

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

January 15, 2013 - 10:03 a.m.
Concord, New Hampshire

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RE: DE 12-295
PNE ENERGY SUPPLY, LLC d/b/a
POWER NEW ENGLAND:
Petition for Review of Public Service
Company of New Hampshire's Services
and Charges to Competitive Electric
Suppliers. (Prehearing conference)

PRESENT: F. Anne Ross, Esq.
(Presiding as Hearings Examiner)

Sandy Deno, Clerk

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James T. Rodier, Esq.

Reptg. Public Service of New Hampshire:
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Matthew J. Fossum, Esq.

Reptg. North American Power:
Robert J. Munnelly, Jr., Esq. (Murtha Cullina)

Reptg. Retail Energy Supply Association:
Douglas L. Patch, Esq. (Orr & Reno)

Reptg. Electricity N.H., LLC d/b/a ENH Power:
Christopher G. Aslin, Esq. (Bernstein Shur)

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

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I N D E X

PAGE NO.

STATEMENTS RE: MOTIONS TO INTERVENE BY:

Mr. Bersak	6, 14
Ms. Amidon	7
Mr. Munnelly	9
Mr. Aslin	11
Mr. Patch	13
Mr. Rodier	14

STATEMENTS RE: PSNH MOTION TO DISMISS BY:

Mr. Patch	15, 17
Mr. Aslin	17, 18

STATEMENTS OF PRELIMINARY POSITION BY:

Mr. Rodier	19
Mr. Bersak	23
Mr. Munnelly	23
Mr. Patch	24
Mr. Aslin	27
Ms. Hollenberg	28
Ms. Amidon	30
Mr. Bersak	31

P R O C E E D I N G

1
2 MS. ROSS: Good morning, ladies and
3 gentlemen. I'm Anne Ross. I'm going to be serving as the
4 Hearings Examiner this morning. I will be taking
5 appearances and hearing any arguments, and then making a
6 recommendation to the Commission.

7 So, this is Docket DE 12-295. On
8 October 1st, 2012, Power New England, LLC d/b/a Power New
9 England, filed a petition requesting the Commission review
10 the reasonableness and appropriateness of Public Service
11 Company of New Hampshire's approved charges for certain
12 services to competitive electric suppliers.

13 This morning I would like to begin by
14 taking appearances, and then we will deal with the pending
15 motions to intervene.

16 MR. RODIER: Good morning. Should I
17 address you as "Ms. Ross"? Is that okay?

18 MS. ROSS: That would fine.

19 MR. RODIER: All right. Good morning,
20 Ms. Ross. Jim Rodier, for PNE Energy Supply. And, Gus
21 Fromuth is with me, who has -- who has, excuse us, filed
22 -- who has prefiled testimony in this proceeding.

23 MS. ROSS: Thank you.

24 MR. BERSAK: Good morning. We've got

1 Robert Bersak and Matthew Fossum representing the Public
2 Service Company of New Hampshire.

3 MS. ROSS: Good morning.

4 MR. MUNNELLY: Good morning, madam
5 Hearing Officer. Robert Munnelly, for North American
6 Power. And, with me is Taff Tschamler from the company.

7 MS. ROSS: Was that "Taft Chandler"?

8 MR. TSCHAMLER: Correct. T-a-f-f.

9 MS. ROSS: Oh, "Taff". Excuse me.

10 Thank you.

11 MR. PATCH: Good morning. Doug Patch,
12 from the law firm of Orr & Reno, today on behalf of the
13 Retail Energy Supply Association.

14 MR. ASLIN: Good morning. Christopher
15 Aslin, from the law firm of Bernstein Shur, on behalf of
16 ENH Power. And, with me here Kevin Dean from ENH Power.

17 MS. HOLLENBERG: Good morning. Rorie
18 Hollenberg and Stephen Eckberg here for the Office of
19 Consumer Advocate.

20 MS. ROSS: Good morning.

21 MS. AMIDON: Good morning, Attorney
22 Ross. Suzanne Amidon, for Commission Staff. With me
23 today is Al-Azad Iqbal, an Analyst with the Electric
24 Division, and to my far left is Amanda Noonan, who is the

1 Director of the Consumer Affairs Division.

2 MS. ROSS: Good morning. And, for those
3 of you who have not already given the reporter your
4 business card, please do so before you leave today, so
5 that we get the names, initials, and titles correct.

6 Now, we have several pending petitions
7 to intervene. PSNH has been granted party status as a
8 necessary party. Could we -- are there any objections to
9 the petitions to intervene?

10 MS. AMIDON: Attorney Ross, we do have
11 some comments on the petitions to intervene. We take no
12 position, but I would like to make some observations, when
13 it's Staff's turn.

14 MS. ROSS: Okay. Are there any other
15 parties who have comments or objections to the pending
16 motions to intervene?

17 MR. BERSAK: Public Service doesn't have
18 an objection, *per se*, to the motions to intervene.
19 However, as you're aware, there is a Motion to Dismiss the
20 docket that's pending. And, in the event that the
21 Commission grants that Motion to Dismiss, we think that
22 the petitions to intervene would, therefore, be moot.

