

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

Docket No. DE 12-093

**Power New England**

Petition for Order Requiring Modification to PSNH's Terms and Conditions to Ensure that  
PSNH's Small Customers Benefit from Retail Electricity Choice

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S  
MOTION TO DISMISS  
PETITION OF PNE ENERGY SUPPLY, LLC**

Public Service Company of New Hampshire (“PSNH” or the “Company”) hereby moves the Commission, pursuant to Rule Puc 203.07, to reject the “Petition of Power New England for Order Requiring Modifications to PSNH's Terms and Conditions to Ensure that PSNH's Small Customers Benefit from Retail Electricity Choice” (the “Petition”) dated April 12, 2012. The bases for this Motion are that the Petition is both procedurally and substantively deficient. In support of its Motion, PSNH states as follows:

1. On April 12, 2012, PNE Energy Supply, LLC, d/b/a Power New England ("PNE") filed a Petition with the Commission seeking “an Order requiring modifications to PSNH's Services and Schedule of Charges for Energy Service Providers... .” (Petition at p. 1). The Petition notes that the charges in question are contained in PSNH's “Electricity Delivery Service Tariff- NHPUC No. 8, Original Pages 31 through 40. PSNH's ‘Services and Schedule of Charges’ are set out in Section 2, original pages 32 through 36.” (*Id.* at unnumbered p. 2).

2. The Petition seeks an Order that would adjust certain of PSNH's tariffed rates; in particular, PNE asks that the following portions of Tariff NHPUC No. 8 contained in the "Terms and Conditions for Energy Providers" be adjusted to a rate level of zero by eliminating them completely: i. the "Selection Charge" at Section 2(a) (Tariff p.32). ; ii. the "Billing and Payment Service Charge" at Section 2(f) (*Id.* at p. 35); and, iii. the "Collection Services Charge" at Section 2(g) (*Id.* at p. 36).

3. The Petition provides no basis for its requested relief other than the unsupported assertion that the identified charges "are completely out-of-line with the comparable charges assessed by other New England utilities... ." (*Id.* unnumbered pp. 2-3). PSNH moves to dismiss the Petition because the allegations in the Petition are not reasonably susceptible to a construction that would permit the relief sought under existing law in New Hampshire. *McNamara v. Hersh*, 157 N.H. 72, 73, (2008). "The evidentiary standard to be applied to a motion to dismiss is well settled: the factual allegations of the petitioner are assumed to be true and all reasonable inferences therefrom must be construed in favor of the petitioner. *See e.g. Rounds v. Standex International*, 131 N.H. 71, 74 (1988); *Bell v. Pike*, 53 N.H. 473, 475 (1873)." *Southern New Hampshire Water Co.*, 75 NHPUC 282, 284 (1990).

4. At the most basic level, the Petition is deficient because it contains bald face allegations that are not substantiated either through pre-filed testimony, or verification, as required by the Commission's rules. Rule Puc 203.06(c) requires that "All petitions seeking a rate adjustment shall be . . . accompanied by pre-filed testimony and exhibits." The instant Petition expressly seeks an adjustment to certain of PSNH's existing tariffed rates. The Petition is deficient as

there is no accompanying pre-filed testimony and exhibits providing any evidence whatsoever whether the established rates and charges are unjust and unreasonable. The Petition is replete with unsupported assertions, of dubious veracity, upon which the Commission is asked to eliminate the identified charges, and require PSNH to provide those services to any and all competitive suppliers for free. For example, the Petition states “No other utility in New England charges a fee for ‘Billing and Payment Services.’” (Petition at unnumbered page 3). Pursuant to Rule Puc 203.27, the Commission may take Administrative Notice of Chapter 322 of the Rules of the Maine Public Utilities Commission governing “Metering, Billing, Collections, and Enrollment Interactions Among Transmission and Distribution Utilities and Competitive Electricity Providers” which at §3.F provide:

F. Charge for Consolidated Utility Billing

A transmission and distribution utility shall charge a competitive electricity provider the utility’s incremental cost of providing basic bill issuance, bill calculation, and collections pursuant to Sections (3), (4) and (6). On or before June 1, 1999, the utility shall file a proposed term and condition containing the terms and the amount of this charge. This provision applies to standard offer providers.

