

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

PNE ENERGY SUPPLY, LLC D/B/A POWER NEW ENGLAND

Petition for Review of Public Service Company of New Hampshire's Services and Charges to
Competitive Electric Suppliers
Docket No. DE 12-295

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S MOTION TO COMPEL
RESPONSES BY ELECTRICITY N.H. LLC D/B/A E.N.H. POWER TO DATA
REQUEST 1-27**

NOW COMES Public Service Company of New Hampshire ("PSNH" or the "Company") and respectfully requests that the Commission compel Electricity N.H. LLC d/b/a E.N.H. Power ("ENH") to respond to PSNH's first set of data requests. In support hereof, PSNH says the following:

1. On October 10, 2012, PNE Energy Supply LLC requested that the Commission open a docket for the purpose of reviewing certain charges assessed by PSNH to competitive electric power suppliers operating in PSNH's service territory. In its order of notice in the docket, the Commission noted that "In support of its petition, PNE testified that the charges impede the development of the competitive market for small customers." Order of Notice at 2.

2. On January 9, 2013, ENH petitioned to intervene in the docket. In its petition to intervene, ENH stated that it "is subject to the charges at issue in the above referenced docket, and has a substantial and specific interest in ensuring that any charges to competitive suppliers by PSNH are reasonable and appropriate and do not inhibit competition." ENH Petition to Intervene at 1-2. By Order No. 25,468 (March 5, 2013), the Commission granted ENH's petition to intervene. Also by that Order the Commission determined that "PSNH's current competitive

supplier charges bear investigation given the developing competitive markets for residential and small commercial customers in the PSNH service territory.” Order No. 25,468 at 7.

3. On March 26, 2013, ENH filed the direct testimony of Kevin Dean in the docket. As part of that testimony Mr. Dean stated that “Beginning in August 2012, ENH Power has been enrolling between 3,000-10,000 customers each month.” Testimony of Kevin Dean at 3. Further, “As of today, ENH Power has enrolled over 46,000 residential customers in PSNH’s service territory. This represents nearly 11% (out of 424,000 total customers) of PSNH’s residential customer base, not including customers who have migrated to other residential suppliers, such as North American Power.” *Id.* at 4.

4. On April 18, 2013, PSNH submitted data requests to ENH based upon its pre-filed testimony. The purpose of certain data requests was to determine, in light of the level of migration to competitive suppliers identified by ENH, whether PSNH’s charges actually inhibited competition in New Hampshire. On April 26, 2013 ENH timely objected to certain of PSNH’s questions and on April 30, 2013 responded to nearly all of PSNH’s questions. Consistent with Puc 203.09(i)(4), PSNH contacted ENH’s counsel on May 3, 2013 in an effort to resolve the potential discovery dispute on certain questions not answered. Following the technical session on May 7, 2013, ENH’s counsel responded that ENH maintained its objections. Having reviewed the objections raised by ENH, PSNH does not agree that there is a sufficient basis to withhold the information and, as a result, files this motion to compel.

5. In addressing motions to compel discovery responses, the Commission considers whether the information being sought is relevant to the proceeding, or reasonably calculated to lead to the discovery of admissible evidence. *Electric Utility Customers*, Order No. 25,439 (December 7, 2012) at 2. In general, discovery that seeks irrelevant or immaterial information is

not something that the Commission will compel a party to provide. *Id.* New Hampshire law favors liberal discovery and discovery is regarded as an important procedure for proving in advance of trial the adversary's claims and his possession or knowledge of information pertaining to the controversy between the parties. *Id.* at 3 (quotation omitted).

6. In its request 1-27, PSNH asked:

27. The testimony describes the amounts of the charges at issue in this docket as assessed to ENH by PSNH from August 2012 through March 1, 2013. In that period:

- a. What was ENH's profit and expense per customer of PSNH? Please describe by the relevant rate class.
- b. What portion of the expense is attributable to the charges at issue in this docket?
- c. How does that profit and expense compare to the profit and expense on a per customer basis for ENH customers who are distribution customers of other New Hampshire utilities?

In response, ENH stated:

Objection. This request seeks information that is not relevant and is not reasonably calculated to lead to the discovery of evidence admissible in this proceeding. Docket DE 12-295 seeks a determination by the Commission of whether the Supplier Charges imposed by PSNH are just and reasonable charges that reflect PSNH's actual costs of providing certain services. ENH's profits and expenses as a competitive supplier are irrelevant to the question presented. In addition, ENH objects on the basis that the requested information is commercially sensitive financial information that is protected under RSA 91-A:5 and its disclosure to PSNH could compromise ENH's competitive position.

7. Initially, PSNH disagrees with the scope of the docket as defined by ENH. As noted, the Commission's order of notice and Order No. 25,468 stated that there were claims that PSNH's charges inhibit the competitive marketplace in New Hampshire and that the charges bore investigating in light of their potential impact on this "developing market." Thus, the docket is not merely about PSNH's charges in the abstract, but whether, or if, PSNH's charges inhibit this developing market.

8. The profit and expense of competitive suppliers in New Hampshire is relevant to this docket. As noted above, in the approximately 7 months of operations noted in ENH's testimony, it had enrolled 46,000 customers. Given this remarkable expansion of ENH's customer base, PSNH attempted to determine the degree to which its charges actually impact ENH's development as a market participant. Knowing the extent to which PSNH charges actually impact the business of ENH will help the Commission determine whether PSNH's charges have any consequential impact on the competitive market in New Hampshire. The level of PSNH's charges as compared to a supplier's profitability is a significant factor in determining whether such charges impede the development of a competitive market.

9. Furthermore, Staff question 1-2 to ENH asked: "Reference Testimony, page 5, lines 5-6, page 8, lines 8-9, and page 10, lines 24-25: Please provide details of the costs normalized by number of customers (cost per customer) and total revenue (percentage)." ENH, despite numerous caveats, responded to Staff's question. On its face, Staff's question sought information about ENH's costs on a per customer basis, as did PSNH's question. Thus, the questions are not substantially different. Though the level of detail required to respond to the question may be different, the underlying information is essentially the same. It is not clear why ENH could, despite its caveats, answer Staff's question but not that of PSNH.

10. As to the contention that disclosing the information to PSNH could compromise ENH's competitive position, PSNH does not agree. Nevertheless, PSNH was, and remains, willing to enter into a non-disclosure agreement to protect this information from further disclosure. Given the relevance of this information and Staff's interest in similar information, PSNH requests that the Commission compel ENH to respond to question PSNH's question 1-27.

WHEREFORE, PSNH respectfully requests that the Commission:


A. Grant this motion to compel ENH's response to PSNH question 1-27; and

B. Order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

May 13 2013
Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Motion to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

May 13 2013
Date


Matthew J. Fossum