

**STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**Docket No. DE 12-093**

**Power New England**

Petition for Order Requiring Modification to PSNH's Terms and Conditions to Ensure that PSNH's Small Customers Benefit from Retail Electricity Choice

**and**

**Docket No. DE 12-097**

**Electric Utility Customers**

Investigation Into Purchase of Receivables, Customer Referral, and Electronic Interface for Electric and Gas Distribution Utilities

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S**

**MOTION TO DISMISS**  
**PETITION OF PNE ENERGY SUPPLY, LLC**  
**IN DOCKET NO. DE 12-093**

**MOTION TO RESCIND**  
**INTERVENOR STATUS OF PNE ENERGY SUPPLY, LLC**  
**IN DOCKET NO. DE 12-097**

**MOTION TO COMPEL**  
**PNE ENERGY SUPPLY, LLC TO RESPOND TO DATA REQUESTS**

**MOTION TO STRIKE**  
**TESTIMONY OF AUGUST G. FROMUTH**

**MOTION TO STAY**  
**THE PROCEDURAL SCHEDULE**

**August 24, 2012**

Public Service Company of New Hampshire (“PSNH” or the “Company”) hereby moves the Commission, pursuant to Rules Puc 203.07 and 203.09 (i) to:

1. Dismiss the “Petition of Power New England for Order Requiring Modifications to PSNH's Terms and Conditions to Ensure that PSNH's Small Customers Benefit from Retail Electricity Choice” (the “Petition”) dated April 12, 2012, in Docket No. DE 12-093;
2. Rescind the intervenor status of PNE Energy Supply, LLC, d/b/a Power New England (“PNE”) in Docket No. DE 12-097;
3. In the alternative, to compel PNE to fully and accurately respond to the data requests 1-1, 1-2, 1-3, 1-4, 1-8, 1-11, 1-12, 1-14, 1-16, 1-18, 1-21, 1-32. and 1-36 propounded by PSNH in Docket No. DE 12-093;
4. In the alternative, to strike the testimony of Mr. August G. Fromuth filed on behalf of PNE/Freedom/Resident Power in Docket No. DE 12-097; and,
5. Stay the procedural schedule in Docket No. DE 12-097, pending resolution of outstanding motions.

The underlying basis for these Motions is that PNE Energy Supply, LLC, d/b/a Power New England (“PNE”) / Freedom Logistics (“Freedom”) / Resident Power (collectively “PNE”) has willfully and without adequate reason impaired the orderly and prompt conduct of the

proceedings (RSA 541-A:32) by their failure to comply with the Commission's procedural rules and by a lack of candor in their pleadings, testimony and discovery responses.

PSNH notes that it previously filed a Motion to Dismiss in Docket No. DE 12-093 dated April 20, 2012. That Motion is still pending before the Commission. PSNH incorporates that Motion in its entirety. PSNH re-alleges some aspects of that previous Motion in order to provide a foundation for the additional Motions contained herein.

In support of these Motions, PSNH states as follows:

1. On April 12, 2012, PNE Energy Supply, LLC, d/b/a Power New England ("PNE") filed a Petition with the Commission seeking "an Order requiring modifications to PSNH's Services and Schedule of Charges for Energy Service Providers... ." (Petition at p. 1). That Petition was docketed as Docket No. DE 12-093. The Petition notes that the charges in question are contained in PSNH's "Electricity Delivery Service Tariff- NHPUC No. 8, Original Pages 31 through 40. PSNH's 'Services and Schedule of Charges' are set out in Section 2, original pages 32 through 36." (*Id.* at unnumbered p. 2).

2. The Petition seeks an Order that would adjust certain of PSNH's tariffed rates; in particular, PNE asks that the following portions of Tariff NHPUC No. 8 contained in the "Terms and Conditions for Energy Providers" be adjusted to a rate level of zero by eliminating them completely: i. the "Selection Charge" at Section 2(a) (Tariff p.32); ii. the "Billing and Payment

Service Charge” at Section 2(f) (*Id.* at p. 35); and, iii. the “Collection Services Charge” at Section 2(g) (*Id.* at p. 36).

