

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 12-097

ELECTRIC UTILITY CUSTOMERS

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

Order Addressing Motions to Compel

ORDER NO. 25,439

December 7, 2012

I. PROCEDURAL BACKGROUND

On April 16, 2012, the Retail Energy Supply Association (RESA) filed a letter requesting that, consistent with Order No. 25,256 issued in Docket No. DE 10-160, *Public Service Company of New Hampshire, Investigation into Effects of Customer Migration*, the Commission open a generic proceeding to investigate the merits of initiating purchase of receivables (POR), customer referral, and electronic interface programs in New Hampshire to promote the development of retail electric markets for the residential and small commercial customer classes.

The Commission issued an Order of Notice on May 3, 2012. The Office of Consumer Advocate filed its notice of intent to participate in this docket on behalf of residential utility consumers pursuant to RSA 363:28 on May 9, 2012. Following the prehearing conference held on May 31, 2012, the Commission issued Order No. 25,389 (July 3, 2012) which, among other things, established the scope of the docket, limited the investigation to the electric distribution utilities (rather than also including gas distribution utilities), approved a procedural schedule and reported that the following parties were granted intervention: PNE Energy Supply, LLC d/b/a

Power New England (PNE), TransCanada Power Marketing, Ltd. (TransCanada) and North American Power Gas, LLC. Order No. 25,389 also granted a late-filed petition to intervene filed by Direct Energy, a member of RESA, which was filed on June 25, 2012

On August 20, 2012, Granite State Electric Company (GSEC) filed a motion to compel RESA to respond to data requests. On August 24, 2012, Public Service Company of New (PSNH) Hampshire filed a motion to compel RESA to respond to data requests. Also on August 24, 2012, PSNH filed combined motions to compel, dismiss, rescind intervenor status, and strike the testimony of PNE. In addition, PSNH included a motion to stay the procedural schedule, pending resolution of the aforementioned motions.

RESA objected to GSEC's motion to compel on August 27, 2012.¹ On September 4, 2012, RESA objected to PSNH's motion to compel. PNE filed an objection to PSNH's motion to rescind intervenor status on August 29, 2012, an objection to PSNH's motion to stay and motion to dismiss on August 30, 2012, and an objection to PSNH's motion to compel on September 5, 2012. PNE later withdrew from the instant proceeding on September 11, 2012.

II. STANDARD OF REVIEW

In addressing a motion to compel discovery responses, we consider whether the information being sought is relevant to the proceeding, or reasonably calculated to lead to the discovery of admissible evidence. *See, Investigation into Whether Certain Calls are Local*, Order No. 23,658 (2001) at 5. “[I]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide.” *City of Nashua*, Order No. 24,681 (2006) at 2. In Order No. 24,681 we stated:

¹ On August 29, 2012, GSEC filed an attachment inadvertently omitted from its motion to compel.

In the context of civil litigation, New Hampshire law favors liberal discovery, *see, e.g., Yancey v. Yancey*, 119 NH 197, 198 (1970), and discovery is regarded as “an important procedure ‘for proving in advance of trial the adversary’s claims and his possession or knowledge of information pertaining to the controversy between the parties.’” *Johnston v. Lynch*, 122 NH 79, 94 (1990) (citing *Hartford Accident etc., Co. v. Cutter*, 108 NH 112, 113 (1967)). Consistent with Superior Court Rule 35(b) regarding the scope of discovery, we require parties to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.

We review the motions and objections in light of these principles.

III. COMMISSION ANALYSIS

A. PSNH Motion to Compel

PSNH moved to compel RESA to respond to PSNH’s data requests 1-18, 1-19, 1-21, 1-22, 1-25, 1-27, 1-32, 1-33, 1-35, 1-37, 1-39, 1-40, 1-41, 1-44, 1-45, 1-50, 1-51, 1-54, 1-55, 1-59 and 1-71. We consider these data requests in the order presented above.

PSNH 1-18: Are any of RESA’s members regulated utilities, owned by regulated utilities, or have corporate affiliates that are regulated utilities? a) If so, please list such members and list each of their associated regulated utility entities, and the states where such regulated utilities operate. b) If so, do any of those associated regulated utility entities have Purchase of Receivables, Customer Referral, or Electronic Interface programs similar to those discussed in RESA’s testimony? List all such utilities and the similar programs each has, if any. c) For those associated regulated utility entities that have Purchase of Receivable programs, please provide a listing of the discount rate for each customer class that each utility presently charges.

