

BEFORE THE STATE OF NEW HAMPSHIIRE

PUBLIC UTILITIES COMMISSION

PETITION FOR REVIEW OF THE  
REASONABLENESS OF CERTAIN  
CHARGES OF PUBLIC SERVICE  
COMPANY OF NEW HAMPSHIRE  
FOR SERVICES TO COMPETITIVE  
SUPPLIERS

DE 12-295

**OBJECTION OF NORTH AMERICAN POWER AND GAS, LLC TO  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE MOTION TO COMPEL**

North American Power and Gas, LLC (“NAPG” or the “Company”) objects to the May 13, 2013 “Public Service Company of New Hampshire’s Motion to Compel Responses by [NAPG] to Data Requests 1-10, 1-22, 1-23 and 1-33 (“PSNH,” “PSNH Motion,” and the “Requests”). As grounds therefor, NAPG states as follows:

**Background**

1. In its November 21, 2012 Order of Notice, the Public Utilities Commission (“Commission”) opened the instant docket to “review the reasonableness and appropriateness” of PSNH’s “approved charges for certain services to competitive electric suppliers.”
2. The Notice describes the charges at issue as follows:
  - (1) the \$5.00 per request “Selection Charge” which is assessed when a customer switches to or from PSNH’s default service; (2) the “Billing and Payment Service Charge” which PSNH charges on a \$0.50 per bill rendered basis for the billing and payment services PSNH provides to a competitive service supplier who has opted for consolidated billing services; and (3) the “Collection Services Charge” which is billed at 0.252% of total monthly receivable dollars pursuant to a written agreement with competitive suppliers [hereby collectively referred to as the “PSNH Charges”].

3. Testimony by witnesses from NAPG, Electricity New Hampshire (“ENH”) and Retail Energy Supply Association (“RESA”) argued that the PSNH Charges have either no cost support (for the Selection Charge) or highly questionable cost support (for the other Charges) and will cost retail suppliers hundreds of thousands of dollars annually. See generally March 26, 2013 Pre-filed Testimony of Taff Tschamler for NAPG, Kevin Dean for ENH and Daniel Allegretti for RESA.
4. PSNH propounded voluminous discovery requests to NAPG, totaling 42 requests plus subparts. NAPG has answered all but four (1-10, 1-22, 1-23 and 1-33) – more than 90%. PSNH has filed the instant motion seeking to compel responses to each of these four remaining Requests.
5. NAPG objects to the immaterial, burdensome and inappropriate information sought in the above Requests. Compelled production of the information in requests PSNH 1-10, 1-22 and 1-23 is not required or appropriate under the well-established discovery standards. See, e.g., Order No. 25,439 (December 7, 2012), Docket DE 12-097, pp. 2-3; Order No. 24,895 (September 17, 2008), Docket DE 08-077. p. 3. As discussed below, in attempt to find a common ground with respect to these issues, NAPG has elected to drop its objection to Request PSNH 1-33.

## Argument

### **I. NAPG Should Not Be Compelled to Develop Wholly New Profitability Analyses for each New Hampshire Utility Territory.**

6. In Request no. 1-23, PSNH requested in pertinent part the following information:

*In the three months of NAPG's operation:*

*a. What was NAPG'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 NAPG customers who are distribution customers of other New Hampshire utilities?*

7. NAPG objected based on lack of relevance, excessive burdens and threats to disclosure of highly sensitive and proprietary business information. See April 26, 2013 Objections.
8. In attempting to shift focus to NAPG's profitability and relative success in the competitive marketplace, PSNH seeks to divert the Commission's attention from the unsupported and excessive Charges. It does so through the expedient of pursuing compelled information on the immaterial issue of the precise extent of harm experienced by NAPG as a result of the charges. Even though NAPG already has attested to paying hundreds of thousands of dollars in supplier charges that it does not pay in any other state, PSNH propounds discovery "to determine the degree to which its

charges for services actually impact NAPG's development as a market participant" and, by so doing, "determine whether PSNH's charges have any consequential impact on the competitive market in New Hampshire." PSNH Motion, pp. 4-5; see also id., p. 5 (asserting that the level of charges versus profitability is a "significant factor in determining whether such charges impede the development of a competitive market").

9. This inquiry into the extent the Charges have "consequential" impacts on NAPG confirms the collateral and immaterial nature of the request. No principle exempts utilities from imposing unreasonable or unlawful charges to the extent the adverse impacts are not sufficiently onerous to be deemed "consequential" to the affected suppliers. To the contrary, the "just and reasonable rates" requirement precludes unreasonable and excessive supplier fees irrespective of whether suppliers were able to overcome the barriers created by the fees and succeed in the marketplace.
10. In essence, PSNH's view is that, so long as the charges do not significantly harm competitive suppliers, the Charges should stand. NAPG rejects this view and, further, given the size of the projected charges cited in Mr. Tschamler's testimony, the charges are patently consequential to NAPG. The Commission need not endorse PSNH's apparent goal of opening a new collateral litigation front seeking to quantify harms to NAPG and/or other suppliers with precision.
11. Furthermore, NAPG has not yet conducted any profitability analysis of its decision to roll out residential and small commercial services in New

Hampshire, let alone conduct separate profitability assessments for each rate class in each utility service territory. In fact, NAPG is unsure if it can even make such calculations with the precision needed to draw firm conclusions. To mandate such calculations in an effort to quantify the precise extent of harm suffered by NAPG would be punitive as well as excessively burdensome and involve substantial calculation difficulties and would limit the reliability and relevance of any data furnished.