3. On April 20, 2012, PSNH filed a Motion to Dismiss the Petition. That Motion, and its related responsive pleadings, is still pending before the Commission. PSNH incorporates that Motion in its entirety. PSNH re-alleges some aspects of that previous Motion in order to provide a foundation for the additional Motions contained herein. That first Motion to Dismiss prompted the following responsive pleadings: a. PNE’s Motion to Strike PSNH’s Motion to Dismiss, April 21, 2012; b. PSNH’s Objection to PNE’s Motion to Strike, May 1, 2012; and, c. PNE’s Reply to PSNH Objection to PNE’s Motion to Strike.

4. By letter dated April 16, 2012, the Retail Energy Supply Association (“RESA”) requested that the Commission open a proceeding to investigate purchase of receivables and related programs. In response, the Commission opened Docket No. DE 12-097, “Investigation into Purchase of Receivables, Customer Referral and Electronic Interface for Electric and Gas Distribution Utilities.”

5. By Secretarial letter dated May 18, 2012, the Commission announced, “PNE’s petition will be held in abeyance until the Commission issues a ruling following the prehearing conference in Docket No. DE 12-097.” PNE filed a “Petition for Intervention” in Docket No. DE 12-097 dated May, 22, 2012, which was granted by the Commission at the May 31, 2012, prehearing conference.

6. On July 3, 2012, the Commission issued its Prehearing Conference Order, Order No. 25,389, in Docket No. DE 12-097. In that Order, the Commission noted, "...Docket No. DE 12-093 would not be consolidated with this docket and the reasonableness of the specific PSNH tariff charges disputed by PNE in DE 12-093 would not be finally determined in this docket." Order No. 25,389 at 7. *See also id.* at fn. 1.

7. In the Prehearing Conference Order the Commission also adopted the procedural schedule agreed upon by the Parties and Staff. That Procedural Schedule included, *inter alia*, a due date for "Supplier Testimony" of July 13, 2012, and deadlines for discovery, including "Responses to Discovery" on August 10, 2012 and a Technical Session on August 16, 2012. Rule Puc 102.22 defines a "Technical Session:" "'Technical session' means a meeting of the parties at which information is shared on an informal basis and at which neither the presiding officer nor any commissioners are present." A technical session is referred to in Rule Puc 203.09 (j), "Discovery," as a form of discovery.

8. The prefiled Testimony of Mr. August G. Fromuth dated July 13, 2012, was sent to the service list in Docket No. DE 12-097 by email on July 13<sup>th</sup>. That testimony was not received and docketed by the Commission until July 16, 2012, three days after the deadline for such testimony established by Order No. 25,389. As such, that testimony was not timely filed per Rule Puc 202.05: "Puc 202.05 Date of Filing. (a) Any document submitted to the commission shall be deemed to have been filed on the date the commission receives a complete executed paper filing with the required number of copies, pursuant to Puc 203.02, except as provided in (b) below."

9. Neither the filing cover letter, nor the testimony itself, clearly establishes the party sponsoring Mr. Fromuth's testimony. Although PNE was the petitioner in Docket No. DE 12-093 and the party granted intervenor status in Docket No. DE 12-097, the testimony appears to be filed on behalf of Freedom Logistics and Resident Power, in addition to PNE.

10. Pursuant to the procedural schedule set forth in Order No. 25,389, on July 27, 2012, PSNH submitted data requests to PNE. Copies of those data requests are included in Attachment 2 of Appendix A, ¶31<sup>1</sup> to this Motion. Less than 15 minutes after sending out those data requests, counsel for PNE responded to PSNH by email: "*Are you serious or are you looking for trouble? This is vexatious and an abuse of discovery. Jim Rodier,*" referring specifically to PSNH question number "1-1", "What were Mr. Fromuth's duties and areas of concentration as a Commerce Department Deputy Assistant Secretary?" (That question is actually PSNH data request number 1-3, not 1-1.) See Attachments 4 to Appendix A, ¶46. PSNH's response to the referenced email is included as Attachment 5 to Appendix A, ¶48.

