

STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

**Motion to Clarify the Application and Interpretation of  
Rules Puc 102.22 and Puc 203.09(a)**

NOW COMES PNE Energy Supply LLC d/b/a Power New England (“PNE”), and hereby motions the Commission for a ruling on the application and interpretation of Rule Puc 102.22 and Rule Puc 203.09(a), and in support hereof says as follows:

**Rule PUC 102.22**

1. PSNH has contended in a filing before the Commission that a party’s non-attendance at a Technical Session:

has prejudiced the ability of other parties, including PSNH, to utilize that forum as an effective discovery tool. Merely substituting additional data requests (interrogatories) for the interaction of a Technical Session (akin to a deposition) fails to remedy the harm.

2. Moreover, the Staff of the Commission has contended that a “motion to compel” can be used in connection with a Technical Session in order to compel responses to questions.

3. According to Puc Rule 102.22, a “Technical Session” is a meeting of the parties *at which information is shared on an informal basis* at which neither the presiding officer nor the Commissioners are present.” (Emphasis added.)

4. Accordingly, technical sessions do not exist to exist to provide a forum for any party to engage in a de novo free-ranging, open ended discovery. Unlike a deposition, information is voluntarily shared on an informal basis at a Technical Session. There is no obligation at a Technical Session to respond to questioning under oath in the presence of a court reporter who prepares a transcript.

5. The Commission’s rules do not provide for a motion to compel to be employed in conjunction with a Technical Session.

**RULE PUC 203.09(b)**

6. PSNH has also contended that:

Rule Puc 203.09(b) provides that “any person covered by this rule shall have the right to serve upon any party, data requests, which may consist of a written interrogatory or request for production of documents.” Under this regulation, PSNH has the right to serve any party - - such as PNE - - with data requests, and PNE must answer if it has responsive information. A claim by a party that it “has taken no position” on a subject is not the basis for a valid objection.

7. Accordingly, PSNH insists that it may serve data requests on any party, (a) even if the party has not filed testimony; or (b) if the party has filed testimony, PSNH's data requests may inquire into matters not covered by the party's testimony.

8. PSNH's interpretation of Rule Puc 203.09(b) is inconsistent with longstanding practice and procedure before the Commission.

WHEREFORE, PNE Energy Supply LLC d/b/a Power New England respectfully requests the Commission to issue a ruling declaring the following:

- A. Information is voluntarily shared on an informal basis at a Technical Session;
- B. A motion to compel cannot be employed in conjunction with a Technical Session;
- C. A party may not serve data requests on another party if it has not filed testimony
- D. A party may not inquire into matters not covered by the party's testimony.

Date: September 27, 2012

Respectfully Submitted,  
PNE Energy Supply LLC d/b/a  
Power New England  
By its attorney

/s/ James T. Rodier  
James T. Rodier, Esq.  
1465 Woodbury Avenue, No. 303  
Portsmouth, NH 03801-5918  
603-559-9987