

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

DE 12-097

ELECTRIC AND GAS UTILITIES

Investigation into Purchase of Receivables, Customer Referral and Electronic
Interface for Electric and Gas Distribution Utilities

Objection to Public Service Company of New Hampshire's Motion to Strike
Portions of RESA's Pre-filed Testimony

NOW COMES the Retail Energy Supply Association ("RESA"), an intervenor in this docket, and objects to Public Service Company of New Hampshire's ("PSNH") January 11, 2013 Motion to Strike Portions of RESA's Pre-filed Testimony ("Motion"). In support of this objection RESA states as follows:

1. On January 11, 2013 PSNH filed the Motion asking the Commission to strike portions of the prefiled joint testimony of Daniel W. Allegretti, Marc A. Hanks, and Christopher H. Kallaher. The basis for the Motion was that RESA chose not to respond to one of PSNH's data requests following the Commission's Order No. 25,439, *Order Addressing Motions to Compel*, issued on December 7, 2012 ("the Order").

2. On July 13, 2012 RESA filed the Direct Testimony of Daniel W. Allegretti, Marc A. Hanks and Christopher H. Kallaher. PSNH submitted data request PSNH 1-71 to RESA on July 27, 2012. The data request read as follows:

On page 16, beginning on line 12, RESA's testimony discusses "What benefit(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.

3. RESA objected to the data request on August 6, 2012; PSNH filed a Motion to Compel a response to this and other data requests on August 24, 2012; RESA filed an Objection on August 27, 2012. In the Order the Commission granted PSNH's Motion to Compel with regard to this data request. In the Order the Commission also said: "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." Order at 22. By letter to the Commission dated December 21, 2012, RESA indicated it had decided to withdraw the portions of the pre-filed testimony that PSNH had specifically cited in this data request, page 16, lines 12-17, which constitutes the entire response to the question that begins on line 12 which PSNH cited in the data request.

4. PSNH is now asking the Commission to strike portions of the testimony that were not cited in this data request. In total, PSNH is asking the Commission to strike all of Section III of the prefiled testimony, beginning at line 8, page 15 and going to page 16, line 17. This portion of the testimony relates to electronic interface programs.

5. When RESA received the Order it looked again at PSNH 1-71 in order to comply with the Commission's Order. The breadth of the question became even more apparent as RESA began to answer both subparts of the question. For example, subsection (a) is extremely broad in that it asks for information about any competitive suppliers *accused* of violating rules. Not just RESA members, but any supplier. Subsection (a) has no limit on where such an accusation of a violation could have been

made, presumably anywhere in the U.S., though it was not even limited to the U.S., and it applied to accusations of violating rules, not findings that a rule had actually been violated. The data request asked whether RESA was aware of any such accusations of violations. This would mean that RESA would have to check with RESA member companies to see if they were aware of any such accusations of violations against any competitive supplier in an unlimited number of jurisdictions. Then if RESA members were aware of any accusations of violations, RESA would have had to obtain all of the documents related to such accusations that PSNH requested.

6. In RESA's view it could not respond to such a broad request with a sufficient level of certainty as to its completeness. RESA therefore chose the alternative that the Commission articulated at page 22 of the Order, i.e. to strike the portion of the testimony cited in the request. RESA's supplemental responses to PSNH data requests 18, 19, 21, and 27 demonstrate RESA's good faith effort to answer questions that required a canvas of RESA member companies for information. Data request 1-71, as written by PSNH, is just not a data request that RESA believes it can accurately fulfill.

7. PSNH is now trying to broaden the reach of the data request that it asked by attempting to strike portions of the testimony that were not even mentioned in the data request at issue and go far beyond the specific portion of the testimony cited in the data request. The Commission should deny any such overreaching by PSNH. RESA should not have to revise an inartful discovery request, and PSNH should do its own work to support what will presumably be an argument about "the trustworthiness of competitive suppliers" (see p. 5 of the Motion), i.e. that customers will be harmed if the Commission adopts purchase of receivables, customer referral and electronic interface programs

because there are suppliers somewhere who have been accused of violating rules, notwithstanding whether those suppliers were found to have actually violated such rules.

8. As has been noted in other filings in this docket, PSNH's affiliate in Connecticut is already subject to programs like the ones being proposed here and its affiliate in Massachusetts will soon be subject to such programs. PSNH has a different reason to try to thwart these programs in New Hampshire -- it is steadily losing default service (ES rate) customers to the competitive market because the cost of its own generation is driving up the ES rate. PSNH therefore has an incentive to delay this docket as long as possible and to try to resist any efforts that will make it more convenient or easier for customers to switch to a competitive supplier. Such efforts are what NH's founding fathers recognized in part II, Article 83 of the NH Constitution, cited in the purpose clause of the restructuring statute (RSA 374-F:1,I) where it says: "Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it." RSA 374-F:3,VII says: "Choice for retail customers cannot exist without a range of viable suppliers. The rules that govern market activity should apply to all buyers and sellers in a fair and consistent manner in order to ensure a fully competitive market." That is what this docket is about -- implementing programs and mechanisms that are being used in other states to enhance the range of viable suppliers. PSNH is clearly doing everything in its power to thwart such programs.


9. For the reasons cited above, RESA believes the Commission should deny PSNH's Motion to Strike Portions of RESA's Prefiled Testimony.

WHEREFORE, RESA respectfully requests that this honorable Commission:

- A. Deny PSNH's Motion to Strike Portions of the prefiled testimony; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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Douglas L. Patch

January 17, 2013

Certificate of Service

I hereby certify that on this 17th day of January, 2013 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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