23 MS. ROSS: Okay. Staff, would you like
24 to proceed with your comments?

1 MS. AMIDON: Yes. Thank you. While we
2 take no positions on the motions to intervene, we want to
3 note for the Hearing Officer that both North American
4 Power and ENH Power request the Commission to address
5 issues which were not noticed in the order of notice.
6 And, which, by a plain reading of those issues, seem to
7 apply to electric distribution utilities other than PSNH.
8 These issues include, and I can refer you to North
9 American Power's Page 2, Paragraph 3, as being one
10 example. And, ENH Power's petition, I believe, at
11 Paragraph 6. They include issues such as reducing cost of
12 services provided by utilities to suppliers, allocation of
13 customer payments, the electronic data transmission
14 process, and the allocation of late fees. But, if you
15 want to take some time and read these paragraphs, I can
16 stop there and then continue once you've read them.

17 MS. ROSS: Just one question, counselor.
18 I see Paragraph 3, on Page 2, but I don't see a Paragraph
19 6, on Page 3 of that --

20 MS. AMIDON: I'm sorry. The Paragraph 6
21 was in ENH Power's petition, and that also begins at
22 Page 2 of that petition.

23 MS. ROSS: Excuse me. Let me just get
24 my notes. So, it's Page 2, Paragraph 3, of the North

1 American, and then, for ENH Power, it's Page --

2 MS. AMIDON: Page 2 as well, but
3 Paragraph 6.

4 MS. ROSS: Has everyone been able to
5 hear me?

6 MR. RODIER: Yes.

7 MS. ROSS: I apparently didn't have the
8 mike on. Okay, that's a scoping issue. And, I guess,
9 since Staff has raised it, --

10 MS. AMIDON: I have one additional
11 comment, if I may?

12 MS. ROSS: Yes.

13 MS. AMIDON: The Commission has an open
14 docket, which is 12-097, where it's investigating purchase
15 of receivables, electronic interface, and customer
16 education issues as they implicate competitive supply.
17 And, Staff believes that it is very important to avoid
18 duplication of effort and to the maximum extent possible
19 in these two dockets.

20 And, finally, I mean, obviously, as you
21 just suggested, this was not in the scope of the order of
22 notice, some of these additional issues. And, we are
23 concerned that, by plain reading, they implicate other
24 electric distribution utilities. And, as you see, the

1 only other electric distribution -- the only electric
2 distribution utility here is PSNH.

3 So, those are my observations on those
4 two particular petitions to intervene.

5 MS. ROSS: Thank you. And, before I
6 pursue the scoping issue any further, would North American
7 Power and ENH be willing to withdraw the language in
8 question, in the interest of staying within the scope of
9 the order of notice, which, obviously, always requires a
10 little bit of flexibility as we move through a -- as we
11 move through a docket?

12 MR. MUNNELLY: Madam Hearing Officer, I
13 guess the first one is that, in terms of the EDI issues,
14 those probably, since they are in the POR docket, those
15 probably should be handle in that forum as well.

16 MS. ROSS: And, just help me, you are
17 representing ENH when you're --

18 MR. MUNNELLY: No. North American
19 Power.

20 MS. ROSS: I apologize. Okay. So, with
21 regard to Page 2, Paragraph 3, you would be willing to
22 withdraw your request to handle the EDI issues in this
23 docket?

24 MR. MUNNELLY: Yes, I believe so. The

1 other one, I mean, it is a question for the Commission in
2 how to handle this. There certainly are other barriers or
3 apparent barriers to competition that North American Power
4 is experiencing that deserve Commission review, we
5 believe. Whether it's in this -- in this docket,
6 certainly seems to be a ready one for that. I don't know
7 that we would necessarily be opposed to re-noticing it, if
8 the Commission did want to pursue it in this docket,
9 issues other than the ones that are already in 12-097.

10 MS. ROSS: So, the sentence we're
11 speaking about says "electronic data transmission
12 process", I'm sorry to get so down in the weeds, but I do
13 need to understand what your --

14 MR. MUNNELLY: That's fine. Yes.

15 MS. ROSS: "The manner in which late
16 fees are applied to competitive suppliers, and the manner
17 in which customer payments on a single utility are
18 allocated to retail suppliers vis-a-vis the utility."

19 MR. MUNNELLY: Yes. Yes. We'd like to
20 have those -- those issues are something that we believe
21 merit Commission review. And, if the Commission is
22 amenable to that, we would be willing to present those
23 issues in this docket.

