

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 12-097

Electric Utility Customers

**Investigation Into Purchase of Receivables, Customer Referral
and Electronic Interface Programs**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION TO STRIKE PORTIONS OF RESA'S PRE-FILED TESTIMONY**

January 11, 2013

Pursuant to N.H. Admin. Rule Puc 203.07, Rule Puc 207.01, and Order No. 25,439, Public Service Company of New Hampshire (“PSNH” or the “Company”) hereby moves the Commission to strike certain portions of the prefiled joint testimony of Daniel W. Allegretti, Marc A. Hanks, and Christopher H. Kallaher submitted by the Retail Energy Supply Association (“RESA”). The basis for this Motion is that following the Commission’s December 7, 2012, “Order Addressing Motions to Compel” in this proceeding (Order No. 25,439) wherein RESA was ordered to respond to certain data requests, RESA chose not to respond to one of those data requests. The testimony identified herein must be stricken to comply with the decision of the Commission contained in Order No. 25,439 at p. 22, that “In the event that RESA fails to provide responses to associated data requests where the motion to compel has been granted, the related testimony shall be stricken from the record.”

In support of this Motion, PSNH states as follows:

1. By letter dated April 12, 2012, RESA requested that the Commission open a proceeding to investigate purchase of receivables, customer referral, electronic interface programs, and other retail market enhancements. RESA asserted that such programs “are important tools to promote the development of retail electric markets for the residential and small commercial customer segments.”

2. By Order of Notice dated May 3, 2012, the Commission opened this proceeding.

3. RESA sought party intervenor status in this proceeding via its petition to intervene dated May 24, 2012, wherein it stated, “RESA’s participation as a party in this docket conserves resources for the Commission and other participants that might otherwise have to respond to participation by multiple individual RESA member companies seeking to protect its own interests.” The Commission ultimately granted RESA party intervenor status.

4. On July 13, 2012, RESA submitted the direct testimony of Daniel W. Allegretti, Vice President, State Government Affairs – East for Exelon Corporation; Marc A. Hanks, Senior Manager of Government & Regulatory Affairs for Direct Energy Services, LLC; and Christopher H. Kallaher, Senior Director of Government & Regulatory Affairs for Direct Energy. Section III of that testimony beginning on page 15¹ was dedicated to “Electronic Interface,” a proposal to “allow suppliers direct access to key customer usage and account data.” The testimony states

¹ RESA’s direct testimony includes two portions referenced as Section III. The first, identified as “Customer Referral Programs” begins on page 13. The second, identified as “Electronic Interface” begins on page 15.

that, “Such data access should include customer-specific data such as account number, meter number, service address, next scheduled meter read date, rate code, ICAP tag, historic usage data, payment history, service status (EDC or supplier), and other relevant information.”

Regarding customers’ authorization for the release of their information, the testimony also states, “Suppliers, not the EDCs, should be responsible for maintaining Letters of Authorization and these forms should be subject to audit by the Commission.”

5. On July 27, 2012, pursuant to the procedural schedule set forth in the Prehearing Conference Order, Order No. 25,389, PSNH submitted data requests to RESA. PSNH question 1-71 to RESA reads as follows:

On page 16, beginning on line 12, RESA’s testimony discusses “What benefits(s) will result from enhancing access to customer information.”

- a. Is RESA aware of any competitive suppliers that have been accused of violating applicable rules in place that are intended to protect consumers or the competitive marketplace? If so, please provide a listing of all such alleged violations known to RESA.
- b. Have any RESA members been accused of any such violations? If so, please provide all documents, correspondence, orders, and the like detailing the allegations, the competitive suppliers’ responses thereto, and the action (if any) taken by the respective state or federal agency.

6. On August 6, 2012, RESA submitted objections to certain data request questions of PSNH, including question 1-71. On August 24, 2012, PSNH submitted a Motion to Compel RESA to respond to data requests, including PSNH 1-71. On December 7, 2012, the Commission issued Order No. 25,439 “Order Addressing Motions to Compel.” In that Order, the Commission granted PSNH’s Motion to Compel a response to PSNH 1-71. Specifically, the Commission stated:

RESA objected to the question on the grounds that the question seeks information not in its possession or control and that it would be imprudent for RESA to

inquire of its members for the information. Notwithstanding and not waiving its objection, RESA provided a response which essentially repeated its objection. PSNH said that the question was based on RESA's assertion in its testimony that it has information pertaining to certain retail market enhancements. PSNH said that the answer will provide admissible information directly pertaining to the implementation, structure, costs and benefits associated with those enhancements. We agree with PSNH that the question relates to RESA's testimony and will

likely produce admissible evidence, and we grant the motion to compel a response to PSNH 1-71.

