

## 1 STATE OF NEW HAMPSHIRE

## 2 PUBLIC UTILITIES COMMISSION

3 **March 27, 2013** - 9:08 a.m.  
4 Concord, New Hampshire

NHPUC APR02'13 PM12:50

5  
6 RE: DE 13-059 RESIDENT POWER, LLC:  
7 *Show Cause as to Whether the Company*  
8 *should be Subject to Penalties or*  
9 *Registration Suspension or Revocation.*10 DE 13-060 PNE ENERGY SUPPLY, LLC:  
11 *Show Cause as to Whether the Company*  
12 *should be Subject to Penalties or*  
13 *Registration Suspension or Revocation.*14  
15 **PRESENT:** Chairman Amy L. Ignatius, Presiding  
16 Commissioner Robert R. Scott  
17 Commissioner Michael D. Harrington

18 Clare Howard-Pike, Clerk

19  
20 **APPEARANCES:** **Reptg. Resident Power, LLC and**  
21 **PNE Energy Supply, LLC:**  
22 Christopher H. M. Carter, Esq. (Hinckley...)  
23 Daniel M. Deschenes, Esq. (Hinckley Allen...)24  
**Reptg. Residential Ratepayers:**  
Susan W. Chamberlin, Esq., Consumer Advocate  
Office of Consumer Advocate  
Stephen R. Eckberg**Reptg. PUC Staff:**  
Alexander F. Speidel, Esq.  
Amanda O. Noonan, Dir./Consumer Affairs Div.  
Steven E. Mullen, Asst. Dir./Electric Div.

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

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X

PAGE NO.

*Public statement by Mr. Bersak (PSNH)*

27

**WITNESS PANEL:**            **AMANDA O. NOONAN**  
   **STEVEN E. MULLEN**

Direct examination by Mr. Speidel

40

Cross-examination by Ms. Chamberlin

48

Interrogatories by Cmsr. Harrington

59, 74

Interrogatories by Cmsr. Scott

66, 75

Interrogatories by Chairman Ignatius

67

Redirect examination by Mr. Speidel

78

\*       \*       \*

**CLOSING STATEMENTS BY:**

**PAGE NO.**

Ms. Chamberlin

82

Mr. Carter

84

Mr. Speidel

86

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S

EXHIBIT NO.	D E S C R I P T I O N	PAGE NO.
1	Settlement Agreement {Filed as a <i>public redacted version</i> } (03-26-13)	42
2	Settlement Agreement {Filed as a <u>CONFIDENTIAL</u> version} (03-26-13)	42
3	<i>Redacted</i> customer contact information obtained through responses to the Companies' discovery requests PUC Consumer Affairs Division	53
4	Resubmitted Settlement Agreement with attached Stipulation of Facts {Updated pursuant to Commission Bench ruling} (03-27-13)	81

**P R O C E E D I N G**

1  
2 CHAIRMAN IGNATIUS: I'd like to open the  
3 hearing in Docket DE 13-059 and DE 13-060. These are two  
4 dockets that were consolidated for proceedings. They  
5 involve Resident Power Natural Gas & Electric Solutions,  
6 LLC, and PNE Energy Supply, LLC. The dockets were  
7 initiated by an Order of Notice dated February 28th, 2013  
8 by the Commission, which called for proceedings to respond  
9 to a recommendation filed by the Commission Staff that the  
10 Commission schedule a show cause hearing as to whether  
11 Resident and/or PNE should be subject to penalties or  
12 suspension or revocation of their registrations pursuant  
13 to administrative rules of the Commission. And, then, in  
14 the last, really, just a month's time there have been  
15 numerous pleadings, filings back and forth, dealing with  
16 procedural issues, issues on the merits, tremendous  
17 exchange of discovery and discussions among the parties.

18 So, in a moment, we'll take appearances.  
19 And, then, as I understand it, we received late yesterday  
20 afternoon a proposed Settlement Agreement reached between  
21 the Staff and Resident and PNE, which we will hear  
22 evidence on. We understand it's not a settlement  
23 involving the other party, the Office of Consumer  
24 Advocate, and I'll be interested in your description of

1 what you think the appropriate procedure should be to work  
2 through all of that today.

3 So, let's first start with appearances  
4 please. Mr. Carter.

5 MR. CARTER: Good morning. I'm Chris  
6 Carter. I'm here with my colleague, Dan Deschenes, and  
7 Bart Fromuth and Gus Fromuth upon behalf of PNE and  
8 Resident Power.

9 CHAIRMAN IGNATIUS: Good morning.

10 MS. CHAMBERLIN: Susan Chamberlin,  
11 Consumer Advocate for the residential ratepayers, and with  
12 me today is Stephen Eckberg.

13 CHAIRMAN IGNATIUS: Good morning.

14 MR. SPEIDEL: Good morning,  
15 Commissioners. Alexander Speidel, representing the Staff  
16 of the New Hampshire Public Utilities Commission. And, I  
17 have with me Assistant Director Steve Mullen and Director  
18 Amanda Noonan, of the Electric Division and the Consumer  
19 Affairs Division respectively. Thank you.

20 CHAIRMAN IGNATIUS: Good morning. Thank  
21 you. Is there an understanding of the best way to present  
22 the Settlement this morning? Anything that's been agreed  
23 upon? Mr. Speidel.

24 MR. SPEIDEL: Yes. I think, in general

1 terms, Chairman Ignatius, that we would like to have a  
2 panel of witnesses presented, specifically Staff witnesses  
3 Mullen and Noonan. I'd like to have the two Settlement  
4 documents filed as exhibits. The first exhibit would be  
5 the redacted public version of the Settlement Agreement  
6 and the second exhibit would be the unredacted  
7 confidential version of the Settlement Agreement. I'd  
8 like to have Witnesses Noonan and Mullen adopt the  
9 document, and also open themselves to Bench questioning,  
10 if appropriate.

11 CHAIRMAN IGNATIUS: All right. And,  
12 questioning from OCA and the Companies as well?

13 MR. SPEIDEL: Of course, yes.

14 CHAIRMAN IGNATIUS: Is that acceptable,  
15 that Staff, that would be the first presentation would be  
16 the Staff panel?

17 MR. SPEIDEL: It would be the primary  
18 presentation.

19 CHAIRMAN IGNATIUS: All right. Are  
20 there other witnesses that people intend to call?

21 MR. CARTER: No. We do not intend to  
22 call any witnesses. But we will be available to answer  
23 any questions.

24 CHAIRMAN IGNATIUS: All right.

1 Ms. Chamberlin.

2 MS. CHAMBERLIN: Your Honor, at some  
3 point I'd like to address the request for confidentiality  
4 of the Settlement Agreement. I believe the Settlement  
5 Agreement should not be confidential, that one paragraph.  
6 And, I know that it has been received with the agreement  
7 to treat it confidential until the Commission decides  
8 otherwise. But I don't believe that it falls under any of  
9 the exceptions. And, I believe that the public should be  
10 able to know all of the terms of the Settlement Agreement.

11 CHAIRMAN IGNATIUS: All right. And, are  
12 you planning on calling a witness, Ms. Chamberlin?

13 MS. CHAMBERLIN: No. I'm planning to  
14 proceed through cross-examination.

15 CHAIRMAN IGNATIUS: All right. So,  
16 before we get to the confidentiality question, is it  
17 acceptable to the parties to have the Staff witness panel  
18 be presented, then go to cross-examination, questions from  
19 us, and then I assume the only other order of business  
20 would be public comments, if anyone has them, and closing  
21 arguments?