RESA objected to PSNH 1-18 on the basis that the information requested was not in the possession of RESA but its individual members, and that it would be “imprudent” for RESA to collect the information from members because such information is protected from disclosure among members and because it would be unduly burdensome to compile the information. RESA also claimed that the information was otherwise publicly available.

In its motion to compel, PSNH recited assertions in RESA's intervention motion that RESA's members are active market participants in the retail electricity market, and that RESA's participation would conserve resources for the Commission that might otherwise result if multiple individual RESA members chose to participate in the docket to protect their own interests.

We agree with PSNH that RESA, in its motion to intervene, asserted that its participation would avoid the need for individual RESA members to participate in the docket and that its participation would not impair the orderly conduct of the proceeding. RESA also claimed that its members are active in the competitive electric market and have experience in the New England region's competitive market. The experience of RESA members that are utilities or their affiliates with POR, customer interface and electronic data exchange programs is relevant to this proceeding and likely to lead to information that is admissible as evidence. On this basis, we grant the motion to compel RESA to respond to PSNH 1-18.

PSNH 1-19. Have any of the affiliates of your companies ever taken a position on Purchase of Receivables in any other jurisdiction? If so, please provide a summary of those positions.

RESA objected to PSNH 1-19 on the same basis that it objected to PSNH 1-18, that is, that the requested information was not in its possession and that it would be burdensome to require RESA to solicit the requested information from its members. In its motion to compel, PSNH made the same argument as it made for PSNH 1-18, namely, that RESA has claimed that its participation on behalf of its members would contribute to the proceeding and that RESA's members had experience relevant to the scope of the docket. We find that the information

sought by PSNH 1-19 is relevant to this proceeding and may lead to the discovery of admissible evidence, and on that basis, we grant the motion to compel RESA to respond to PSNH 1-19.

PSNH 1-21. Which of RESA's members sell electricity to retail electric customers in New Hampshire?

RESA objected to the question, again asserting that it would be imprudent to gather this information from members because it is protected from disclosure. In its motion to compel, PSNH pointed out that RESA's testimony explicitly stated that RESA members currently serve New Hampshire electric customers and, therefore, the response to the data request would likely lead to the discovery of admissible evidence. We agree. We find that the data request is directly related to RESA's testimony and the responses will likely result in admissible evidence and, therefore, we grant PSNH's motion to compel RESA to respond to PSNH 1-21. If RESA is unable to answer this data request, any reference in its testimony to its members serving New Hampshire electric customers shall be stricken from the record.

PSNH 1-22. For those RESA members that do sell electricity to retail electric customers in New Hampshire, please provide a listing by customer class (residential, commercial, industrial, streetlighting) that each member has served by month from 2010 to present.

RESA objected to PSNH 1-22 on the same basis that it objected to PSNH 1-18 and also argued that the information sought is confidential or financial information that is protected from disclosure pursuant to RSA 91-A:5, New Hampshire's Right-to-Know statute. In its motion to compel, PSNH claimed that the information is relevant to demonstrate whether a POR is necessary to develop the competitive market in New Hampshire. PSNH stated that it was willing to enter into a non-disclosure agreement relative to the requested data.

We have reviewed the data request and have determined that the detailed information which PSNH seeks is sensitive commercial or financial information which is protected from

disclosure, that the disclosure could undermine the competitive position of RESA members, and that because RESA members compete with PSNH, a nondisclosure agreement would not address the potential harm of requiring that the information be disclosed. Further, we find that responses are not likely to result in the production of admissible evidence and, therefore, deny the motion to compel insofar as it requests the detailed data.

PSNH 1-25. Page 6, lines 14-15 of RESA's testimony states, "The residential and small commercial customer migration statistics in each of the electric distribution utilities' service territories in particular are concerning."

- a. Please list the electric distribution companies referred to in this statement.
- b. Please provide the customer migration statistics referred to in this statement by customer class for each of the electric distribution utilities' service territories.
- c. Please list each RESA member that is actively soliciting residential and small commercial customers in each of the electric distribution utilities' service territories.
- d. For those RESA members listed in response to subquestion c, please provide details of each such member's active solicitation program.

PSNH 1-25 is a four-part question whereby PSNH sought to examine a statement in RESA's testimony regarding customer migration of residential and small commercial customers in electric distribution service territories. RESA objected to PSNH 1-25 on the same basis as its objection to PSNH 1-18, because the question asked for commercial or financial information that is protected under RSA 91-A:5, and because the request information may be more readily available from another publicly available source, such as the Commission. Notwithstanding its objection and not waiving its objection, RESA provided the names of the electric distribution utilities and the customer migration reports for each, but did not provide information in response to parts c. and d. of PSNH 1-25.

