

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

**DE 12-097**

**ELECTRIC AND GAS UTILITIES**

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

**Objection to Granite State Electric Company's Motion to Compel**

NOW COMES the Retail Energy Supply Association ("RESA"), an intervenor in this docket, and objects to Granite State Electric Company's ("GSEC") August 20, 2012 Motion to Compel Retail Energy Supply Association's Responses to Data Requests 1-7, 1-11, 1-15, 1-17 and 1-18 ("Motion"). In support of this objection RESA states as follows:

1. On July 13, 2102 RESA filed the joint testimony of Daniel Allegretti, Marc Hanks, and Christopher Kallaher. On July 27, 2012 GSEC propounded 21 data requests on RESA. On August 6, 2012 RESA objected to six of the data requests (7, 11, 15, 17, 18 and 20) and on August 10, 2012 RESA responded to one of the data requests (7) that it had objected to, notwithstanding the objection, and responded to the remaining data requests. On August 20, 2012 GSEC filed the Motion.

2. As the Commission noted in the Order of Notice and the Commission's Prehearing Conference Order in this docket, the issues in the docket are limited to whether purchase of receivables, customer referral and electronic interface programs will promote customer choice consistent with the restructuring principles of RSA 374-F:3, whether the resulting rates associated with the programs are just and reasonable pursuant

to RSA 378:5 and 7, and an examination of the costs and benefits of these programs, including the recovery of the associated costs. In that Order of Notice the Commission also cited its order in DE 10-160 where the Commission had said that it would open a generic proceeding to explore whether these kinds of programs should be implemented in New Hampshire “to support customer choice in energy supply” for smaller customers.

3. As the Commission noted in a recent order, when addressing motions to compel “we consider whether the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.” Order No. 25,398, issued August 7, 2012 in DE 11-250, page 2. “[I]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide.” *City of Nashua*, Order 24,681 (2006) at 2.”

4. RESA’s objections to GSEC’s data requests 1-7, 1-11, 1-15, 1-17 and 1-18 start from the basis that responses to these requests would not be relevant to the issues in this docket nor would they be reasonably calculated to lead to the discovery of information that would be admissible in this proceeding. Data requests that seek information such as company-specific credit check processes of individual RESA members, many of whom may not participate in the NH market, including the number of accounts with charge-offs, the percent of total accounts represented, the dollars charged-off, the average balance per account, the reason for the charge off, and the average length of time the account was held by the RESA member, or the details of marketing programs to specific classes of customers by RESA’s members in NH and other states, seek information that is not relevant to the issues the Commission laid out in the Order of Notice and would not lead to the discovery of information that would be relevant to those

issues and therefore would not be admissible in this proceeding. The Commission has clearly articulated the scope of the docket and that scope does not include an examination of the credit check practices and marketing efforts of all of the RESA members who are suppliers in this state or other states.

5. RESA does not have in its possession the kind of information that has been requested and RESA members have no obligation to provide this information to RESA. Collection of this information would be a very arduous task and, for the reasons explained further in this paragraph, would require the use of an unaffiliated, neutral third party to collect this information. Moreover, the collection and dissemination of commercially sensitive information by a trade association, such as RESA, could have serious implications under both the Sherman Anti-Trust Act and applicable NH anti-trust law and is contrary to RESA's anti-trust policy.

6. Gathering all of the information GSEC is seeking from RESA's 22 members about their practices in each state in which each of those members are doing business would be extremely time consuming and burdensome. As noted above, it is difficult to know which RESA members might ultimately decide to become involved in the NH market, depending on whether the Commission ultimately adopts a POR program and what it entails, and when RESA members might enter the market if they do in fact decide to make such entrance. In its motion GSEC says that to develop an appropriate discount rate: "Liberty must understand the credit check process that RESA's members use prior to enrolling a customer". RESA fails to see how the credit check process of a RESA member in another state is even relevant to the discount rate and RESA believes that this is especially true because that member may never participate in the NH market.

What RESA is proposing is an adjustable discount rate, one that can be periodically adjusted depending on the experience and the costs of the utility. It seems quite a stretch to argue that GSEC needs to know the credit check process or the level of bad debt of all of RESA's members in all of the other jurisdictions in which they have operated in order for them to determine an appropriate adjustable discount rate.

7. GSEC has cited a Massachusetts DPU ruling in support of its motion, but when you look at the underlying issues and underlying data requests that were at issue in that case they were far less comprehensive than the ones at issue in this docket. The information requests at issue in that case pertained "to the amount of renewable energy being supplied by RESA member companies to customers within Massachusetts and NSTAR Electric's service territory." Hearing Officer Ruling, D.P.U. 07-64, p. 7. Compare that with for example GS 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." This data request is extremely broad in that it would apply to all 22 of RESA's members in all of the states in which they operate. See also GS 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.