22 MR. CARTER: That's acceptable to us,  
23 Ms. Ignatius.

24 CHAIRMAN IGNATIUS: All right.

1 Mr. Fossum.

2 MR. FOSSUM: Good morning. Matthew  
3 Fossum, for Public Service Company of New Hampshire. We  
4 have a couple of witnesses who are here and available,  
5 they were requested to be available. I guess it sounds at  
6 the moment like perhaps they won't be called, but they're  
7 nevertheless here. And, I wanted to just speak, because  
8 you had mentioned the possibility of public comment. PSNH  
9 does have a public comment to make and it would appreciate  
10 the opportunity to do so. I don't know what would work  
11 best for the Commission, in terms of receipt of that  
12 comment. We're certainly willing and able to make it  
13 prior to proceeding on the Settlement Agreement, and I  
14 would leave that to the Commissioners. But we're ready,  
15 willing and able to make that comment at any time.

16 CHAIRMAN IGNATIUS: Thank you. And, if  
17 others have an interest in making public comment  
18 statements, we'll entertain that. They are always  
19 authorized by those who are not intervenors. We generally  
20 do it at the end of a proceeding, but let me consult with  
21 my colleagues. And, if any of the parties have an issue  
22 -- have a concern or a preference on timing, I'd be  
23 willing to hear that as well.

24 (Chairman and Commissioners conferring.)

1 CHAIRMAN IGNATIUS: Is there any  
2 preference on the part of the parties and Staff as to when  
3 public statements should be taken?

4 MR. SPEIDEL: No preference on the part  
5 of Staff.

6 MR. CARTER: We'd request that they be  
7 made at the end, as what you just suggested is an ordinary  
8 procedure.

9 MS. CHAMBERLIN: I agree with that. I  
10 think it would be just more orderly to have it at the end.

11 CHAIRMAN IGNATIUS: Mr. Fossum.

12 MR. FOSSUM: I guess, to the extent that  
13 our preference weighs in here, our preference would be to  
14 make a statement at the beginning. I understand that it's  
15 common practice to have it at the end. However, it sounds  
16 like there's going to be at least a portion of this  
17 hearing that will be held in confidential session. I  
18 don't know what portion that might be or how long that  
19 might last. I think, to the extent that PSNH's witnesses  
20 may or may not be called for, if they're not going to be  
21 called later in the proceeding, it would make sense to  
22 actually dismiss them then. If they're not going to be  
23 part of the proceeding, it just seems to make sense, from  
24 our perspective, to allow PSNH the opportunity to make its

1 comment. And, to the extent that nobody has any further  
2 questions for PSNH, then, so be it.

3 (Chairman and Commissioners conferring.)

4 CHAIRMAN IGNATIUS: All right. I think  
5 we will agree to do the opening statement -- I mean,  
6 excuse me, the public statement from PSNH before the panel  
7 testifies, so that we'll know whether we think, based on  
8 that, there's going to be a need for having your witnesses  
9 stay. And, if not, they would be free to leave. That is  
10 more efficient.

11 Before we get to that, however, I think  
12 the question of confidentiality has been raised, and that  
13 we do need to take up before we begin evidence, because  
14 that will affect whether or not we have to close any  
15 portion of the proceeding. For those who aren't frequent  
16 fliers here, we have, at times, confidential information  
17 that has been made available to the parties under a  
18 commitment that they keep it confidential, and that, when  
19 we have to present any of that on the record, we have to  
20 clear the room for those who are not parties to the  
21 proceeding. So that that would mean, if we have to go  
22 into any confidential matters, the Consumer Advocate, the  
23 Commission Staff, and the Companies' people, both  
24 witnesses and counsel, would remain, and everybody else

1 would have to leave the room. We would keep a transcript  
2 of it, but it would be in a marked "confidential" section.  
3 And, when that section dealing with confidential matters  
4 is concluded, we would then bring everybody back into the  
5 room.

6 It's not preferred. We try to stay out  
7 of that as much as possible. And, we try to discuss  
8 things in a way that doesn't require going into  
9 confidential materials whenever possible.

10 But there is one section of the proposed  
11 Settlement Agreement that has been marked as  
12 "confidential" until a ruling by the Commission. And,  
13 that's on Page 2. I'm sure everybody's redacted version  
14 shows that it goes from Section 2.2 to Section 2.4. So,  
15 Section 2.3 has been marked "confidential". Otherwise,  
16 the entire Settlement Agreement and the attached  
17 stipulation is public.

18 And, I think it would be best to first  
19 ask those who are proposing that it be confidential, which  
20 would be Staff and the Companies, to explain why that  
21 paragraph, without getting into specifics, if you can, why  
22 it needs to be confidential, and you have to be a little  
23 bit general in description, to the extent you're able to  
24 do that, and the OCA be able to respond. If you can't

1 describe why it needs to be confidential without going  
2 into confidential matters, then, you'll have to tell me  
3 that. We'll give the OCA a chance to argue without having  
4 -- well, you've seen the materials.

5 MS. CHAMBERLIN: I have the materials.

6 CHAIRMAN IGNATIUS: And, to the extent  
7 you're able to describe anything without being delving  
8 into confidential matters, we'll hear that. If need be,  
9 even for discussion of how to treat this section, we may  
10 have to clear the hearing room. But let's first try and  
11 discuss it in general terms and see if we can make  
12 progress without, while everybody is still able to hear  
13 the full discussion. Mr. Carter.

14 MR. CARTER: Thank you. This one  
15 paragraph relates to information that previously has been  
16 granted confidential treatment by the Commission. And,  
17 so, for that reason, we ask that it be -- we think that  
18 was -- we agree with that prior --

19 CHAIRMAN IGNATIUS: And, you can feel  
20 free to sit, if it's easier. The mike is important for  
21 the court reporter.

22 MR. CARTER: We agree with the prior  
23 decision to treat this information confidentially. And,  
24 for that reason, we had asked that only this one paragraph

1 be treated confidentially with respect to the Settlement.

2 MR. SPEIDEL: Yes, Chairman Ignatius.

3 In an abundance of caution, Staff had agreed to the  
4 request for confidential treatment for this Settlement  
5 term, on the basis of the fact that there had been an  
6 original reference document supplied by the Companies  
7 under request for confidential treatment back in February  
8 that referred to this general matter. And, I -- and,  
9 Staff takes the overall view that we try to be as careful  
10 as possible in making sure that we don't inadvertently  
11 disclose confidences in advance of the Commission ruling  
12 on confidentiality.

13 Now, I would have to confess that I  
14 would like to make doubly sure that, if the Commission has  
15 definitively ruled on this point, that it is still within  
16 the ambit of confidentiality. But, that said, presuming  
17 that the Commission, even if it hasn't definitively ruled  
18 on this issue, it's best to keep it confidential in  
19 advance of any definitive ruling on the subject matter at  
20 hand.

21 And, the material was filed originally  
22 in DE 11-075, the source material for the concerns about  
23 confidentiality. So, --

24 CHAIRMAN IGNATIUS: Well, can I ask a

1 clarification, from both of you, before we go to  
2 Ms. Chamberlin? What I've heard so far is, "because the  
3 Commission has an order protecting it, you have to be very  
4 careful and not violate that", which I appreciate. But we  
5 could make a new ruling right now and free everybody from  
6 that restriction. So, is your request that it be  
7 protected not only because it had been protected before,  
8 but that it should remain protected for reasons  
9 independent of what happened in the past? I mean, what's  
10 the reason today that this section should remain  
11 protected?

12 MR. SPEIDEL: What I'm trying to  
13 explain, Commissioners, that we're not 100 percent sure if  
14 you have issued that definitive ruling quite yet. But,  
15 under the Commission rules, pending a definitive ruling on  
16 a subject matter of a confidentiality ruling, you have to  
17 keep it in confidence. So, we would, again, request that  
18 perhaps this be revisited at a later point through perhaps  
19 a separate order, and that you take the arguments of the  
20 various parties into consideration.