24 MS. ROSS: Okay. And, with regard to

1 ENH, and let me just see if I can find the -- that would
2 be Mr. Aslin?

3 MR. ASLIN: Yes.

4 MS. ROSS: Okay. And, I'm looking at
5 your petition. And, this is Page 2, Paragraph 6.

6 MR. ASLIN: That's correct.

7 MS. ROSS: "The Commission require PSNH
8 to amend the Terms and Conditions for Suppliers set forth
9 in its tariff, reducing the charges imposed on competitive
10 suppliers to reasonable and appropriate levels." That
11 appears to be within the scope. "In addition...believes
12 that related issues associated with the nascent
13 development of residential electric service competition
14 would be properly addressed. These issues include",
15 again, the same issue raised by North American, "the
16 allocation of customer payments between the utility and
17 the competitive supplier, especially when a customer has
18 remitted only a partial payment." In addition,
19 "responsiveness and support for electronic data exchange"
20 -- "interchange issues; and customer difficulties in
21 signing up for competitive supply."

22 MR. ASLIN: And, I would echo North
23 American Power, that we can probably set aside the EDI
24 issues in this docket, as they will be addressed in the

1 POR docket.

2 The question of "allocation of payments"
3 ENH feels is relevant to this docket, as it's using
4 charges for services, including for consolidated billing.
5 And, allocation of payments is caught up in that, in the
6 billing process in this case. How payments get
7 distributed between the utility and the competitive
8 supplier when there's less than a full payment? We would
9 feel that that is relevant and within -- at least could be
10 within the scope of this docket, if the Commission is
11 interested in reaching it.

12 The third issue, with regard to
13 customers signing up, has to do with the release of
14 customer account information from the utility, with
15 written consent of the customer, which is not something
16 that is permitted currently. That issue is a little bit
17 farther afield from the scope. We raised it, because it
18 also addresses questions of barriers to competitive
19 supply. We feel that it would be worthwhile for the
20 Commission to review. But, if the Commission prefers to
21 do that in another venue, then we would be amenable to
22 that as well.

23 MS. ROSS: All right. Thank you.

24 MR. RODIER: Ms. Ross, -- oh, I'm sorry.

1 MS. ROSS: Oh, excuse me. Mr. Patch,
2 would you like to proceed?

3 MR. RODIER: Sorry.

4 MR. PATCH: Yes. Thank you. I would
5 like to support Staff's comment, that it's important to
6 avoid duplication with the POR docket, the 097 docket. I
7 think that's important. I think the three issues noticed
8 there are the purchase of receivables, customer referral,
9 and electronic interface. And, so, it would be important
10 not to overlap with that.

11 I would like to say, however, that I do
12 support what North American and ENH are saying. I think
13 it's important for the Commission to be aware of anecdotal
14 evidence, that there are some efforts being made to
15 discourage customers from participating in the market. I
16 think the Commission has been made aware of some of the
17 insertions into customer bills that PSNH has made, and
18 some questionable language about whether that's, in fact,
19 discouraging customers from participating in the market.
20 And, I think it's important for the Commission to address
21 that in some form. And, if it takes issuing a new order
22 of notice, and including other distribution utilities in
23 this docket, then, so be it. But I don't think it's a
24 good idea for the Commission to ignore that.

1 I think we're at a critical point, in
2 terms of the development of the competitive market. I
3 haven't seen the latest migration numbers, but it would
4 surprise me if they weren't up significantly for small
5 customers, since they can make significantly -- they can
6 do much better on the competitive market than they can
7 from the ES rate.

8 So, I think we're at a critical point.
9 And, I think it's important for the Commission to be aware
10 of that. And, I can cite to you a number of provisions in
11 the restructuring law that I think indicate that it would
12 be a responsibility to make sure that the competitive
13 market is working effectively. And, so, therefore, I
14 would support efforts to try to broaden the scope in order
15 to address those issues.

16 MS. ROSS: Thank you. Other comments?

17 MR. RODIER: The Petitioner fully
18 supports what Attorney Patch stated.

19 MS. ROSS: Okay. PSNH, do you care to
20 weigh in?

21 MR. BERSAK: Well, we -- yes. Thank
22 you, madam Hearing Officer. We agree with the views of
23 Staff, that the petitions for interventions do go well
24 beyond what this docket purports to be. The Petition

1 filed in this docket was asking the Commission to review
2 certain of PSNH's tariffed rates. What we're hearing now
3 in this docket is they wish it to become a generic docket
4 that applies to all electric utilities, something that's
5 more tantamount to a rulemaking. That is well beyond the
6 scope of what this Petition is about and what this order
7 of notice is about. It does create problems, because
8 there are already existing dockets dealing with some of
9 these issues. And, for us to be trying to have new
10 dockets dealing with the same issues or to expand this
11 docket beyond what it purports to be, which is a review of
12 PSNH's tariffed rates, is not what was anticipated.

13 MS. ROSS: Would PSNH support some other
14 vehicle for exploring some of the competitive issues that
15 are being raised in the motions to intervene?

16 MR. BERSAK: We always respond to the
17 wishes of the Commission. We are before the Commission in
18 the other docket, 12-097, and are dealing with many of
19 these issues.

20 MS. ROSS: Thank you. The only other
21 issue that I'm aware of so far in this docket is the
22 pending Motion to Dismiss by PSNH, and the objection filed
23 by -- I'm sorry, Mr. Patch?

