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STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

March 15, 2013 - 10:44 a.m.  
Concord, New Hampshire

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NHPUC APR17'13 PM 1:26

RE: DE 13-059 RESIDENT POWER, LLC:  
*Show Cause as to Whether the Company  
should be Subject to Penalties or  
Registration Suspension or Revocation.*

DE 13-060 PNE ENERGY SUPPLY, LLC:  
*Show Cause as to Whether the Company  
should be Subject to Penalties or  
Registration Suspension or Revocation.*

**PRESENT:** Chairman Amy L. Ignatius, Presiding  
Commissioner Robert R. Scott  
Commissioner Michael D. Harrington

Sandy Deno, Clerk

**APPEARANCES:** **Reptg. Resident Power, LLC and  
PNE Energy Supply, LLC:**  
Christopher H. M. Carter, Esq. (Hinckley...)  
Daniel M. Deschenes, Esq. (Hinckley Allen...)

**Reptg. Residential Ratepayers:**  
Rorie E. P. Hollenberg, Esq.  
Stephen R. Eckberg  
Office of Consumer Advocate

**Reptg. PUC Staff:**  
Suzanne G. Amidon, Esq.  
David Shulock, Esq.  
Steven E. Mullen, Asst. Dir./Electric Div.

Court Reporter: Steven E. Patnaude, LCR No. 52

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**I N D E X**

**PAGE NO.**

**STATEMENTS BY:**

Ms. Amidon	5, 27, 47, 61, 62, 65, 67
Mr. Carter	9, 12, 22, 32, 43, <b>54, 57</b> , 64, 66, 67
Mr. Deschenes	10, 65
Ms. Hollenberg	23
Mr. Shulock	48, <b>54, 55</b> , 62

**QUESTIONS BY:**

Chairman Ignatius	11, 15, 24, 29, 33, 40, 49, <b>55</b> , 63
Cmsr. Harrington	20, 36, <b>53, 56</b>
Cmsr. Scott	31, 44

**NOTE TO READER:** The above page numbers in bold are contained within the transcript noted as "**CONFIDENTIAL & PROPRIETARY**"

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24**P R O C E E D I N G**

CHAIRMAN IGNATIUS: Welcome, everyone.

I would like to open the hearing in two dockets being consolidated for proceedings today, Docket DE 13-059, Resident Power Natural Gas & Electric Solutions, and Docket DE 13-060, PNE Energy Supply. This proceeding was scheduled just on Wednesday at the request of the two Companies for a prehearing conference. And, so, an order that was issued on March 13th, this week, scheduled a prehearing conference for 10:00 this morning. And, we understand that the parties and Staff have been in discussions on some of the procedural matters, which we always welcome. So, we're starting a little late, because of the opportunity for people to discuss informally some of the things that presumably are to come before us now.

What I'd like to do is begin with appearances, and then hear from all of you your proposals on any procedural matters that we should address, either for today's proceeding or for when we get to the hearing on the merits in these matters. We have a couple of pending motions that we can hear argument on and address. And, there may be, I don't know if there's a proposed procedural schedule, any other details, but we'll get to all of that.

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

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1                   So, let's first just begin with  
2 appearances. And, I'll look first to Mr. Carter.

3                   MR. CARTER: Good morning. I'm Chris  
4 Carter, and I'm here with my colleague, Dan Deschenes.  
5 I'm also here with Gus Fromuth and Bart Fromuth. And, we  
6 are here on behalf of Resident Power and PNE.

7                   CHAIRMAN IGNATIUS: And, both of you  
8 together are representing both Companies?

9                   MR. CARTER: Yes, ma'am.

10                  CHAIRMAN IGNATIUS: Thank you.

11                  MS. HOLLENBERG: Good morning. Rorie  
12 Hollenberg and Stephen Eckberg here for the Office of  
13 Consumer Advocate.

14                  CHAIRMAN IGNATIUS: Good morning.

15                  MS. AMIDON: Good morning,  
16 Commissioners. I want to thank you for your forbearance,  
17 allowing us to discuss matters with the Companies'  
18 attorneys this morning. My name is Suzanne Amidon. I'm  
19 the Staff attorney on this docket, along with David  
20 Shulock, to my left, who's my co-counsel. To his left is  
21 Steve Mullen, the Assistant Director of the Electric  
22 Division.

23                  CHAIRMAN IGNATIUS: Thank you. We have  
24 folks in the back. Is there anyone else who is appearing

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 today and participating?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: All right. Then,  
4 why don't we begin, I guess, if you have a -- if any of  
5 you have a recommendation on what order to take things up  
6 in today or anything that, if you have anything to report  
7 from your earlier discussions this morning, we're all  
8 ears?

9 MS. AMIDON: Well, I'll begin with where  
10 Staff is at this point. Some of the discussion we had  
11 this morning did divert from process, and, in that sense,  
12 I think you might hear different proposals between myself  
13 and the Companies' attorneys. We did agree on the  
14 following: We did agree to exchange witness lists; we did  
15 agree to exchange a list of exhibits, to the extent that  
16 we are aware of them at this point, but reserve the right,  
17 for example, to supplement the exhibits at hearing, if  
18 necessary. Staff filed a memorandum, as you know. We do  
19 not plan to file prefiled testimony or other memorandum,  
20 unless directed by the Commission. But there are two  
21 provisos that we have.

22 Staff was delivered discovery yesterday.  
23 And, as you know, under the Commission rules, Staff has --  
24 well, any party to a proceeding has ten calendar days --

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 strike that -- ten business days to respond to discovery.  
2 So, we would -- given that, and the fact that there was a  
3 filing this morning, which, to be quite honest, I haven't  
4 read, I believe it was a memorandum on burden of proof, we  
5 would have ten days to respond to that as well. So, at  
6 this point, with things unresolved, we feel that moving  
7 ahead with the show cause hearing next week may not be  
8 possible.

9           Having said that, Staff is open to  
10 further discussions with the Company, if we have the  
11 appropriate go-ahead from our staff working on this, that  
12 is Mr. Mullen and Amanda Noonan, who is not here today.

13           A couple of areas of concern is whether  
14 the suspension for PNE should continue through the  
15 conclusion of the show cause hearing, and then until such  
16 time an order is issued from that or if there is a  
17 settlement agreement, until such time that that is  
18 approved. And, I believe at this point Staff's  
19 recommendation, unless persuaded otherwise or agreed to  
20 otherwise with the Company, would be "yes".

21           The second issue that we have is, we do  
22 have some additional discovery ourselves that we would  
23 like to be able to serve on the Companies. And, let me  
24 just check my notes one more time. One final point. We

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 wanted to recognize that, pursuant to Commission Rule  
2 203.23(c), the rules of evidence don't apply to  
3 proceedings before the Commission. So, in that sense, we  
4 wanted just to -- I neglected to mention that to the  
5 Companies' lawyers this morning. And, I just wanted to  
6 put that on the record so that that was clear.

7 I do have one final thing. And, that  
8 is, in the Staff's objection to the Motion for  
9 Confidential Treatment, there was an Exhibit 1, which I  
10 neglected to attach to the objection. I have copies of it  
11 today, which I will file formally. The exhibit is merely  
12 a printout of a page from Resident Power's website. If  
13 you would like it now, I could provide it to you now. Or,  
14 I will -- and I am going to formally file it anyway,  
15 because I neglected to add it. I can provide it to you  
16 now, if you wish, or --

17 CHAIRMAN IGNATIUS: I haven't even -- a  
18 more fundamental question, I didn't realize there was an  
19 objection filed. So, I'll need all of it. But it's  
20 probably working its way through the -- through the filing  
21 system.

22 CMSR. HARRINGTON: I have the motion,  
23 but not the objection.

24 CHAIRMAN IGNATIUS: So, why don't you

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1 file all of it.

2 MS. AMIDON: Okay.

3 CHAIRMAN IGNATIUS: The replacement or  
4 the additional page --

5 MS. AMIDON: Okay.

6 CHAIRMAN IGNATIUS: And, Commissioner  
7 Scott always has everything.

8 MS. AMIDON: Okay.

9 CHAIRMAN IGNATIUS: And, it was filed  
10 yesterday, at 1:30. So, I apologize for not having it  
11 with me.

12 MS. AMIDON: Okay. But I will file this  
13 formally.

14 CHAIRMAN IGNATIUS: Why don't we see  
15 whether we're going to take that up today or not.

16 MS. AMIDON: Well, with respect to that,  
17 I mean, we did talk to the Company briefly this morning.  
18 And, Attorney Deschenes represented that he was going to  
19 make some kind of responsive filing this afternoon,  
20 recognizing that there was some publicly available  
21 information that was inadvertently redacted in his filing.  
22 But I don't -- I don't understand that all the issues that  
23 were raised in our objections are resolved. And,  
24 certainly, he's entitled to make his own argument in that

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}



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1 regard.

