

STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

DG-15-090

NORTHERN UTILITIES, INC.  
2015 Summer Period Cost of Gas  
Adjustment

ENERGY EXPRESS, INC.  
d/b/a METROMEDIA ENERGY, INC.'s  
OPPOSITION TO SETTLEMENT AGREEMENT

Express Energy, Inc. d/b/a Metromedia Energy, Inc. (“Energy Express”) requests that the Commission consider this Opposition to the Settlement Agreement should the Commission grant Energy Express’s Petition to Intervene filed August 7, 2015.

**INTRODUCTION**

As explained in Energy Express’s Petition to Intervene, Energy Express would lose approximately \$600,000 if the Commission approves the Settlement Agreement. Energy Express was an active participant in the market throughout the period that the PNGTS rate was in effect and paid the higher rate to Northern. Because Energy Express exited the market in 2014, it would now have to absorb the entire cost of its overpayments if the Commission approves this Settlement Agreement. Energy Express therefore requests that the Commission reject the Settlement Agreement and order a hearing to decide this case on the merits of each party’s position.

**DISCUSSION**

Energy Express opposes the Settlement Agreement executed by Northern Utilities, Inc. (“Northern”) and the Office of the Consumer Advocate (“OCA”) for three reasons. First, the settlement is at odds with the Maine Public Utilities Commission’s recent decision requiring

Northern to issue a one-time cash refund to all marketers. Second, the agreement is based on the false premise that Northern is unable to identify and prevent customers from migrating to Sales Service to take advantage of the refund. Finally, Energy Express never participated in the Settlement Agreement, and the impact of that Agreement on Energy Express would be severe. Energy Express is cognizant of the Commission's directive to the marketers to address only the issue of whether Northern is capable of protecting Sales Service customers, however, Energy Express respectfully requests that the Commission also take note of the Maine Commission's decision and Energy Express's unique situation in deciding whether to order further proceedings in this case.

**I. The Maine Commission has Decided to Order Northern to Issue Direct Cash Refunds to Marketers and There Is No Difference Between Maine and New Hampshire When it Comes to Refunding Marketers.**

Northern originally proposed to return the PNGTS refund to New Hampshire customers using the same method that applies to Maine customers. On May 12, 2015, the Maine Commission ordered Northern to refund Sales Service customers by prospectively reducing rates over three years, with 50% of the refund returned in year one, 30% in year two, and 20% in year three. *Northern Utilities, Inc. d/b/a Unitil*, Proposed Cost of Gas Factor May 2015 – October 2015, No. 2015-00041, Order at 13 (Me. P.U.C. May 12, 2015). After this decision, Northern proposed the same method for Sales Service customers in New Hampshire and all parties agreed to this at the June 2, 2015 hearing. Energy Express has no objection to using this formula for Sales Service customers.

The Maine Commission decided, however, that a different method should be used to refund marketers. On Tuesday August 11, 2015, the Maine Public Utilities Commission publicly deliberated the issue of how the PNGTS refund to Northern should be refunded to marketers in

Maine.<sup>1</sup> The Commission rejected the Examiner’s Report that recommended marketers be refunded using the same 50-30-20 formula applicable to Sales Service customers and concluded that Northern shall issue direct cash refunds to marketers based on the marketers’ historical overpayments. Now that the Maine Commission has spoken, Northern should adjust its proposal in New Hampshire to ensure consistency between the jurisdictions.

The details of the Maine proceeding are also instructive. The Examiner’s Report in the Maine proceeding acknowledged that, although there is some risk that Delivery Service customers could migrate to Sales Service to receive a double refund, “the risk is small . . . .” *Northern Utilities, Inc. d/b/a Unitil*, Proposed Cost of Gas Factor for May 2015 – October 2015, No. 2015-00041, Examiner’s Report at 9 (Me. P.U.C. Aug. 3, 2015). The Maine Commissioners apparently concluded that this small risk would be outweighed by the unfairness to marketers like Energy Express that paid Northern’s excessive rates and now stand to lose the opportunity to recover the full amount of their overpayments. This conclusion is bolstered by the fact that the amount overpaid by each marketer is easy to calculate and not in dispute. As in Maine, marketers in New Hampshire paid the entire higher PNGTS rate that was passed on by Northern. Given the Maine Commission’s recent decision, and considering the record in that proceeding negates the justification for the Settlement Agreement here, the Commission should decline to adopt the Settlement Agreement.