21 Staff is responding to a request for  
22 confidentiality by the Companies as part of the Settlement  
23 Agreement, and we were settling with that party. We took  
24 it into due consideration, and it made sense to us on the

1 basis of their past request for confidentiality in the  
2 11-075 docket, that source material. So, we're not really  
3 in a position to say "well, yes, it would be great if it  
4 were disclosed." We would, frankly, prefer that, for the  
5 time being at least, at the bare minimum, that we maintain  
6 it confidentially.

7 CHAIRMAN IGNATIUS: Mr. Carter.

8 MR. CARTER: If I could just add, this  
9 paragraph isn't material to any of the -- I suggest is not  
10 material to any of the steps that are being taken to  
11 implement the Settlement terms that are outlined in this  
12 Article II. It's a carryover from prior history, if you  
13 will. And, from my clients' point of view, it is  
14 appropriate to treat this paragraph confidentially,  
15 because it relates to matters that -- I submit it would --  
16 releasing it would relate -- would convey a misleading  
17 impression, in terms of what some of the prior events here  
18 were.

19 And, I'd be happy to go into more detail  
20 confidentially. But, again, I don't believe that this  
21 paragraph is material to the other Settlement terms or to  
22 the public's ability to understand what the other  
23 Settlement terms are.

24 CHAIRMAN IGNATIUS: Well, I really have

1 to challenge you on that. I don't follow. Within this  
2 section, there's some terms that are all about  
3 implementing the terms of the Settlement Agreement.  
4 They're mechanical. They, to me, are significant to what  
5 it is that is being proposed here. And, there's some  
6 other parts of this section that seem to refer to, as  
7 Mr. Speidel keeps referring to, "source documents" or  
8 something like that.

9           So, is it true -- is it really all of  
10 2.3 you feel needs to be protected or only some subset of  
11 2.3? And, again, if there's a concern that you can't  
12 release it, because we may have protected it in the past,  
13 we're here to make a determination and can go and consult  
14 and come back with a ruling. So, that shouldn't be the  
15 basis. It's really what today is the right thing to do  
16 and why something is required under 91-A to be protected.

17           MR. CARTER: We can propose a limited  
18 redaction, which I think will accomplish -- I hope will  
19 accomplish everyone's objectives. And, perhaps we could  
20 approach or --

21           CHAIRMAN IGNATIUS: All right. Or, we  
22 could take a quick break. Did you have questions as well?

23           CMSR. SCOTT: I was just going to  
24 suggest, perhaps between the commas of the first sentence

1 may be all you need to redact, as a suggestion?

2 MR. CARTER: I think that might have  
3 been exactly what we were thinking. If I could approach?  
4 I'm not sure how --

5 CHAIRMAN IGNATIUS: I know. Well, I  
6 think --

7 MR. CARTER: It would be from the first  
8 -- after the first comma, from there to the word "from" in  
9 the second line. I think that is between the first two  
10 commas. Thank you.

11 CHAIRMAN IGNATIUS: So, the top half of  
12 the first sentence to the halfway into the second sentence  
13 -- first line, and halfway into the second line?

14 MR. CARTER: Yes.

15 CHAIRMAN IGNATIUS: And, otherwise, you  
16 would not have an objection to the rest of 2.3 being  
17 released, presuming there's no Commission issue with it?

18 MR. CARTER: Correct.

19 CHAIRMAN IGNATIUS: Mr. Speidel, would  
20 you have any concern with the more limited redaction  
21 proposed?

22 MR. SPEIDEL: That phrase there really  
23 goes to the heart of what the Staff was worried about, in  
24 terms of inadvertently disclosing confidences. So, if it

1 works for the Companies, it would work for us.

2 CHAIRMAN IGNATIUS: Ms. Chamberlin, any  
3 concern?

4 MS. CHAMBERLIN: Well, I'm concerned in  
5 that the public interest, from the consumer's point of  
6 view, is in full disclosure. There's been a great deal of  
7 confusion. I think that's been the most significant  
8 impact of all the events. And, so, even if there's a  
9 black spot, people are going to wonder "what is that?"

10 I actually think that the -- that the  
11 information is -- I don't see that it's commercially  
12 sensitive. I just don't see why it's -- I just don't even  
13 see why it needs to be confidential.

14 I suppose, if we could use a generic  
15 phrase, so that the sentence actually makes sense, I could  
16 do that. But I just -- I really don't like releasing a  
17 settlement agreement to the public with a black spot in  
18 it, for reasons that I don't really understand. I mean, I  
19 don't see the commercial sensitivity of this as it's a  
20 settlement agreement. I just don't see it.

21 CHAIRMAN IGNATIUS: Yes. Commissioner  
22 Harrington, a question.

23 CMSR. HARRINGTON: Yes. Mr. Speidel,  
24 just a question. You had said earlier that this

1 paragraph, the information in it, was requested  
2 confidential treatment by the Company, and that it was  
3 "pending", and that some ruling may come in the future.  
4 So, until that ruling was made, felt confidential  
5 treatment should be given to it at this time, which is  
6 standard practice. Is that correct?

7 MR. SPEIDEL: Well, there's two separate  
8 issues. There's the original source document that comes  
9 from the month of February in 11-075, that has been  
10 submitted to the Commissioners. And, the Companies had  
11 requested confidential treatment for that source material.  
12 And, I'm not certain, I don't think that the Commission  
13 has definitively ruled on whether that source material  
14 should have confidential treatment or not. My  
15 understanding is it will probably be handled through a  
16 post hearing order in this proceeding tangentially.

17 So, what Staff was concerned about here,  
18 and what Staff has agreed to, was the Companies said  
19 "Look, this is kind of relating to the same sensitive  
20 material. We would ask that you also agree, as part of  
21 the Settlement Agreement, to file this as a confidential  
22 provision and redact that." And, from Staff's  
23 perspective, we weren't really weighing in on whether the  
24 material should be forevermore confidential, we were

1 weighing in on the fact that "yes, as of March the 26th,  
2 we're giving it confidential treatment, this source  
3 material, this type of material, confidential treatment",  
4 per force of the Commission rule that says "in advance of  
5 the Commission ruling on confidentiality, the Staff shall  
6 maintain the confidence".

7 So, we were reacting to that, and the  
8 fact that we had to produce a document in short order to  
9 have it submitted, and not really overstep our authority  
10 to Staff.

11 CMSR. HARRINGTON: Okay. That's very  
12 helpful. Let me get to my second question then. If, in  
13 the future, that source material was found to be not  
14 qualified as being confidential and be released, what  
15 effect would that have on the Settlement Agreement, if it  
16 was approved, given the statement in the General  
17 Provisions, "if anything is changed and it's not  
18 acceptable to both parties, then the Settlement Agreement  
19 goes away"? I mean, --

20 MR. SPEIDEL: Well, that's a legal  
21 question that I think, if we step back a little bit, the  
22 way it would work, as a practical matter, is that, if the  
23 Commission were to find that full public disclosure of  
24 this Settlement provision were to be appropriate, I think

1       there could be some consultative process where comment  
2       could be invited from the Companies, for instance, and  
3       from Staff. And, if they were to agree to that, in  
4       theory, there wouldn't be much of a need to fret about the  
5       effect on the Settlement Agreement.