11. On July 27, 2012, Commission Staff also propounded data requests on PNE.

12. On August 3, 2012, PNE provided its objections and responses to PSNH's data requests, which are included in Attachments 1 and 3 of Appendix A to this Motion (¶29, 37), respectively.

13. In accordance with Rule Puc 203.09 (i)(4), PSNH made a good-faith effort to resolve its disputes concerning the questions objected to by PNE, as well as the Company's dissatisfaction

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<sup>1</sup> ¶# refers to the Bates sequential page number required by Rule Puc 203.04(a)(3).

with responses from PNE that were deemed to be inadequate or nonsensical. The letter attached as Appendix A, β22, to this Motion fulfilled this requirement.

14. By email dated August 15, 2012, PNE submitted its responses to Staff's data requests. These responses were admittedly untimely, as they were submitted five days after the August 10, 2012, date set forth in Order No. 25,389, and just one day before the August 16th Technical Session. Indeed, counsel's email sending out the responses to Staff's questions stated, "Please find attached PNE's responses to Staff's data requests. ***I should have gotten these out earlier this week.*** Jim Rodier, 603-559-9987." (Emphasis added).

15. On August 16, 2012, the Technical Session scheduled in Order No. 25,389 was held at the offices of the Commission. Two days prior to that Technical Session (on August 14), Commission Staff notified parties on the service list that there would be a dial-in number for the Technical Session for those individuals wishing to participate by telephone. Approximately 18 people, including representatives from the state's four electric distribution companies (UNITIL, Liberty Utilities, New Hampshire Electric Cooperative, and PSNH), the Retail Energy Supply Association, the Office of the Consumer Advocate, and Commission Staff attended the August 6 Technical Session in person, and an additional two people participated via the dial-in telephone conference call. Neither counsel, the witness, nor any other representative of PNE attended this discovery proceeding, either in person or via telephone. *See* the Affidavit of Stephen R. Hall attached hereto as Appendix B, β50. PSNH had questions for PNE and its witness at the Technical Session which could not be asked due to their failure to attend.

16. Immediately after the Technical Session on August 16, 2012, Commission Staff inquired into PNE's failure to attend that scheduled proceeding. In an email sent to the service list for Docket No. DE 12-097, Commission Staff indicated that counsel for PNE had been contacted, and that "***he said he chose not to attend the hearing*** because he is in a discovery dispute with PSNH." (Emphasis added). Upon return to PSNH's Manchester office after the August 16<sup>th</sup> Technical Session, PSNH's Manager of Rate and Regulatory Services, Stephen R. Hall, had a voice-mail message from counsel for PNE which was left at 1:58 p.m. As noted in Mr. Hall's affidavit at Appendix B, B50, referring to PNE's absence from the Technical Session, counsel for PNE stated, "***I had absolutely no time available to go to that.***"

17. As noted in Appendix A, B22, nearly half of PNE's responses to PSNH's data requests were either objections, had answers deemed inadequate by PSNH, or were nonsensical as they had internal references which were incorrect or completely nonexistent. By email on August 15, 2012, in response to PSNH's August 9 letter (Appendix A), PNE provided a supplemental response to its data requests correcting some of the various numbering errors contained in its original response.<sup>2</sup> Curiously, the cover letter forwarding that supplemental response was dated August 10, 2012, a full five days prior to the date it was emailed to parties on the discovery service list. For some unexplained reason, the corrected responses (along with the responses to Staff's data requests) were not provided until the day before the scheduled Technical Session. A copy of PNE's supplemental data request responses is attached as Appendix C, B52.

18. PNE's repeated failures to comply with this Commission's procedural orders and flaunting of this Commission's rules have caused the other parties to this proceeding, including

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<sup>2</sup> PNE's responses to PSNH questions 1-9 and 1-10 still appear to be incorrect.

PSNH, to expend unnecessary time and resources. PNE's decision not to attend the Technical Session has prejudiced the ability of other parties, including PSNH, to utilize that forum as an effective discovery tool. Merely substituting additional data requests (interrogatories) for the interaction of a Technical Session (akin to a deposition) fails to remedy the harm. But, PNE's procedural failings alone must not be viewed in isolation when considering whether its Petition should be dismissed in Docket No. DE 12-093 and whether its status as an intervenor in Docket No. DE 12-097 should be rescinded. Its transgressions during the discovery process, described below, also support the granting of these motions.

