

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. IR 13-233

PNE ENERGY SUPPLY, LLC

**Investigation Pursuant to RSA 365:4 and N.H. Code Admin. Rules PART Puc 204 Into
Dispute Between PNE Energy Supply, LLC and Public Service Company of New
Hampshire**

JOINT STATEMENT OF AGREED FACTS

NOW COMES the Petitioner PNE Energy Supply, LLC (“PNE”) and the Respondent Public Service Company of New Hampshire (“PSNH”) (collectively, the “Parties”), in response to the Secretarial Letter of the New Hampshire Public Utilities Commission (“Commission”) dated February 3, 2014, requesting that the Parties submit no later than February 14, 2014, a joint statement of agreed facts for use by the Parties and the Commission at a hearing scheduled by the Commission in this matter for February 18, 2014. For their Joint Statement, the Parties state as follows:

1. PNE is a duly registered competitive electric power supplier (“CEPS”) under Puc 2003.01.
2. PSNH is a New Hampshire electric utility subject to the jurisdiction of the Commission under RSA Chapters 362 and 365, and Chapter Puc 300.
3. The PSNH Electricity Delivery Service Tariff – NHPUC No. 8 (the “PSNH Tariff”), authorized by the Commission on June 28, 2010, is the applicable tariff that governs the relationship between PSNH and suppliers, including PNE.
4. The PSNH Tariff includes “Terms and Conditions for Energy Service Providers” (hereinafter “PSNH Tariff Terms and Conditions”), which govern the services PSNH provides to suppliers and the charges PSNH assesses to suppliers.

5. In addition to the PSNH Tariff Terms and Conditions, on January 16, 2013, PSNH and PNE entered into a standard form Electric Supplier Services Master Agreement (“ESSMA”) and a standard form Electric Supplier Trading Partner Agreement (“ESTPA”) [collectively “the Agreements”].
6. Upon execution of these Agreements and prior to February 20, 2013, PNE requested and PSNH provided services covered by these Agreements.
7. The Agreements require PSNH to provide services to CEPS in accordance with the PSNH Tariff Terms and Conditions.
8. The Agreements delineate the manner in which PSNH can charge and collect fees approved by the PSNH Tariff Terms and Conditions.
9. PSNH drafted the Agreements, and the language of the Agreements is not negotiable.
10. The Agreements require PSNH to invoice CEPS on a monthly basis for billing and payment services and other services. See Exhibit A (ESSMA, § IX); Exhibit B (ESTPA, § IX).
11. The Agreements require the Parties to remain in compliance with all applicable laws, tariffs, and NH PUC regulations. See Exhibit A (ESSMA, § V); Exhibit B (ESTPA, § V).
12. The ESTPA requires, “To the extent reasonably practicable, Supplier shall notify the Company no less than forty-eight (48) hours prior, to an event reasonably within Supplier's knowledge, and of which Supplier has reason to believe the Company has no knowledge, and that will render Supplier or its agent unable to maintain Supplier's status with NEPOOL required to serve load.” See Exhibit B (ESTPA, § VI).

13. The ESSMA also provides that, “Payments received shall be applied first to the Company's accounts receivable until the Company's accounts receivable are fully satisfied. Any remaining payment shall be applied to the Supplier accounts receivable until the Supplier accounts receivable are fully satisfied.” See Exhibit A (ESSMA, § VII.A).
14. The Agreements contain identical provisions that provide as follows:
- The Company shall have the right to subtract fees that Supplier owes to the Company, and that are sixty (60) days or more past due, from amounts the Company collects on behalf of Supplier for reimbursement to Supplier, if applicable. Amounts subject to a good faith dispute will not be subject to deduction.
- See Exhibit A, § VIII (emphasis added); Exhibit B, § VIII.
15. PSNH has never provided PNE with written notice that either one of the Agreements was terminated or suspended.
16. In February 2013 both of the Parties were “market participants” pursuant to the ISO New England Inc. Transmission, Markets and Services Tariff (“ISO-NE Tariff”), and PSNH was a “host market participant”/ “host utility” pursuant to the ISO-NE Tariff. See Exhibit C (definitions from ISO-NE Tariff of “Market Participant” and “Host Participant or Host Utility”; the entire ISO-NE Tariff is available at <http://iso-ne.com/regulatory/tariff/index.html>).
17. On February 14, 2013, PNE was suspended by ISO-NE from participation in the New England wholesale electric market. Further, on that same date, ISO-NE notified PSNH that pursuant to the ISO-NE Tariff, as the host utility PSNH must assume the load assets that had been held by PNE by 0001 hours on February 20, 2013. Finally, ISO-NE stated that PNE had waived its right to cure.