6                   CMSR. HARRINGTON: I guess my point is,  
7       what if this remains confidential for the purposes of  
8       today's hearing. And, then, in the future, a ruling on  
9       that source material, it was determined to be not  
10      confidential. What would happen to the Settlement  
11      Agreement, if it had been approved, and on the basis of  
12      "as written" with the Company, would the Company then have  
13      an option to come back and say "the Settlement Agreement  
14      is no longer valid, because you changed it after the  
15      fact"?

16                   MR. SPEIDEL: Essentially, it wouldn't  
17      change the terms of the Agreement. It would change the  
18      disclosure of the Agreement to the public at large. You  
19      have at your hands the confidential version that's  
20      completely unredacted. That is what is being submitted to  
21      the Commission for its review. You have full knowledge,  
22      as does the Office of the Consumer Advocate and the Staff  
23      and the Companies of what's in the material. So, the  
24      material itself isn't changing, it's just the vehicle for

1 disclosure would change for the public's consumption.

2 CMSR. HARRINGTON: Okay. I'm just  
3 looking at the part that says, in Section 3.1, "without  
4 change or condition".

5 MR. SPEIDEL: Yes.

6 CMSR. HARRINGTON: So, this, making this  
7 what's right now confidential not confidential, doesn't  
8 invoke the Section 3.1 privilege of the Company to  
9 basically make the Settlement -- withdraw from the  
10 Settlement Agreement?

11 MR. SPEIDEL: Well, I would hope that  
12 everyone will take a common sense approach to that and not  
13 do that. I mean, in theory, you can kind of petty fog a  
14 lot of little issues. But I think that the Companies and  
15 the Staff and everyone would kind of recognize that it's  
16 good to maintain the substantive terms of the Settlement  
17 Agreement, even if 2.3 were to be disclosed after a  
18 Commission ruling on the confidentiality, I hope. I hope.

19 CMSR. HARRINGTON: All right. Thank  
20 you.

21 CHAIRMAN IGNATIUS: I appreciate the  
22 suggestion that a more refined redaction would be  
23 acceptable, and that goes a long way towards our concerns  
24 to be able to really address in a public forum what it is

1 that's being proposed here.

2 Let me ask you about your redaction. If  
3 you look in the first line, rather than after the comma,  
4 if you moved two words over, and started the redaction  
5 there, is that all right? Because I see that the part  
6 that I'm suggesting you open up is repeated at the bottom  
7 of the section as well.

8 MR. CARTER: That's fine.

9 CHAIRMAN IGNATIUS: All right. So, that  
10 certainly provides more detail to the public. Any --  
11 Ms. Chamberlin, are you still concerned?

12 MS. CHAMBERLIN: I'm still concerned. I  
13 also wasn't quite sure what you did.

14 CHAIRMAN IGNATIUS: Oh. That's a  
15 different question. In the first line, move the redaction  
16 two words past the comma. So, it would begin --

17 CMSR. HARRINGTON: Before the "T".

18 CHAIRMAN IGNATIUS: Before the -- it  
19 would begin --

20 MS. CHAMBERLIN: May I approach?

21 CHAIRMAN IGNATIUS: Yes.

22 MS. CHAMBERLIN: I mean, I just want to  
23 see what you're doing.

24 CHAIRMAN IGNATIUS: So, one, two -- ten

1 words would be redacted. Starting at the -- towards the  
2 end of the first line, going to the middle of the second  
3 line.

4 MS. CHAMBERLIN: I still maintain that  
5 there's no reason to keep that confidential. I just -- I  
6 think it could be stricken completely from the Agreement,  
7 so that the Agreement is -- however, I didn't sign the  
8 Agreement, so, I shouldn't -- I'm not in the position of  
9 rewriting it. But I would -- I believe the Settlement  
10 Agreement should be public. And that, if you strike that  
11 out, so there's no big black mark in the Agreement, I  
12 think that's preferable. I don't see the importance of  
13 the information. I don't see -- I don't see the  
14 confidentiality of the information. I just don't think  
15 they have met the burden of showing that this should be --  
16 that this is against, you know, against any privacy  
17 interest.

18 (Chairman and Commissioners conferring.)

19 CHAIRMAN IGNATIUS: All right. The  
20 suggestion that those -- that phrase, the more limited  
21 phrase now be redacted -- be stricken, rather than  
22 redacted, and not appear in the document, was an  
23 interesting one. Is it necessary to be there at all? I  
24 just ask the Company and the Staff. And, does that

1 resolve the problem?

2 MR. CARTER: I don't think it does need  
3 to be -- does not need to be there. We'd be happy to  
4 replace it. We can do so this morning, during the  
5 pendency of this hearing, if that would be helpful?

6 CHAIRMAN IGNATIUS: Any concern on the  
7 Staff's part to simply striking those words that begin --  
8 the last two words of Line 1, and up to the comma on Line  
9 2?

10 MR. SPEIDEL: Again, under the terms of  
11 the Commission rules, we're kind of the tail of the  
12 Company's dog, in terms of maintaining confidences. If  
13 that works for them, it works for us.

14 CHAIRMAN IGNATIUS: Then, why don't we  
15 do that. We will strike the last two words of the first  
16 line, through the comma in the second line. And, then,  
17 with that, and I want to make sure, before I say anything  
18 further, that that would be -- the Company would withdraw  
19 its request for confidentiality for all of 2.3?

20 MR. CARTER: Yes. And, we would be  
21 willing to have a substitute page presented.

22 CHAIRMAN IGNATIUS: Yes.

23 MR. CARTER: If the Commission would  
24 like that?

1                   CHAIRMAN IGNATIUS: That will be great.  
2           We'll -- yes. So that what we will want to do, so that  
3           people who don't have copies of this in front of them know  
4           what in the world it is we're talking about, Section 2.3,  
5           let me read it into the record. And, then, we will -- can  
6           get a replacement page. And, it may be that even,  
7           Mr. Speidel, you could get someone from the Commission  
8           Staff to rerun that page here from our systems, or if  
9           anyone else wants to work on that.

10                   Let me read what 2.3 will now read:  
11           "Within 3 days of the approval of this Agreement, the  
12           10,000" -- excuse me -- "the \$100,000 from the escrow  
13           account established by PNE with Sovereign Bank pursuant to  
14           PUC 2003.01(d)(4) and 2003.03, shall be delivered by the  
15           Commission to counsel for PNE, and shall be held by  
16           counsel for PNE in a client IOLTA", I-O-L-T-A, "account  
17           pending the delivery of all one-time customer payments  
18           described in Paragraph 2.1. Counsel for PNE shall release  
19           said \$100,000 to PNE after delivery of all said customer  
20           payments."

21                   I appreciate that. Thank you. That  
22           will make questioning far easier and addressing in any  
23           subsequent order. Right. So, with that, the Settlement  
24           Agreement is fully publicly available. And, I think,

1 unless there's anything else, procedural matters to take  
2 up, can we begin with the Staff panel?

3 MR. SPEIDEL: Yes. Thank you.

4 CHAIRMAN IGNATIUS: Oh, I'm sorry.

5 MR. SPEIDEL: Oh, the PSNH --

6 CHAIRMAN IGNATIUS: The public statement  
7 from PSNH.

8 MR. FOSSUM: Thank you. Mr. Bersak will  
9 be delivering the public comment orally, but I do have  
10 copies of what he will be saying to distribute to those  
11 who wish to have them.

12 CHAIRMAN IGNATIUS: All right. Mr.  
13 Speidel? Oh, you're wishing to have it.

14 MR. SPEIDEL: Yes. Thank you. I'm  
15 sorry.

16 MR. BERSAK: Thank you, madam Chair,  
17 Commissioners. We appreciate the opportunity to make our  
18 public comment at this time, so that, if it's not  
19 necessary for us to be here all day, we can go back and  
20 tend to other duties.