19. In the event that the Commission does not grant PSNH's Motion to Dismiss and Motion to Rescind Intervenor Status, PSNH seeks an order overruling the objections made by PNE and compelling PNE to respond to PSNH data request numbers 1-1, 1-2, 1-3, 1-4, 1-11, 1-12, 1-14, 1-21, and 1-36. In addition, PSNH seeks an order from the Commission compelling PNE to provide full and accurate responses to PSNH data request numbers 1-8, 1-16, 1-18, and 1-32.

20. The standard for discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Investigation into Whether Certain Calls are Local*, 86 NH PUC 167, 168 (2001). The Commission will typically allow "wide-ranging discovery" and will deny discovery requests only when it "can perceive of no circumstance in which the requested data would be relevant." *Re Lower Bartlett Water Precinct*, 85 NH PUC 371, 372 (2000). A party in a legal proceeding in New Hampshire is entitled to "be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponent, and whether the evidence is in the possession of his opponent

or someone else.” *Scotsas v. Citizens Insurance Co.*, 109 N.H. 386, 388 (1969). *See also, Public Service Co. of New Hampshire*, Order No. 25,398 (August 7, 2012). Information sought for the purpose of exploring the experience, expertise and credibility of a witness is relevant, and its withholding is subject to an order to compel production. *Re Public Service Co. of New Hampshire*, 69 NH PUC 649, 651 (1984).

21. PSNH comprehensively set forth its disputes concerning PNE’s data request responses in its August 9, 2012, letter to counsel for PNE that is included as Appendix A, β22, hereto. Rather than repeat those bases for PSNH’s Motion to Compel, PSNH incorporates the contents of that Appendix herein. PSNH seeks an order compelling responses to all the questions identified in paragraph 19, above.

22. Further discussion is only necessary for certain responses that were included as part of PNE’s supplemental response (Appendix C, β52) (presented in the order contained in Appendix C); for the remainder, the discussion in Appendix A will suffice:

- a. Questions 1-1 through 1-4: PNE’s supplemental objections remain insufficient. The bases for seeking an order compelling responses to these questions set forth in Appendix A, β22, remain.
- b. Questions 1-11 and 1-14: PNE now claims the information requested is confidential and protected under RSA 91-A:5; for these, and all other questions for which PNE objects on the basis of confidentiality (questions 1-21, 1-18, and 1-36), PSNH is willing to be bound by a standard non-disclosure agreement protecting information that the Commission deemed to be confidential. PNE also claims “Moreover, this information is available from a more convenient and less

burdensome source, namely PSNH.” Since the question asked for information relating to “each New Hampshire utility’s service area,” PNE’s objection states as its basis a conclusion that is incorrect.

- c. Question 1-21: PNE asserts that information regarding uncollectible rate experience “is irrelevant to this proceeding and is not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding.” In Order No. 25,389 the Commission ruled that the scope of Docket No. DE 12-097 will “include an examination of the costs and benefits of purchase of receivables, customer referral, and electronic interfacing including the collection of the associated costs, as well as consideration on a generic basis on which the costs associated with the provision of competitive supplier services generally should be recovered.” Order 25,389 at 7 (footnote omitted). PSNH’s question is directly relevant to the examination of costs and benefits of a purchase of receivables program. PNE also objects on the basis that, “PNE has taken no position on POR.” PSNH refers the Commission to paragraph 23 of this pleading, *infra*, for a discussion of this response by PNE; in addition, Rule Puc 203.09(b) provides that “any person covered by this rule shall have the right to serve upon any party, data requests, which may consist of a written interrogatory or request for production of documents.” Under this regulation, PSNH has the right to serve any party - - such as PNE - - with data requests, and PNE must answer if it has responsive information. A claim by a party that it “has taken no position” on a subject is not the basis for a valid objection.
- d. Question 1-8: Both PNE’s Petition and Mr. Fromuth’s testimony complain that certain charges in PSNH’s tariff relating to services offered to competitive

