSNH now asserts that this docket must be dismissed because PNE’s status as a competitive electric power supplier (“CEPS”) has been called into question. *Public Service Company of New Hampshire’s Supplemental Motion to Dismiss* (Feb. 19, 2013). RESA submits that the Commission should deny PSNH’s supplemental motion for several reasons. First, the issues raised by PNE’s petition are vital concerns which impact the competitive supply market in New Hampshire and all competitive suppliers, not just PNE.¹ Second, dismissal of this docket will only result in administrative delay

¹ For the purposes of this filing, RESA assumes: (1) that that the Commission will grant the motions to intervene filed by RESA, NAP and ENH Power; (2) that the Commission will accept the procedural schedule set forth in Staff’s January 16, 2013 letter; and (3) that the Commission denies PSNH’s January 4,

and expense, given that several parties seek redress regarding the concerns originally raised by PNE, and those parties would be forced to bring their own petitions to the Commission if the instant docket is dismissed. Finally, if the Commission finds PSNH's standing argument compelling, RESA respectfully requests a waiver, pursuant to N.H. Admin R. Puc 201.05, or action by the Commission, pursuant to RSA 365:5, to avoid additional costs and delay in the Commission's consideration of the important issues raised by the PNE Petition.

5. The substance of PNE's Petition, which requests that the PUC review the reasonableness and appropriateness of several of PSNH's charges, applies equally to any competitive supplier that is currently providing service to PSNH's distribution customers. In particular, several of RESA's members are directly impacted by charges referenced in PNE's petition. RESA has expressed these interests in its Petition to Intervene and in its objection to PSNH's January 7 Motion to Dismiss. Because RESA's members share PNE's interests in this docket, even if PNE does not participate, the issues raised by the PNE petition will remain

6. Tellingly, the proposed procedural schedule, agreed to by PSNH, recognizes that the intervenors are similarly situated to PNE with respect to their position and interests. The schedule provides PSNH with the opportunity to perform discovery on testimony from RESA, NAP and ENH Power (in addition to PNE) before submitting its own testimony. RESA, NAP and ENH Power are therefore akin to petitioners who have an opportunity to provide testimony in support of the underlying petition and the issues

2013 motion to dismiss. RESA makes no assumption regarding whether the scope of Docket DE 12-295 will be expanded to include competitive market issues raised by RESA, NAP and ENH Power.

raised in the Order of Notice prior to the submission of testimony by PSNH, Staff or the Office of Consumer Advocate.

7. Furthermore, PSNH's Motion is merely an attempt to elevate form over substance. Arguably, any one of the intervenors to this docket could bring a petition regarding the charges at issue. Dismissal of PNE's petition would therefore only serve to delay the Commission's ability to address the charges at issue.

8. PSNH cites Puc 207.01(c)(3) to support its claim that PNE's petition should be dismissed, because PNE's legal rights may not be implicated if it is no longer a CEPS. Without restating any arguments set forth in its Objection to PSNH's January 4 Motion to Dismiss, RESA strongly disagrees with PSNH's position. As indicated above, the legal rights of several other parties would be implicated should the Commission decide to dismiss PNE's petition and consequently dismissal is inappropriate in this case. Further, PNE's petition was filed in accordance with Puc 203.06, not necessarily Puc 207.01. To the extent that the Commission is concerned that this docket no longer meets the express terms of its rules, RESA respectfully suggests that the Commission consider two options that would allow this docket to proceed in a timely manner.

9. First, acknowledging that three intervenors have indicated that they are similarly situated to PNE for the purposes of PSNH's competitive charges, the Commission could grant a waiver of the requirement that the *petitioner's* legal rights or responsibilities must be implicated. This would be appropriate under Puc 201.05. A waiver serves the public interest by permitting the Commission to timely address rate and competition issues which fall squarely within the public's interest. Puc 201.05(a)(1). It would avoid unnecessary administrative costs and delay, and would assist in the orderly

and efficient resolution of this matter. *Id.* at (a)(2). Finally, the purpose of the Commission's rules, including Puc 207.01(c)(3), would be satisfied because there are three active intervenors whose legal rights are clearly implicated by the issues raised in PNE's original petition.

10. Second, the Commission has the right, via RSA 365:5, to open an independent inquiry into "any rate charged or proposed." RSA 365:5. *See also* RSA 374-F:4, VIII(a) ("the Commission is authorized to order such charges and other service provisions and to take such other actions that are necessary to implement restructuring and that are substantially consistent with the principles established in this chapter.") The Commission could, considering the importance of the issues raised by PNE and their implications for the competitive market within PSNH's service territory, convert the instant docket to such an inquiry, allowing the adjudicative process relating to PSNH's charges to go forward. *See* RSA 374-F:1 and RSA 374-F:3, II, IV, and VII.

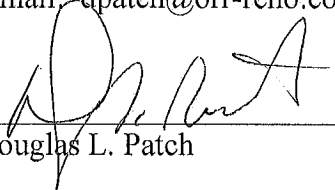
11. For the reasons cited above RESA believes the Commission should deny PSNH's Supplemental Motion to Dismiss.

WHEREFORE, RESA respectfully requests that this honorable Commission:

- A. Deny PSNH's Supplemental Motion to Dismiss; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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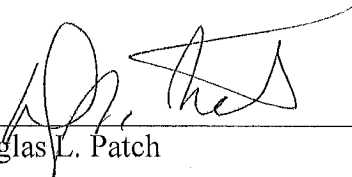


Douglas L. Patch

March 1, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2013 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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