21 I am Robert Bersak. I'm Assistant  
22 Secretary and Associate General Counsel of Public Service  
23 Company of New Hampshire. PSNH appreciates the  
24 opportunity to make this public comment pursuant to the

1 Commission's rules.

2           The purpose of today's hearing is to  
3 hear evidence to determine whether Resident Power or PNE  
4 have violated the Commission's rules regarding the  
5 competitive marketplace. This is not a hearing about  
6 PSNH. PSNH is present here today to answer questions at  
7 the request of Commission Staff.

8           However, because PSNH is neither a party  
9 nor an intervenor in today's dockets, we deemed it  
10 necessary to provide this public comment to succinctly  
11 state our position concerning certain aspects of the  
12 subject matter of these proceedings that do relate to  
13 PSNH.

14           Ever since PNE made what has been deemed  
15 a "voluntary" business decision to walk away from its  
16 obligations to its customers, PNE and Resident Power have  
17 cast blame for their predicament and the impact to  
18 customers on PSNH. They did this in myriad formal filings  
19 with this Commission, as well as in the media. But PSNH  
20 did not cause the problems facing PNE and Resident Power.  
21 They did that on their own.

22           Like many thousands of other New  
23 Hampshire residents and businesses, PSNH has not profited,  
24 but has suffered harm as a result of PNE's decision to

1 default at ISO-New England, of PSNH's -- of PNE's decision  
2 not to cure that default, and PNE's resulting immediate  
3 suspension from the New England wholesale electricity  
4 marketplace. PNE made those decisions; not PSNH, not  
5 Commission Staff, not anyone else. But PSNH, Staff, and  
6 this Commission have been left to clean up the chaos and  
7 confusion that PNE and Resident Power have created, and  
8 have been the targets of their blame.

9 In the Respondent's pre-hearing  
10 memorandum filed just last week, they begin their  
11 explanation of the events leading up to their deal with  
12 FairPoint in November of last year. But, according to  
13 their filings, they did not reach a deal to sell  
14 approximately 8,500 of their customers to FairPoint until  
15 Wednesday, February 6. On February 7, PNE, Resident  
16 Power, and FairPoint jointly asked the Commission to waive  
17 certain consumer protection rules in order to allow that  
18 transaction to move ahead immediately, foregoing prior  
19 notice that the Commission's regulations would normally  
20 require.

21 In support of that filing, they told the  
22 Commission "No special off-cycle meter read dates will be  
23 necessary as a result of this transfer. Customers will  
24 transfer suppliers upon their next scheduled meter read

1 date." They also stated, "There will be no risk or  
2 detriment to PSNH as a result of this transfer or  
3 requested waiver." And, finally, "Furthermore, there will  
4 be no risk or detriment to the transferred customers."  
5 Based on the content of their Petition, the Commission  
6 granted their request for waiver the very next day,  
7 Friday, February 8th.

8 As noted in the Respondent's Joint  
9 Petition for Waiver, in New Hampshire's competitive  
10 electricity marketplace, transactions take place upon a  
11 customer's next scheduled meter read date. These  
12 transactions are implemented via an Electronic Data  
13 Interface, or EDI, system that was established by this  
14 Commission in 1998. As part of this Commission's EDI  
15 protocol, suppliers are responsible for submitting inputs  
16 into the EDI system detailing who serves a customer's  
17 account, the rate that customer pays, and other aspects of  
18 the customer/supplier relationship. The accuracy and  
19 timeliness of those inputs are the responsibility of the  
20 suppliers; neither PSNH nor any of the other utilities in  
21 this state enter that data. EDI transactions submitted by  
22 a supplier to a utility's EDI system are not implemented  
23 until a customer's next meter-read date following a two  
24 business day waiting period. This waiting period, too, is

1 part of the EDI rules implemented by this Commission; it  
2 is not a PSNH policy, as stated by Respondents in their  
3 pre-hearing memo.

4 CHAIRMAN IGNATIUS: Mr. Bersak, let me  
5 stop you for a moment please. You have a seven-page  
6 statement, and we're now only two pages through it. And,  
7 you're reading it verbatim, which is fine, but, if that's  
8 what it is, you can simply submit it. There's no reason  
9 for you to read it and make the court reporter type down  
10 word-for-word what's already in print. Most public  
11 statements we're used to are people who haven't written  
12 anything, they speak from the heart, and they are in and  
13 out fairly quickly. So, I don't --

14 MR. BERSAK: I would prefer to read it,  
15 if I have the opportunity, madam Chair.

16 CHAIRMAN IGNATIUS: I don't see why it's  
17 a useful time spent of us and the court reporter to type  
18 down what we have in writing. So, I guess --

19 MR. BERSAK: I guess that it would be  
20 instructive to be able to ask for the Commissioners to ask  
21 questions of the panel that's about to appear.

22 CHAIRMAN IGNATIUS: A public statement  
23 is not subject to cross-examination.

24 MR. BERSAK: I understand.

1                   CHAIRMAN IGNATIUS:  They are not facts  
2                   that are found.  It's a public statement of your point of  
3                   view.  And, we take it for that, and we give it the weight  
4                   that we deem appropriate.

5                   MR. BERSAK:  PSNH is one of the entities  
6                   in the state that has been harmed.  It has suffered the  
7                   greatest harm of any entity in this state.  The Settlement  
8                   Agreement that's before the Commission for consideration  
9                   today does not even discuss that harm.

10                  CHAIRMAN IGNATIUS:  Well, I think, if  
11                  PSNH feels that it has claims against the Company or the  
12                  Commission Staff or anyone else, it ought to make those  
13                  claims.  You're not -- you didn't move to intervene in the  
14                  case.

15                  MR. BERSAK:  That's correct.

16                  CHAIRMAN IGNATIUS:  You're not a party  
17                  to cross-examine.  You're not a party to oppose the  
18                  Settlement Agreement.  So, if you feel you need a forum  
19                  for that, that's fine.  But I don't think that's here.  
20                  Obviously, we will accept your statement.  But I just  
21                  wonder why we have to have someone take a stenographic  
22                  record of what's already in seven pages of typing?

23                  MR. FOSSUM:  Madam Chairman, I  
24                  understand the Commissioner's concern, but 203.18 does say

1 "Persons who do not have intervenor status in a proceeding  
2 but having an interest in the subject matter shall be  
3 provided with an opportunity at a hearing or prehearing  
4 conference to state their position." This would appear to  
5 be our opportunity to state our position.

6 CHAIRMAN IGNATIUS: And, you've prepared  
7 it and made copies for everyone. So, I guess I'm just  
8 questioning why the need to read the seven-page statement,  
9 rather than have it admitted to the record?

10 (Chairman and Commissioners conferring.)

11 CHAIRMAN IGNATIUS: Mr. Bersak, I think  
12 I'm going to give you two options. You can either just  
13 submit the written statement as is or, if you'd like to  
14 summarize any key high points briefly in addition to that,  
15 we'll give you that opportunity, but we're not going to  
16 sit here and have you read five more pages.

17 MR. BERSAK: Thank you, madam Chair. We  
18 can try to summarize this as quickly as we can. And,  
19 we'll provide the full statement to the parties here and  
20 to the Commission for their consideration.

21 The concerns that PSNH have is -- are  
22 about threefold. Number one is that the Settlement that  
23 we arrived here today and first read this morning contains  
24 very little of substance. Our first and foremost concern

1 is that it appears that customers will not be fully  
2 compensated for the harm that they suffered. A liquidated  
3 offer to pay \$9.50 per customer likely falls short of full  
4 compensation. And, to get that, customers must waive all  
5 their claims against PNE. All entities damaged as a  
6 result of this situation should be fully compensated for  
7 their damages. The Settlement fails to even discuss the  
8 fate of over 200 customers that were wrongly transferred  
9 or had EDI transactions submitted to be wrongly  
10 transferred.