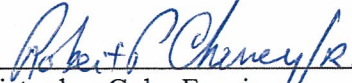
18. Prior to February 20, 2013, 1188 PNE customer accounts were transferred to FairPoint Energy, LLC (“FPE”) consistent with EDI transactions submitted to PSNH by FPE.
19. On or after February 20, 2013, the remaining customer accounts in the suspended PNE load asset were moved by PSNH to PSNH Default Service as required by ISO-NE.
20. On February 28, 2013, the Commission convened two dockets – DE 13-059 and DE 13-060 – to investigate PNE’s financial default and other matters concerning PNE and Resident Power Natural Gas & Electric Solutions, LLC (“Resident Power”). On March 27, 2013, the Commission Staff, PNE, and Resident Power entered into a Settlement Agreement in DE 13-059 and DE 13-060. The Commission issued an Order approving the Settlement on April 15, 2013.
21. Beginning on or about February 20, 2013, and prior to any invoice sent from PSNH to PNE, PSNH held and did not remit to PNE customer payments for electricity purchases prior to February 20, 2013, that by February 28, 2013, had accumulated to an amount in excess of \$250,000.
22. On February 28, 2014, PSNH remitted to PNE all but \$100,000 of the PNE customer payments held by PSNH.
23. By letters dated April 15 and April 30, 2013, PNE requested an invoice for the \$100,000 in PNE customer payments held by PSNH. See Exhibit D (letter from Robert P. Cheney, Esquire to Robert A. Bersak, Esquire, dated April 15, 2013); Exhibit E (letter from Robert P. Cheney, Esquire to Robert A. Bersak, Esquire, dated April 30, 2013).

24. On May 8, 2013, PSNH invoiced PNE the following amounts totaling \$92,961.39:
- (a) \$38,570 in PSNH internal costs associated with assuming PNE's load responsibility; (b) \$47,735 in Selection Charges relating to 9,547 electronic data interchange ("EDI") drop transactions recorded by PSNH ("invoiced drop transactions") prior to February 20, 2013; and (c) \$6,656.39 in other PSNH Tariff charges for various services provided in February and March 2013; and remitted to PNE \$7,038.61. See Exhibit F (letter from Robert A. Bersak, Esquire, to Robert P. Cheney, Esq., dated May 8, 2013).
25. On or about December 16, 2013, PSNH remitted to PNE the \$38,570 relating to PSNH's internal costs.
26. As of February 18, 2014, PSNH retains \$54,391.39.
27. In this proceeding, PNE has not challenged the PSNH invoice relative to \$6,656.39 in various supplier charges, which include the following: (a) Billing and Payment Service Charges - \$4,092.50; (b) Collection Services - \$1,963.89; and (c) Interval Data Subscription -- \$600. Subtracting these sums from the amount in ¶26 above yields a remainder of \$47,735.
28. In this proceeding, PNE has not challenged that PNE will pay PSNH \$3,450 in PSNH Tariff Selection Charges for 690 EDI drop transactions initiated by PNE of the 9,547 invoiced drop transactions recorded by PSNH.
29. Of the remaining 8,857 invoiced drop transactions, 1188 of these accounts were enrolled by and transferred to FPE, and FPE paid a \$5.00 Selection Charge for each of these accounts, totaling \$5,940. PNE has also been charged a \$5.00 Selection Charge for each of the 8,857 transactions.

Respectfully submitted,

**SHEEHAN PHINNEY BASS + GREEN,
PROFESSIONAL ASSOCIATION**


Dated: February 14, 2014

By: 
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Robert P. Cheney, Jr., Esquire
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PUBLIC SERVICE COMPANY OF NH

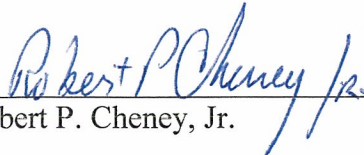
Date: February 14, 2014

By its Attorneys,

By: 
Matthew Fossum, Esquire
Public Service Company of New Hampshire
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CERTIFICATION OF SERVICE

I, Robert P. Cheney, Jr., hereby certify that on this 14th day of February, 2014, a copy of the foregoing Joint Statement of Agreed Facts was hand-delivered to the Public Utilities Commission and sent via electronic mail to all counsel of record and persons on the Commission's distribution list, a copy of which is attached hereto.



Robert P. Cheney, Jr.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 13-233-1 Printed: February 14, 2014

FILING INSTRUCTIONS:

a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.

c) Serve a written copy on each person on the service list not able to receive electronic mail.