STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 12-295

POWER NEW ENGLAND, LLC

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

CLOSING STATEMENT OF ELECTRICITY N.H., LLC D/B/A/ E.N.H. POWER

Electricity N.H., LLC d/b/a E.N.H. Power ("ENH Power") respectfully submits this closing statement in connection with the captioned docket, DE 12-295, and states as follows:

Introduction

This docket was initiated by a Petition from Power New England, LLC d/b/a Power New England ("PNE"), requesting that the Commission review the reasonableness and appropriateness of three charges imposed on competitive electric power suppliers ("CEPS") by Public Service Company of New Hampshire ("PSNH"): (1) a $5.00 customer selection charge assessed any time a PSNH customer enrolls with or leaves a CEPS (the "Selection Charge"); (2) a billing and payment charge assessed at a rate of $0.50 for each bill issued by PSNH to a customer receiving electric supply from a CEPS (the "Billing Charge"); and (3) a collection service charge assessed at a rate of 0.252% against a CEPS' total monthly receivables, regardless of whether receivables were delinquent or required collection activities by PSNH (the "Collection Charge") (collectively the "Supplier Charges").

The Supplier Charges were included in PSNH's Distribution Tariff (Hearing Exhibit 6 at pages 32, 35-36), pursuant to the Commission's 2000 Order approving PSNH's Proposed

Restructuring Settlement, on the express premise that because the Supplier services "will impose *additional costs* on the Company, they are proper for recovery from suppliers taking the services." *PSNH Proposed Restructuring Settlement*, Order No. 23,433 Docket No. DE 99-099 at 259 (April 19, 2000) (emphasis added). In approving the charges, the Commission relied on PSNH's cost justifications for the Supplier Charges, which were included as attachment GAL/SRH-8 to the Direct Testimony of Gary A. Long and Stephen R. Hall (August 2, 1999) submitted by PSNH in Docket DE 99-099. *See* Hearing Exhibit 4, at Exhibit B thereto (hereafter "GAL/SRH-8").

With regard to the five dollar Selection Charge, "PSNH did not prepare a cost analysis of the administrative costs but rather adopted the amount used by Granite State Electric Company for the same transaction." GAL/SRH-8 at page 1 of 5. Moreover, PSNH stated that it would "revisit the fee in the future when actual costs are better known." *Id.* PSNH did not, however, track the associated administrative costs or revisit the fee during the subsequent 13-year period despite three intervening rate cases. Hearing Transcript ("Tr.") at 135-37, 140 (testimony of Charles Goodwin); *see also* Hearing Exhibit 7 (PSNH Response to ENH Data Request 1-8).

PSNH's cost justification for the Billing and Collection charges is based on embedded costs calculated from a 1998 test year. Hearing Exhibit 5 (Rebuttal Testimony of Charles R. Goodwin & Stephen R. Hall) at 8 (hereafter "Goodwin/Hall Testimony"). Specifically, PSNH calculated its total cost of billing and payment processing activities in 1998 on an average per-bill basis ($0.50) to establish the Billing Charge. GAL/SRH-8 at page 5 of 5. Similarly, PSNH calculated its total cost of collection activities in 1998 and normalized those costs by its average monthly receivables (0.252%) to establish the Collections Charge. *Id.* at page 3 of 5. PSNH

uses the same embedded cost analysis to recover all of its Billing and Collection costs through distribution rates. Goodwin/Hall Testimony at 8.

All of PSNH's embedded costs for Billing and Collection services are recovered from its distribution customers; none of these costs are included in the default service (ES) rate. Tr. at 182-83, 186-87, 224-25 (Goodwin). In the 2008 test year, $16,653.63 of revenue from Supplier Charges was included in the calculation of PSNH's distribution rates. Tr. at 147-48 (Goodwin); *see also* Hearing Exhibit 10 (PSNH Response to ENH Data Request 1-1). During the first half of 2013, PSNH billed $824,005.92 in Supplier Charges. Hearing Exhibit 11 (PSNH Response to ENH Data Request 1-2).

ANALYSIS

The central issue raised in this docket is whether PSNH's Supplier Charges are "just and reasonable" under R.S.A. 378:7. The statute requires that

> Whenever the commission shall be of opinion . . . that the rates, fares *or charges* demanded or collected . . . by any public utility for service rendered or to be rendered are *unjust or unreasonable* . . . or in any wise *in violation of any provision of law*, . . . the commission *shall determine* the just and reasonable or lawful rates, fares and charges to be thereafter observed . . . .

R.S.A. 378:7; *see also Appeal of Eastman Sewer Co., Inc.*, 138 N.H. 221, 225 (1994) ("In determining just and reasonable rates, the PUC must balance the consumers' interest in paying no higher rates than are required with the investors' interest in obtaining a reasonable return on their investment. The protection of investors' interests, however, must be secondary to the primary concern of the commission, which is the protection of the consuming public.") (quotations and citations omitted). In assessing whether the Supplier Charges are unjust or unreasonable, or in violation of any provision of law, the Commission may look to the requirements of the Restructuring Act, R.S.A. ch. 374-F. These include the mandate that "[c]osts

should not be shifted unfairly among customers." R.S.A. 374-F:3, VI. Moreover, the Commission has established that "utility rates that in effect permit double recovery of capital investment are neither just [or] reasonable as contemplated by RSA 378:7." *In re Mountain High Water and Gas Sales, Inc.*, 76 N.H.P.U.C 415, 418 (1991). The evidence presented clearly demonstrates that the Supplier Charges are unjust and unreasonable and should be suspended.