In its motion to compel, PSNH insisted that the information requested by PSNH 1-25 would give insight into whether the POR program was necessary to facilitate robust competition in New Hampshire as claimed by RESA in its testimony. To the extent that RESA provided a response to PSNH 1-25, we grant the motion to compel. However, we find that PSNH 1-25 c. and d. ask for commercially sensitive information, the release of which could compromise the competitive position of RESA members. RESA members compete with PSNH and the disclosure of the requested confidential and financial information to PSNH could compromise the competitive position of RESA members. On that basis we deny the motion to further response to PSNH 1-25 c. and d.

PSNH 1-27. Page 7, lines 6-8 of RESA's testimony states, "While medium and large commercial and industrial customer[s] in New Hampshire have enjoyed the benefits of a robust competitive market for some time, the same cannot be said about the residential and small commercial market segments." Please identify which RESA members, if any, have actively marketed to the residential and small commercial market segments, the time(s) when such marketing activities took place, and describe those marketing activities

Similar to data request PSNH 1-25, PSNH 1-27 requested RESA to identify which members have actively marketed to residential and small commercial customer classes, including the time when such marketing activities took place and a description of those marketing activities. RESA objected to the request for the same reasons it objected to PSNH 1-18 (information not in the possession of RESA and would have to be gathered from its members). PSNH in its motion to compel said that the information is relevant to determining whether a POR program is a necessary or proper solution to the lack of choice for small customers or if the cause is a lack of marketing by competitive suppliers. We disagree, in part, with PSNH's argument. The purpose of the Commission's investigation is not to inquire into the underlying reason for the lack of choice for some customers; rather, it is to examine the potential impact and costs of a

POR program in expanding customer choice. We will require RESA to respond only to the portion of the question which asks: Which RESA members, if any, have actively marketed to the residential and small commercial market segments. We will not require any response to the balance of the question, because we do not find the detailed information on RESA members' marketing efforts, as requested by PSNH 1-27, to be relevant to this proceeding. Further, we find that detailed information concerning competitive marketing efforts is competitively sensitive and should be subject to protection from disclosure. Thus, we deny in part and grant in part PSNH's motion to compel a response to PSNH 1-27.

PSNH 1-32 On page 7, lines 19-20, RESA's testimony refers to RSA 374-F:3, VI, saying that the NH law requires that restructuring be implemented in a manner that benefits all consumers equitably and not one customer class to the detriment of another. For those RESA members that serve retail customers in New Hampshire, do each of them charge the same energy cost to all customer classes? If not, for each such RESA member serving retail customers in New Hampshire, please list the following four customer classes in order of increasing cost of energy charged: industrial, commercial, residential, and streetlighting.

In its objection to 1-32, RESA asserted that the requested information was not in its possession and that it would be imprudent for RESA to gather the information from its members, that the information requested is irrelevant to the proceeding, not likely to result in the production of admissible evidence, and that the requested information is commercial or financial information protected from disclosure under RSA 91-A:5. PSNH moved to compel a response to examine RESA's statement in its testimony that that a POR program and other market enhancements will result in more equitable sharing of the benefits of the market and compliance with restructuring law. We have reviewed the data request and agree with RESA that the question asks for commercial and financial information, the disclosure of which could compromise the competitive position of RESA members. As we previously noted, because

RESA members compete with PSNH, the execution of a non-disclosure agreement would not sufficiently protect the interest of RESA members. Therefore, we deny the motion to compel RESA to respond to PSNH 1-32.

PSNH 1-33. Your testimony states that your proposed market enhancements would accomplish the purpose of RSA 374-F:1,I. How will adoption of your proposals benefit customers who choose to purchase energy service from PSNH?

RESA objected to the question on the basis that the request asks for speculation, that it is argumentative, and that it is based on a faulty premise. Notwithstanding and not waiving its objection, RESA responded by stating that adopting its proposals will benefit customers who choose to purchase energy service from PSNH because its proposals will create a better marketplace for those customers if they eventually decided to purchase energy service from a competitive supplier. We agree that the response to PSNH 1-33 is relevant to establish whether POR and other programs will benefit customers and that the response is likely to lead to the discovery of admissible evidence. Therefore, we grant the motion and consider the question answered.

