

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

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

Docket No. DE 12-295

**OBJECTION OF NORTH AMERICAN POWER
AND GAS, LLC TO MOTION TO DISMISS**

Introduction

North American Power and Gas, LLC ("NAP") hereby objects to the January 4, 2013 Motion to Dismiss of Public Service Company of New Hampshire's ("PSNH") filed with the Public Utilities Commission ("PUC" or the "Commission") ("PSNH Motion"). NAP is a licensed retail electric supplier that recently has begun serving New Hampshire customers. PSNH contends that this docket, commenced in response to an October 1, 2012 Petition for Review filed by PNE Energy Supply LLC d/b/a Power New England ("PNE"), should be dismissed, on grounds that it improperly (a) seeks to engage in single-issue ratemaking and (b) seeks a declaratory ruling involving future factual situations. NAP hereby objects to and opposes the PSNH Motion, substantially for the reasons stated in PNE's earlier-filed Objection to the PSNH Motion dated January 7, 2013, as well as the grounds stated herein.

Argument

NAP opposes the PSNH Motion and requests that the Commission take evidence and fully consider the merits of the PNE Petition for Review during the proceedings that will follow the upcoming January 15, 2013 public hearing and technical conference.

First, NAP rejects that PSNH argument that PNE seeks to engage in single-issue ratemaking. PNE and other concerned retail suppliers are seeking to review and, if necessary, modify or eliminate excessive and potentially non-cost-based PSNH charges imposed on retail suppliers that are not charged in many other states and that may serve as a barrier to competitive choice in New Hampshire. The public interest supports reviewing these charges as promptly as possible, irrespective of any limited impacts on PSNH's revenue requirement.

Second, even if the investigation develops evidence that the rates in question are inappropriate or excessive, PNE has not stated conclusively that PSNH rates must be adjusted in this proceeding. *See* PNE Petition, p. 1; *see also* Commission Order of Notice, p. 1 ("PNE said that it is not seeking a rate adjustment in this proceeding and that any rate adjustment that resulted from the Commission's review would take place in a subsequent PSNH general rate case"). Thus, this proceeding should not be terminated at the start because of concerns regarding possible violation of the single-issue rate doctrine. The Commission may well be able to craft a remedy that either avoids single-issue ratemaking concerns (such as permitting an exogenous cost recovery, as permitted in certain cases under the 2010 PSNH rate settlement), or, alternatively, the Commission may determine that the investigation falls within a recognized exception to the doctrine.¹

¹ "[T]he Commission has allowed single-issue ratemaking regarding changes in tax laws." *See* DE 04-231, *Unitil Energy Systems, Inc. Petition for an Accounting Order*, Order No. 24,449, 2005 N.H. PUC LEXIS 31, *6 (Apr. 7, 2005). In addition, the Commission has also granted a temporary bill surcharge for certain specified expenses outside of a general rate case. *See* Docket No. 01-224, *Connecticut Valley Electric Company Inc. Request for Temporary Billing Surcharge and Waiver of Rule Puc 1203.05(a) Order on Oral Motions*, Order No. 23,887, 2001 N.H. PUC LEXIS 228 (Dec. 31, 2001). Finally, in a docket where the PUC denied recovery of additional pension expense outside of a general rate case proceeding, it noted that pension expense is an ordinary category of expense and that the company did not demonstrate any

Third, even though the Commission did dismiss PNE's initial petition filed on April 12, 2012 (the "Initial Petition") and stated in the Order that it does not prefer single-issue ratemaking as a rate adjustment mechanism, the Commission dismissed the Initial Petition due to procedural deficiencies rather than due to violations of the single-issue ratemaking doctrine. In the same ruling, the Commission made clear that the issue was not fatal to Commission consideration of the merits of the PNE concerns. To the contrary, the Commission plainly contemplated the potential for PNE to file a subsequent petition on the same matter. *See* Docket No. DE 12-093 *PNE Energy Supply, LLC d/b/a Power New England Petition for Modification to Certain Tariff Terms of Public Service Company of New Hampshire*, Order No. 25,405, 2012 N.H. PUC LEXIS 90, *10 (Aug. 31, 2012) (highlighting what PNE must do in a subsequent petition to correct the procedural deficiencies in the Petition).

Fourth and finally, compelling policy reasons support a ruling that the Commission should evaluate and, if appropriate, grant relief in connection with PNE's Petition in this proceeding. If the specified PSNH charges are shown to be unwarranted or excessive, recovery of the specified charges from competitive suppliers will increase their operating costs and likely lead to higher rates, both of which will impede the development of a vibrant competitive electric market for residential and small commercial customers in New Hampshire at a time when many people are looking to save money and cut down on energy costs during these difficult economic times.

extraordinary circumstances that would justify deviation from the Commission's normal practice. Order No. 24,449, 2005 N.H. PUC LEXIS at *11.

Conclusion

WHEREFORE, NAP respectfully requests that the Commission deny PSNH's Motion to Dismiss and grant such other and further relief as may be just and equitable.

Respectfully submitted,

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