Code Me. R. 65 407 322 § 3 (2002).

5. The charges that are the subject of the Petition were reviewed and approved by the Commission prior to being included in PSNH’s Tariff. In Order No. 23,443 (85 NHPUC 154 (2000)) the Commission set forth each of the charges noted in the Petition, and expressly stated, “Since these are new services that will impose additional costs on the Company, they are proper for recovery from suppliers taking the services.” 85 NHPUC at 273.

6. The Petition provides no evidence whatsoever that PSNH no longer bears additional costs for the services in question. Without such evidence, even assuming the factual allegations of the petitioner are assumed to be true, and construing all reasonable inferences therefrom in favor of the petitioner, the Petition is not susceptible to a construction that would permit the relief sought under existing law in New Hampshire, and thus should be dismissed. This is because the relief sought by the Petition is prohibited by statute. RSA 378:7, "Fixing of Rates by Commission," requires that rates be just and reasonable for the service to be performed. Clearly, the services in question must have value to PNE, or they could avoid the charges by simply not asking PSNH to provide them. Instead, PNE has petitioned the Commission demanding that these valuable services be provided for free. As the Commission held in Order No. 23,443, it costs PSNH money to provide these services. Requiring PSNH to provide them for free cannot meet the statutory requirement that services be priced at a just and reasonable level.

7. What the Petition is seeking is a subsidy from PSNH – or, effectively, from all retail customers via the ratemaking process – that would lower competitive suppliers' costs of doing business. The Petition is unabashed in demonstrating that is its aim. In the Petition's largely irrelevant introduction, PNE rambles on about a "Purchase of Receivables" proposal - - a matter that is not included in the Petition's prayer for relief. However, inclusion of that discussion clearly demonstrates that what PNE is seeking is for the Commission to put costs and responsibilities on PSNH and all its customers that today are costs of doing business that must be borne by competitive suppliers.

8. This shifting of costs from suppliers to customers is an unfair assessment on such customers who for whatever reason are not served by the competitive market. The restructuring statute disfavors such a result – “Costs should not be shifted unfairly among customers.” RSA 374-F:3, VI.

9. In addition, the Petition asks the Commission to engage in single-issue ratemaking, which is clearly disfavored. *In Re Statewide Low-Income Electric Assistance Program*, 87 NHPUC 349 (2002); *see also In Re Connecticut Valley Elec. Company*, 86 NHPUC 947 (2001). In the *Connecticut Valley Electric* case, the Commission has described the reasons why this is disfavored:

Single-issue rate cases are frowned upon in utility ratemaking because the objective of ratemaking is not to ensure recovery dollar for dollar of every expenditure made by a utility, but rather to ensure that the company has a reasonable opportunity to earn a reasonable overall return on investments dedicated to public utility functions. In order to make this ultimate determination, it is necessary to match ordinary and necessary expenses with income from the same period, and determine whether the net income is sufficient to provide a reasonable return on allowable rate base. Single-issue rate cases do not allow for this determination of overall net income. They focus on the change in a single expense (or revenue) item since the last rate case, ignoring completely what changes may have taken place in the other factors of net income.

*In Re Connecticut Valley Elec. Company*, 86 NHPUC at 952-53.

10. Here, PNE asks the Commission to focus on three selected tariffed rates associated with the provision of services, and eliminate the charges associated with them. What PNE fails to take into account is that those charges were included as part of an overall ratemaking process where the revenues from those services were considered in light of the Company’s overall revenue requirement. The Commission cannot now eliminate a part of those revenues in

isolation without upsetting the overall revenue requirement calculus. Doing so “would essentially constitute single-issue ratemaking, a practice we have traditionally eschewed.” *In Re Statewide Low-Income Electric Assistance Program*, 87 NHPUC at 369.

WHEREFORE, PSNH respectfully requests that the Commission:

- A. Grant this Motion and dismiss the Petition filed by PNE, and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By Its Attorneys

Dated: April 20, 2012

By: \_\_\_\_\_



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**Certificate of Service**

I hereby certify that a copy of this Motion has been served electronically on the persons on the Commission's service list in this docket in accordance with Puc 203.11 this 20<sup>th</sup> day of April, 2012.



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Robert A. Bersak