2 So, finally, just to let the Commission  
3 know, the Staff hopes to be able to call PSNH and  
4 FairPoint as a witness, because we'll -- while PSNH has,  
5 and that's Public Service Company of New Hampshire for the  
6 record, while Public Service Company of New Hampshire has  
7 indicated to us that they are willing to accept a notice  
8 by letter to be Staff's witness, we will most likely have  
9 to do a subpoena for FairPoint, which may also make it  
10 very difficult to move ahead with a hearing next week.

11 So, that's where we are. And, I know  
12 that's probably not as far as the Commission would like us  
13 to have gone, but we did, as I said, have good discussions  
14 with the Companies' attorneys this morning, and expect  
15 that we will continue in that regard.

16 CHAIRMAN IGNATIUS: That does sound like  
17 quite extensive conversations and appreciate that.  
18 Mr. Carter, Mr. Deschenes, do you want to respond to your  
19 understanding of anything that Ms. Amidon described, but  
20 also other issues that you want to bring forward on sort  
21 of procedural matters as we get ready for today and the  
22 hearing on the merits?

23 MR. CARTER: Thank you. Yes. First,  
24 thank you for your patience this morning. We did make

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 some ground this morning. I'd like Attorney Deschenes to  
2 address the confidential treatment. It's my belief that  
3 almost all those issues have been resolved, with the  
4 exception of some documents that have been previously  
5 granted confidential treatment. Dan, do you want to?

6 MR. DESCHENES: Yes. Briefly, the issue  
7 there, and the representation I made to Attorney Amidon  
8 this morning was, to the extent she has pointed out issues  
9 which have already been publicly disclosed. I will make  
10 that determination when I go back to the office. And,  
11 obviously, if it's already been publicly disclosed, I will  
12 reproduce, and I think specifically we're talking about  
13 the materials that are at Tab 1. Most of the other issues  
14 I think we're in agreement on, that customer information  
15 and the financial data that was specifically requested are  
16 confidential.

17 The only issue that I did flag with  
18 Attorney Amidon, and I'm happy to address it with her  
19 after the hearing, is Request Number 11, which requested  
20 certain documents with respect to the FairPoint/PNE  
21 transaction. And, we have not reached agreement on that.  
22 We have a position that it's confidential. What I did  
23 pledge to Attorney Amidon is that I would revisit the  
24 issue and see if it could be resolved.

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

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1 CHAIRMAN IGNATIUS: All right. Then, it  
2 sounds like it would be more efficient to wait for a  
3 further response from you, after you've had a chance to  
4 check a couple of those things and discussions, and then  
5 before ruling on the Motion for Confidential Treatment?

6 MR. DESCHENES: And, I'd be happy to  
7 inform, by the end of the business day today, whether or  
8 not any of those specific issues, 1 through 11, need to be  
9 addressed.

10 CHAIRMAN IGNATIUS: All right. And, in  
11 the Motion, am I right in that there's even a request to  
12 protect some things that are taken direct quotes from the  
13 order that we issued and that sort of thing, clearly,  
14 that's already public. There would be no reason that that  
15 would be protected.

16 MR. DESCHENES: I'm not quite certain  
17 what you're referring to, but I agree with the concept  
18 that you're referring to.

19 CHAIRMAN IGNATIUS: Okay. Why don't you  
20 go back and take a look and make sure that -- we try to  
21 find that right balance between protecting business  
22 information that in a competitive market should be kept  
23 protected, and the fact that you also deal with a  
24 regulator shouldn't force all of your information to be

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1 made public, at the same time not protect things that  
2 they're either already made available or there is really  
3 no basis for confidential treatment. So, I appreciate  
4 your effort to fine-tune it a little bit.

5 MR. DESCHENES: Thank you.

6 MR. CARTER: Thank you. In terms of the  
7 proceedings for next week, PNE, which, as the Order of  
8 Notice indicates, is under voluntary suspension, or two  
9 issues, there is the ISO cure, and then voluntary  
10 suspension --

11 (Court reporter interruption.)

12 MR. CARTER: Cure the ISO default, and  
13 the voluntary suspension pending the outcome of the show  
14 cause hearing. PNE anticipates curing the ISO default  
15 next week. PNE and Resident Power will be prepared to  
16 proceed on Wednesday. And, under the circumstances,  
17 including the voluntary suspension, they strongly appeal  
18 to the Commission to conduct the hearing at the scheduled  
19 date. What we believe to be inaccurate press reports of  
20 the Companies' businesses and the events that gave rise to  
21 the ISO default were, in our belief, inaccurate, they have  
22 led to a severe harm to the business. We would like to  
23 address the allegations made in the Staff Recommendation  
24 Report. We're going to be prepared to do that. And, so,

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 we would request strongly that the hearing remain on  
2 schedule.

3 Attorney Deschenes mentioned, we've been  
4 trying to work with the Staff to clarify any issues  
5 regarding confidentiality. And, I think that's a matter  
6 that reasonable minds can resolve without further input  
7 from the Commission.

8 In terms of witness lists, we will be  
9 prepared to exchange preliminary witness lists as early as  
10 this afternoon, understanding that there may be some  
11 subsequent revisions to that.

12 Regarding the exhibits, a substantial  
13 amount of the documents that the Companies would seek to  
14 introduce at the hearing are part of the material that has  
15 been supplied in response to the data requests. There's  
16 additional material, particularly with respect to e-mail  
17 communications going back and forth between the Staff and  
18 Resident Power and Power New England, dating back to the  
19 time period even prior to the registration of these two  
20 companies. That kind of e-mail and documents will also be  
21 part of our exhibits. And, we expect, probably by the end  
22 of the day on Monday, to be able to provide an exhibit  
23 list. Given the nature of those documents, many of them  
24 are already in the possession of Staff, since they're

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 e-mail communications between my clients and different  
2 Staff members.

3 We did file yesterday a discovery  
4 request. We did that, however, not, and I expected that  
5 the Staff will point out that, under the rules, there is  
6 ordinarily ten days to provide a response to that kind of  
7 information. Of course, this is not an ordinary  
8 situation. The Commission has scheduled a hearing within  
9 a very brief period of time from its Order of Notice. I  
10 would submit that the information that is the subject of  
11 our discovery request is information that we should be  
12 entitled to receive, because it relates directly to  
13 allegations that Staff made in its Recommendation Report,  
14 including, for example, the allegation that there were any  
15 number of consumer complaints. The fact of a consumer  
16 complaint is a predicate for some of the jurisdictional  
17 issues here. And, I submit that, as a matter of due  
18 process, we should be entitled to see whether there were  
19 complaints and the content of them.

20 There are also general allegations in  
21 the Staff Recommendation, some of which do not appear in  
22 the Order of Notice, but we feel color the proceeding.  
23 And, we've asked for clarity, in terms of what Staff  
24 meant. For example, when they alleged that my clients

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1       tried to "enroll" a commercial customer after the ISO  
2       suspension. And, we'd like to know where that allegation  
3       comes from.

4                        So, although the PUC rules do  
5       contemplate, in the ordinary course, a ten-day period for  
6       responding, and, as Attorney Amidon pointed out, a ten-day  
7       period to respond to a motion, this is not the ordinary  
8       case. And, I believe that they would -- and we discussed  
9       that before the hearing today. And, I think the  
10      information we've requested is not so broad in scope or so  
11      unanticipated that it can't be provided very promptly.  
12      Much in the same way that we've done our best to turn  
13      around the extensive quantity of information that the  
14      Commission asked at the recommendation of the Staff.

15                      CHAIRMAN IGNATIUS: Is there a reason  
16      that you didn't make the request earlier than yesterday?  
17      I agree this is not a usual case, but the things you've  
18      just described were set forth in the Staff memo, you know,  
19      weeks ago, and could have given rise to a request earlier  
20      than yesterday.

21                      MR. CARTER: Well, there are two answers  
22      to that, madam Chairwoman. First, my firm became involved  
23      in this case a week and a half ago. Now, that's not an  
24      excuse, but I'm providing that information to you as a

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1 matter of context. Secondly, we were devoting enormous  
2 resources to responding to, in very short order, to the  
3 voluminous information requests that Staff requested the  
4 Commission to make. And, we appreciated your brief  
5 extension of time. We identified that as the most  
6 imperative issue.

7 Third, I did not anticipate the  
8 resistance that we faced from Staff in trying to work  
9 through these issues. I contacted the Staff last Thursday  
10 -- Thursday, asking whether they would agree to this  
11 conference; they objected, for reasons that still have not  
12 been made clear to me. We asked, when they did object, if  
13 they could explain why they objected, and whether they  
14 would be willing to sit down with us to try to work out  
15 cooperatively a schedule to go forward; and they were not  
16 willing to do that either. We asked for this conference  
17 because we were hoping that the Commission would help us  
18 in getting clarity on some of these issues.

19 I can represent, based on what's been  
20 said to me this morning, that the Staff appears to take  
21 the position that some of the discovery we're asking for  
22 they're not even required to provide. So, I think we may  
23 need some guidance from the Commission.

