

**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 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") January 4, 2013 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 Public Service Company of New Hampshire's ("PSNH") 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, also noting 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. In that Order of Notice 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. RESA submitted a Petition to Intervene in this docket on November 7, 2013 and attended the prehearing Conference.

2. On January 4, 2013 PSNH filed a Motion to Dismiss this docket, arguing that the PNE Petition is asking the Commission to engage in single issue ratemaking and that it seeks a declaratory ruling that involves future factual situations that are not definite or concrete and a hypothetical situation. On January 7, 2013 PNE filed an Objection to the PSNH Motion and on January 14, 2013, North American Power and Gas, LLC (“NAP”) also filed an Objection to the Motion. RESA first became aware of this Motion on January 8, 2013.

3. RESA agrees with PNE and NAP that the Commission should not dismiss this Petition. RESA submits that this Petition raises important issues regarding charges that PSNH makes to customers and competitive suppliers. Moreover, as RESA and others argued during the prehearing conference, RESA believes that the scope of this docket should be expanded to include related issues regarding PSNH’s practices for addressing customers switching to competitive suppliers. RESA submits that this is a critical time in the development of the competitive market in New Hampshire, particularly for residential customers. The Commission should review the charges at issue as well as other PSNH practices to insure that there are no market barriers for customers and suppliers and that any charges related to switching electricity suppliers are reasonable.

4. The New Hampshire restructuring law, RSA 374-F, contains a number of provisions that are relevant to the issues raised by the Petition and that should be addressed in this or another proceeding, that are not being addressed in DE 12-097. The restructuring policy principles contained in RSA 374-F:3, II include a provision that says the Commission “should ensure that customer confusion will be minimized and

customers will be well informed about changes resulting from restructuring and increased customer choice.” The implementation section, RSA 374-F:4, VIII(a) authorizes the Commission “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.” As PSNH notes in its Motion to Dismiss the charges at issue were approved 13 years ago; much has changed since then. Given the stage we are at in the development of the competitive market and the comparison to how other distribution companies are handling similar functions with little or no charge, RESA submits that it is appropriate and necessary that the Commission review these charges at this time. RESA further submits that since PNE has made a prima facie showing that the charges are unreasonable the Commission should direct PSNH to provide cost justification for the charges.

5. PSNH argues that the Commission can not engage in single issue ratemaking. RESA submits that a Commission review of the charges raised by the PNE Petition is clearly authorized by the language in RSA 374-F noted above. In addition, as NAP pointed out the Commission has recognized exceptions to the principle that single issue ratemaking is not a preferred mechanism. Because the charges at issue are restructuring-related charges the Commission can review them at any time. Moreover, as PNE noted in its Objection, the settlement agreement in PSNH’s last rate case contains a mechanism for addressing exogenous charges. In Order No. 25,123, at pages 13-14 and pages 38-39 the Commission recognized the mechanism contained in the settlement agreement as allowing PSNH to adjust its rates for the impacts of exogenous events (specific cost changes from state or federal governments or regulatory cost reassignments

among others). It is absurd to suggest that the Commission does not have authority to review these charges until after the period covered by the settlement agreement in PSNH's last rate case expires in 2015, especially given the mechanism included in the settlement agreement approved by the Commission in that case, DE 09-035.

6. When PNE submitted the Petition in this docket it attempted to address the Commission's basis for dismissing the prior petition that it had filed in DE 12-093. In the Order dismissing that petition the Commission required any petition that seeks an adjustment to rates (the Commission said eliminating certain charges for services would be a rate adjustment) had to be accompanied by pre-filed testimony and exhibits, which PNE did here. In that Order the Commission also said that single issue ratemaking is not a preferred mechanism to adjust rates, but it chose not to dismiss the petition on that basis alone. RESA submits that it would be inappropriate to use single issue ratemaking as the basis for dismissing this Petition for the reasons noted above (the mechanism adopted in the last rate case for exogenous events and the authority and responsibility the Commission has to implement the restructuring law).

7. In response to the PSNH argument that this Petition is seeking a declaratory ruling that involves future factual situations that are not definite or concrete and a hypothetical situation, RESA submits that the charges at issue are real and have been imposed on suppliers and customers for some time. Perhaps the relief being requested in this docket needs to be re-evaluated given how critical these issues are to the development of the competitive market for residential customers. In any event there is nothing hypothetical or indefinite about what is taking place at this point in time with regard to customers attempting to switch to a competitive supplier to take advantage of

the reduced costs that the competitive market is now providing to all consumers. *See* RSA 374-F:1,I (“The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets”).

8. For the reasons cited above RESA believes the Commission should deny PSNH’s Motion to Dismiss.

WHEREFORE, RESA respectfully requests that this honorable Commission:

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

Respectfully submitted,

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Douglas L. Patch

January 18, 2013

Certificate of Service

I hereby certify that on this 18th day of January, 2013 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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