24 MR. PATCH: Could I just be heard

1 procedurally on this. RESA just became aware of that
2 Motion to Dismiss on the 8th, last Wednesday. And, I
3 don't fault PSNH for that. We weren't -- we hadn't filed
4 a petition to intervene until I think it was the 7th, and
5 we weren't on any service list. But I would respectfully
6 request that we have a little more time in order to
7 respond to the Motion to Dismiss. If we had until the end
8 of this week, I think that would be helpful. If you're
9 going to hear arguments on that today, we can certainly
10 offer something orally. But we would like the opportunity
11 to submit something in writing by the end of the week, if
12 the Commission is amenable to doing that. Thank you.

13 MS. ROSS: If I'm hearing you correctly,
14 offering you an oral response today would not satisfy you,
15 in terms of your ability to respond to the pending motion?

16 MR. PATCH: Well, I mean, I can
17 certainly do my best to try to address it today. But I
18 know, under the Commission's rules, there are typically
19 ten days to respond to a motion. And, I just think,
20 technically, it would be good if we had the full ten days.
21 But, whatever the Commission wants, obviously, we will
22 adapt to. Thank you.

23 MS. ROSS: Can I just -- PSNH, can you
24 give me your filing date, I'm sorry?

1 MR. BERSAK: January 4th.

2 MS. ROSS: So, the 15th would be --
3 would be the ten days?

4 MR. BERSAK: The 14th.

5 MS. ROSS: The 14th would be the ten
6 days. Technically, yesterday would have been it. So,
7 that's a rule. You could -- I will take that as a request
8 for a waiver, given the early stage of the proceeding.
9 And, I think I would recommend that waiver to the
10 Commission. Yes?

11 MR. ASLIN: On behalf of ENH, we also
12 intervened late in the process, and we were not aware of
13 the Motion to Dismiss until the 8th or 9th. And, we would
14 ask for the same waiver, to be able to file a written
15 objection.

16 MS. ROSS: I do just -- I do note for
17 the record that I believe the Motion to Dismiss is on our
18 website, and is accessible to the public through the
19 website. And, so, anyone intervening would have known the
20 docket number, and should have been capable of researching
21 what had been filed. But I, again, because it's early in
22 the docket, I will certainly support a waiver request on
23 that point.

24 MR. PATCH: Just one issue on that. I

1 don't know the timing of it coming up onto the website.
2 But, typically, it takes at least a few days after
3 something is filed before it comes up. So, I don't -- I
4 doubt very much that it came up on the 4th, but I don't
5 know for a fact.

6 MR. ASLIN: I do know that it did not
7 come up before the 8th, --

8 MS. ROSS: Oh. Okay. Thank you.

9 MR. ASLIN: -- because I had been
10 monitoring.

11 MS. ROSS: Yes, that's quite possible.
12 Because I do acknowledge there is some delay in getting
13 things posted, especially around the Holiday and New Year
14 vacation issues.

15 Okay. I think it's not going to be
16 productive to have arguments today on the Motions to
17 Dismiss. They have been filed -- well, the Motion to
18 Dismiss has been filed, and an objection. I will
19 recommend that the Commission allow further objections.
20 And, I guess I will have to let the Commission decide
21 whether any follow-up replies are appropriate from PSNH,
22 after the objections are filed. To the extent that they
23 are beyond the scope of the original Motion to Dismiss, it
24 may be fair to allow the Company to respond.

1 And, I do appreciate that the
2 competitive market and the competitive issues are critical
3 issues, and that it is a very dynamic situation right now.
4 I'll be -- I hope to hear from the Consumer Advocate with
5 regard to the scope of the docket and their concerns on
6 these issues. Is there anything else that needs to come
7 before me this morning?

8 MS. AMIDON: Are we going to take
9 initial positions of the parties?

10 MS. ROSS: Yes. I would like to do
11 that. Thank you for reminding me. Let's do that,
12 beginning with the Petitioner.

13 MR. RODIER: Thank you. While I think
14 of it, if the Commission, in its wisdom, is going to allow
15 other issues in here, I've got one on my laundry list that
16 I think is very important, and that's the PSNH supplier
17 agreements. The Petition of PNE requested expanded
18 billing service from PSNH on December 5th. On
19 December 18th, we got --

20 MS. ROSS: I'm sorry, requested what?

21 MR. RODIER: Expanded billing service.
22 Expanded billing service.

23 MS. ROSS: Okay.

24 MR. RODIER: It's a consolidated billing

1 service on steroids. Meaning, you could put your logo on
2 PSNH's bill, and put a message on their bill, okay, that
3 kind of thing. Well, December 18th we get a new supplier
4 service agreement that had expanded billing service
5 removed. And, that is a "take it or leave it" proposition
6 that we have to respond to by January 18th. And, we would
7 have to accept it or run the risk of PSNH terminating all
8 of their services to PNE.

9 So, that's an issue that is, and I don't
10 know if any of the other suppliers are bothered by it,
11 but, certainly, we wanted expanded billing service. So,
12 we are. And, we'd like to have that addressed by the
13 Commission.