This data request is clearly going on an incredibly broad fishing expedition for much more information than what is necessary or relevant to this docket.

8. In GS 1-15, 1-17 and 1-18 GSEC is asking for marketing programs by all RESA members in all New England states and results of those marketing programs.

What do the marketing programs have to do with the kinds of programs that are at issue in this docket? This is particularly sensitive information that can serve no useful purpose in this docket. GSEC argues (p. 8 of its Motion) that RESA asked the Commission to open this docket because “it claims these programs are necessary in order to develop retail markets for residential and small commercial customers. There is no need to delve into the marketing practices of each of the RESA member companies in order to review the importance of a POR program or customer referral and electronic interface programs. The testimony provided by expert RESA witnesses as well as the expected cross examination will adequately and appropriately provide a record that is in alignment with the stated scope of this proceeding. The discovery at issue does nothing to further the scope of this case nor does it contribute to the Commission’s desire to advance the development of retail markets for residential and small commercial customers in New Hampshire.

9. RESA also wants to make the Commission aware of two orders, one issued by the State Corporation Commission in Virginia and one by the California Public Utilities Commission, copies of which are attached to this Objection as Attachments A and B respectively. In the Virginia Order a utility sought to amend the Virginia State Corporation Commission rules to permit interrogatories and requests for production of documents to be sent to individual members of an association appearing in a Commission proceeding. The Commission said that permitting discovery “on non-parties to a proceeding – *i.e.*, individual members of an association – is not reasonable and should not be adopted.” See p. 7 of Attachment A. Similarly, the California Public Utilities Commission reversed an ALJ’s discovery ruling which had directed a cable association to

compel its members to answer data requests: “We do not believe that members of an association should automatically be subject to discovery merely because they are a member of an association... Such a result would be unduly burdensome on the individual members.” See p.7 of Attachment B. The California Commission went on to note that if the information is being sought from individual members it is “unlikely that the association possesses or has control over that sort of information.” That is exactly the case here and for the same reasons this Commission should deny the Motion to Compel.

10. Granting the Motion to Compel would have a chilling effect on the participation by groups like RESA in Commission proceedings. Participation by groups such as RESA provides many advantages to the Commission and all parties involved in cases before the Commission. The U.S. Supreme Court has explicitly recognized the many benefits for adjudicatory bodies of group participation. See International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, et al. v. Brock Secretary of Labor, 477 U.S. 274 at \*289 - 290 (1986). By combining efforts, members of groups such as RESA provide case efficiencies (including putting on witnesses and other aspects of a case) into a single party, thereby eliminating duplication of efforts by all parties to a case. Additionally, working together allows RESA and other groups to combine their expertise and thereby provides the Commission with a stronger and more complete record to make its decisions. Permitting this kind of discovery on each RESA member, especially on those who have elected not to participate or fund this particular RESA activity, could deprive this Commission of future participation by groups like RESA and the expertise that retail marketers can bring to advancing New Hampshire state policy as it relates to electric restructuring. New Hampshire’s shopping

statistics demonstrate there is still significant progress to be made and RESA members want to be a part of furthering this marketplace. However, the burdens associated with responding as individual members to such discovery would likely dampen enthusiasm for entering this market and actively participating through RESA in Commission cases going forward.

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

12. The burden of proving the necessity of compelling RESA to provide responses to these overreaching data requests falls on GSEC. RESA submits that GSEC has not met that burden. Admin. Rule Puc 203.25.

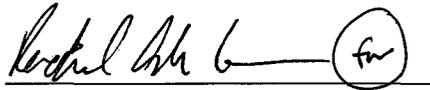
13. For the reasons cited above RESA believes that the Motion to Compel should be denied.

WHEREFORE, RESA respectfully requests that this honorable Commission:

- A. Deny GSEC's Motion to Compel; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Douglas L. Patch", is written over a horizontal line. To the right of the signature is a circular stamp containing the letters "for".

Douglas L. Patch

August 27, 2012

Certificate of Service

I hereby certify that on this 27rd day of August, 2012 a copy of the foregoing motion was sent by electronic mail to the Service List.

A handwritten signature in black ink, appearing to read "Douglas L. Patch", is written over a horizontal line. To the right of the signature is a circular stamp containing the letters "for".

Douglas L. Patch

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