12. For example, NAPG would need to create a new analysis that would identify revenues by service territory and rate class, and then factor in impacts of payment delays and reductions caused by the current anti-supplier payment hierarchy. See May 13, 2013 Staff letter to the Commission recommending an investigation of payment hierarchy issues. On the cost side, NAPG would need to allocate both state-specific and national operational and overhead expenses across NAPG's services (electricity, gas and unregulated services), among NAPG licensed and currently active states (which are not necessarily the same) and among New Hampshire utility areas. NAPG would then be expected to combine the inputs into rate class and service territory-specific profitability analyses and compare those to the PSNH Charges NAPG expects to pay by utility area and each rate class.
13. In short, this effort to explore the potential profits and costs of supplier entry into New Hampshire is grossly excessive in time and burden compared to any possible limited relevance of this information.

14. Finally, even if the Commission were to determine that the extent of impact of the Charges on NAPG operations in New Hampshire had any relevance to the issues under review, which NAPG denies, probative and useful information of the extent that the Charges impact NAPG is provided in NAPG's response to Staff 1-1 (comparing the impact of the Charges compared to certain NAPG overall expenses).

**II. PSNH Inappropriately Seeks to Require NAPG to Calculate What Its Hypothetical Costs Would Be Using a Business Model that NAPG Has No Intention to Adopt.**

15. Requests 1-10 and 1-22 each seek NAPG to develop projections of what its costs would be if NAPG lacked access to PSNH tariffed charges for billing and collections services, respectively. Specifically, 1-10 provides:

*Please describe all costs that NAPG would incur, both initially and on a continuing basis, to bill customers if it did not use PSNH's billing and payment services. Please include an analysis of the costs it would incur should it bill on its own as well as an analysis of the costs it would incur by using a third party company.*

Similarly, 1-22 provides:

*Please describe all costs that NAPG would incur, both initially and on a continuing basis, to conduct collections if it did not use PSNH's collection services. Please include an analysis of the costs it would incur should it conduct collections on its own as well as an analysis of the costs it would incur by using a third party company.*

16. NAPG objected to each based on (1) lack of relevance, (2) the fact that PSNH, in comparison to NAPG, is a distribution utility required to justify its charges based on reasonableness and cost, (3) lack of probative value to the issues established for this proceeding, (4) excessive burdens and (5)

threats to disclosure of highly sensitive and proprietary business information. See April 26, 2013 Objections.

17. PSNH justifies both requests on several grounds, principally a concern that reducing supplier charges as a result of this investigation may “inhibit” developing competitive markets for billing and collections services and that the Commission should seek to understand pricing differences between PSNH charges and those charged by competitive providers before reaching a final decision on the “justness or reasonableness of PSNH’s charges.” PSNH Motion, pp. 3-4.
18. NAPG’s objections to these irrelevant, immaterial and excessively burdensome requests should be upheld. The relevant inquiry in this docket is into the legal basis and reasonableness of the PSNH supplier Charges noticed in this proceeding. NAPG has already responded to extensive discovery concerning the basis for its testimony regarding these charges. It need not do more.
19. NAPG does not use non-utility billing and collections services to operate in New Hampshire, either on its own or using non-utility third parties, and current law precludes NAPG from issuing single bills that would include both generation and distribution charges. Given the legal and practical impediments, it is not reasonable or appropriate to compel NAPG to undertake detailed hypothetical inquiries into both start up and ongoing costs under two separate billing scenarios and two separate collections scenarios (i.e., one under assumption that NAPG does all work itself and

one under assumption that NAPG retains a third party non-utility provider to do the work).

20. If PSNH is concerned about potential impacts that reducing its excessive billing and collections charges would have on non-utility market participants and believes that information on non-utility billing and collections markets are relevant, it is free to develop its own record and present that to the Commission.

**III. NAPG Will Withdraw Its Objections to PSNH 1-33**

On review of the issues, NAPG has elected to respond to PSNH 1-33 regarding its fee structures with EDI vendors.

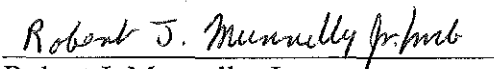
**Conclusion**

For the foregoing reasons, the Commission should deny PSNH's Motion to Compel Responses with respect to PSNH Requests 1-10, 1-22 and 1-23.

Respectfully submitted,

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