14 Now, with respect to -- I just want to
15 make a brief summary statement here of a few things.
16 There's three charges. And, what I -- I've been working
17 on this for quite a while now. And, the Selection Charge
18 and the Billing & Payment Charge and the Collections
19 Charge. And, PNE called to my attention that the other
20 utilities don't have these charges. And, we're talking
21 about PSNH's affiliates, NSTAR, CL&P, Western Mass.
22 Electric do not have these charges, to the best of our
23 information, knowledge and belief. NGrid companies, in
24 Massachusetts and Rhode Island, don't have them. In New

1 Hampshire, the Liberty Utilities doesn't have them, and
2 neither does Unitil. So, it just raises the question of,
3 in our view, and we said PSNH is an outlier. And, if
4 nobody else -- if the regulators in these other cases
5 haven't allowed them, why should PSNH? Now, PSNH has
6 said, "Well, you're lacking in candor. For example, NHEC
7 has them." I don't think NHEC is being regulated by the
8 PUC in this regard, but I may be wrong. But, in any
9 event, the other one was CMP. With regard to CMP, they do
10 not have a selection charge, which is the one that is
11 particularly onerous, in PNE's view. And, they have one
12 other charge. And, you know, I think it's fair to say PNE
13 would happily -- PSNH has raised Central Maine Power
14 Company as something that apparently PNE's omitted from
15 their testimony and Petition. We would accept what CMP
16 has. We have no gripe with CMP with one of those charges.

17 So, having said that, I do want to point
18 out that we are saying -- PNE is saying we're not looking
19 for a rate adjustment, we would like some ruling from the
20 Commission. This is not a hypothetical situation. These
21 are facts. These exist right now. We want some guidance
22 from the Commission as to how it views these issues that
23 are creating friction between PSNH and the suppliers.
24 That's all we're looking for here.

1 We do not oppose them getting their
2 money back, through some type of adjustment under their
3 previous settlement agreement five years ago, or whatever.
4 It's not about gouging PSNH. It's about straightening out
5 the rules for the competitive market.

6 And, by the way, you know, as far as the
7 rate case is concerned, this -- I believe these stem from
8 a rate case that concluded sometime in 2010. And, all of
9 these charges are coming about right now because of the
10 migration of the residential and small commercial
11 customers to the competitive market. These PSNH charges
12 never have been a problem or an issue until now. But
13 they're particularly important with respect to the small
14 customers, the migration. There was no issue here back
15 when PSNH's existing rates were set, I presume, on a 2009
16 test year or something like that. So, all of this revenue
17 that has subsequently come in, basically falling to their
18 bottom line.

19 So, I guess that is what I would say
20 where PNE is coming from. We started out with only three
21 charges, because we feel it was the low-hanging fruit,
22 that this couldn't be very difficult to get through the
23 Commission, because these other companies don't have it.
24 And, you know, I was really mistaken, evidently.

1 So, thank you for the opportunity to
2 summarize PNE's position.

3 MS. ROSS: Thank you. PSNH.

4 MR. BERSAK: Would the Hearing Officer
5 allow us to respond after all the like-minded competitors
6 have had their positions on the record?

7 MS. ROSS: Does anyone have any
8 objection to allowing PSNH to respond after the other
9 intervenors?

10 (No verbal response)

11 MS. ROSS: All right.

12 MR. BERSAK: Thank you.

13 MR. MUNNELLY: Thank you, for North
14 American Power. North American Power strongly supports
15 the Commission's investigations into these charges and
16 other practices. We do think that the investigation would
17 determine that the charges are inappropriate, excessive,
18 and not cost-based. You know, they're not charged in many
19 states. And, they also, as Mr. Rodier noted for PNE, they
20 were set prior to the start of substantial small customer
21 competition in New Hampshire. And, we're concerned that
22 there's, you know, they really can't be presumed to be
23 just and reasonable at this point. So, the time for
24 changing them is now, as opposed to, you know, two and a

1 half, three years from now, after the -- during the next
2 PSNH rate case.

3 Again, as we noted earlier, we do
4 support consideration of other practices in this docket as
5 well. I won't belabor them at this point.

6 And, I think that's it. I mean, beyond
7 that, and certainly we oppose the Motion to Dismiss, for
8 the reasons we stated in a written opposition that we
9 filed yesterday. And, unless there are questions, we
10 thank the Commission for looking at these issues.

11 MS. ROSS: Thank you.

12 MR. PATCH: RESA's preliminary position
13 is similar to what's already been articulated by PNE and
14 by North American. We certainly support the Commission
15 looking at the issues that had been raised by PNE. We
16 think they're legitimate. We think, in terms of it being
17 a single rate case issue, we think the language in the
18 Settlement Agreement approved by the Commission in the
19 last rate case makes it clear that exogenous events, which
20 are defined as "various specific cost changes from state
21 or federal governments, regulatory cost reassignments, or
22 changes in accounting rules" are legitimate exogenous
23 events. And, so, we don't think that that should be a bar
24 to the Commission hearing the issues in this case. And,

1 even if the Commission were to hear the issues and not
2 order an adjustment to these rates, perhaps that could be
3 done in some other proceeding, if necessary.