PSNH 1-35. On page 8, lines 11-13 of RESA's testimony, the following example of how a POR program works was provided: "assuming a 1% discount rate and a \$100 receivable, an EDC would pay the Supplier \$99 and retain \$1 as compensation for bad debt risk and approved program implementation costs."

- a. Suppose that the \$100 receivable was the result of a competitive supply contract with a medical emergency customer insulated from termination for non-payment. What recourse would the utility have to collect that \$100 receivable?
- b. Suppose that instead of charging that medical emergency customer \$100 for energy supply, the competitive supply contract with that customer resulted in a cost of energy of \$100,000.
 - i. Under the example used by RESA, under a POR program with an assumed discount rate of 1%, how much of that \$100,000 receivable would the utility have to pay the supplier?

ii. What is the likelihood that the utility would be able to recover that \$100,000 receivable created by the agreement between a third-party competitive supplier and that medical emergency customer?

iii. If that \$100,000 receivable is ultimately uncollectible, who takes the loss?

RESA objected to PSNH 1-35 on the basis that the question asks for speculation, that it is argumentative and that it is based on a faulty premise. Notwithstanding and not waiving its objection, RESA provided the following response:

“(a) Please see Admin Rules Part PUC [sic] 1205.

(b) The POR program would only be applicable to residential and small commercial accounts and therefore the large customer example listed above is inapplicable in the current situation.”

We agree with PSNH that part a. of the question is relevant and intended to elicit an explanation of testimony. With respect to part b. of PSNH 1-35, we agree with RESA that the question appears to apply to a customer class that would not be subject to the POR. Therefore, we grant the motion to compel with respect to PSNH 1-35 a. and deny the motion with respect to PSNH 1-35 b. and consider the question answered.

PSNH 1-37. On page 8, lines 18-20, RESA’s testimony states “POR programs are usually designed for the mass market customers, the residential and small commercial market segments, which otherwise can be difficult and expensive for a supplier to individually conduct a credit check and bill.”

- a. Is the cited difficulty and expense of conducting credit checks and issuing bills unique to competitive energy suppliers?
- b. Would RESA agree that the cost of credit checks and billing customers is a normal cost of business?
- c. Are cable, telecommunications, or broadband providers also faced with the difficulty and expense of conducting credit checks and issuing bills?
- d. Is it RESA’s position that utilities should be forced to offer billing and POR programs for other industries, such as cable, telecommunications, or broadband providers?

RESA objected to PSNH 1-37 on the basis that the question is argumentative, asks for speculation, and is irrelevant to this proceeding and unlikely to lead to the discovery of

admissible evidence. Notwithstanding and not waiving its objection, RESA responded to PSNH 1-37a. by stating its belief “that conducting credit checks and issuing bills does occur in retail markets for other goods and services.” For its response to parts b. and c., RESA referred to its response to part a. and answered “no” to part d. In its motion to compel, PSNH stated that PSNH 1-37 directly relates to claims made by RESA in its testimony and is likely to result in the discovery of admissible evidence. We agree with RESA that the PSNH 1-37 is argumentative, calls for speculation and is not likely to result in the discovery of admissible evidence, and, as RESA provided a partial response, we deny the motion and consider it answered.

PSNH 1-39. Do the Commission’s regulations allow the state’s regulated electric utilities to disconnect customers for failure to pay amounts owed to a competitive supplier?

RESA objected to the data request on the basis that the answer to the information is more readily available from a publicly available source, such as the Commission. Having asserted its objection, RESA responded “not explicitly.” PSNH claimed in its motion to compel that the data request was directed to RESA in an attempt to understand RES’s testimony regarding the ability of electric distribution companies to disconnect customers for nonpayment. PSNH is subject to the Commission’s regulations and is familiar with the rules regarding disconnection of customers for nonpayment. The rules speak to this subject and do not require any additional explanation. We deny the motion to compel regarding PSNH 1-39 and consider the question answered.

PSNH 1- 40. Are the state’s utilities always able to disconnect a customer for non-payment?

With its objection, which is identical to the objection it raised with respect to PSNH 1-39, RESA provided the following response: “Notwithstanding and without waiving RESA’s objections, RESA responds as follows: Please see RSA 363-F:1 and Admin. Rules Puc 1203.11

and 1203.12, which are duly enacted laws and regulations that speak for themselves.” We have previously stated that the Commission’s rules on disconnection do not require explanation and we deny the motion to compel a response to PSNH 1-40 and consider the question answered.

PSNH 1-41. Are there moratorium periods when the state’s utilities are not allowed to disconnect customers for non-payment?

