

ATTACHMENT A

PUC Docket No. DE 12-097
RESA Responses to
First Set of Granite State Electric Company
d/b/a Liberty Utilities Data Requests

Date of Request: July 27, 2012 Date of Response: August 10, 2012

Q-GRANITE STATE 1-7. Please describe in detail the credit check process used by each member of RESA prior to enrolling residential customers, small commercial customers, and large commercial and industrial customers.

Witness: Allegretti, Hanks, Kallihier

Response: **Objection:** RESA objects to the request on the basis that it is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding, that it is seeking commercial or financial information that is protected under RSA 91-A:5, and it would be imprudent for RESA to gather the requested information from its member companies because it is protected from disclosure among members by law and or/agreement respecting antitrust principles.

Notwithstanding and without waiving RESA's objections, RESA responds as follows: The actual practice of each RESA member is not known to the witnesses and is commercially sensitive information. In general, we understand that practices may vary. Some suppliers may elect to pull a credit report for each customer prior to enrollment. Some suppliers may outsource credit checking to a third-party vendor and some may manage credit exposure on a portfolio basis.

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Q-GRANITE STATE 1-11. Please provide the following for each member of RESA by customer class in each state in which each RESA member does business: (a) the number of accounts with charge-offs; (b) the percentage of total accounts represented; (c) the number of total dollars charged-off; (d) the average balance per account; (e) the reason for the charge-off, and; (f) the average length of time the account was held by the RESA member.

Witness: None

Response: **Objection:** RESA objects to the request on the basis that it would be unduly burdensome to compile the information requested, on the basis that it is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding, that it is seeking commercial or financial information that is protected under RSA 91-A:5, and it would be imprudent for RESA to gather the requested information from its member companies because it is protected from disclosure among members by law and or/agreement respecting antitrust principles.

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Q-GRANITE STATE 1-15. Re: Testimony page 14, lines 21-22. Please provide the details of any and all marketing programs by RESA's members to improve customer awareness of retail choice options in New Hampshire and in other states in New England.

Witness: **None**

Response: **Objection: RESA objects to the request on the basis that it is seeking information that is not in the possession, custody or control of RESA, that it would be unduly burdensome to compile the information requested, that it is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding, that it is seeking commercial or financial information that is protected under RSA 91-A:5, and it would be imprudent for RESA to gather the requested information from its member companies because it is protected from disclosure among members by law and or/agreement respecting antitrust principles.**

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Q-GRANITE STATE 1-17. Re: Testimony page 6, lines 14-17. Please provide the details and results of any and all marketing programs RESA's members have made to New Hampshire's electric residential and small commercial customers since retail access began.

Witness: None

Response: **Objection:** RESA objects to the request on the basis that it is seeking information that is not in the possession, custody or control of RESA, that it would be unduly burdensome to compile the information requested, that it is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding, that it is seeking commercial or financial information that is protected under RSA 91-A:5, and it would be imprudent for RESA to gather the requested information from its member companies because it is protected from disclosure among members by law and or/agreement respecting antitrust principles.

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Q-GRANITE STATE 1-18. Re: Testimony page 7, lines 8-10. Please provide the details and results of any and all marketing programs RESA's members have made to electric residential and small commercial customers in other states in New England since retail access began in those states.

Witness: None

Response: **Objection:** RESA objects to the request on the basis that it is seeking information that is not in the possession, custody or control of RESA, that it would be unduly burdensome to compile the information requested, that it is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding, that it is seeking commercial or financial information that is protected under RSA 91-A:5, and it would be imprudent for RESA to gather the requested information from its member companies because it is protected from disclosure among members by law and or/agreement respecting antitrust principles.