4 I think the way it ought to work is, I
5 think PSNH ought to be required to justify the charges in
6 their tariffs. So, I think that's the way it ought to
7 start. They ought to be required to put forth some
8 evidence of justification for those charges, or they ought
9 to have to respond to requests, discovery requests about
10 those charges. You know, whatever is the right way to do
11 that, I'm not sure which is the best way.

12 But, as noted earlier, this is a
13 critical time in the development of the competitive market
14 in New Hampshire. And, this is an important issue. And,
15 I think broadening the issue, as has been supported by
16 everyone, other than -- at least by the suppliers that
17 have petitioned to intervene in this docket, I think it's
18 critical that that be done.

19 I just want to briefly mention a few
20 provisions in the electric utility restructuring act that
21 I think are important for the Commission to focus on. The
22 fundamental one being the provision in the New Hampshire
23 Constitution, cited in 374-F:1, II, that was really a
24 foundation for restructuring in New Hampshire. Part II,

1 Article 83, "Free and fair competition in the trades and
2 industries is an inherent and essential right of the
3 people and should be protected against all monopolies and
4 conspiracies which tend to hinder or destroy it.

5 374-F:3, II, on "Restructuring Policy
6 Principles", "the Commission should ensure that customer
7 confusion will be minimized and customers will be well
8 informed about changes resulting from restructuring and
9 increased customer choice." IV, in that Section 3,
10 "Non-discriminatory open access to the electric system for
11 wholesale and retail transactions should be promoted."

12 374-F:4, "Implementation", III, "the
13 Commission shall investigate and shall approve utility
14 compliance filings, subject to modification by the
15 Commission if necessary, after public hearing and subject
16 to a finding that the filings are in the public interest
17 and substantially consistent with the principles
18 established in this chapter." And, then, finally,
19 VII(a) [VIII(a)?], in Section 4, "the Commission is
20 authorized to order such charges and other service
21 provisions and to take such other actions that are
22 necessary to implement restructuring and that are
23 substantially consistent with the principles established
24 in this chapter."

1 I think the legal authority for the
2 Commission to take action as requested by the suppliers is
3 clear. And, I would urge the Commission to broaden the
4 scope and do that. Thank you.

5 MS. ROSS: Thank you.

6 MR. ASLIN: On behalf of ENH Power,
7 well, we strongly support PNE's Petition, and I won't
8 reiterate the points that have already been made, but only
9 suggest that ENH Power does agree with those points.

10 From our perspective, as a supplier,
11 with experience also in Maine, we see the rates -- the
12 charges here by PSNH to be substantially greater than
13 other charges we've seen by other utilities. It is a
14 barrier to entry to the competitive market. And, we
15 believe that investigation by the Commission will
16 demonstrate that the rates charged -- the charges by PSNH
17 exceed their incremental cost to provide the services of
18 consolidated billing and collection that are suggested in
19 the tariff.

20 We strongly urge the Commission to take
21 a look at those issues, as well as the other issues that
22 have been raised. And, we believe that there's ample
23 support, as you heard from Mr. Patch and others, for the
24 Commission to have the authority to do so in this docket.

1 MS. ROSS: Thank you.

2 MR. ASLIN: Thank you.

3 MS. HOLLENBERG: Good morning.

4 MS. ROSS: Good morning.

5 MS. HOLLENBERG: I'm pleased to say that
6 the Office of Consumer Advocate agrees with PSNH that this
7 is not the context to change PSNH rates. We have an
8 agreement, a long-term rate plan with PSNH, which will --
9 which has described within it, as its terms, the
10 circumstances in which rates may be adjusted. And, we
11 would like to confirm that that is not the intention of
12 this docket. And, that's our understanding.

13 Related to the single-issue ratemaking
14 issue, I realize you're not receiving positions on the
15 Motion to Dismiss, but I would just say that the PUC has
16 the authority to consider policy issues outside the
17 context of ratemaking and rate cases. And, we don't know
18 if this is the appropriate context in which to consider
19 these issues. But we do believe that, as Mr. Patch aptly
20 described earlier, this is a critical time for PSNH and
21 its customers.

22 As the Commission is aware, there are a
23 number of pending dockets at this point in time, which
24 involves significant policy issues, which will have or may

1 have significant financial consequences. And, these
2 include the increasing level of customer migration,
3 increasing energy service costs, the circumstances of
4 PSNH's generation fleet, and the adequacy of PSNH's
5 long-term planning.

6 Where -- we think that the time is now
7 for the Commission to, and very likely for policy leaders
8 in the State of New Hampshire, to look at the
9 circumstances that PSNH is facing at this time. And, so,
10 we're not saying definitively in what context the issues
11 that have been raised in this proceeding are best
12 addressed. They seem to be part of a much broader
13 picture.

14 And, I guess, similarly, with respect to
15 whether or not it's appropriate to expand the scope of
16 this docket to include other issues, again, it seems as
17 though this is a much larger picture that needs some real
18 thought, in terms of how issues are addressed and at what
19 time issues are addressed, to be -- to use the
20 Commission's resources and the parties' resources most
21 efficiently. Excuse me one moment.