24 So, I can tell you that, in the very

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}



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1 short period of time since the Order of Notice was issued  
2 on Friday, the 28th of February, we're now -- that was two  
3 weeks ago, we have been working aggressively to provide  
4 the information that the Commission has requested, to deal  
5 with some very complex legal issues, like burden of proof.  
6 We've made overtures repeatedly with Staff to try to  
7 resolve those issues among ourselves. And, we're coming  
8 to the Commission as, really, as a matter of last resort.

9 We have filed a motion on the burden of  
10 proof. And, we did only file that this morning, for many  
11 of the same reasons that I just described. We did try to  
12 arrange an opportunity to deal with that issue with Staff  
13 last Thursday. They directed us to the Wilton case that  
14 we discussed, but, beyond that, there was not an interest  
15 in trying to work through that. And, I filed that today,  
16 so I'm not expecting the Commission would be issuing an  
17 order this morning, but it is an issue that we believe  
18 needs to be addressed before the hearing begins, and we  
19 believe that it can be. And, you know, it could easily  
20 have been filed as a motion *in limine*, if you will, for a  
21 pre-conference ruling on a legal issue. And, again, we  
22 were kind of working without the guidance of a pretrial  
23 conference, which I note is typically ordered in cases  
24 like this.

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

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1                   But, in terms of the burden of proof,  
2 we'd be happy to address that briefly now, and further  
3 later. This is a -- this case is very much unlike the  
4 Wilton decision that Staff, I expect, will say "provides  
5 guidance". In that case, the overriding allegation was  
6 that a public utility had failed to comply with a 1999  
7 Settlement Agreement. And, in that respect, the show  
8 cause order and the show cause hearing was very much what  
9 you might see, for example, in a superior court action,  
10 where a defendant, civil or criminal, if you will, fails  
11 to pay a fine or pay a damages award consistent with a  
12 prior court order. There's already been an adjudication,  
13 if you will, and the question is, "Has the defendant  
14 complied with the sanction or decision?"

15                   Here, as that Staff Recommendation  
16 Report acknowledges, there are many complicated facts at  
17 issue here. Not all of them, there are some issues which  
18 are relatively discrete. We've discussed those and we've  
19 identified some of those in our response to the data  
20 requests. But, particularly with respect to the  
21 allegations of willfulness, and some of the more serious  
22 allegations, which potentially would support the Staff's  
23 request for a severe sanction, to include loss of  
24 registration, we believe that, in a case like this, the

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

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1       burden of proof should fall on the claimant, if you will,  
2       the PUC Staff, as a matter of due process.

3               So, not only is this case very different  
4       from the Wilton decision, in terms of what the fact at  
5       issue, compliance with a settlement agreement, versus a  
6       very complicated factual history which needs to be  
7       resolved, we pointed out that some of the legal authority  
8       that supported the Wilton decision has since changed. In  
9       particular, the federal cases cited in that, in the Wilton  
10      decision, have been overruled in relevant part by the  
11      United States Supreme Court more recently, in which the  
12      Supreme Court affirmed that the allegation falls on the  
13      claiming party to meet their burden of proof.

14              To hold otherwise, the complexity of the  
15      allegations made in the Staff Report, and the lack of any  
16      clear delineation between the list of rules that are cited  
17      in the beginning of the Report, and then a large block of  
18      facts, and then a conclusion of the recommended show cause  
19      hearing, as a matter of due process, I would submit that  
20      we are entitled to put the Staff to their burden of  
21      proving by a preponderance of the evidence that the  
22      conduct that they claim occurred did occur, did occur.

23              And, I understand that we just filed  
24      this this morning, and I appreciate the Staff may want

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 more time to address this. But this will -- this is an  
2 issue, I submit, that needs to be resolved, would have to  
3 be resolved in this very, and I think we all agree, is an  
4 unusual proceeding. Thank you.

5 CHAIRMAN IGNATIUS: Thank you. Yes,  
6 Commissioner Harrington.

7 CMSR. HARRINGTON: Yes. Just a  
8 follow-up on that, on the Motion for Burden of Proof.  
9 Forgetting the dates just for a second, is it the  
10 Companies' position that that issue needs to be resolved  
11 before the start of the hearing?

12 MR. CARTER: Yes, sir, and for a really  
13 good, practical reason. It's going to dictate how the  
14 entire proceeding goes forward. In other words, if, by  
15 analogy, if this were a civil enforcement case before the  
16 Superior Court, or other cases, adjudicative proceedings  
17 before the Commission, the Staff would go first, it would  
18 present its witnesses, and then we would have a chance to  
19 cross-examine, and then present our case, and then there  
20 might be an opportunity for rebuttal. I would expect  
21 that, if the Staff's position on burden of proof prevails,  
22 the nature of the proceeding itself will be far different.

23 CMSR. HARRINGTON: So, if, for whatever  
24 reason, the ruling was not made prior to the scheduled

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1 hearing, you would propose that the hearing be delayed, if  
2 necessary, in order to get the ruling made first?

3 MR. CARTER: I would -- well, --

4 CMSR. HARRINGTON: I'm not saying what  
5 you preferred, but I'm just trying to get --

6 MR. CARTER: That relates back to where  
7 I started, in terms of the -- there is the ISO, the cure  
8 of the ISO, which PNE believes will be imminent. And,  
9 then, there's been the voluntary suspension pending the  
10 outcome of the show cause hearing by PNE. Resident Power  
11 is not under any suspension. However, it is operating  
12 under the shadow of the allegations raised in the Staff  
13 recommendation regarding slamming.

14 And, until those issues can be resolved,  
15 in essence, Resident Power is operating under a sword of  
16 Damocles, if you will. And, PNE is in purgatory, and that  
17 both Companies risk the loss of their viability by the  
18 delay.

19 In the event -- Attorney Amidon I think  
20 began to address what possibly could be a solution, which  
21 is, if the ISO was cured, and if the decision is made that  
22 it would be difficult to proceed with a hearing, or  
23 "preferable", I should say, I think we all can agree that,  
24 you know, a hearing can continue next week, just a matter

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 of whether, you know, what's required for that to occur.  
2 There's no -- it's not an impossibility. However, we  
3 would entertain the idea of, pending the cure of the ISO,  
4 which is not a matter for the Commission, it's a matter  
5 for my client, to, if they were permitted to continue to  
6 service customers, certainly in full compliance with all  
7 of the rules, and with close consultation with the Staff  
8 and with the OCA, --

9 CMSR. HARRINGTON: So, you're proposing  
10 that PNE would be able to take on new electric customers?

11 MR. CARTER: Yes.

12 CMSR. HARRINGTON: Okay.

13 MR. CARTER: With respect to Resident  
14 Power, I appreciate that the issue of slamming has been  
15 the subject of a prior docket, and that issue remains  
16 unresolved. And, one of our paramount objectives in this  
17 proceeding is to demonstrate that, as a factual matter,  
18 that allowing Resident Power to port its former customers  
19 does not constitute slamming. And, so, we would like to  
20 have the opportunity to present that evidence starting  
21 next Wednesday.

22 It would be much easier for Resident  
23 Power to deal with a delay of this proceeding, if there  
24 were some ability to resolve that issue, which, at this

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 point, is really preventing it from doing any business.

2 So, I'd be happy to answer any other  
3 questions, but thank you very much.

4 CHAIRMAN IGNATIUS: Thank you. I want  
5 to get around to everyone on a lot of issues --

6 (Court reporter interruption.)

7 CHAIRMAN IGNATIUS: -- that we need to  
8 address and hear from each of the parties on. So, let's  
9 turn to the OCA, and you can take them on in any order  
10 that occurs to you.

11 MS. HOLLENBERG: Thank you. Thank you.  
12 Just would suggest that there possibly is some recent  
13 precedent at the Commission with regard to the burden of  
14 proof. In the Northern show cause case, which was DG  
15 11-196, I think the Commission made a determination in  
16 that docket, I don't recall specifically what the ruling  
17 was, but that might be a source of information for the  
18 parties and the Commission.

19 The Companies did provide me with a  
20 confidential copy of the response to the Commission that  
21 they filed. So, I wanted you to know that. That is  
22 mentioned in the Staff's objection to the Motion for  
23 Confidential Treatment. So, we do have a confidential  
24 version of the Companies' filing at this time.

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 CHAIRMAN IGNATIUS: Are you taking about  
2 the discovery response?

3 MS. HOLLENBERG: Yes, ma'am.

4 CHAIRMAN IGNATIUS: Thank you.

5 MS. HOLLENBERG: And, we do support,  
6 however, continue to support the Staff's motion --  
7 objection to the Motion for Confidential Treatment, and  
8 are looking -- we do believe that, given the discussions  
9 this morning, that it will be likely that we will resolve  
10 those issues with the Companies.

11 At this point, I don't anticipate having  
12 a witness or any type of active role of putting on a  
13 direct case in this proceeding. And, we don't really have  
14 a position yet on the motion for the burden of proof. I  
15 will take a look at that. I got that this morning.