- a. If so, please identify those periods.
- b. During any such periods identified in response to subpart a, are competitive suppliers able to terminate their arrangements with customers during those time periods?
- c. Are there any times of year when a competitive supplier is not able to terminate their arrangements with a customer for non-payment?
- d. Are there certain classes of customers who are never subject to disconnection for non-payment by the state’s utilities? If so, identify those types of customers.
- e. For the customer types listed in response to subpart d, are competitive suppliers able to terminate their arrangements with those customers for non-payment?

RESA objected to PSNH 1-41 on the same basis that it objected to PSNH 1-40 and provided the same response. We agree with RESA that the statute and rules speak for themselves and we deny the motion to compel a response to PSNH 1-41 and consider the question answered.

PSNH 1-42. Does implementation of a POR program provide opportunities for “gaming” by competitive suppliers? If the answer is yes, please detail all such opportunities.

RESA objected to this question on the grounds that the question was vague and overbroad and uses an undefined term, “gaming”. In its motion to compel, PSNH said that it believes the meaning of the term “gaming” as used in the context of this question is understood by RESA because RESA referred to “gaming” in filings in other jurisdictions where RESA had requested certain relief to prevent “gaming” by suppliers. We agree that as a representative of participants in the competitive market, RESA should have an understanding of what “gaming” means in the context of PSNH 1-42. We find that the data request is relevant and that the

responses are likely to result in the discovery of admissible evidence and, on that basis, we grant in part the motion to compel a response to PSNH 1-42. We will allow the first part of the question which asks whether there may be an opportunity for gaming. We will not require RESA to provide detail on all such gaming opportunities, because such response would be burdensome.

PSNH 1-44. Is there any legal impediment restricting competitive supplier from mitigating the possibility of unpaid or delinquent bills by requiring customers to post a deposit?

- a. Wouldn't the requirement for a deposit equivalent to two months of energy costs be sufficient to eliminate "the credit risk associated with payment loss" discussed on page 9, line 19?
- b. Do any of RESA's members serving residential or small commercial customers in New Hampshire require deposits of any customers?

RESA objected to PSNH 1-44 on the basis that the requested information may be more readily available from a more convenient and less burdensome source like the Commission, and that it seeks a legal conclusion. Notwithstanding and not waiving its objection, RESA provided an answer to part a. of the data request. In its motion to compel, PSNH referred to Order No. 25,389 and said that the scope of the proceeding includes an examination of the costs and benefits of a POR program. PSNH said that if the underlying issue facing competitive suppliers regarding uncollected or delinquent bills could be mitigated via the use of customer deposits, such information is relevant to the proceeding. PSNH said that the Commission is not the likely source for such information. We agree with PSNH that the requested information is relevant to this proceeding and relates to RESA's testimony. Therefore, we grant the motion to compel for PSNH 1-44. We note that RESA provided a response to part a. of the data request and therefore, must provide a response to part b.

PSNH 1-45. If a POR program was instituted, would such a program result in the payment of all bills by all customers?

- a. With a POR program in place would there continue to be payment loss to suppliers or utilities as a result of uncollectible bills?
- b. If there will continue to be payment loss as a result of uncollectible bills, who ultimately bears the costs of such uncollectible bills?
- c. Does RESA agree that a POR program syndicates the risk of loss across all customers?

RESA objected to PSNH 1-45 on the basis that the question is vague and overbroad and uses undefined terms. RESA replied that it is unclear what “payment of all bills by all customers” means. Notwithstanding and not waiving its objection, RESA provided an affirmative answer to a., stated in response to b. that “[t]he cost of such uncollectibles is a cost of doing business for both suppliers and utilities,” and, in response to PSNH 1-45 c. stated that “RESA agrees that a POR program syndicates the risk of loss across of [sic] all customers of an EDC, except those who have opted for dual billing and are, therefore, outside the program.” In its motion to compel, PSNH said that despite RESA’s clarification, RESA did not withdraw its objection, and insisted that RESA be compelled to respond to PSNH 1-45. We find that RESA has provided a response and deny PSNH’s motion to compel to PSNH 1-45 as answered

PSNH 1-50. On page 10, lines 6-7, RESA’s testimony states that by implementation of a POR program “Customers take advantage of existing rate-base resources, thereby avoiding duplicative costs...” Similarly, on page 10, line 23, RESA testifies of the benefits of “maximiz[ing] the utilization of the existing rate-based utility resources.” And, on page 12, line 12, RESA discusses the benefits of “greatly reducing duplicative administrative and cash management functions.”

