

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. _____

**PETITION OF POWER NEW ENGLAND FOR DECLARATION THAT THE
THE FINANCIAL SECURITY POSTED BY ELECTRICITY NH, LLC IS UNLAWFUL**

NOW COMES PNE Energy Supply LLC, d/b/a Power New England (“PNE”), by its attorney, and hereby petitions the Commission for a declaration that the Financial Security posted by Electricity NH, LLC is unlawful, and for other relief. In support of its Petition, Petitioner says the following:

Introduction

1. PNE Energy Supply LLC d/b/a Power New England (“PNE”)¹ is a registered Competitive Electric Power Supplier (CEPS) in New Hampshire. Docket No. DM 11 -075 (September 22, 2011).
2. Electricity NH, LLC d/b/a E.N. H. Power², is a registered CEPS in PSNH’s service territory. Docket No. DM 12 -075 (June 8, 2102).
3. On May 15, 2012, Noble Group Limited apparently provided joint financial surety for Noble Americas Energy Solutions LLC and Electricity NH, LLC. The joint financial surety reads, in pertinent part, as follows:

GUARANTEE, dated as of May 8, 2012, of Noble Group Limited, whose registered office is located at Clarendon House, Church Street, Hamilton HM 11, Bermuda (the “Guarantor), in favour of New Hampshire Public Utilities Commission (“Beneficiary”).

1. Guarantee

In consideration of Beneficiary entering into a trading relationship with Noble Americas Energy Solutions LLC and Electricity N.H., LLC (“Guaranteed Parties”), Guarantor guarantees to Beneficiary, its successors and assigns, the prompt payment as and when due of all liabilities of Guaranteed Parties to Beneficiary (the “Obligations”).

¹ www.powernewengland.com

² www.electricitynh.com

4. The Commission's rules require that the financial security "[n]ame the Commission as obligee." Puc 2003.03(a)(3). The Commission may assess the financial security due to "[f]ailure by any CEPS to comply with the requirements or obligations of this section." Puc 2003.01(j).

5. The Guarantee provided by Noble Americas is expressly "[i]n consideration of Beneficiary [the Commission] entering into a **trading relationship** with Noble Americas Energy Solutions LLC and Electricity N.H., LLC." (Emphasis added.) PNE does not believe that the Commission has intended to enter into a trading relationship with Electricity NH nor would it be lawful for the Commission to do so in any event.

6. The foregoing circumstance also appears to be directly at odds with the wording of the instructions by the Staff of the Commission to PNE in Docket No. DM 11-075 with respect to a "deficiency in financial security:"

[T]he financial security is not intended to cover a "financial security obligation to the NHPUC" as stated in whereas clause 3. See also paragraph 2.1 which states that the funds are available to the PUC "if PNE does not faithfully perform all duties and protect the NHPUC from any damage caused by PNE's non-compliance with or breach of any laws or statutes, or rules or regulations pertaining to the license or permit issued by the NHPUC." The purpose of the financial security is to provide the Commission with a financial resource to pay third parties who are aggrieved as a result of the applicant- CEPS's failure to comply with the applicable laws and rules. The escrow agreement should be corrected to state the nature of the intended use of the money.

Secondly, we prefer Constellation's wording on the obligation guaranteed:

"Constellation Energy Group, Inc. (the "Guarantor") hereby unconditionally guarantees the full and faithful payment of all of the obligations of CNE that are now due or may hereafter become due and payable to the Commission or to customers of CNE located in New Hampshire (collectively, the "Obligations")."

7. Accordingly, the financial security provided by Noble Group on behalf of Electricity NH is patently deficient. Electricity NH's application for registration as a CEPS should not have been approved by the Commission.

8. Pursuant to PUC 2003.03 (a)(5), the financial security posted on behalf of a CEPS must "have an expiration date not less than: 5 years and 150 days after the date the applicant's application is filed..."

9. In contrast, financial security posted on behalf of Electricity NH can be terminated upon 30 days' notice to the Commission:

Termination

Guarantor shall be permitted to terminate this Guarantee by written notice (by facsimile followed by a confirmation letter sent by registered mail with acknowledgement of receipt) to Beneficiary. **Such written notice shall state the date it is being sent and shall be effective 30 days after such date (the “Effective Termination Date”).** Termination shall not reduce or diminish the liability of the Guarantor to Beneficiary in respect of any Obligation incurred before the Effective Termination Date. (Emphasis added.)

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully petitions the Commission for an Order that:

1. Declares that the financial security posted by Electricity NH, LLC is unlawful because it is premised upon an unlawful “trading relationship” with the Commission;
2. Requires that any future financial security posted by Electricity NH, LLC must have an expiration date of not less than 5 years.
3. Requires that any future financial security posted by Electricity NH, LLC conforms with the instructions provided to PNE by Staff as set out in ¶6 *supra*.

RESPECTFULLY SUBMITTED,
PNE Energy Supply LLC
by its Attorney,

Dated: July 6, 2012

/s/ James T. Rodier
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