

**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 Motion to Strike Portions of Pre-Filed Testimony

ORDER NO. 25,460

January 30, 2013

I. PROCEDURAL BACKGROUND

The Commission issued an order of notice in the instant docket on May 3, 2012.¹

Pursuant to the procedural schedule established in Order No. 25,389 (July 3, 2012), the Retail Energy Supply Association (RESA) filed testimony on July 13, 2012. The parties engaged in discovery according to the procedural schedule. Subsequently, on August 24, 2012, Public Service Company of New Hampshire (PSNH) filed a motion to compel RESA to respond to certain data requests.

In Order No. 25,439 (Dec. 7, 2012), the Commission granted PSNH's motion to compel RESA to respond to data request PSNH 1-71. The data request reads as follows:

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

¹ For a complete procedural background in this docket and the scope of the proceeding, *see* Order No. 25,389 (July 3, 2012).

allegations, the competitive suppliers' responses thereto, and the action (if any) taken by the respective state or federal agency.

The Commission also ruled that, if RESA failed to reply to this request as directed, then the testimony related to the data request "[would] be stricken from the record." The Commission directed RESA to provide responses by December 21, 2012.

RESA provided responses to a number of data requests other than PSNH 1-71 on December 21, 2012. On the same day, RESA filed a letter stating that it could not obtain all of the information requested by data request PSNH 1-71 and, consequently, chose to withdraw lines 12-17 on page 16 of the prefiled testimony. RESA asked that this portion of the testimony be stricken from the record consistent with Order No. 25,439.

On January 11, 2013, PSNH filed a motion to strike (Motion) additional portions of RESA's prefiled testimony. RESA filed an objection (Objection) to PSNH's Motion on January 17, 2013. On January 22, 2013, PSNH filed a motion for leave to reply to objection and a reply (Reply).

II. POSITIONS OF THE PARTIES

A. PSNH

In its Motion, PSNH argued that RESA's action to withdraw only one sentence of its testimony does not comply with the Commission's ruling in Order No. 25,439 striking related testimony because the Commission agreed that data request PSNH 1-71 would likely lead to admissible evidence. *See* Order No. 25,439 at 19.

According to PSNH, RESA's testimony alleges that direct access to detailed customer information by competitive suppliers would produce certain benefits. Further, PSNH stated that the New Hampshire Supreme Court and the Commission have previously ruled that the type of

customer-specific information sought by RESA through electronic interface is confidential.

PSNH opined that the trustworthiness of competitive suppliers, including those that are members of RESA, to protect customers' privacy interests could be measured in part by how those competitive suppliers adhere to consumer protection requirements in other jurisdictions.

PSNH said that the information sought in data request PSNH 1-71 is related to the advisability and benefits of implementing the electronic interface programs requested in RESA's testimony, and the trustworthiness of such suppliers to have direct and enhanced access to customers' private information. According to PSNH, as a result of RESA's failure to provide a response to data request PSNH 1-71, all of its testimony related to electronic interface programs must be stricken. PSNH claimed that such testimony includes all of Section III of RESA's pre-filed testimony, beginning at line 8, page 15 and continuing through line 17, page 16. PSNH requested that the Commission strike that portion of RESA's testimony from the record.

PSNH requested leave to reply because, according to PSNH, RESA's Objection contains an untimely objection to discovery, an untimely request for rehearing, and introduces issues unrelated to PSNH's Motion. In its Reply, PSNH argued that RESA's "new look" at data request PSNH 1-71 essentially constituted a late filed objection to the data request; and if the Objection could be viewed as a motion for rehearing, that motion would also be untimely and violate the Commission's rules.

PSNH also claimed that it was significant that RESA's Objection did not discuss subpart (b) of data request PSNH 1-71, which relates solely to allegations of consumer protection violations by RESA's members. PSNH noted that RESA stated that PSNH must do its own work to support an argument about the trustworthiness of competitive suppliers, a statement

which PSNH interpreted to be tantamount to an admission by RESA that the information sought is relevant to the proceeding. PSNH said that the portions of testimony it seeks to strike contain RESA's contention that enhanced access to customer information should be provided, and hence that text is implicated by data request PSNH 1-71 and should be stricken from the record consistent with Order No. 25,439.