16 And, I guess I'm not going to take a  
17 position on the dispute that's going on right now, about  
18 whether or not the hearing -- I think the primary issue is  
19 whether or not the hearing will occur next week. And, so,  
20 to the extent that we can resolve that issue as soon as  
21 possible, that, obviously, would be helpful, in terms of  
22 preparation for the hearing.

23 CHAIRMAN IGNATIUS: Do you have a  
24 position on whether it should go forward Wednesday or be



[REDACTED - FOR PUBLIC USE]

1 extended?

2 MS. HOLLENBERG: I guess I -- I  
3 understand the concerns that the Company has raised about  
4 a delay. And, I hear what they're saying about needing to  
5 have information before the hearing. I don't -- they did  
6 propound a discovery request on the OCA, there's one  
7 question. I don't anticipate having any difficulty  
8 responding to that by Monday. But I do recognize that  
9 Staff had a good number of more questions than we did.

10 And, in terms of whether or not we would  
11 agree to delaying the hearing on the condition that the  
12 Company's voluntary suspension, the PNE's voluntary  
13 suspension is lifted, presuming curing the default at ISO,  
14 I guess my only concern is maybe, to the extent that it's  
15 possible, maybe there might be an opportunity for some  
16 additional surety in the interim, just to have as a safety  
17 net for customers.

18 I worry about the -- I worry about  
19 customers' perception that the suspension would be lifted  
20 during an investigation, given the allegations, without  
21 something as a -- something additional there. And, I  
22 don't know exactly whether or not that's provided for by  
23 the rules, but perhaps that's something that we can talk  
24 about with the Companies and Staff.

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 CHAIRMAN IGNATIUS: So, and I realize  
2 you're sort of thinking as you go here, --

3 MS. HOLLENBERG: Uh-huh.

4 CHAIRMAN IGNATIUS: -- but would the  
5 thought be that, if there were an ISO agreed upon  
6 resolution that lifted the suspension status at ISO, that  
7 you might also advocate for an additional New Hampshire  
8 PUC surety, some escrowing of some funds for the sake of  
9 New Hampshire customers?

10 MS. HOLLENBERG: Something, off the top  
11 of my head, that's just -- it seems that it would be  
12 appropriate, in light of the allegations and the fact that  
13 there's a proceeding pending, that there would be a signal  
14 to the public that, you know, it's just a little bit more  
15 than "business-as-usual", I guess. There's a little more  
16 protection than business-as-usual. But there's still this  
17 pending proceeding, and the allegations haven't been  
18 decided, so, we're going to allow them to continue to  
19 operate, so long as the financial issues have been  
20 resolved.

21 CHAIRMAN IGNATIUS: All right. And,  
22 we'll come back to the Companies later for -- if you have  
23 any reaction to that, I don't know if that's something  
24 that was floated in the --

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1 MS. HOLLENBERG: I mentioned it, but it  
2 really was off the top of my head.

3 CHAIRMAN IGNATIUS: And, when we get  
4 back to it, I'll be curious, I meant to ask you before,  
5 when you said the "ISO cure is imminent", what that means,  
6 put a little flesh on that one, but we'll come back to  
7 that.

8 Anything else from the Consumer  
9 Advocate?

10 MS. HOLLENBERG: Not that I can think  
11 of. But, if you have a specific question for me about --  
12 about the case, I apologize, I'm relatively new to the  
13 case as well.

14 CHAIRMAN IGNATIUS: All right. Staff,  
15 response to any of the things that we have just been  
16 through or any further detail as it sort of develops as  
17 we're going here?

18 MS. AMIDON: Yes, we do. While we heard  
19 this morning that, from Attorney Deschenes, that he was  
20 going to attempt to respond to some of Staff's concerns  
21 about the redacted material that they provided in response  
22 to the Commission's order, until such time as we see  
23 those, we reserve our right to comment on whether or not  
24 there -- it has satisfied the objection.

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1                   Regarding Mr. Carter's indication that  
2                   he wanted discovery, I think he said he wanted discovery  
3                   of e-mail going back in time, or perhaps he has access to  
4                   them otherwise. As you know, we -- the PUC changed over  
5                   to the Granite system, I forget how long ago that was, two  
6                   months ago, three months ago. So, we don't have access --  
7                   all that e-mail was -- prior to that I think was -- we  
8                   don't have access to it, because I think all the e-mail  
9                   prior to the conversion to this new IT system, all of  
10                  that's no longer available to us. So, I don't know what  
11                  Mr. Carter plans to do about that.

12                                   (Atty. Amidon and Atty. Shulock  
13                                   conferring.)

14                                   MS. AMIDON: Okay. And, Attorney  
15                   Shulock just reminded me, we would probably need copies of  
16                   them, if he's -- but, if he's going to introduce them as  
17                   an exhibit, then I guess we would have copies.

18                                   We still reserve our right to ten days  
19                   to respond to the motion that was filed this morning and  
20                   to the discovery that was filed yesterday. And, one of  
21                   the compelling reasons is we don't have an attorney who  
22                   can work over the weekend to prepare the DRs. But, more  
23                   importantly, Ms. Noonan is not available until Monday.  
24                   So, it's just virtually impossible for us to do any

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 expedited turnover of discovery, and we would still  
2 request the ten days.

3           There was some reference that was made  
4 to "slamming". I don't believe the Staff's memorandum  
5 that was filed with the Commission mentioned "slamming".  
6 So, I'm not sure why that was mentioned at this hearing  
7 this morning.

8           And, finally, insofar as this proposal  
9 to let PNE come and do business once its suspension at the  
10 ISO is removed by curing its default for, I don't know if  
11 it was for billing purposes, for financial assurance  
12 purposes, or for other issues related to the billing  
13 attachment to the ISO tariff, the argument has been made  
14 that they would -- that, once that suspension at the ISO  
15 is lifted, that they could continue -- that they could  
16 resume doing business in New Hampshire. We haven't had a  
17 chance to discuss that with Staff. And, if you wanted an  
18 answer this morning, we would have to take a break to  
19 discuss that separately with Staff, Mr. Mullen.

20           And, if there are any additional  
21 questions that you have, I'd be happy to answer them.

22           CHAIRMAN IGNATIUS: That's fine. I am  
23 curious to know, there were a lot of comments that  
24 Mr. Carter made regarding Staff's position on burden of

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1 proof, but I don't know if that, in fact, is Staff's  
2 position on burden of proof. And, so, although you may  
3 not have had a chance to digest the motion filed today,  
4 you know, it all relates to the issue of what is the  
5 appropriate burden of proof. Does Staff have a position  
6 thus far?

7 MS. AMIDON: Well, just to -- I didn't  
8 want to get into a "he said/she said", but to provide you  
9 some background on that. When Mr. Deschenes and  
10 Mr. Carter, last Thursday, or was it Friday? I think it  
11 was Friday. Mr. Shulock was out of the office, I was in  
12 the office. And, apparently, Mr. Deschenes attempted to  
13 contact Mr. Shulock, and ended up sending us an email  
14 saying "would we consent to the motion for the prehearing  
15 conference?" I talked with Staff, and Staff -- and one of  
16 the issues that they raised -- he raised in his e-mail was  
17 "burden of proof", and I was familiar with the Wilton  
18 case. So, I discussed with Staff. Staff conveyed their  
19 position that they didn't think a prehearing conference  
20 was necessary. And, I conveyed that to him. And, at the  
21 same time, I suggested that he look at that case. It was  
22 merely one example where I knew that the Commission had  
23 previously ruled on it. And, out of a matter of courtesy,  
24 I was just trying to refer it to him to see if that might

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 help him in determining whether or not we needed to have a  
2 prehearing conference to discuss the burden of proof. So,  
3 that's how all that came about.

4 So, I hadn't looked at that case. I  
5 don't think the burden of proof -- well, I don't think I  
6 could really comment. I have not read the motion that was  
7 filed this morning. I was preparing for the pre-meeting  
8 with the attorneys for the Companies. And, so, that's why  
9 I asked for the ten days to respond, because we -- I need  
10 to examine the arguments that they bring. And, I'm not  
11 familiar, if they -- he referred to some Supreme Court  
12 cases or federal cases, I have not reviewed those. So,  
13 I'm not sure that they would pertain to a process before  
14 the Commission, because, as I said, the Commission is a  
15 quasi-judicial agency and doesn't necessarily adhere to  
16 all of the same strictures as a court, but I would want a  
17 chance to look at that.

18 CHAIRMAN IGNATIUS: All right.  
19 Commissioner.

20 CMSR. SCOTT: Thank you. I understand  
21 you'd like ten days, and I digested that. I was curious  
22 what your reaction would be to, we've, obviously, noticed  
23 and have scheduled both the 21st -- excuse me, the 20th  
24 and the 22nd, I believe, for hearings, I don't know how

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 long this would take. But, if, instead of the -- I'm just  
2 thinking out loud, obviously, but, instead of the  
3 Wednesday next week for the beginning of the hearing, we  
4 did the Friday, do you think that that extra time would  
5 allow you to do what you need to do?