22 (Atty. Hollenberg conferring with Mr.
23 Eckberg.)

24 MS. HOLLENBERG: Thank you. That's all.

1 MS. ROSS: Thank you. And, Staff?

2 MS. AMIDON: Thank you. We take no
3 position on the Petition. But, in our mind, the Petition
4 does raise some questions, particularly in that it
5 requests investigation, but it states that "no relief is
6 requested at this time." And, we question whether it's
7 appropriate, both in terms of time and resources, to
8 engage in a review when there's no request for relief.
9 And, the fact that the initial review is outside the
10 context of a revenue requirement proceeding raises
11 concerns as well. Because, if there is a conclusion
12 reached in this docket, that conclusion may be rendered
13 moot or irrelevant by the change -- by the time a rate
14 case is undertaken.

15 But, having said that, we're just trying
16 to inform the Hearings Examiner of some of the issues that
17 we've identified in connection with the Petition.
18 Similarly, we take no position on the Motion to Dismiss.

19 I did have some additional comments on
20 scoping. I'm fully aware that Staff has brought to the
21 attention of the Hearing Examiner the additional issues
22 which were raised in the petitions by North American Power
23 and ENH Power in their petitions to intervene. And, I
24 will comment that, based on my -- based on my

1 understanding, some of the concerns that have been
2 discussed, such as customer confusion, communication with
3 customers, and customers' understanding of their right to
4 choose, are subjects of phone calls made to the Consumer
5 Affairs Division and are worthy of investigation.

6 So, I'm not suggesting in my comments
7 that the Commission not expand the scope of this
8 proceeding. However, I do think it's more than just a
9 petition to review three items in PSNH's tariff if you do
10 that, and it should be properly noticed, and with giving
11 everyone, and other utilities, if they're interested, the
12 opportunity to participate in the examination. So, the
13 question becomes whether this is an issue with respect to
14 all utilities or whether it's a focus on PSNH.

15 But I did want to make that clear, that
16 Staff does not -- the Staff was merely concerned that with
17 -- the additional issues were not properly noticed in the
18 order of notice, which, in its terms, states the scope to
19 be with these three particular terms, and also states that
20 it requests no relief at this time. Thank you.

21 MS. ROSS: Thank you. And, PSNH, would
22 you like to?

23 MR. BERSAK: Yes. First, I'd like to
24 thank your indulgence and the indulgence of the other

1 parties to allow us to kind of wrap up here, but cleanup.

2 The Petition that was filed that was the
3 genesis of this docket is very narrow. It's a Petition to
4 look at three rates that are in PSNH's approved tariff.
5 And, what we've heard this morning is that there are
6 attempts to turn this docket into a free-for-all, where
7 anything goes, any matter can be heard, and that the scope
8 of the order of notice and the Petition are somewhat
9 irrelevant as to, you know, what we're going to deal with
10 in the course of this proceeding.

11 We came here today looking at what was
12 requested in the Petition, and also looking at what PNE,
13 the Petitioner, said this docket is not. In their
14 objection to our motion, they said this docket "does not
15 engage", you know, "seek to engage in single-issue
16 ratemaking". They say it does not involve a request for a
17 declaratory ruling. They're saying they are "not seeking
18 a rate adjustment". They say it is not their purpose to
19 change any aspect of PSNH's revenues. And, they say that
20 they're also -- that, frankly, they're not a customer
21 that's subject to the terms of PSNH's delivery tariff in
22 any event. So, I'm not really quite sure what this docket
23 is about, because it seems to be a lot about nothing, kind
24 of like an episode of Seinfeld.

1 We have heard the Petitioner say that
2 "you really need to take a look at the rules for how the
3 competitive market works." Well, that's not the subject
4 of this docket. This is not a rulemaking. This is a very
5 specific, very narrow look or a request to look at three
6 tariffed rates. And, to the extent that the Commission
7 feels it's appropriate to have a look generically at the
8 rules for the competitive market, that's within the
9 purview of the Commission to do so, but that's not this
10 docket.

11 We've heard arguments today or positions
12 that the reason why it's important to hear all these
13 various issues is because there's increased, and one party
14 said "substantial", migration of customers now. But, at
15 the same time we hear "and we need to change the rules
16 because there's a barrier to competition", which seems to
17 be somewhat at odds. You know, to the extent that
18 competition is significantly and substantially increasing,
19 there does not appear to be any barriers, other than the
20 cost of energy itself.

21 Finally, there was a suggestion that we
22 need to justify the cost basis for rates in this
23 proceeding. In my mind, that's a rate case, which this is
24 not. And, that rate case has been settled. And, to the

1 extend that the Commission wants to reopen that settled
2 rate case, that's an entirely different matter than what's
3 before the Commission today.

4 So, our position is is that this docket
5 is extremely narrow, and, in fact, it's so narrow, it
6 involves nothing and should be dismissed. Thank you.