suppliers “are completely out-of-line with the comparable charges assessed by other New England utilities.” When asked for “a listing of all ‘other New England utilities’ detailing the ‘comparable charges assessed by’ each such utility in any form, whether tabular, spreadsheet, listing, or any other format that PNE or Mr. Fromuth may have,” PNE’s supplemental response was, “No such table exists. Moreover, it appears that PSNH has already gathered this information.” The information requested goes to the central issue in PNE’s petition and testimony – it is unfathomable to think that PNE has no information whatsoever to support its own allegations and testimony. And, PSNH has not gathered the requested information; even if the Company had made its own inquiries, that does not relieve PNE or any other party from responding to a relevant discovery question to provide a means of confirming any such data and to probe the credibility of the allegations made in pleadings and testimony.

- e. Question 1-16: PNE’s testimony stated “that ‘within the past year’ there has been a ‘relatively large increase in the enrollment by competitive suppliers of residential and small commercial customers...’” PSNH asked for a quantification of that statement. PNE’s supplemental response was “A “relatively large increase in enrollment” refers to a large increase with respect to historical levels, but small in absolute numbers.” That is not a quantification; that supplemental answer is not responsive.

23. PSNH’s issues with PNE’s discovery responses go beyond the questions that were objected to or which received nonresponsive answers. PSNH must also question the veracity of

those answers actually provided by PNE. PNE's responses to PSNH questions 1-38 and 1-39 illustrate this problem. Those two questions, and PNE's responses thereto, are:

**1-38 Does FEL, PNE or Resident Power have a position regarding whether the Commission should mandate implementation of a purchase of receivables program by the state's electric utilities? If so, please provide and explain any such position in detail.**

**Not at this time.**

**1-39 Does FEL have a position regarding whether a mandated purchase of receivables program would impact electricity rates? If so, please explain any such position in detail.**

**Not at this time.**

PNE's responses clearly and unequivocally state that neither FEL ("Freedom Energy Logistics")<sup>3</sup>, PNE or Resident Power has any position on implementation of a purchase of receivables program or whether such a purchase of receivables program would impact electricity rates. Contrary to the responses provided to these data requests, as demonstrated below FEL has indeed taken public positions regarding these matters, and has failed to accurately and truthfully respond to these data requests:

a. **Via a Freedom Energy Logistics internet blog site at:**

<http://freedomenergy.wordpress.com/2012/06/12/purchase-of-receivables-the-sub-prime-mortgage-equivalent-for-utilities/>

*where FEL references this very NHPUC docket* ("The NH PUC has opened Docket DE 12-097 to investigate, among other issues, purchases of receivables (POR) in order to 'enhance' the competitive options for energy supply.") That

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<sup>3</sup> Freedom Energy Logistics is a registered trade name of Freedom Logistics, LLC.

blog continues *by setting forth FEL's position* on implementation of a purchase of receivables program, and concludes by stating:

So, the “competitive” supplier gets paid, albeit at some figure less than it billed, the utility becomes the bill collector to the “competitive” energy supplier’s deadbeat customers, and *the loyal customer who pays their own bills sees their electricity rates rise even further* through stranded costs subsidized on their backs.

*FEL does not favor POR and will testify against it in the coming months.*

(Emphases added). A copy of FEL’s complete web posting concerning its position on purchase of receivables is attached at Appendix D, ¶62. This web posting is dated June 12, 2012 - - just six weeks prior to the date of PNE’s data request responses referred to above, wherein PNE stated that neither FEL, PNE, or Resident Power had taken a position on the issue of purchase of receivables.

b. **Via radio broadcast, with an MP3 audio archive available at:**

<http://www.girardatlarge.com/media/audio/6-14-2012%20Hour%203.mp3>

where Mr. Sean Devine (“Sean the Energy Guy”) explains purchase of receivables and why it is “very bad for the ratepayers.” A transcript of this broadcast is attached hereto as Appendix E, ¶64. FEL notes on its blog site that “FEL Power sister company Resident Power now sponsors a weekly radio segment, ‘Sean the Energy Guy’ on NH’s 1250 AM. Hosted by FEL Power’s Sean Devine and co-host Bart Fromuth, Resident Power Managing Director, each segment tackles a current energy issue.” *See,*