6 MS. AMIDON: I will note that on your  
7 schedule and on my schedule is a hearing on Tuesday  
8 morning. So, whether I could do that, I would have to  
9 work with Mr. Shulock. And, so, until we have a chance to  
10 discuss that, I wouldn't be able to answer you. I  
11 apologize.

12 CMSR. SCOTT: Okay.

13 CHAIRMAN IGNATIUS: All right. Why  
14 don't we hear if the Companies have any help for me on  
15 what the "ISO cure being imminent" really means, to the  
16 best of your understanding? And, if the idea that  
17 Attorney Hollenberg threw out is just sort of a concept,  
18 without a lot of detail yet, but whether there's anything  
19 there that could be useful as a way to both allow  
20 something to move forward and some delay, if needed, in  
21 reaching resolution of all of the issues on the hearing  
22 themselves, any responses you have to that?

23 MR. CARTER: Thank you. We expect --  
24 excuse me -- the cure, the ISO cure to be accomplished by



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1 Thursday of next week, possibly sooner.

2 CHAIRMAN IGNATIUS: And, help me,  
3 because we see a lot of ISO notices, they're confidential,  
4 so, I won't go into them, and ask you not to go into them.  
5 But, if you can just describe generally what it is, if you  
6 can do this without going into confidential matters, what  
7 it is that's being cured? What restrictions the Company,  
8 PNE, is under that will be lifted?

9 And, one other thing, if there's no way  
10 to do this without going into confidential materials, then  
11 we will mark the transcript a "confidential" portion,  
12 we'll ask certain people to leave the room. So, let's  
13 first do everything we can without confidential materials.

14 MR. CARTER: I believe I can answer your  
15 question appropriately without going into confidential  
16 material. I know that this is addressed in one of our --  
17 I believe it was in response to Question Number 6 to the  
18 data requests. PNE remains a member of the NE Pool. The  
19 cure of the ISO default is a matter of restoring the  
20 financial assurance account, which is simply a payment.  
21 Once that payment is made, the ISO suspension, ISO default  
22 is lifted.

23 CHAIRMAN IGNATIUS: And, has PNE worked  
24 out with ISO, is it clear what the amount of payment would

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1 be required? Is that fairly straightforward to be able to  
2 calculate?

3 MR. CARTER: Yes, it is. And, I'm sorry  
4 to interrupt. It's designated in our answers to the data  
5 -- the Information Request Number 6.

6 CHAIRMAN IGNATIUS: And, so, it's your  
7 expectation that, by Thursday of next week, the 20 -- is  
8 that the 21st?

9 MR. CARTER: That would be the 21st.

10 CHAIRMAN IGNATIUS: Or possibly earlier,  
11 that payment will be made and the ISO suspension would be  
12 formally lifted?

13 MR. CARTER: That is correct.

14 CHAIRMAN IGNATIUS: And, you said this  
15 before, Resident Power has no ISO issues pending? There's  
16 no suspension or --

17 MR. CARTER: Correct. That's correct.  
18 Resident Power has not -- has been, let's say, on hold as  
19 a result of the slamming allegations that Staff raised.  
20 And, if I could point out that "slamming" is raised on  
21 Page 5 of their recommendation, and it's raised again --  
22 and that issue is picked up on Page 3 of the Order of  
23 Notice. And, the issue, the "slamming" allegations are  
24 integrally involved, entwined with all of the facts here,

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 because the question of whether Resident Power's ability  
2 to consummate the transfer of PNE customers to FairPoint,  
3 or whether doing that after a certain date would  
4 constitute "slamming", was central to a lot of the issues  
5 which gave rise to the ISO default, the Staff's concern,  
6 their recommendation and Report and what brings us here  
7 today.

8 And, it's that allegation of "slamming",  
9 which is, again, preventing right now some large number of  
10 Resident Power customers, who are on default service with  
11 PSNH paying higher rates than they would if the porting  
12 over to FairPoint had been completed as Resident Power,  
13 FairPoint, and, up to a certain point, Staff had  
14 attempted. PSNH objected. I note that, in a Footnote 4  
15 of a supplemental objection filed by PSNH in docket 295,  
16 they mapped out their theory of "slamming", which was then  
17 presented by the Staff. We need to have that issue  
18 resolved, because, otherwise, the Company will -- its  
19 business will fail, because it's backed into a corner and  
20 can't do anything.

21 We don't believe that completing the  
22 transfer of those customers to FairPoint at a lower rate  
23 is "slamming". We believe that we can -- we will show or  
24 present evidence in an argument which we believe will

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 convince the Commission that the aggregation agreement  
2 between Resident Power and those customers remain valid,  
3 and that a transfer should be allowed to continue for the  
4 benefit of the customers. The only person that's  
5 benefiting by not allowing it, to be blunt, is PSNH.

6 CHAIRMAN IGNATIUS: All right. Well,  
7 we'll get to all of that, I'm sure. Let me ask you a  
8 couple of other questions. First, Commissioner  
9 Harrington.

10 CMSR. HARRINGTON: Yes, just before we  
11 left this issue, on the scheduling part of it. Do you  
12 need the answers to the discovery from Staff prior to the  
13 start of the hearing? Is that mandatory that you get all  
14 of those answers before we can start the hearing?

15 MR. CARTER: Yes. And, if I could just  
16 expound on that just a bit. The Staff recommendation  
17 asked for a hearing, and I'll quote, "as soon as  
18 practicable", and that's at Page 7, and the Commission  
19 obliged. The Staff asked that we respond to 11 voluminous  
20 data requests, and we obliged. The Staff opposed this  
21 conference, but the Commission granted it to us. I  
22 presume that, if we had not had this conference, we would  
23 have been off to the races next Wednesday.

24 Again, I don't want to repeat myself,

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 but the information that we requested is what I -- we  
2 submitted very narrowly tailored requests. As Attorney  
3 Hollenberg mentioned, we submitted a total of one request  
4 to the OCA, to find out if there were, as Staff alleged,  
5 these 84 complaints filed? And, thank you for the -- I  
6 would like to address very briefly the issue of  
7 correspondence. What we have --

8 CMSR. HARRINGTON: Could you just -- I'm  
9 just trying to get the answer to the question.

10 MR. CARTER: Sure.

11 CMSR. HARRINGTON: So, what you're  
12 saying then, and just so we're clear, that it's your  
13 position that you need to have the Staff answer the  
14 discovery questions prior to the start of the hearing.  
15 And, how many questions are involved?

16 MR. CARTER: I believe we submitted four  
17 to the Staff.

18 CHAIRMAN IGNATIUS: Yes. We haven't  
19 seen --

20 MR. CARTER: I stand corrected, eight.  
21 Eight. Predominantly, they asked that -- they're  
22 duplicative to a certain extent with what we submitted to  
23 the OCA. So, if they're produced by the OCA, that's taken  
24 care of. We asked for them to provide us with the

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1 evidence, which they apparently already have, we asked  
2 them to substantiate -- provide evidence to substantiate  
3 some of the allegations in their recommendation. I  
4 wouldn't expect that, if they put those facts in the  
5 recommendation, it would be much of a task to then provide  
6 us with that same information.

7 We asked for, then perhaps the broadest  
8 category is correspondence with PSNH, regarding PNE and  
9 Resident Power and the issues that are before the  
10 Commission. That correspondence would only have been  
11 generated within the last month and a half.

12 CMSR. HARRINGTON: Just to follow up  
13 then. So, it sounds like what you're saying is, you need  
14 the ruling on the motion for the burden of proof, you need  
15 the answers to discovery before a hearing can start. And,  
16 you seemingly offered an optional course, and I want to  
17 get this straight. And, that is, if you were to cure the  
18 default with ISO and the suspension was lifted, that, if  
19 you at that point were allowed to resume business in New  
20 Hampshire, that you wouldn't object to delaying the  
21 hearing past Wednesday? Or are you still -- or are those  
22 two totally separate issues? I'm trying to get that  
23 straight.

24 MR. CARTER: I'm not trying to dodge

[REDACTED - FOR PUBLIC USE]

1 your question.

2 CMSR. HARRINGTON: No. Okay.

3 MR. CARTER: But if I could just answer  
4 it like this. We very much want to go forward on  
5 Wednesday.

6 CMSR. HARRINGTON: Okay.

7 MR. CARTER: I don't want to repeat  
8 myself. One of the main threats that we face is the  
9 voluntary suspension pending the outcome of the show cause  
10 hearing, provided we're able to handle the ISO cure. An  
11 agreement, as I've -- as we've all been discussing, to  
12 allow PNE to continue operations, continue to serve  
13 customers, would eliminate the -- in the short term, some  
14 of the problems that PNE would face by a continuance of  
15 the hearing. So, although we object to a continuance, we  
16 would, as a fallback, as to PNE, we would need to have  
17 something there to allow the Company to proceed.