A. PSNH's $5 Selection Charge is Arbitrary, Unreasonable and Unjust

PSNH admits that it has no cost justification for the Selection Charge and has not followed through on its promise to "revisit the fee" in the thirteen years that have elapsed since the Selection Charge was approved in 2000. GAL/SRH-8 at page 1 of 5; Tr. at 135-37, 140 (Goodwin). PSNH further admits that it does not track the costs of administrating customer switches between the utility default service and CEPS supply service, or between CEPS suppliers. Hearing Exhibit 7 (PSNH Response to ENH Data Request 1-8); Tr. at 137. In addition, testimony by the CEPS established that the modern cost of administering customer switches is minimal. Tr. at 95 (Fromuth) ("[I]n [PNE's] experience, the EDI vendor, to enroll or to drop an account, the charge is somewhere between 10 and 15 cents."); Tr. at 96 (Tschamler) (describing EDI vendor charges on a per-meter or per-customer basis); Tr. at 96-97 (Dean) ("[T]he charge is roughly a third of what Mr. Fromuth describes, and . . . it's [paid for] all transactions for the meter, not just an add or drop."). Indeed, PSNH admits that customer switches are essentially automated. Tr. at 149 (Goodwin).

Accordingly, there is little debate that PSNH's $5 Selection Charge is arbitrary; there simply is no cost justification for PSNH assessing and collecting a $5 charge each time a customer switches their supplier (or $10 total when a customer switches from one CEPS to another CEPS). PSNH claims that capital expenditures to upgrade its billing system justify the

Selection Charge. However, those costs are in PSNH's distribution rates and are likely fully recovered, making additional recovery unlawful. Tr. at 163-66, 182-83, 244 (Goodwin); *In re Mountain High Water and Gas Sales, Inc.*, 76 N.H.P.U.C 415, 418 (1991). In the absence of any proof of unrecovered costs associated with the Selection Charge and in light of evidence that the current costs of switching customers are *de minimus*, continued imposition of the arbitrary $5 Selection Charge would be unreasonable and unjust.

B. PSNH's Billing and Collection Charges are Unreasonable and Unjust

PSNH's "embedded cost" approach to the Billing and Collection Charges results in double recovery *and* in unfair cost shifting between customers receiving PSNH's default energy service (hereafter "Default Service Customers") and customers choosing energy supply service from a CEPS (hereafter "Competitive Supply Customers"). PSNH fully recovers its Billing and Collection costs through distribution rates. Tr. at 182-83 (Goodwin); Hearing Exhibit 13 (PSNH Response to Staff Data Request 1-3). The Billing and Collection Charges are paid by the CEPS and their customers; no portion of those costs are recovered from the energy service supply rate for Default Service Customers.[1] *Id.*

As a result of PSNH's billing structure, Competitive Supply Customers pay twice for the fully embedded Billing and Collection costs: once in their distribution rates and once in their energy service bills. Meanwhile, Default Service Customers pay only once, via their distribution rates. *All* customers pay the fully embedded costs of Billing and Collections through their distribution rates, regardless of their electric supplier. Despite recovering its costs through distribution rates, PSNH charges CEPS for these *same embedded costs* through the Billing and

[1] It is implicit that some customers, particularly residential customers, benefit from and strongly prefer receiving a single consolidated bill delivered to their home. *See, e.g.*, Tr. at 42 (Dean). Furthermore, PSNH's claims regarding billing fail to recognize that CEPS do not currently have the power to directly provide consolidated billing to their customers. *Id.*

Collection Charges, and as Commissioner Harrington aptly noted, in a competitive market CEPS pass these costs on to the Competitive Supply Customers. Tr. at 225. In fact, PSNH included only $15,487.63 in revenue from the Billing and Collection Charges in its last rate case as "other revenues" offsetting distribution rates. Hearing Exhibit 11 (PSNH Response to ENH Data Request 1-2); Tr. 183 (Goodwin). However, revenue from the Billing and Collection Charges has increased substantially, with PSNH recovering nearly $300,000 in the first half of 2013 *alone*. Hearing Exhibit 11 (PSNH Response to ENH Data Request 1-2). Thus, PSNH is recovering hundreds of thousands of dollars from Competitive Supply Customers for services already paid for by PSNH's distribution customers (including those same Competitive Supply Customers). The result is an unjust and unreasonable charge.