Finally, PSNH stated that whether or not the proposed market changes are consistent with New Hampshire law or the New Hampshire Constitution has no bearing on whether RESA has complied with the Commission's order by striking a single sentence from its testimony after choosing not to respond to relevant discovery. For the stated reasons, PSNH said that the Commission should Grant PSNH's Motion.

B. RESA

In its Objection, RESA emphasized that data request PSNH 1-71 specifically cited RESA's testimony at page 16, lines 12-17, the portion of RESA's testimony that RESA had proposed to withdraw from its testimony and from the record in this proceeding. RESA pointed out that PSNH is now requesting that the Commission strike the entirety of its testimony on electronic interface.

RESA said that it had taken a "new look" at data request PSNH 1-71 and believes that the question is overbroad. RESA said that, in particular, subsection (a) is broad because it asks for information regarding whether any competitive suppliers has been accused of violating regulations or rules, and the question on its face appears to apply to any competitive suppliers and not to only those suppliers who are members of RESA. According to RESA, to respond to the question, RESA would have to check with RESA member companies to see if they were

aware of any such accusations against any competitive supplier in an unlimited number of jurisdictions. Then, if any RESA member were aware of such accusations, that member would have to obtain all documents related to such accusations.

Because RESA could not be certain that it could completely respond to such a broad request, RESA said it chose the alternative offered by the Commission and agreed that a portion of its testimony referred to in the subject data request—namely lines 12 through 17 at page 16—should be stricken from the record. RESA said that PSNH’s Motion is essentially an effort to recast data request PSNH 1-71 and broaden it beyond a plain reading of the question. RESA argued that that the Commission should deny such overreaching by PSNH.

In the Objection, RESA noted that PSNH’s affiliate in Connecticut is already subject to purchase of receivables, electronic interface, and customer referral programs, and that its affiliate in Massachusetts will also be subject to these programs. RESA referred to Part II Article 83 of the N.H. Constitution and suggested that the efforts to promote competition were consistent with Article 83 as well as the purpose of the restructuring statute, RSA 374-F:3, VII. RESA concluded by requesting that the Commission deny PSNH’s Motion.

III. COMMISSION ANALYSIS

Although Commission rules do not provide for reply to objections, in this instance, we grant PSNH leave to reply to RESA’s Objection in so far as the reply addresses RESA’s “new look” at PSNH 1-71. We agree that much of RESA’s argument is directed at the scope of the data request and not at disputing PSNH’s Motion. Consequently, it is just and reasonable to permit PSNH to be heard. Having said that, we have reviewed and considered the arguments of PSNH and RESA, and based on our analysis, we deny PSNH’s Motion. There is no dispute that

PSNH 1-71 references lines 12 through 17 of page 16 of RESA's testimony. RESA has withdrawn that portion of the testimony and has agreed that it should be stricken from the record. We are not persuaded by PSNH that there is a nexus between the remaining RESA testimony on electronic interface and the rule violations that were the subject of the data request. Further, in the scoping order on this docket, we specifically accepted the recommendation that this proceeding include an examination of the costs and benefits of purchase of receivables, customer referral, and electronic interface. Order No. 25,389 (July 3, 2012) at 7.

In its Motion, PSNH said that it is concerned whether there is sufficient information to gauge the compliance of competitive suppliers in the handling of private, customer-specific information. PSNH, as a party, and others will have an opportunity to introduce testimony on this issue, and further discovery may be conducted as a result. In addition, there is no procedural impediment to exploring this issue with witnesses at hearing. Consequently, we do not find our ruling denying PSNH's Motion as foreclosing further examination of the conduct of competitive suppliers.

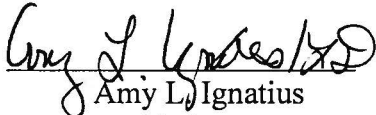
Based upon the foregoing, it is hereby

ORDERED, that the Motion for Leave to File a Reply by Public Service Company of New Hampshire is hereby GRANTED; and it is

FURTHER ORDERED, that the motion by Public Service of New Hampshire to strike certain testimony of the Retail Energy Supply Association is hereby DENIED; and it is

FURTHER ORDERED, that the Retail Energy Supply Association's withdrawal of lines 12 through 17 at page 16 of its prefiled testimony is ACCEPTED, and that portion of the testimony shall be stricken from the record.


By order of the Public Utilities Commission of New Hampshire this thirtieth day of
January, 2013.


Amy L. Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director