< <http://freedomenergy.wordpress.com/tag/sean-devine/> >. A copy of this FEL web posting is attached at Appendix F, ¶74. This broadcast occurred on June 14,

2012 - - just six weeks prior to the date of PNE's data request responses referred to above, wherein PNE stated that neither FEL, PNE, or Resident Power had taken a position on the issue of purchase of receivables.

24. Similarly, PSNH's data request number 1-5 to PNE asked, "Please describe the research that was performed to substantiate your testimony that utilities in New Hampshire other than PSNH 'do not levy charges on competitive suppliers.'" PNE's response was, "**PNE reviewed the currently effective tariffs for Unitil, Liberty, and NHEC.**" (Emphasis in original). PSNH refers the Commission to the approved tariff of the New Hampshire Electric Cooperative, NHPUC No. 21. Paragraph 5 of NHEC's tariff is captioned "NHEC TRANSACTIONS WITH COMPETITIVE SUPPLIERS AND MARKET PARTICIPANT END-USERS." Subparagraph 5.2, "Cooperative Requirements" includes subsection e: "The Cooperative will provide billing information to competitive suppliers. The Cooperative will offer consolidated billing services to competitive suppliers *in accordance with the terms, conditions and fees per sections 5.4 and 5.5.*" (Emphasis added). Subparagraph 5.4, "Billing Options" at subparagraph a. provides: "The Cooperative will offer both Standard and Consolidated billing services to competitive suppliers *in accordance with the fee schedule provided in section 5.5.* The competitive suppliers may choose which service they receive." (Emphasis added). Finally, subparagraph 5.5 "Electronic Data Interchange and Billing Option Fees" provides:

#### **5.5 Electronic Data Interchange and Billing Option Fees**

a. Historical interval usage data, if available, will be supplied via 3.5" diskette and US Mail to properly authorized competitive suppliers *for a fee* of \$25.00 for each month's data per account. Twelve months of a member's historical billing usage data will be supplied to competitive suppliers upon proper authorization at no charge. Any available usage data will be supplied to the member free of charge.

b. Competitive suppliers who utilize the Standard billing option **will be charged a set up fee** of \$400.00 provided that the supplier is willing to accept the Cooperative's normal set up. Any customization **will be charged** to the supplier at a rate of \$110.00 per hour for computer programming staff. There may be a considerable delay associated with customization. There are no monthly fees associated with Standard billing service.

c. The Cooperative will provide Consolidated-billing service to any competitive supplier which chooses this option and with which the Cooperative has an agreement to do so. **There is a setup fee** for each competitive supplier of \$480.00 based on the supplier using the Cooperative's normal set up. If the supplier requires customization, **the Cooperative will charge** the supplier \$110.00 per hour for computer programming staff. There may be considerable delays related to customization. **The fee per month per account** for Consolidated billing service is \$0.60.

Issued: July 21, 2003

Effective: August 14, 2003

Authorized by the NHPUC Order No. 24,172 in Docket No. DE 03-007 issued May 13, 2003

Issued by: Heather Kaufman

Title: Controller/Rates Manager

(Emphases added).

Clearly, NHEC's tariff approved by this Commission does include charges levied on competitive suppliers, contrary to the allegations contained in PNE's Petition, contrary to the testimony of its witness, and contrary to PNE's responses to PSNH data request numbers 1-5, 1-6, 1-8, and 1-9. Such a lack of candor should not be tolerated.

25. No party to an administrative or judicial proceeding should have to question the completeness or veracity of information provided in a pleading, testimony, or discovery process. Unfortunately, as demonstrated herein, the parties to these two proceedings are forced to do just that. It is the obligation of a party subject to discovery to identify responsive information, to provide copies of that information, or to indicate where such information can be obtained. It is

also an obligation of a party subject to discovery to provide true, complete, and accurate responses. PNE has failed to live up to these obligations.