11 MR. CARTER: I don't -- I'm sorry if I'm  
12 stepping on protocol, but this is a matter that is not  
13 part of this docket. These are not allegations that  
14 appear in the Staff's memo. I have been, in the last few  
15 days, I've been advised that there was a question, whether  
16 raised by PSNH or by someone else, about I believe what  
17 the issue Mr. Bersak is referring to. I think it would be  
18 improper to inject those allegations, which are not  
19 relevant to this -- to either proceeding into the public  
20 comment in this matter. And, I believe, perhaps  
21 Mr. Bersak can confirm, that he's not referring to any  
22 issue that is set forth in the Staff memorandum or in the  
23 Order of Notice.

24 CHAIRMAN IGNATIUS: Mr. Bersak, is it,

1 your understanding of the memo, is it within the scope of  
2 what was in the Staff memo or in the Commission's Order of  
3 Notice?

4 MR. BERSAK: I believe it was.

5 CHAIRMAN IGNATIUS: Mr. Speidel, do you  
6 have a view on that?

7 MR. SPEIDEL: I was hoping that this --  
8 I was hoping that this settlement hearing was not going to  
9 be a vehicle for collateral litigation of issues that  
10 aren't within the scope of the Settlement Agreement. It  
11 was signed and submitted after the close of Commission  
12 business yesterday, the Settlement Agreement. We all  
13 prepared it. We came to a meeting of the minds. And, I  
14 understand that the PSNH folks have a public comment to  
15 make and have a point of view, and that they had  
16 anticipated that they would have to testify as a Staff  
17 witness as of yesterday morning, for instance, and  
18 yesterday afternoon, for instance, until this Settlement  
19 Agreement was actually finalized.

20 So, I can sympathize with their feeling  
21 that they would like to get their point of view out, and  
22 they have a First Amendment right to speak. But, at this  
23 juncture, I would really urge the Commissioners, if we can  
24 at all make sure that this hearing is regarding the

1 Settlement Agreement. And, you know, if PSNH would like  
2 to file this written statement, I think that's perfectly  
3 fine. They, again, have a right to make a public comment.  
4 But I'm not going to call the PSNH folks as witnesses  
5 today to discuss this Settlement Agreement. And, we are  
6 not litigating certain allegations within the context of  
7 having the Commission review this Settlement Agreement.

8 If I had to do it all over again,  
9 perhaps I would have asked for a cooling-off period before  
10 the Commission held a hearing to review the Agreement.  
11 But, I think, in the interest of timeliness and  
12 efficiency, we had elected not to do so.

13 So, at this juncture, I would just, you  
14 know, it's a settlement between two parties, Staff and the  
15 Companies. We'd like to have the Staff witnesses present  
16 their point of view on the Settlement and what the  
17 Settlement means, and open them up to cross-examination by  
18 parties or friendly cross by parties, as appropriate, and  
19 then Bench questioning.

20 At some point, there has to be kind of  
21 an efficiency determination by the Commission as to  
22 whether it is fruitful to have the Companies and PSNH  
23 argue about allegations and claims right now in this  
24 context. Thank you.

1 (Chairman and Commissioners conferring.)

2 CHAIRMAN IGNATIUS: I do want to keep us  
3 focused on what the Order of Notice brought forth. And,  
4 there may be other issues for another day that are quite  
5 legitimate. I'm not trying to suggest that they aren't.  
6 But they, as I understand where you're heading, is stuff  
7 that is not part of the Order of Notice. And, the  
8 proceeding this morning is to address the Settlement  
9 that's been proposed and other issues in the Order of  
10 Notice for those who aren't parties to the Settlement  
11 Agreement.

12 And, I think, again, we're trying to  
13 give you leeway here, but we are not going to turn this  
14 into a proceeding to address everything else that the  
15 Companies may legitimately have issues of dispute over  
16 that may continue after today. We need to get on with  
17 addressing the Settlement and the issues raised in the  
18 Order of Notice. So, if you can move on and continue to  
19 summarize --

20 MR. BERSAK: I fully understand, madam  
21 Chair. I believe that the Order of Notice dealt with  
22 questions regarding the conduct of PNE and Resident Power  
23 in the marketplace with respect to the treatment of  
24 customers. And, what I was going to discuss deals

1 directly with that situation, directly with hundreds of  
2 customers who are continuing to be with the wrong  
3 supplier.

4 CHAIRMAN IGNATIUS: Is it addressed in  
5 your written statement?

6 MR. BERSAK: It's in the addendum to the  
7 written statement, madam Chair.

8 CHAIRMAN IGNATIUS: "Addendum" meaning  
9 part of what's here?

10 MR. BERSAK: Meaning the "Addendum to  
11 Public Comment of PSNH Re: Settlement Stipulation". It's  
12 a separate page. Do you have that?

13 MR. FOSSUM: No.

14 CMSR. SCOTT: I don't have that.

15 CHAIRMAN IGNATIUS: No. I have seven  
16 pages.

17 MR. BERSAK: Well, there's another page  
18 and a half.

19 CHAIRMAN IGNATIUS: All right.

20 MR. BERSAK: We were trying to react to  
21 -- you know, we were asked to be here as witnesses. When  
22 we came to the office this morning we were faced with a  
23 Settlement. We're doing the best we can, given what we  
24 have to work with.

1 CHAIRMAN IGNATIUS: I understand. Can  
2 you just summarize your position in the next couple  
3 minutes, we're going to move on?

4 MR. BERSAK: Yes. That we believe that  
5 any settlement of this matter should contain provisions  
6 which fully protect customers, that's all customers, and  
7 fully protects PSNH, which was harmed by the voluntary  
8 business decision of PNE. That PNE has made statements  
9 which were clearly erroneous to try to cast blame on the  
10 Company. And, we would like the Stipulations to reflect  
11 the fact that their statements were, in fact, incorrect,  
12 so the record in this proceeding clearly demonstrates that  
13 PSNH did what it was supposed to do, when it was supposed  
14 to do it, in full cooperation with the Staff and this  
15 Commission, to try to deal with a situation which neither  
16 PSNH nor Staff created.

17 And, we'd really like the opportunity to  
18 continue with our public statement, because we think it  
19 will be instructive for the Commission in order to ask  
20 questions of the panel that's going to testify regarding  
21 the Settlement, as to whether the Settlement is, in fact,  
22 a proper way of resolving the issues that are contained in  
23 the Order of Notice.

24 CHAIRMAN IGNATIUS: Thank you. Is there

[WITNESS PANEL: Noonan|Mullen]

1 anyone else making a public statement?

2 (No verbal response)

3 CHAIRMAN IGNATIUS: If not, then,  
4 Mr. Speidel, will you call your witnesses please.

5 MR. SPEIDEL: I call Steven Mullen and  
6 Amanda Noonan to the stand for testimony on behalf of the  
7 Staff of the New Hampshire Public Utilities Commission.

8 (Whereupon **Amanda O. Noonan** and  
9 **Steven E. Mullen** were duly sworn by the  
10 Court Reporter.)

11 **AMANDA O. NOONAN, SWORN**

12 **STEVEN E. MULLEN, SWORN**

13 **DIRECT EXAMINATION**

14 BY MR. SPEIDEL:

15 Q. Mr. Mullen and Ms. Noonan, could you each please  
16 describe your full name and your responsibilities at  
17 the New Hampshire Public Utilities Commission.