**II. The Commission Should Reject the Settlement Agreement Because Northern has the Ability to Address the Potential Problem of Delivery Service Customers Migrating to Sales Service to Collect an Extra Refund.**

The supposed problem with issuing a direct refund to the marketers is that it would allow Delivery Service customers to switch to Sales Service to take advantage of lower rates for the

---

<sup>1</sup> A recording of the Commissioners’ deliberations is available on the Maine PUC website under the “Listen to Live Audio” link at: [http://www.maine.gov/mpuc/news/calendar/live\\_audio.shtml](http://www.maine.gov/mpuc/news/calendar/live_audio.shtml).

next three years. (June 2, 2015 Hearing Transcript at 37.) Northern had implied that it would be impossible to prevent such a move and that refunds must therefore be distributed prospectively to prevent gaming. This claim is entirely speculative as there has been no analysis in this proceeding about the magnitude of the gaming risk or the costs of preventive measures. Northern should be required to justify its claim and prove that it would be impossible for it to prevent this hypothetical migration problem.

Common sense suggests that Northern could implement simple safeguards to prevent the specter of double recovery. Northern knows which customers receive Sales Service and which receive Delivery Service and is able to track when a customer opts to migrate from Delivery Service to Sales Service. Northern could easily prohibit migration during the time period that lower Sales Service rates are in effect or adjust its rates to eliminate the refund portion of the rate to those customers that migrate. Although there may be a small risk of harm to existing Sales Service customers, the Commission must balance this small risk against the impact on marketers that stand to lose millions of dollars if the Commission adopts the Settlement Agreement. Because the risk of gaming is small and preventable and outweighed by certain harm to marketers if the Agreement is adopted, the Commission should reject the Settlement Agreement.

**III. The Settlement Agreement is Unfair to Energy Express Because It had No Opportunity to Participate in the Settlement Discussions and the Settlement Agreement Would Severely Impact Energy Express.**

Energy Express has a basic due process right to be heard in this matter because the Settlement Agreement would cost Energy Express approximately \$600,000. Under New Hampshire's retail choice program, Energy Express, as a marketer, was obligated to pay the higher PNGTS rate. Having left the market in 2014, Energy Express will have no opportunity to recover its overpayments if the Commission approves the Settlement Agreement.

The Settlement Agreement is opposed by Energy Express and the other marketers who paid millions of dollars in overcharges while the higher PNGTS rate was in effect. The Commission should be concerned about a Settlement that is opposed by the intervenor-ratepayers that have such a substantial stake in the outcome. Under the circumstances, it would be better to let the case proceed to hearing and be decided on the merits of each party's position. As recognized by the Maine Commission, the issue of whether to order a direct refund to marketers is unique because it involves a small and discrete number of marketers and self-suppliers, and Northern has identified the exact amount that each marketer overpaid. The Settlement Agreement completely ignores these relevant differences between Sales Service and Delivery Service customers. Rather than force a Settlement Agreement on marketers, the Commission should hear from all interested parties and decide this case on the merits.

### **CONCLUSION**

For the foregoing reasons, Energy Express requests that the Commission reject the Settlement Agreement and order a hearing on the issue of whether Northern should be required to distribute the PNGTS refund to marketers.

Respectfully submitted on August 12, 2015.

*William S. Harwood*

---

William S. Harwood (ME Bar # 1852)  
wharwood@verrilldana.com  
Brian T. Marshall (ME Bar # 5309)  
bmarshall@verrilldana.com

Attorneys for Energy Express, Inc.

VERRILL DANA, LLP  
One Portland Square  
P.O. Box 586  
Portland, ME 04112  
(207)774-4000