18 As to Resident Power, the "slamming"  
19 allegations have been left to resolution by the hearing.  
20 And, until those are resolved, we are at risk of losing  
21 our entire customer base. So, I'm afraid I don't have  
22 anything more to offer on that point. We have -- we had a  
23 collegial discussion this morning about procedural and  
24 substantive issues, you know, perhaps continuing those

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 discussions, which we intend to do, will allow for a  
2 remedy that we could present to the Commission that will  
3 address both the PNE and the Resident Power concerns.  
4 And, that -- I hope that provides some clarity.

5 CHAIRMAN IGNATIUS: And, were you even  
6 suggesting the possibility of going forward on Wednesday  
7 on, if need be, going forward on Wednesday with Resident  
8 Power, because some other arrangement is worked out  
9 regarding PNE, or am I reading too much into the way  
10 you've structured your sentences there?

11 MR. CARTER: Well, this is a combined  
12 proceeding. So, I didn't mean to suggest we'd go forward  
13 on Resident Power and wait on PNE. What I meant to say  
14 is, the solution of allowing PNE to continue with  
15 safeguards acceptable to everyone after the ISO cure would  
16 remove the most immediate threat to PNE, but it would  
17 still leave Resident Power staring in the face of these  
18 "slamming" allegations that Staff had raised.

19 If Staff were to withdraw those, I  
20 understand there is some question about whether that is  
21 something they want to proceed with, that might remove  
22 that obstacle.

23 CHAIRMAN IGNATIUS: Okay. Thank you.

24 MR. CARTER: Thank you.



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1                   CHAIRMAN IGNATIUS: A couple of other  
2 questions, I was looking back at your motion for a  
3 prehearing conference, you had also asked for development  
4 of what you called a "full procedural schedule". Is there  
5 anything further on a procedural schedule you want to  
6 address?

7                   MR. CARTER: Thank you.

8                   CHAIRMAN IGNATIUS: And, one other, I'll  
9 just let you, I mean, work it in as you see fit. Is you  
10 asked for the "opportunity for prehearing memoranda",  
11 which isn't something we normally do. And, I don't know  
12 if that's something you're also asking for in this case?

13                   MR. CARTER: We think it would be very  
14 helpful, to frame the issues for the Commission and to  
15 provide for the more orderly, prompt adjudication of the  
16 many issues that have been raised. And, so, we would,  
17 appreciating it's not something that's ordinarily done,  
18 this isn't an ordinary case, and I think that it would be  
19 helpful to the Commission to understand what the facts  
20 are.

21                   And, as a matter of, you know, they  
22 would, by necessity, they would be relatively limited in  
23 length, given the time we have here. But I do think it  
24 would be helpful for the Commission, and my client would

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 appreciate the opportunity to, in advance of the hearing,  
2 to respond to some of the very detailed allegations that  
3 are contained in the Report, to help frame the issues more  
4 appropriately before the hearing starts.

5 CHAIRMAN IGNATIUS: I guess I have a  
6 couple concerns about that. One is, if we're trying to  
7 accelerate to meet the Wednesday deadline, adding anything  
8 else is problematic, it could be more easily granted with  
9 a delay.

10 MR. CARTER: Uh-huh.

11 CHAIRMAN IGNATIUS: But I know that's  
12 not what you want. So, I assume, between, if that were  
13 the choice, to allow for the filing of the memoranda, but  
14 a delayed schedule, you'd prefer to go forward and  
15 jettison the memoranda, correct?

16 MR. CARTER: Yes.

17 CHAIRMAN IGNATIUS: Okay.

18 MR. CARTER: Perhaps we could have a --  
19 if that is the decision, perhaps we could address the  
20 issue of, for example, opening statements, and --

21 CHAIRMAN IGNATIUS: Yes. The other  
22 thing is, we, I mean, we always hear arguments in  
23 closings, either written or orally. We -- our interest is  
24 to get as quickly as we can to real evidence, and

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 testimony, real adjudication of facts, rather than  
2 people's arguments about what the facts will mean when we  
3 finally get around to hearing the facts, we'd rather just  
4 move straight to that, and then give an opportunity for  
5 closing arguments, to kind of summarize it, put it into  
6 context, explain how it does or doesn't meet our rules or  
7 statutes.

8 MR. CARTER: I understand. If you just  
9 give me a moment. This is -- the Staff has submitted a  
10 very, very detailed account of what it believes the  
11 situation to be. As I -- as we noted in our motion this  
12 morning, there is much more to be said and that needs to  
13 be said to provide a more balanced account of both the  
14 historic facts, "historic" meaning beginning with the  
15 registration of PNE and Resident Power, and Staff's  
16 involvement, understanding in the businesses and the  
17 relationship. And, also, much more to be said about the  
18 level of communication and cooperation and work that was  
19 going on between my clients and Staff during the critical  
20 period beginning with, you know, the last week or two of  
21 January, leading up to the ISO default. And, we are -- we  
22 find ourselves in the position here where we have a very  
23 limited amount of time to prepare for a hearing that we  
24 need to proceed with because of the -- the stage has

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 already been set.

2 The Staff has had a full opportunity to  
3 air its position through its Report, and our concern is  
4 trying to make sure that, when we go -- that my client has  
5 some comfort that, when we go forward with the hearing,  
6 it's on an even playing field, where they're not facing an  
7 uphill battle. That is the reason or -- and, I'm not  
8 questioning the impartiality of the Commission or that you  
9 prejudge the case, I'm only basing it on the written  
10 filings in the docket. And, that was the reason why I  
11 advocated or requested the opportunity to file, you know,  
12 even a brief prehearing memoranda, so that the Commission  
13 going into this proceeding has some idea or a further  
14 appreciation that there's a lot more to this story than  
15 one would ever get by reading the Staff recommendation.

16 CHAIRMAN IGNATIUS: All right.

17 MR. CARTER: That's it. Thank you.

18 CHAIRMAN IGNATIUS: Thank you.

19 Commissioner Scott.

20 CMSR. SCOTT: At the beginning of your  
21 response regarding the ISO cure, you mentioned, if I  
22 understood correctly, that we could look to the Staff Data  
23 Request Number 6, your responses to that. And, I just  
24 want to make sure we're on the same, for the package that

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 at least I have on the Bench here, we don't have Tab --  
2 there's no Tab 6. There's Tab 1 through 5, and then 7  
3 through 11.

4 MR. CARTER: There's a narrative,  
5 Commissioner, that --

6 CMSR. SCOTT: Okay.

7 MR. CARTER: -- which I -- I shouldn't  
8 have used the word "tab", I apologize, I should have -- if  
9 I did. I meant to say "in the answer to Question 6".

10 CMSR. SCOTT: I used "tab", you did not.

11 MR. CARTER: There is not a tab. There  
12 are not 11 tabs, because not each answer required a  
13 separate compendium of documents.

14 CMSR. SCOTT: Okay. So, it is -- thank  
15 you. I just wanted to make sure we had everything we  
16 needed.

17 MS. AMIDON: Commissioner Scott, just  
18 for your information, it's in the text of the cover  
19 letter.

20 CMSR. SCOTT: Thank you very much.

21 MS. HOLLENBERG: We actually don't have  
22 that cover letter, if we could get that?

23 MR. CARTER: Absolutely. Sorry.

24 CHAIRMAN IGNATIUS: Commissioner

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1 Harrington, a question?

2 CMSR. HARRINGTON: Yes. I want to ask a  
3 question, and it's in the confidential section. So, I  
4 want to try to avoid saying anything confidential. But  
5 it's in your -- I don't know, what we're calling it, I  
6 guess your response --

7 MR. CARTER: Yes.

8 CMSR. HARRINGTON: -- to the data  
9 responses. And, on the second page, under the Section 6,  
10 it's about how you plan on curing the financial default  
11 with ISO-New England. And, you talk -- I'm not going to  
12 use any of the numbers that are in here, but you talk  
13 about different ways that you're going to be able to do  
14 this. And, it seems like some of the dates you mention  
15 here about getting some monies to help cure the response  
16 are after next Thursday. So, am I missing something or --

17 MR. CARTER: The information that we  
18 provided was our best understanding on the day we  
19 submitted those.

20 CMSR. HARRINGTON: Okay.

21 MR. CARTER: I believe it was Tuesday.  
22 The Company has been working full force to address these  
23 issues. It's had success in doing so. And, I'm --

24 CMSR. HARRINGTON: So, you have --

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1 excuse me. You have a high degree of confidence that next  
2 Thursday the default will be cured?

3 MR. CARTER: Yes, sir.

4 CMSR. HARRINGTON: Okay. Thank you.

5 MR. CARTER: Or sooner.

6 CMSR. HARRINGTON: That answers my  
7 question.

8 CHAIRMAN IGNATIUS: Ms. Amidon, do you  
9 have more to add? Because I'll tell you what my hope is,  
10 that we get anything else left that people needed to  
11 mention on any of these issues, and this is unusual, we've  
12 got so many things going at once, and we're just kind of  
13 working our way around the room. And, then, we'll take a  
14 brief caucus to discuss it and come back. So, what else  
15 left that people needed to get back to us on in any  
16 responses?