- a. Do competitive suppliers incur costs to obtain the electric energy, capacity, and other products necessary to supply their retail customers?
- b. If the answer to subpart a. is in the affirmative, aren’t those costs duplicative of services also performed by the state’s utilities?

- c. Aren't all services and administrative costs incurred by competitive suppliers duplicative of similar services and costs of the state's utilities? If, the answer to this question is not in the affirmative, please explain in detail what services performed and costs incurred by competitive suppliers are not duplicative.
- d. Would RESA characterize its proposal to implement a POR program as an effort to recapture an economy of scope what was lost following restructuring?

RESA objected to the request on the basis that the question is argumentative and seeks information that is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and not waiving its objection, RESA provided a response: (a) yes; (b) yes, however, RESA's proposal seeks to better utilize functions that customers already pay for and that, if eliminated from a supplier's costs, can be passed onto customers *via* better rates than what might otherwise be offered; (c) please see response to (b); and (d) no. In its motion to compel, PSNH said that the information requested is directly related to the testimony provided by RESA and is relevant to this proceeding. Because RES provided a response, we deny PSNH's motion to compel to PSNH 1-50.

PSNH 1-51. On page 10, line 14, RESA's testimony refers to "lower prices currently offered by retail suppliers." Can RESA guarantee that prices offered by competitive retail suppliers will always be lower than standard offer (default energy service) provided by each of the state's utilities? If the answer to this is in the affirmative, please explain in detail the basis of RESA's answer.

RESA objected to this data request on the basis that it calls for speculation and predictions about future prices. Notwithstanding and not waiving its objection, RESA provided the following response: "RESA answers that it does not know. RESA suppliers offer multiple products with varying characteristics based on market pricing at the time the retail offers are made." We agree with PSNH that the response to this question is relevant and that RESA is

capable of responding and did, in fact, respond. We deny the motion to compel RESA to respond to this data request because the question was answered.

PSNH 1-54. On page 10, lines 19-22, RESA's testimony states, "a well designed POR program would significantly contribute to the public policy objective to help reduce costs for all consumers by harnessing the power of competitive markets."

- a. Is RESA guaranteeing that implementation of a well-designed POR program will reduce costs for all consumers?
- b. In the states where RESA alleges "well-designed, non-recourse POR programs have been established, e.g., Connecticut, New York, Illinois, Maryland, and Pennsylvania" (p. 10, lines 11-13), are there retail electric customers that continue to receive their electric supply from standard offer, default service, provider-of-last-resort service, or some similar offering provided by an EDC in such state?
- c. If the answer to subpart b is in the affirmative, please provide a listing of the number of retail customers that continue to receive electric supply from the EDC, by state, utility, and customer class.

RESA objected to the request on the basis that the question was argumentative and that it would be unduly burdensome to compile the information. RESA also said that the information requested is irrelevant to this proceeding and is more readily available from a "publicly available" source. Notwithstanding and not waiving its objection, RESA provided a response to parts a. and b. of the question. In its motion to compel, PSNH said that the answer to PSNH 1-54 is relevant because the response would shed light on RESA's assertion that all consumers would benefit from a POR program. We agree with PSNH that the question asks for relevant information and is directly related to RESA's testimony and likely to lead to the discovery of admissible evidence. Therefore, we grant the motion to compel with respect to PSNH 1-54 a. (which essentially seeks an affirmative or negative answer) and consider part b. as answered. Regarding PSNH 1-54 c., we find that that answer to this question would require RESA to

disclose competitively sensitive information and on that basis, we deny the motion to compel RESA to respond to PSNH 1-54 c.

PSNH 1-55. On page 11, line 9, RESA's testimony asks the question, "Will the EDC be financially harmed by POR?" The other side of that question is "Will competitive suppliers benefit from POR?"

- a. What is the average profit per month for that a RESA-member competitive supplier receives from serving a residential customer?
- b. What is the average rate of return on equity (or the overall average rate of return) by a RESA-member competitive supplier company? If average rate of return for RESA-member companies is unavailable, what is the average rate of return for the companies for whom the witnesses are employed?
- c. Please provide all documents, reports, studies supporting this response.