ATTACHMENT B

Sarah Knowlton

From: Patch, Douglas L. <DPatch@orr-reno.com>
Sent: Tuesday, August 14, 2012 5:17 PM
To: Sarah Knowlton
Subject: RE: RESA Objections DE 12-097

Sarah,

Here is RESA's response to your questions regarding RESA's objections to certain of Granite State's data requests in DE 12-097:

RESA's objections to 1-7, 1-11, 1-15, 1-17 and 1-18 start from the basis that these requests are not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding. If you look back at the Order of Notice and the Commission's Prehearing Conference Order it is clear that the issues in this docket are limited to whether purchase of receivables, customer referral and electronic interface programs will promote customer choice consistent with the restructuring principles of RSA 374-F:3, whether the resulting rates associated with the programs are just and reasonable pursuant to RSA 378:5 and 7, and an examination of the costs and benefits of these programs, including the recovery of the associated costs. Data requests that seek information such as company-specific credit check processes of individual RESA members, including the number of accounts with charge-offs, the percent of total accounts represented, the dollars charged-off, the average balance per account, the reason for the charge off, and the average length of time the account was held by the RESA member, or the details of marketing programs to specific classes of customers by RESA's members in NH and other states, seek information that would not lead to the discovery of information that would be relevant to the issues to be addressed in this proceeding and therefore would not be admissible in this proceeding. The Commission has clearly articulated the scope of the docket and that scope does not include an examination of the credit check practices and marketing efforts of all of the RESA members who are suppliers in this state or other states.

In addition, RESA does not have in its possession the kind of information that has been requested and RESA members have no obligation to provide this information to RESA. Moreover, the collection and dissemination of commercially sensitive information by a trade association, such as RESA, has serious implications under both the Sherman Anti-Trust Act and applicable NH anti-trust law and is contrary to RESA's anti-trust policy because the sharing of commercially sensitive information among competitors can lead to collusive behavior that is contrary to the law.

Moreover, gathering all of this information from RESA's 22 members about their practices in each state in which each of those members are doing business would be extremely time consuming and burdensome.

Assuming the information requested met the relevance test and that the other bases for objection could be overcome, the suggestion that a non-disclosure agreement and a protective order would resolve RESA's concerns is incorrect. A protective order and non-disclosure agreement is an imperfect solution, especially where the information would be shared with other commercial entities. In the event of a breach it will be both costly and difficult to establish with accuracy the extent of the damages suffered by each affected RESA member. Such mechanisms also do not prevent the transfer of information which may occur when personnel change jobs and find themselves working for a competitor. In short, these mechanisms should not be used unless there is a strong and compelling need for the information, something which is not the case here.

In terms of the objection to Granite State 1-20 the information that GSEC is seeking about proposals made to the EBT Working Group is presumably available from the Commission or wherever notes or transcriptions of the EBT Working Group meetings are maintained. As noted, RESA does not have this information in its possession and did not participate in these meetings.

Let me know if you have any additional questions.
Doug

Douglas L. Patch

Admitted in NH and MA



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From: Sarah Knowlton [mailto:Sarah.Knowlton@libertyutilities.com]
Sent: Monday, August 13, 2012 5:11 PM
To: Patch, Douglas L.
Subject: RE: RESA Objections DE 12-097

Doug,

I've taken a look at RESA's answers and continue to have the same questions outlined below regarding the legal basis for RESA's objections. I would appreciate any insight you can provide as to the basis for these objections and whether there is a way to voluntarily obtain the information sought by the data requests, or whether a motion to compel will be necessary

Thanks,

Sarsah

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11 Northeastern Boulevard, Salem NH 03079

From: Patch, Douglas L. [<mailto:DPatch@orr-reno.com>]
Sent: Friday, August 10, 2012 2:39 PM
To: Sarah Knowlton
Subject: RE: RESA Objections DE 12-097

Sarah,

We are in the process of getting the responses to the data requests out - you should receive them in the next hour or so - without having checked all of the responses that you have mentioned in your email, I believe that we will be providing responses to some of the ones listed. I will take a look at this once we are done getting the responses out to see if maybe some of these are no longer relevant, then I will look further into what you have sent and respond to your questions. Thanks.