17 MS. AMIDON: Well, I don't want to get  
18 into argument here. But, I think, first of all, I just  
19 want to say, from Staff's concern, Staff's not concerned  
20 about what Staff knew at what time. It's whether  
21 customers knew what was happening to their accounts,  
22 whether they were getting appropriate notices, and whether  
23 they were being transferred to other suppliers without  
24 their consent. But I did not correctly understand the

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 issue regarding "slamming", and I'd like Mr. Shulock to  
2 address that, if you would give us a chance?

3 CHAIRMAN IGNATIUS: Of course.

4 MR. SHULOCK: There are two slamming  
5 issues here, and neither one is really involved in this  
6 proceeding. The Resident -- in Staff's recommendation and  
7 in the Commissioners' Order of Notice, slamming by  
8 Resident Power is discussed in terms of the emergency  
9 petition that Resident Power filed for a declaration that  
10 it would not be committing slamming under certain  
11 circumstances. And, the Commission found in its order  
12 that the facts and circumstances were not definite and  
13 concrete enough for the Commission to give that  
14 declaratory judgment. Whether there's slamming here is  
15 not an issue, it's not an allegation in the case, we  
16 haven't cited a slamming violation rule for Resident  
17 Power. Their choice not to aggregate customers and  
18 proceed with their business is their own. In your Order  
19 of Notice, you specifically stated that they could go on  
20 and enroll customers and aggregate them and continue their  
21 business. If they're choosing not to do so, and that's --  
22 that's really of their own doing. I don't think that  
23 that's a reason to rush to the hearing on Wednesday, that  
24 they can't conduct business because of this pall hanging

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}



1 over their head.

2 The other slamming issue is a slamming  
3 issue by PNE. That's a developing issue. It was not  
4 brought forth in the Staff's recommendation in this case.  
5 And, there were no rule violations noted associated with  
6 slamming by PNE. But there is investigation going on in  
7 that regard, but also that that's not involved in  
8 Wednesday's hearing, so that that also is not a reason to  
9 go to hearing on Wednesday.

10 And, in terms of lifting the suspension,  
11 if they're able to cure at ISO, we would need to break and  
12 talk to Staff about that, because it's not simply a matter  
13 of lifting their suspension. \_\_\_\_\_  
14 \_\_\_\_\_. They have not  
15 registered to serve the C&I customers that they want to  
16 enroll and serve beginning on Thursday. And, so, there  
17 are some procedural things that they would have to do, in  
18 addition to just having that suspension lifted. And,  
19 Staff would want to have the opportunity to talk about  
20 that.

21 CHAIRMAN IGNATIUS: \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_?

24 **MR. SHULOCK:** \_\_\_\_\_

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**CHAIRMAN IGNATIUS:** \_\_\_\_\_

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\_\_\_\_\_.

**MR. SHULOCK:** \_\_\_\_\_.

**CHAIRMAN IGNATIUS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_?

MR. SHULOCK: That's correct. And, I've just been told, informed, I have to do a *mea culpa*, that may be confidential.

CHAIRMAN IGNATIUS: And, my apologies as well. Is there anything else you wanted to add?

MS. AMIDON: No. Thank you.

CMSR. HARRINGTON: Just could I ask a follow-up question? I'm trying to get that straight, since now the cat is out of the bag \_\_\_\_\_  
\_\_\_\_\_. Is it that --

CHAIRMAN IGNATIUS: Well, before we go on, let me ask --

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1 MR. SHULOCK: They didn't let the cat  
2 out of the bag, sir.

3 CHAIRMAN IGNATIUS: Yes. Before we go  
4 on, if we do need to go into this, I would like anyone who  
5 is not here with PNE, Resident Power, OCA, or Staff, to  
6 please leave the room. And, sir, I apologize, I don't  
7 know who you are. Are you with --

8 MR. BODI: I'm just an observer.

9 CHAIRMAN IGNATIUS: On behalf of who?

10 MR. B. FROMUTH: He's with me.

11 MR. BODI: With Resident Power.

12 MR. A. FROMUTH: He's with Resident  
13 Power, Chairman.

14 CHAIRMAN IGNATIUS: All right. Your  
15 name, sir? Your name please?

16 MR. BODI: Mark Bodi.

17 CHAIRMAN IGNATIUS: Oh. Thank you. I  
18 knew you looked familiar. I couldn't figure out why.  
19 Thank you.

20 (The hearing continues under separate  
21 cover designated as "**CONFIDENTIAL &**  
22 **PROPRIETARY**" and includes Page 52  
23 through Page 57.)  
24

[REDACTED - FOR PUBLIC USE]

1 (Public session resumes.)

2 CHAIRMAN IGNATIUS: All right. We are  
3 back on a public record. And, I just want to assure  
4 people, there was some question about the status of some  
5 information that has not yet been ruled on, it's  
6 confidential status, whether it's protected or not. And,  
7 the norm, the practice in our rules require that something  
8 that's pending confidential ruling should be kept  
9 confidential. So, that applies to parties, to any other  
10 participants, any observers, to protect anything that is  
11 in that pending status. And, we appreciate your  
12 assistance in that.

13 While we were breaking, we also caucused  
14 among ourselves, the Commissioners caucused, and this is  
15 what we would propose to do: We recognize the need to  
16 find a balance between giving people an opportunity to  
17 prepare and respond to requests. The Company was given a  
18 very short time frame to respond to a lot of data  
19 requests, and needed a few extra days. It worked  
20 diligently, and it met that deadline, and we appreciate  
21 that. The Staff now has a less extensive packet, but a  
22 number of questions to respond to, OCA, sounds like one  
23 question to respond to. And, in order to try and find a  
24 balance, with the Companies' needs to move forward and get

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 to a timely resolution of these issues, and the rights of  
2 everyone to adequately prepare and have a meaningful  
3 record, we will use the Friday date, March 22nd, as the  
4 first day of a hearing, and not proceed on Wednesday, the  
5 20th. So, that gives another preparation day for  
6 everyone. If we can conclude this in one day, that's a  
7 good thing. And, the more we've worked out in advance the  
8 better. And, if there's any stipulated facts or any  
9 agreement on any issues, so much the better. That's  
10 always much more quickly. Particularly, I'm struck with  
11 the comments about needing emails going back to the  
12 pre-registration phase. And, those may be some things  
13 that could be stipulated to. And, I don't know, I'll  
14 leave it to you to work that out, if it's possible. And,  
15 if that would move things along, then so much the better.

16 If an additional hearing date is needed  
17 after the 22nd, we'll have to -- we'll have to look for  
18 that date and find something as quickly as we can. It's  
19 probably a good idea to start at 9:00 in the morning on  
20 Friday, to give us an additional hour, and run later than  
21 4:30, if need be, within reason. So, to run till  
22 5:00-5:30 Friday afternoon, if need be.

23 We would like the discovery responses by  
24 OCA and Staff to be submitted no later than Thursday

{DE 13-059 &amp; DE 13-060} [Prehearing conference] {03-15-13}

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1 morning, at 9:00 in the morning. If they can come in  
2 sooner, that's fine, but no later than that. And,  
3 obviously, delivered by e-mail to the parties, so there's  
4 no delay in people receiving the information.

5 On the memorandum of law regarding  
6 burden of proof, if the Staff or OCA would like to file  
7 anything in response, it's free to do so. We would want  
8 that to be received by, I would say, the close of business  
9 Tuesday, in order for us to respond. If Staff or OCA is  
10 not available to work on that, and working on other  
11 things, that's fine. We can, on issues of law, we don't  
12 need to have responses from people. They're not factual  
13 allegations, and we can evaluate the law and deal with it  
14 on our own. So, I really leave that to you, in juggling  
15 the different preparation needs that you have.

16 We will issue an order prior to the  
17 commencement of the hearing, obviously, on burden of  
18 proof. We would have it out -- did I just say "Tuesday"  
19 for the --

20 CMSR. HARRINGTON: Yes, close of  
21 business, just for the --

22 CHAIRMAN IGNATIUS: Yes. So, it will be  
23 out during the day Wednesday or very early Thursday  
24 morning, because we now have the day free on Wednesday as

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1 well. And, there may be a few other issues that we can  
2 address in the context of that order to help with the  
3 moving forward on Friday in as streamlined a way as  
4 possible.

5 One of the things that we will want to  
6 hear on Friday will be the status with the ISO suspension.  
7 And, that we will want to hear if there's any formal  
8 written indication of the status, that would be something  
9 to submit under confidential basis. What we do with the  
10 status of PNE, if there is a cure with the ISO, I don't  
11 know, we'll have to take that up. And, we're not ruling  
12 today on any agreement that, if the ISO suspension is  
13 cured, then that automatically means something about the  
14 New Hampshire situation. But we will -- we will consider  
15 that on Friday, if people want to raise that.

16 All right. Unless there's anything that  
17 anyone thinks that I've forgotten? Looks like I have.  
18 Ms. Amidon.

19 MS. AMIDON: Yes. Staff had some  
20 additional discovery on the Company. If we issue that  
21 today, can they respond the same time frame that Staff has  
22 to respond to?