26. If the Commission decides not to grant PSNH's Motion to Dismiss and Motion to Rescind Intervenor Status, and also decides not to grant some or all of PSNH's Motion to Compel based on the determination that the questions seek information that is irrelevant or immaterial to the subject of the proceeding(s), PSNH moves that the underlying testimony of Mr. Fromuth be stricken accordingly. As PSNH questions 1-1 through 1-4 all go to the experience, expertise and credibility of the witness, if those questions are deemed irrelevant or immaterial the entirety of Mr. Fromuth's prefiled testimony should be struck. For the remaining questions, Appendix A, B22, provides references for each question to the underlying testimony which should be struck.

27. One of the mandatory requirements for the grant of intervenor status set forth in RSA 541-A:32 is that "the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." RSA 541-A:32,I,(c). PNE's course of conduct throughout Docket Nos. DE 12-093 and DE 12-097 has demonstrably impaired the orderly and prompt conduct of the proceedings.

28. PNE's impairment of the orderly and prompt conduct of the proceedings is amply demonstrated throughout these proceedings, including:

- a. Inclusion of allegations in its Petition that are unverified and unsubstantiated;

- b. Failure to comply with Rule Puc 203.06(c) which requires that “All petitions seeking a rate adjustment shall be . . . accompanied by pre-filed testimony and exhibits.”
- c. Failure to timely file testimony in accordance with the procedural schedule set forth in Order No. 25,389 and Rule Puc 202.05;
- d. Submission of incomprehensible data request responses, which were supplemented on August 10, but not provided to the parties until August 15, the day prior to the Technical Session;
- e. Sending disturbing emails concerning discovery, *i.e.*, “*Are you serious or are you looking for trouble?*”
- f. The myriad objections to data request questions submitted by PSNH discussed herein;
- g. Failure to respond fully, accurately, and truthfully to data requests;
- h. Failure to timely respond to Staff’s data requests, providing responses five days late, and just one day prior to the Technical Session;
- i. Failure to attend, or even call into, the Technical Session because “*I had absolutely no time available to go to that,*” which wasted the time and resources of Commission Staff, the Office of Consumer Advocate, and representatives from all four of the state’s distribution companies.

29. RSA 541-A:32,V provides the Commission with authority to modify an order granting intervention in a proceeding at any time. PSNH moves that for the reasons stated herein, that

pursuant to the statutory authority provided by RSA 5641-A:32, the Commission rescind the order granting intervenor status to PNE.

30. For the reasons set forth herein, PSNH moves that PNE's Petition docketed as DE 12-093 be dismissed with prejudice.

31. The procedural schedule for Docket No. DE 12-097 calls for the filing of Staff/OCA/Intervenor Testimony on September 10, 2012. Without decisions from the Commission on the outstanding procedural motions, PSNH is not able to effectively prepare such testimony. As a result, PSNH requests that the Commission stay the procedural schedule in Docket No. DE 12-097 pending Commission decisions on the outstanding motions.

**WHEREFORE**, PSNH respectfully requests that the Commission:

- A. Dismiss PNE's Petition in Docket No. DE 12-093, and close that proceeding with prejudice;
- B. Rescind PNE's grant of intervenor status in Docket No. DE 12-097;
- C. Compel PNE to respond to PSNH's data requests fully, accurately, and truthfully if either dismissal of the Petition in Docket No. DE 12-093 or the rescission of intervenor status in Docket No. DE 12-097 is not granted;
- D. Striking of the testimony of Mr. August G. Fromuth as necessary and appropriate, based upon the Commission's actions on these Motions; and
- E. Stay the procedural schedule in Docket No. DE 12-097 pending a resolution of all outstanding procedural issues.

Respectfully submitted,

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

Dated: August 24, 2012

By:   
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**Certificate of Service**

I hereby certify that a copy of this Motion has been served electronically on the persons on the Commission's service lists in Docket No. DE 12-093 and Docket No. DE 12-097 in accordance with Puc 203.11 this 24<sup>th</sup> day of August, 2012.



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Robert A. Bersak