Doug

From: Sarah Knowlton [<mailto:Sarah.Knowlton@libertyutilities.com>]
Sent: Friday, August 10, 2012 2:33 PM
To: Patch, Douglas L.
Subject: RESA Objections DE 12-097

Doug,

Prior to filing a motion to compel regarding RESA's objections to Granite State Electric's data requests in DE 12-097, I wanted to follow up with you to see if there is any way to resolve the objections and obtain the information that Granite State seeks. In order to assess whether a motion to compel is appropriate, I need to understand the basis for the objections that you have asserted in response to GSE 1-7, 1-11, 1-15, 1-17, 1-18, and 1-20.

Relevance: Your objections to these responses summarily conclude that the information is not relevant but you provide no reasoning as to the basis of the relevance objection. For each data request to which RESA objects, would you please provide me the rationale for why this information is not likely to lead to the discovery of information that would be admissible in this proceeding.

Confidential Status of Information: You assert that the information sought is "commercial or financial information that is protected under RSA 91-A:5." I am not aware that there is any legal authority that supports the position that confidential information is excepted from disclosure during discovery. Rather, as you know, Puc 203.08 provides a detailed process for motions for protective treatment to address those very concerns. I would be glad to discuss different levels of protection of information (e.g. attorneys' eyes only) if that were the nature of the concern. But the mere status of information as confidential does not protect that information from disclosure in discovery. As a result, I would appreciate it if you would provide legal support for that position as I do not think it is sustainable.

Imprudent Disclosures: Your objections state that it "would be imprudent" for RESA to gather the information because it is protected from disclosure among members. I am not familiar with any legal basis of "imprudence" that excludes information from discovery and would appreciate any support you can provide for this position so that I can assess the merits of it. Further, I do not see any reason why you could not provide the information to Granite State but not share RESA member information among members. I would also point out that RESA intervened in this docket on the basis that it would be efficient for the member organization to participate in lieu of participation of individual members. I do not think it is appropriate for RESA to now use the fact that it is a membership organization as a shield against discovery.

Thanks,

Sarah

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ATTACHMENT C

**PUC Docket No. DE 12-097
RESA Responses to
First Round of PSNH Data Requests**

Date of Request: July 27, 2012 **Date of Response:** August 10, 2012

Q-PSNH 1-67. On page 15, lines 16-18, RESA proposes that “EDCs should develop and maintain dedicated and secure web-based interface sites that allow suppliers direct access to key customer usage and account data, presented in a format that can be automatically pulled and scraped.”

- a. The Commission has consistently held that customer-specific data is entitled to confidential treatment. How does RESA’s electronic interface proposal comport with these Commission determinations?
- b. What limitations, if any, would RESA’s electronic interface proposal place on what customer data may be obtained?
- c. What limitations, if any, would RESA’s electronic interface proposal place on which competitive suppliers would be able to access the customer data?
- d. What limitations, if any, would RESA’s electronic interface proposal place on what competitive suppliers could do with the customer data made available to them?
- e. What penalties, if any, would RESA propose in the event that a competitive supplier misused customer data made available to them under an electronic interface program?
- f. What agency of the state does RESA claim has jurisdiction to impose any such penalties discussed in response to subpart e?
- g. Does “customer-specific data such as account number, meter number, service address, next scheduled meter read date, rate code, ICAP tag, historic usage data, payment history, service status (EDC or supplier), and other relevant information” as set forth on page 15, lines 18-21 have potential commercial value to other entities outside of the electric energy supply business?
- h. Is RESA aware of any “Red Flag Rule” restrictions imposed by the Federal Trade Commission that would be compromised by its customer information access proposal?

Witness: RESA witnesses Allegretti, Kallaher, and Hanks

Response:

- a.) Access to the data on the secure web-based interface would be password protected to only permit access by suppliers who have obtained customer authorization, consistent with commission rules.
- b.) See a.) above
- c.) See a.) above
- d.) The use of customer-specific data would continue to be governed by Commission rules, as it is today. RESA is merely proposing enhancements to the quality, extent and manner in which such data is provided.

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- e.) RESA has no such proposals.**
- f.) RESA makes no statements in its testimony regarding jurisdiction to impose such penalties.**
- g.) RESA has no information or opinion regarding such "other entities outside of the electric energy supply business."**
- h.) No.**