18 A. (Mullen) My name is Steven Mullen. I'm the Assistant  
19 Director of the Electric Division. Working with the  
20 Director of the Electric Division, manage the  
21 day-to-day activities of those in the Division, review  
22 various utility-related filings, deal with policy  
23 matters, and whatever else comes across my desk.

24 A. (Noonan) My name is Amanda Noonan. I'm the Director of

{DE 13-059 & DE 13-060} {03-27-13}

1 the Consumer Affairs Division at the Commission. The  
2 Consumer Affairs Division is responsible for the  
3 conduct of consumer-related policies and also dealing  
4 with consumer issues, complaints, and questions.

5 Q. Mr. Mullen and Ms. Noonan, do you happen to have --  
6 well, at this juncture, it might be a little bit of a  
7 pointless exercise, but we have two filed versions of  
8 the Settlement Agreement. We have one version with a  
9 cover letter bearing my name, dated March the 26th that  
10 is marked as a "public, redacted version"?

11 A. (Mullen) Yes.

12 A. (Noonan) Yes.

13 Q. And, the second is a version with my cover letter dated  
14 March the 26th that reads "confidential version". Do  
15 you have those two versions before you?

16 A. (Mullen) Yes.

17 A. (Noonan) Yes.

18 MR. SPEIDEL: Now, Commissioners, I  
19 suppose that the confidential version would remain the  
20 same, the public redacted version would change on the  
21 basis of this Bench ruling. But shall I mark these as  
22 exhibits, to just indicate as to what matters we're  
23 dealing with, and have a substitution exhibit provided or  
24 should we have a record request for the public version?

[WITNESS PANEL: Noonan|Mullen]

1 CHAIRMAN IGNATIUS: Apparently, we have  
2 another one that's just arrived. I don't know if you've  
3 got --

4 MR. SPEIDEL: I haven't done a  
5 line-by-line compare.

6 CHAIRMAN IGNATIUS: All right.

7 MR. SPEIDEL: And, it's not executed.  
8 These versions are executed.

9 CHAIRMAN IGNATIUS: All right. Well, we  
10 should certainly put in the first and second, Exhibit 1  
11 was the redacted and Exhibit 2 was the confidential  
12 version?

13 MR. SPEIDEL: That's correct.  
14 (The documents, as described, were  
15 herewith marked as **Exhibit 1** and  
16 **Exhibit 2**, respectively, for  
17 identification.)

18 MR. SPEIDEL: Now, Clerk, do you happen  
19 to have those on hand or shall I distribute them to the  
20 Commissioners and to you?

21 CHAIRMAN IGNATIUS: We have those.

22 MR. SPEIDEL: Excellent. Thank you so  
23 much.

24 BY MR. SPEIDEL:

{DE 13-059 & DE 13-060} {03-27-13}

1 Q. Are you both familiar with these two documents?

2 A. (Noonan) Yes.

3 A. (Mullen) Yes.

4 Q. Were you involved in the overall negotiations that led  
5 to the preparation of these two documents?

6 A. (Mullen) Yes.

7 A. (Noonan) Yes.

8 Q. Very good. Now, Mr. Mullen, would you be prepared to  
9 give the Commission and the attendees today a general  
10 overview of how this Settlement Agreement works in  
11 coordination with the Stipulation of Facts that is  
12 appended hereto?

13 A. (Mullen) Certainly.

14 Q. Thank you.

15 A. (Mullen) As stated in the first paragraph of the  
16 Settlement Agreement, the "Settlement Agreement  
17 constitutes this document, along with an incorporated  
18 Stipulation of Facts", which is "attached as  
19 Exhibit A."

20 Let me start with the Stipulation of  
21 Facts first. So, if you turn to that Stipulation of  
22 Facts, which it is not attached to the new document  
23 that you have just received some language stricken.  
24 But, for point of reference, if we turn to Exhibit 1.

1 There's a separate -- there's a separate attachment for  
2 the Stipulation of Facts. Rather than go through this  
3 point by point, it essentially goes through the  
4 timeline of various events that have transpired,  
5 beginning with the registration of PNE and Resident  
6 Power, continuing up to the present time. As Chairman  
7 Ignatius mentioned, especially in the early part of  
8 this year, there's been a lot of documents filed back  
9 and forth. This kind of relates some of that history.  
10 Rather than spending a lot of time going through point  
11 by point, if there's particular questions on any of  
12 these provisions, we'd be happy to address them.

13 But the Stipulation of Facts basically  
14 says "Well, here's how we got to where we are today."  
15 And, if you turn back to the Settlement Agreement, the  
16 Settlement Agreement says "Well, here's where we are  
17 today. What do we do going forward?" And, that's kind  
18 of how these documents work and a brief description of  
19 how they were put together.

20 Q. Yes. Thank you. Ms. Noonan, could you please turn to  
21 point 2.6 within Exhibit 1 of this document, this  
22 Settlement Agreement.

23 A. (Noonan) Yes.

24 Q. Could you provide a little bit of background about what

1 you expect will occur within the context of the point  
2 2.6?

3 A. (Noonan) Certainly. One of the main concerns in this  
4 whole proceeding was adequate notice to customers, and  
5 I believe someone indicated earlier there was  
6 considerable confusion for customers about the events  
7 as they unfolded. And, so, this notice would be some  
8 type of factual description of the events, with  
9 information to provide customers with assurance, and  
10 the market with assurance, that similar such events  
11 wouldn't necessarily trigger similar outcomes, and help  
12 customers, you know, have a better sense and better  
13 understanding of the market and how it works, and what  
14 their expectations should be.

15 In addition to this notice, in the  
16 Stipulation of Facts, Resident Power also agreed to  
17 provide notices going forward disclosing its  
18 affiliation with PNE to customers appropriately, in  
19 accordance with the rules. So, there would also be  
20 that notice as well.

21 Q. Now, Ms. Noonan, there is some considerable amount of  
22 customer compensation that has been agreed to as part  
23 of the Settlement, is that correct?

24 A. (Noonan) Yes.

1 Q. And, that would be outlined in general terms in  
2 Subparts 2.1 through 2.3?

3 A. (Noonan) Yes, that's correct.

4 Q. And, the amount of customer compensation is provided on  
5 what basis? Is it a flat fee, a flat payment, so to  
6 speak?

7 A. (Noonan) It is a flat payment per customer.

8 Q. And, that would be \$9.50?

9 A. (Noonan) Yes. That is correct.

10 Q. So, in the aggregate, the amount of customer  
11 compensation would be how much roughly, on the basis of  
12 the number of customers? It would probably be in the  
13 high five figures, correct?

14 A. (Noonan) I believe it would be in the ballpark of  
15 \$70,000.

16 MR. SPEIDEL: Thank you very much. I  
17 think, in general terms, that would conclude Staff's  
18 direct questioning of these witnesses. We would like to  
19 make them available for cross-examination by parties.

20 CHAIRMAN IGNATIUS: All right. Let's  
21 first have questioning from the Companies, and then move  
22 to OCA.

23 MR. CARTER: At this time, the Company  
24 has no questions for cross-examination. Thank you.

[WITNESS PANEL: Noonan|Mullen]

1 CHAIRMAN IGNATIUS: All right. Well,  
2 this is your only time. So, I just want to make sure,  
3 you're not assuming you're having another round through?