Order No. 25,439 at 19.

7. Order 25,439 later directs that "***In the event that RESA fails to provide responses to associated data requests where the motion to compel has been granted, the related testimony shall be stricken from the record.***" *Id.* at 22 (emphasis added).

8. By letter dated December 21, 2012, RESA averred that it "[did] not believe that it can obtain all of the information requested" in PSNH data request 1-71. Rather than respond to that question seeking information about any of its members or other competitive suppliers accused of violating applicable consumer protection rules, RESA chose to withdraw testimony related thereto. RESA limited the testimony it withdrew to one sentence -- page 16, lines 12-17. RESA Letter Withdrawing Portion of Testimony (Dec. 21, 2012).²

² Direct Testimony Daniel Allegretti, Marc Hanks, and Christopher Kallaher, pg. 16, lines 12-17:

Q. What benefit(s) will result from enhancing access to customer information?

A. Making customer information more easily accessible, in a secure, and standard format will result in the following benefits: (a) a consistent, complete, and standardized format of the data available; (b) improved timeliness and accuracy of competitive service offerings to prospective customers; (c) ability to check on the service status of a prospective customer; and (d) development of a strong, competitive electric marketplace.

9. RESA's action withdrawing only one sentence of testimony does not comply with the Commission's ruling in Order 25,439 that if "RESA fails to provide responses to associated data requests where the motion to compel has been granted, the related testimony shall be stricken from the record." In granting PSNH's Motion to Compel a response to question 1-71, the Commission agreed that the question relates to RESA's testimony and will likely produce admissible evidence. Order 25,439 at 19.

10. PSNH's Motion to Compel expressly stated, "PSNH Question 1-71 pertains to effects of 'enhancing access to customer information.'" (Motion to Compel, ¶37.) RESA's testimony alleges that direct access to detailed customer information by competitive suppliers would produce certain benefits. However, the N.H. Supreme Court and this Commission has previously held that the type of customer-specific information sought by RESA as part of its "electronic interface" proposal includes information eligible for confidential treatment. *Lamy v. New Hampshire Pub. Utils. Comm'n*, 152 N.H. 106, 113 (2005) ("The public interest in disclosing customer names and addresses so that they may be contacted at home does not outweigh their privacy interest in not being disturbed at home."); *see also, e.g., Re Public Service Co. of New Hampshire*, 85 NHPUC 679 (2004). The trustworthiness of competitive suppliers, including those that are members of RESA, to protect customers' privacy interests could be gauged, in part, by those competitive suppliers' adherence to consumer protection requirements in other jurisdictions.

11. RESA itself chose not to respond to question 1-71. The information sought in question 1-71 is related to the advisability and benefits of implementing the "electronic interface" programs requested in its testimony, and the trustworthiness of such suppliers to have direct and

“enhanced” access to customers’ private information. This is especially true in light of RESA’s testimony asking that these same competitive suppliers be allowed to maintain the letters of authorization from customers allowing the EDC’s to provide access to their confidential customer-specific information. Hence, as a result of RESA’s failure to provide a response to PSNH question 1-71, all of its testimony related to such “electronic interface” programs must be stricken.

12. Therefore, in order to comply with the Commission’s direction in Order 25,439 that failure to respond to a data request would result in the striking of the related testimony from the record, all testimony related to “enhancing access to customer information” must be stricken from RESA’s prefiled testimony. Such testimony includes all of Section III of RESA’s pre-filed testimony, beginning at line 8, page 15 and continuing through line 17, page 16.

WHEREFORE, PSNH respectfully requests that the Commission:

- A. Grant this Motion and strike in its entirety Section III, “Electronic Interface” of the prefiled testimony submitted by RESA, and
- B. Grant such other relief as is just and equitable.

Respectfully submitted this 11th day of January, 2013,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE



By: _____

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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 Rule Puc 203.11 this 11th day of January, 2013.



Robert A. Bersak