RESA objected to the question on the basis that the request is argumentative and seeks information that is not in RESA's possession or control, and that it would be imprudent for RESA to gather the information from its member companies because it is protected against disclosure among its members by law and/or agreement, and that the requested information is commercial or financial information that is protected under RSA 91-A:5. Notwithstanding and not waiving its objection, RESA replied that it is not able to answer the question for the same reasons stated in its objection. In its motion to compel, PSNH claimed that the information requested will provide guidance on how a POR program would be structured for New Hampshire and whether such a program is actually warranted. We have reviewed the data request, RESA's objection and PSNH's argument in its motion to compel and have determined that the information is commercial and financial information that is not subject to public disclosure, that the disclosure could undermine the competitive position of RESA members, and that because RESA members compete with PSNH, a nondisclosure agreement would not address the potential

harm of requiring that the information be disclosed. Therefore, we deny the motion to compel a response to PSNH 1-55.

PSNH 1-59. On page 14, lines 2-5, regarding its proposed customer referral program, RESA's testimony states, "the EDCs would be also be required to offer residential and small commercial customers the option to learn about their electricity supply options when they contact the company for certain other purposes, namely (a) to make an inquiry regarding their rates or the amount of their bill; or (b) to seek information regarding energy efficiency or other value-added services."

- a. Would the proposed marketing services provided by a utility's customer service representatives increase the duration of calls?
- b. Would the proposed marketing services require an increase in the number of customer service representatives employed by a utility in order to keep the average wait-time to answer at the same levels provided prior to implementation of those marketing services?
- c. How do RESA-member competitive suppliers inform customers about their electricity supply options today?
- d. Do RESA-member competitive suppliers pay for marketing and/or advertising services today?
- e. If any such marketing and/or advertising costs are incurred by RESA members today, do those costs include a profit margin to the entities supplying those services?
- f. Does RESA propose that the state's EDCs can charge competitive suppliers for providing the proposed marketing services?
- g. Does RESA propose that any charges imposed by the state's EDCs for such marketing services may include a profit margin?
- h. In what states, if any, do such customer referral programs exist?
- i. In any states identified in response to subpart h, do the utilities charge competitive suppliers for this service, and, if so, do such charges include a profit margin?

RESA objected to the request on the basis that it seeks information which is not in its possession or control and is protected from disclosure among RESA members by law and/or agreement, calls for speculation and is available from a public source. Notwithstanding and not waiving its objection, RESA provided a partial response to a. and b., responded "no" to f. and g.,

and referred PSNH to responses to Staff 1-10 for responses to h. and i. PSNH argued that the information requested is within the scope of this proceeding and would produce admissible information pertaining to the implementation, structure, costs and benefits associated with a customer referral program. We agree with PSNH that the information requested is relevant to this proceeding, relates to RESA's testimony, and is likely to result in admissible evidence and we grant the motion to compel. The motion to compel is granted but the question is considered answered with respect to parts a., b., f., g., h. and i. RESA shall provide responses to c., d. and e.

PSNH 1-71. On page 16, beginning on line 12, RESA's testimony discusses "What benefit(s) will result from enhancing access to customer information."

a. Is RESA aware of any competitive suppliers that have been accused of violating applicable rules in place that are intended to protect consumers or the competitive marketplace? If so, please provide a listing of all such alleged violations known to RESA.

b. Have any RESA members been accused of any such violations? If so, please provide all documents, correspondence, orders, and the like detailing the allegations, the competitive suppliers' responses thereto, and the action (if any) taken by the respective state or federal agency.

RESA objected to the question on the grounds that the question seeks information not in its possession or control and that it would be imprudent for RESA to inquire of its members for the information. Notwithstanding and not waiving its objection, RESA provided a response which essentially repeated its objection. PSNH said that the question was based on RESA's assertion in its testimony that it has information pertaining to certain retail market enhancements. PSNH said that the answer will provide admissible information directly pertaining to the implementation, structure, costs and benefits associated with those enhancements. We agree with PSNH that the question relates to RESA's testimony and will likely produce admissible evidence, and we grant the motion to compel a response to PSNH 1-71.

B. Granite State Electric Company Motion to Compel

GSEC moved to compel RESA to respond to GSEC data requests 1-7, 1-11, 1-15, 1-17 and 1-18. We consider these data requests in the order presented above.

GSEC 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.

RESA objected to GSEC 1-7 on the grounds that the information requested 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 by RSA 91-A:5, and that it would be imprudent for RESA to collect from its members. Notwithstanding and not waiving its objection, RESA stated that the practice of each RESA member is not known to the witness and is commercially sensitive information, and that suppliers practices may vary. In its motion to compel, GSEC stated that the credit check process and bad debt experience of RESA members are relevant to this proceeding and the information is necessary to understand the process RESA members use prior to enrolling a customer.