23 CHAIRMAN IGNATIUS: And, I don't know if  
24 they have seen it, we don't know anything about how

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1 extensive that is.

2 MS. AMIDON: We discussed it. I think  
3 that, if Staff has to turn this around, and we don't have  
4 a witness till Monday to begin working on it, that they  
5 can provide these things. It's items that they should  
6 have. And, I can, if you want to direct them to do it, to  
7 do that in one moment. The operating agreement for the  
8 Companies; PNE notices to customers; and, for Resident  
9 Power, the number of customers with suppliers other than  
10 PNE, as related to the total customers.

11 MR. SHULOCK: There would have been some  
12 additional ones, such as the dates of service to C&I  
13 customers, customers under Rate G, Outdoor Lighting, and  
14 any other non-residential account. So, the actual days  
15 that those customers were customers of PNE.

16 CHAIRMAN IGNATIUS: You said "there  
17 would have been more" or "there are more"?

18 MR. SHULOCK: No, that there are more  
19 discovery requests than just that. So, --

20 MS. AMIDON: What Mr. Shulock is  
21 referring to is, if you have not had a chance to look at  
22 the objection, we asked, in the objection to the Motion  
23 for Confidential Treatment, we asked for one, an  
24 electronic version with non-identifying information for



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1 the residential customers, so that we could sort them by  
2 date of enrollment and date of service. And, in addition,  
3 we asked for the customer -- the C&I customers, we asked  
4 for the enrollment date and the days of service, I  
5 believe.

6 And, finally, in the Motion for  
7 Confidential Treatment, we noticed that, with respect to  
8 the Tab 11, the FairPoint agreement, there were some  
9 exhibits or attachments to that agreement that were  
10 omitted. And, we understand if they want to file it under  
11 confidential treatment, but one example is the customer  
12 list, which I think we would find highly useful.

13 CHAIRMAN IGNATIUS: Let me make sure  
14 that I understand. Because a moment ago before you said  
15 you wanted some information that was not  
16 customer-specific, and then the customer list you did, you  
17 said "without identifying information"?

18 MS. AMIDON: Well, insofar as the  
19 customer list that was attached to the FairPoint  
20 agreement, which the Companies are saying is  
21 "confidential", the agreement to sell that business to  
22 FairPoint, there was an attachment, I want to say it was  
23 "Attachment C", which was a customer list, identification  
24 of the customers that were being transferred to FairPoint.

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

[REDACTED - FOR PUBLIC USE]

1 While we understand that that's confidential and will  
2 probably be provided to us in a redacted version, that's  
3 what we are looking for there. That's different than what  
4 -- different than I believe was Tab 7, what we asked for  
5 in the objection to the Motion for Confidential Treatment  
6 in Tab 7.

7 CHAIRMAN IGNATIUS: Let me suggest this.  
8 First, I want to hear from Attorney Carter on the response  
9 time of Thursday morning, at 9:00, to respond to those  
10 questions, if that's acceptable. But also would  
11 recommend, when we adjourn here in a few minutes, that the  
12 more you can either describe or write down the actual,  
13 what exactly it is you'll be asking for, get that out in  
14 writing as soon as possible, the better, so there's no  
15 misunderstanding, rather than trying to work this out on  
16 the fly.

17 Attorney Carter, is Thursday morning, at  
18 9:00, for response to those workable?

19 MR. CARTER: I believe so. We haven't  
20 -- we've been doing our best to cover what she's reading  
21 into the record now. I don't think, based on what Staff  
22 has said, there will be a problem. We request they put it  
23 in writing, so we have something to follow. But I don't  
24 believe that's going to be a problem. If there is, we'll

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1 alert them, and, if necessary, the Commission, as soon as  
2 possible.

3 CHAIRMAN IGNATIUS: All right.

4 MS. AMIDON: Thank you. I just wanted  
5 the Commission to recognize that earlier on we mentioned  
6 our need for some additional discovery, and I didn't want  
7 that to be omitted in your layout of the procedure in this  
8 docket. And, obviously, we can put that in writing,  
9 because we know what it is. But thank you very much.

10 CHAIRMAN IGNATIUS: No, I appreciate  
11 that. I had forgotten about that. And, then, we're also  
12 going to be seeing, maybe later today, or Monday, a  
13 follow-up filing on confidentiality that may fine-tune a  
14 bit what's being requested for confidential treatment, and  
15 the missing page in the Staff's submission that was  
16 missing one of the attachment pages, that those would both  
17 come in, is that correct? Can we see those by Monday?

18 MR. DESCHENES: On our side, yes, your  
19 Honor. And, I think some of the -- if I'm understanding  
20 what Attorney Amidon said, is that some of the requests  
21 she just referenced are, like the Exhibit C, are part of  
22 our earlier submission, and then there's the new discovery  
23 for the Thursday. And, I would just say, I'm not quite  
24 sure of the scope of that discovery now, and perhaps

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 that's the list that she's talking about. Things like  
2 operating agreements, obviously, I can pledge to madam  
3 Chairwoman that we can get, and I'm not quite sure what  
4 the whole scope is. So, I don't know that I can comment  
5 on that fully.

6 CHAIRMAN IGNATIUS: All right. Well,  
7 the more that can be all rolled into something by Monday  
8 or even Tuesday on confidentiality -- let's just safe all  
9 the legal stuff come in by Tuesday, end of the day,  
10 whether it's confidentiality or anyone who wants to  
11 comment on the "burden of proof" question, end of the day  
12 for Tuesday for that. And, then, we'll take all those  
13 issues up on Wednesday.

14 All right. Unless there's anything  
15 else, thank you for your patience --

16 MR. CARTER: I'm sorry.

17 CHAIRMAN IGNATIUS: Mr. Carter.

18 MR. CARTER: Would the Commission be  
19 inclined to set deadlines for issues as to witness lists  
20 or the exchange of exhibits?

21 CHAIRMAN IGNATIUS: Yes. I thought you  
22 had said that -- I thought it sounded like that was sort  
23 of working out of when you'd be able to produce those  
24 things. Because we're not -- can I just leave that for

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1 you two to discuss? Whatever it is, it's, obviously,  
2 something that needs to be reasonable, not Friday morning  
3 or even Thursday night. But I don't know if you need us  
4 to tell you --

5 MR. CARTER: That's fine.

6 CHAIRMAN IGNATIUS: -- it's going to be  
7 Friday or Monday or Tuesday, as long as it's --

8 MS. AMIDON: Mr. Carter previously said  
9 that this afternoon he could provide his list, as we've  
10 already given him what we intend to do. Whether our  
11 witnesses are given sufficient time to be here is another  
12 question. But -- so, I don't see why this afternoon it  
13 wouldn't be possible to get his witness list. He  
14 previously said that was possible.

15 MR. CARTER: I stand by my word. We  
16 will give them our preliminary list today. And, I'm  
17 assuming they will oblige us with theirs as well.

18 CHAIRMAN IGNATIUS: Yes.

19 MR. CARTER: And, in terms of the  
20 exhibits and the written exhibits, we understand your --  
21 we would be -- and we would anticipate actually providing  
22 them with premarked copies of our exhibits, you know, in  
23 advance of the hearing. And, I would appreciate a  
24 reciprocal treatment on behalf of the Staff.

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1           The last issue is our ability to, and to  
2           the extent that there are material witnesses who are not  
3           inclined to show up here voluntarily, I believe that we  
4           would need to seek leave from the Commission to subpoena  
5           them.

6                   CHAIRMAN IGNATIUS: Are you talking  
7           about someone that you want to call?

8                   MR. CARTER: People that we would --  
9           that are material to our presentation that are not  
10          parties, and that we would need to have subpoenas issue.  
11          My understanding is we would need to seek the Commission's  
12          assistance for that. And, I'm not sure if that's  
13          something that needs to be addressed today?

14                   CHAIRMAN IGNATIUS: It does. I had not  
15          realized that you were anticipating witnesses that you  
16          would need subpoena authority to get them here. So, I  
17          think what we should do is, why don't you discuss that.  
18          If there's something that you need our assistance in  
19          doing, submit it to us, preferably the end of today, if  
20          not, on Monday. The sooner we have to try and work it  
21          through the better. We don't do it very often. And, so,  
22          we'll have to kind of reconstruct the best way to make it  
23          happen. Often, people will agree by a letter served on  
24          the company to appear is sufficient, and not have to go to

{DE 13-059 & DE 13-060} [Prehearing conference] {03-15-13}

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1 a formal subpoena.

2 MR. CARTER: Okay.

3 CHAIRMAN IGNATIUS: But we'll respond as  
4 needed. Because of the time constraints, obviously, the  
5 sooner we know, the better.

6 MR. CARTER: Thank you.

7 CHAIRMAN IGNATIUS: Thank you. Thank  
8 you, everyone, for trying to work through all of these  
9 little details as we get ready for the hearing. So, we  
10 will take all of this under advisement.

11 **(Whereupon the prehearing conference**  
12 **ended at 12:31 a.m.)**

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