7 MS. ROSS: Thank you. Well, let me
8 depart a little from the script. We could play this
9 pretty straight and narrow right now, and I could ask you
10 all to meet following this hearing, and come up with a
11 procedural schedule, assuming the scope of the docket is
12 described in the order of notice. And, hopefully, you
13 would all be able to do that, assuming that this docket
14 were not dismissed.

15 But I think I'm going to take advantage
16 of the fact that I've got PSNH and a number of fairly
17 substantial competitors in the room, as well as Staff, our
18 Consumer Affairs Division, and the OCA, and ask you to
19 maybe do a little more than would be the normal request.
20 And, that is, would you mind sitting together for a while
21 and exploring what vehicle you would recommend the
22 Commission use to deal with the broad array of competitive
23 entry issues that we are anecdotally hearing about.
24 Because I think the Commission would be very interested in

1 your input, in terms of an efficient, effective, fair
2 docket, or a rulemaking, or whatever, stakeholder process,
3 *etcetera*, please feel free to think outside the box. I
4 really would encourage you to do both things, if you
5 wouldn't mind. And, that is, let's assume for a moment
6 that the order of notice in this proceeding stands. But,
7 recognizing the importance of the other issues, please
8 take the time to recommend a process for refining and
9 improving various competitors' and distribution company
10 expectations, with regard to customer choices, customer
11 communications, moving customers back and forth between
12 suppliers. I would really appreciate that. And, I'm sure
13 that you've taken the time to be here, and it's a good use
14 of time.

15 Is that a clear request? Are there any
16 objections or questions?

17 MS. AMIDON: I do have a question,
18 because Staff -- because we're very confused about the
19 Petition, and we're concerned that it's -- that may be a
20 use of time and resources that's inappropriate, we have
21 not prepared a procedural schedule. We were going to ask
22 the Commission for advice on how they would recommend
23 proceeding. Because, you know, there's the rate case
24 where this was -- or, was it the

1 reorganization/restructuring docket where this was
2 approved? There's that proceeding. This is a petition by
3 PNE, they filed testimony. Where do we go?

4 I -- really, we were going to ask the
5 Commission to give us some guidance on that, because I
6 don't understand this proceeding to be a typical tariff
7 proceeding. It's a petition to change a tariff by someone
8 who's not the Company. And, I discussed it with Staff,
9 and we're uncertain about how to proceed.

10 MS. ROSS: Are there other parties who
11 were equally baffled by my suggestion for how to work this
12 through?

13 MR. FOSSUM: I guess I would ask what
14 would be, if we do sit down --

15 (Court reporter interruption.)

16 MR. FOSSUM: I'm sorry. I'm just
17 wondering what the expectation would be, if we did sit
18 down and try to explore these issues? Are you looking for
19 a recommendation?

20 MS. ROSS: Yes. I am looking for a
21 recommendation. I'm actually looking for two. One would
22 assume, and I understand that parties like to wait and get
23 more specific direction. So, if you think it's really a
24 waste of time to do this, please let me know. But one

1 would be to simply assume that the existing petition does
2 not get dismissed, and that the scope remains as described
3 in the order of notice. And, based on those assumptions,
4 come up with a procedural schedule that deals with these
5 three, you know, terms and conditions that have been
6 raised in the original Petition.

7 The second request is the one that is
8 really less -- I'm not as able to describe what you would
9 be doing. But I'm suggesting that, since you're here, and
10 you're a major group of players in the competitive market,
11 to be a little proactive and make some suggestion to the
12 Commission as to how to proceed with regard to the sort of
13 collection of issues that have been raised in the two or
14 three motions to intervene that appear to be somewhat
15 beyond the scope of the current order of notice in this
16 docket. And, the reason I suggest that is, that it may
17 not end up being an adjudicated proceeding that would be
18 the most effective vehicle on those -- on those more broad
19 array of competitive issues. And, that's why I was hoping
20 the parties could give the Commission some feedback or
21 recommendations with regard to that.

22 Yes, Mr. Patch.

23 MR. PATCH: I understand what the
24 Hearing Officer is asking for, and I think it makes good

1 sense. I would, and maybe I'm too much of a skeptic, but
2 I would think it would be more difficult on the second of
3 the two to reach agreement with PSNH. So, if there were a
4 partial agreement among some other group, would that be
5 useful to the Commission to submit that as well?

6 MS. ROSS: I think it would. I do. I
7 think it would be. Even if -- even if you have two
8 conflicting recommendations from the parties, it would
9 still be information the Commission could consider in
10 crafting an appropriate vehicle for considering the more
11 broad competitive issues.

12 Is that enough help from me, at least,
13 with regard to what I'm asking for?

14 (No verbal response)

15 MS. ROSS: Okay. Thank you.

16 MR. RODIER: You're welcome.

17 MS. ROSS: We'll adjourn this hearing.
18 And, the parties will meet in a technical session to try
19 to develop some proposals for the Commission. Thank you
20 very much.

21 **(Whereupon the prehearing conference**
22 **ended at 10:52 a.m.)**

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