We have reviewed the question, the objection and the motion to compel and determine that detail regarding the credit check process used by RESA members, particularly used for large commercial and industrial customers, is not relevant to this proceeding. Therefore, we deny GSEC's motion to compel a response to GSEC 1-7. The purpose of this proceeding is to determine whether it is appropriate to institute a POR program in New Hampshire. If the Commission decided to go forward and implement a POR program in New Hampshire, the parties might need to understand how customer credit checks are conducted by RESA members

that market in New Hampshire; however, this information is not relevant at this stage of the proceeding.

GSEC 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.

RESA objected to GSEC 1-11 on the basis that the information would be burdensome to compile, is irrelevant to the proceeding, unlikely to result in the production of admissible evidence, and is commercial or financial information protected from disclosure under RSA 91-A:5. GSEC claimed that the response is necessary to understand the actual experience of RESA members with their customers and will assist GSEC in determining whether RESA's proposed POR mechanism sufficiently protects GSEC and its customers against financial harm.

We have reviewed the data request, the objection and GSEC's motion to compel and we deny the motion for GSEC 1-11. RESA's members' experience in other states is not relevant to the scope of this proceeding as we pointed out in the discussion regarding GSEC 1-7 above. We are mindful, however, that if we ultimately were to approve the institution of a POR program in New Hampshire, the implementation phase will require input from the parties on the appropriate calculation of applicable discount rates.

GSEC 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.

GSEC 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.

GSEC 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.

RESA objected to GSEC 1-15, GSEC 1-17 and GSEC 1-18 on the grounds that the information would be burdensome to compile, is irrelevant to the proceeding, unlikely to result in the production of admissible evidence, and is commercial or financial information protected from disclosure under RSA 91-A:5. GSEC argued that information related to whether RESA's members have conducted any marketing activities in New Hampshire or other New England states to improve customer awareness of retail choice goes to whether market barriers in fact exist, and whether other efforts to improve customer choice have been successful or have failed.

We note that by this order we are requiring disclosure of a more general nature concerning RESA members' marketing efforts to residential and small commercial customers, in response to PSNH 1-27. GSEC -15, GSEC 1-17 and GSEC 1-18, by contrast, request far greater detail regarding RESA members' marketing efforts. For the reasons stated regarding PSNH 1-27, we deny GSEC 1-15, 1-17 and 1-18.

We note that in many instances, RESA provided a response to a data request but nevertheless stated that it did not waive its objections to the data request. Our rulings above are intended to obviate RESA's continuing objection. If we ruled that the motion to compel is granted with respect to a data request as answered, our ruling overrides RESA's objection regardless of RESA's reserved objection. Therefore, for responses for which we have granted motions to compel, the introduction of the response as evidence is allowed. In the event that RESA fails to provide responses to associated data requests where the motion to compel has been granted, the related testimony shall be stricken from the record.

Power New England LLC (PNE) withdrew its participation in this docket on September 11, 2012. Testimony and all other filings made by PNE shall be stricken from the record of this proceeding and PSNH's filing of August 24, 2012 is, therefore, rendered moot.

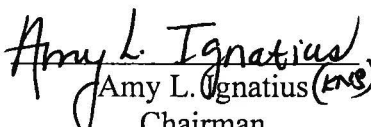
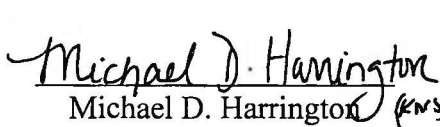
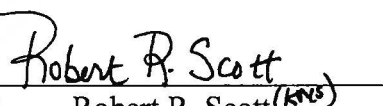
Finally, pursuant to a September 6, 2012 secretarial letter, we suspended the procedural schedule to give us time to address the motions to compel. Where we have granted PSNH's motion to compel, we direct RESA to provide responses within 14 calendar days. Staff should work with the parties to develop a procedural schedule for the remainder of this proceeding.

Based upon the foregoing, it is hereby

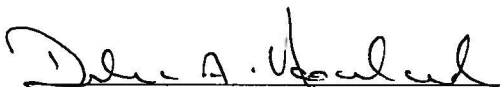
ORDERED, that Public Service Company's Motion to Compel is GRANTED in part and DENIED in part as described in more detail in the body of this order; and it is

FURTHER ORDERED, that Granite State Electric Company's Motion to Compel is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this seventh day of December, 2012.

		
Amy L. Ignatius (KNS) Chairman	Michael D. Harrington (KNS) Commissioner	Robert R. Scott (KNS) Commissioner

Attested by:


Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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