PSNH can point to no incremental cost associated with Billing and Collections for competitive supply.[2] Therefore, PSNH is merely double-billing migrated customers for the same service it provides to Default Service Customers. For example, regardless of whether the revenues from the Supplier Charges are allocated to distribution rates, under the current fee structure the Competitive Supply Customer will always pay more for the rendering of those same bills – once as a distribution customer and then again as Competitive Supply Customer. Competitive Supply Customers receive only one bill, but they pay embedded costs *twice.*

Furthermore, PSNH's claim that the Supplier Charges should offset distribution rates actually results in a redistribution of costs that is akin to a non-bypassable charge. To the extent

[2] PSNH admits that there are essentially no incremental costs associated with providing Billing and Collections services to Competitive Supply Customers, as PSNH's billing system fully automates bill rendering and payment processing, and collection activities are identical for Default Service Customers and Competitive Supply Customers. Tr. at 222-23, 244 (Goodwin); Tr. at 193, 195 (Tebbetts). Moreover, PSNH admits that the Supplier Charges recover more than PSNH's incremental costs. Tr. at 174 (Goodwin). PSNH has not tracked its incremental costs, but admits that calculating them would be relatively simple. Tr. at 144, 247-48.

that Supplier Charges revenue offsets distribution rates, PSNH charges Competitive Supply Customers to subsidize embedded costs for Default Service Customers. In Docket DE 10-160, the Public Utilities Commission found that PSNH cannot recover a portion of its default energy service fixed costs through a non-bypassable charge on distribution rates because it "would constitute unfair cost-shifting to customers that have taken advantage of competitive supply." *Investigation into the Effects of Customer Migration, Order Following Hearing*, Order No. 25,256, Docket DE 10-160 at 28 (July 26, 2011). Similarly, PSNH's Billing and Collection Charges result in an unfair cost-shift, in this instance from the distribution side of the bill to the supply side for Competitive Supply Customers. PSNH's charges "benefit one customer class to the detriment of another" in that PSNH is shifting distribution costs to a subset of customers (Competitive Supply Customers) in order to subsidize distribution customers. This cost shift is contrary to the principles of R.S.A. 374-F:3, VI, and is unjust and unreasonable. *Id.*

As demonstrated by the foregoing, PSNH's embedded cost approach results in unjust and unreasonable charges. Instead, an appropriate measure of any Billing and Collection Charges should be the incremental cost of providing Billing and Collection services for migrated customers. This approach is more equitable and sensible because Billing and Collection services are already provided to all customers and recovered through the distribution rate. An incremental cost approach was implicit in the Commission's approval of the Supplier Charges because that approval was premised on the expectation that migration to a CEPS would result in some "additional costs" to PSNH. *PSNH Proposed Restructuring Settlement*, Order No. 23,433, Docket No. DE 99-099 at 259 (April 19, 2000). To the extent PSNH incurs "additional" incremental costs when providing these services to Competitive Supply Customers, ENH Power does not object to paying a fair share of those costs. Tr. at 110 (Dean). Indeed, this is the

approach employed in Maine, where the Maine Public Utilities Commission has adopted rules allowing utilities to charge CEPS "the utility's incremental cost of providing basic bill issuance, bill calculations, and collections." Tr. at 38 (Dean) (quoting from MPUC Rules, Chap. 322, §3.F).

Finally, to the extent that PSNH attempts to refute the fact that Competitive Supply Customers pay more for Billing and Collection services than Default Service Customers by claiming CEPS are customers of PSNH and should be assessed their "fair share" of the costs, this argument is nonsensical and contrary to PSNH's own tariff. Pursuant to the tariff, a "customer" is an entity "supplied with Delivery Service by the Company." Hearing Exhibit 6 at p. 7. CEPS are not supplied with Delivery Service by PSNH, and are not, therefore, customers pursuant to PSNH's approved tariff. Regardless of the semantics PSNH applies, the undeniable result is that Competitive Supply Customers pay more for the same billing and collection services than Default Service Customers.

Conclusion

The evidence and testimony presented demonstrates that the Supplier Charges are unjust and unreasonable under RSA 378:7. Under that statute, unless and until PSNH presents evidence of its incremental costs of providing the Supplier services at issue in this docket, either through an investigation initiated by the Commission or as part of PSNH's next rate case, the unjust and unreasonable Supplier Charges should be suspended. In addition, because PSNH has no reasonable justification for the unjust and unreasonable Supplier Charges, those charges already paid, particularly where the charges constituted double payment, should be refunded to the CEPS.

WHEREFORE, for the foregoing reasons, Electricity N.H., LLC d/b/a/ ENH Power respectfully requests that the Commission grant PNE's Petition, rule that the Supplier Charges are unjust and unreasonable, suspend and refund said charges to the CEPS, and grant such other relief as the Commission deems fair and just.

Respectfully submitted,

Electricity N.H., LLC d/b/a/ E.N.H. Power
By Its Attorneys
Bernstein, Shur, Sawyer & Nelson, P.A.

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Christopher G. Aslin
P.O. Box 1120
Manchester, N.H. 03105-1120
(603) 623-8700
caslin@bernsteinshur.com

Certificate of Service

I hereby certify that a copy of the foregoing Closing Statement has on this 28th day of October, 2013, been sent by email to the service list in docket no. DE 12-295.

Christopher G. Aslin