

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 11-216

Public Service Company of New Hampshire
Redesigned Alternative Default Energy Service Rate

**FEL MOTION TO DISMISS PSNH'S REVISED ALTERNATIVE
DEFAULT ENERGY SERVICE RATE**

NOW COMES Freedom Logistics, LLC d/b/a Freedom Energy Logistics ("FEL"), a party to this proceeding, and hereby motions the Commission to dismiss PSNH's redesigned Alternative Default Energy Service Rate filed in this proceeding on April 27, 2012 on the grounds that it would be unlawful, and in support hereof, FEL says the following:

I. Facts

1. According to the cover letter to the Commission accompanying PSNH's filing,

"[e]xpeditious implementation of this rate is important in order *to provide customers who have migrated from PSNH's default service an attractive opportunity to return to the Company for energy service*, which in turn is beneficial to those customers who remain on the default energy service rate. (Emphasis added).

2. However, when speaking to its shareholders, PSNH casts this manner in a different light:

PSNH's ES rates have been higher than competitive energy prices offered to some customers in recent years, due primarily to lower natural gas prices. Further increases are expected as the costs associated with the Clean Air Project are fully phased into rates. The remaining retail energy service customers are experiencing an increase in PSNH's ES rate by 5 percent to 7 percent due to migration of large commercial and industrial customers and the lower base in which to recover PSNH's fixed generation costs. This increase may in turn cause further migration and further increasing of PSNH ES rates. This trend could lead to PSNH continuing to lose retail customers and increasing the burden of supporting the cost of its generation facilities on remaining customers *and being unable to support the cost of its generation facilities through an ES rate*.

2011 NU Form 10K (http://www.nu.com/investors/reports/2011_NU_Form_10K.pdf) at p.18 (Emphasis added.)

3. Accordingly, the fact of the matter is that PSNH management is deeply concerned about "being unable to support the cost of its generation facilities through an ES rate." It is

concern for shareholders, not ratepayers, that is the bottom-line motivation for redesigned Alternative Default Energy Service Rate ADE.

II. PSNH's Revised Alternative Default Energy Service Rate ADE is Unlawful

A. RSA 374-F:2, I-a

4. " 'Default service' means electricity supply that is available to retail customers who are *otherwise without* an electricity supplier..." RSA 362-F:2, VI; RSA 374-F:2, I-a (Emphasis supplied). As noted supra, PSNH has unequivocally asserted that "this rate is important in order to provide customers who have migrated from PSNH's default service an attractive opportunity to return to the Company for energy service."

5. The express purpose behind Rate ADE, according to PSNH's cover letter, is to lure customers away from their existing supplier to a more attractive option, namely, default service. Accordingly, implementation of redesigned Rate ADE would be prohibited by the plain language of RSA 362-F:2, I-a.

B. RSA 374-F:3,V(c)

6. Additionally "[d]efault service should be designed to provide a safety net and to assure universal access and system integrity." RSA 374-F:3,V(c). PSNH concedes that redesigned Rate ADE is intended and designed "to provide customers who have migrated from PSNH's default service an attractive opportunity to return to the Company for energy service..."

7. Redesigned Rate ADE is unlawful because it in no way is "designed to provide a safety net and to assure universal access and system integrity." It is designed to lure customers away from their existing supplier.

C. RSA 374-F:3,V(c)

8. RSA 374-F:3,V(c) provides that "if the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service." Rather than discouraging long-term use of default service, redesigned Rate ADE would actually unlawfully encourage long-term use of default service in direct contravention of RSA 374-F:3,V(c). It is designed to lure customers away from their existing competitive supplier back onto default service.

D. RSA 369-B:3, IV, (b)(1)(a)

9. By law, “[t]he price of such default service shall be PSNH’s actual, prudent, and reasonable costs of providing such power...” RSA 369-B:3, IV, (b)(1)(a). According to PSNH’s pre-filed testimony, “[t]he price will be a forecast of the marginal cost to provide full requirements service to the New Hampshire load zone, plus an adder.” Moreover, “[t]he adder will be equal to the non-operating costs of the wet flue gas desulfurization system (scrubber) divided by forecasted Energy Service sales under Rate DE.” PSNH Pre-filed Testimony at p. 10.

10. The non-operating costs of the scrubber are not an “actual” cost of providing service under redesigned Rate ADE. The actual cost is the marginal cost. The costs of the scrubber have nothing to do with the cost the marginal cost of service under Redesigned Rate ADE. The scrubber in no way can be identified as being used in the provision of service under redesigned Rate ADE. Accordingly, implementation of proposed Rate ADE would be prohibited by the plain language of RSA 369-B:3, IV, (b)(1)(a).

E. RSA 378:10

11. RSA 378:10¹ prohibits a utility making or giving any undue or unreasonable prejudice, advantage or disadvantage with respect to its customers.

12. The inevitable and intended result of proposed Rate ADE is that next-door neighbors will experience a 30 to 40 percent difference in PSNH’s energy service rate if one is on Rate DE and the other is on Rate ADE. The type and quality of electric service received from PSNH in all respects will be exactly the same in each case. One of the great ironies will be that the neighbor who has demonstrated loyalty to PSNH by not switching to a competitive supplier will be the one paying the higher rate.

13. If proposed Rate ADE is implemented, it would impose an unlawful disadvantage on the neighbor that did not switch to a competitive supplier, all in the name of helping PSNH reduce the possibility that it will have to take a write-off on the Scrubber recovery.

WHEREFORE, Petitioner respectfully requests the Commission to dismiss PSNH’s redesigned Alternative Default Energy Service Rate filed in this proceeding on April 27, 2012 on

¹ No public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation, or to any locality, or to any particular description of service in any respect whatever or subject any particular person or corporation or locality, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever.

the grounds that it would be unlawful, and to order such other and further relief as may be just and equitable.

Freedom Logistics, LLC
d/b/a Freedom Energy Logistics
by its Attorney,

Dated: May 3, 2012

/s/ James T. Rodier
James T. Rodier, Esq.
1465 Woodbury Ave., No. 303
Portsmouth, NH 03801-5918
jrodier@mbtu-co2.com

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 2nd day of May, 2012.

/s/ James T. Rodier
James T. Rodier, Esq.