4 MR. CARTER: What I'm -- I'm envisioning  
5 a scenario where, if a new issue is raised on questioning  
6 by, for example, OCA, which opened up a new avenue, we  
7 would be prepared to address those new questions. But --

8 CHAIRMAN IGNATIUS: All right. You  
9 should -- don't assume that.

10 MR. CARTER: Okay.

11 CHAIRMAN IGNATIUS: We don't always  
12 follow the "open door" rule. That, if there are things  
13 that you know you would like to address, you should go  
14 ahead. It's possible, after redirect by Staff, that there  
15 might be some opportunity, but we tend not to do that.  
16 Otherwise, we'd be looping around forever. So, if there's  
17 anything you know that you expect to hear questioning on  
18 from OCA, and you want to address now, you should go ahead  
19 and do that.

20 MR. CARTER: I can't address that,  
21 because I don't know what OCA's concerns are. So, we are  
22 supportive of this Agreement, we are supportive of the  
23 Stipulations. And, I have nothing further to add, based  
24 on what I know to be true right now. Thank you.

{DE 13-059 & DE 13-060} {03-27-13}

1 CHAIRMAN IGNATIUS: Ms. Chamberlin.

2 MS. CHAMBERLIN: Thank you.

3 **CROSS-EXAMINATION**

4 BY MS. CHAMBERLIN:

5 Q. When you talk about the number of customers that are  
6 affected by the PNE default, we're generally using  
7 round numbers about -- we talk about "8,500 were going  
8 to be transferred"?

9 A. (Noonan) Yes. To the best of my knowledge, those are  
10 round numbers. I've never seen an exact figure.

11 Q. Do you have the ability to identify specific customer  
12 accounts at this point?

13 A. (Noonan) I'm not sure I understand your question.

14 Q. Well, when it comes to doing a refund, they have to go  
15 to specific people, and we can no longer talk in  
16 general terms. And, I'm wondering, at this point, if  
17 you have the ability to identify those specific  
18 accounts?

19 A. (Noonan) Yes. I think, with the information that has  
20 been obtained, the Company can ascertain which  
21 customers were transferred successfully to FairPoint  
22 without interruption and which customers were not.

23 Q. And, do you agree that the customers that were  
24 transferred successfully to FairPoint got the benefit

1 of their bargain and will not be receiving  
2 compensation?

3 A. (Noonan) Yes. That's correct.

4 Q. And, is it correct to say that the exact amount of  
5 financial harm per customer varies?

6 A. (Noonan) Yes.

7 Q. And, the number that you reached, "9.50", is there a  
8 calculation that went behind that or was that a product  
9 of settlement?

10 A. (Noonan) It was a product of settlement.

11 Q. Would you agree that one way to measure harm for the  
12 customers that were not transferred is to take the  
13 price of the contract that they thought they were  
14 getting and get the difference with the contract price  
15 that they got with default customers, and that  
16 difference is a measure of financial harm?

17 A. (Noonan) That's one component of the measure, yes.

18 Q. And, then, another component could be the length of  
19 time that they were on default service, when they did  
20 not wish to be on default service?

21 A. (Noonan) Yes. That would be another component.

22 Q. Is it correct to say that customers have responded  
23 differently to being placed on default service? Not  
24 every customer has responded exactly the same way?

1 MR. SPEIDEL: I would -- I don't object  
2 to this question, but I'd like to remind Ms. Chamberlin  
3 that my witnesses might not have total knowledge of every  
4 specific customer response. And, it would be ill-advised  
5 to testify as to that, as to every single customer  
6 response.

7 CHAIRMAN IGNATIUS: Well, I think, to  
8 the extent they actually know from customer contacts, it's  
9 a fair question.

10 MR. SPEIDEL: Okay.

11 **BY THE WITNESS:**

12 A. (Noonan) While I haven't reviewed all the contacts that  
13 have come in in the past, at this point, perhaps 45  
14 days, I think that there are some customers that made  
15 one decision, certainly other customers that made a  
16 different decision.

17 **BY MS. CHAMBERLIN:**

18 Q. So, some customers have stayed on default, to the best  
19 of your knowledge?

20 A. (Noonan) I don't have that. I don't have that  
21 knowledge. I would have to go back and verify with my  
22 staff that have spoken with these customers. I believe  
23 that to be true, but I don't have that right in front  
24 of me.

1 Q. Are you aware that some customers have exercised choice  
2 and gone to a different supplier than the default?

3 A. (Noonan) Yes.

4 Q. As part of your responses to data requests from the  
5 Company, you were asked to provide customer contact  
6 data, is that correct?

7 A. (Noonan) Yes.

8 Q. And, if I show you these responses, I'd just ask that  
9 you identify that that's what you produced?

10 (Atty. Chamberlin handing document to  
11 Witness Noonan.)

12 **BY THE WITNESS:**

13 A. (Noonan) Yes.

14 BY MS. CHAMBERLIN:

15 Q. Okay.

16 A. (Noonan) That's correct.

17 Q. And, some of these are labeled as responses regarding  
18 "Resident Power" or contacts regarding "Resident  
19 Power", correct?

20 A. (Noonan) Yes.

21 Q. And, some are identified as contacts regarding "PNE"?

22 A. (Noonan) Yes.

23 Q. And, then, some are just "general inquiry" contacts or  
24 "inquiry about the situation" contacts?

1 A. (Noonan) Yes. The discovery requests, there were two  
2 specific requests. The first one requested the  
3 contacts from customers during a specific time period  
4 identified in the Staff memo, and that's 1. -- 1-1.  
5 And, then, the response to 1-2 provided the Resident  
6 Power contacts separately from the PNE contacts.

7 MS. CHAMBERLIN: Your Honor, not all of  
8 the customer information has been redacted from these,  
9 which is why I'm not offering them as an exhibit. I would  
10 like a fully redacted version to be entered as an exhibit  
11 or reserved as an exhibit.

12 CHAIRMAN IGNATIUS: I appreciate your  
13 caution about that, because we do protect customer  
14 information. And, if something was inadvertently not  
15 redacted, we wouldn't want to put that into a public  
16 record. So, thank you for that. I guess what would make  
17 sense is, during a break, perhaps to go over that with  
18 Ms. Noonan or Mr. Speidel, or later in the day, so that  
19 the documents submitted to the record don't inadvertently  
20 disclose things it should not.

21 But, before you move on, should we  
22 reserve a -- you want to put the entire stack in,  
23 ultimately, when they've been scrutinized?

24 MS. CHAMBERLIN: Yes. I was proposing

1 to put the entire stack in.

2 CHAIRMAN IGNATIUS: All right. And, do  
3 they need to be separated into subsets or could they all  
4 be marked as --

5 MS. CHAMBERLIN: For my purposes, I  
6 don't think they need to be separated into subsets.

7 CHAIRMAN IGNATIUS: Let's mark for  
8 identification the stack of customer contact information  
9 submitted by Ms. Noonan in response to discovery requests  
10 as Exhibit 3, even though we're sort of holding that  
11 number for when the full stack comes in.

12 (The document, as described, was  
13 herewith marked as **Exhibit 3** for  
14 identification.)

15 CHAIRMAN IGNATIUS: Thank you. Please  
16 proceed.

17 BY MS. CHAMBERLIN:

18 Q. So, it's fair to say that the -- or, is it fair to say  
19 that the PNE default generated a large number of  
20 customer contacts to the Consumer Affairs Division of  
21 the PUC?

22 A. (Noonan) Yes. That's correct.

23 Q. And, generally, people were confused?

24 A. (Noonan) Yes. That's correct.

1 Q. When you look at the Settlement Agreement and the  
2 proposal for compensation, does that compensation  
3 represent -- I mean, what does that compensation  
4 represent to you?

5 A. (Noonan) The \$9.50 is a product of settlement. But the  
6 compensation to customers recognizes the fact that  
7 their transfer from PNE to FairPoint was interrupted as  
8 a result of PNE's default with ISO. And, as a result,  
9 those customers wound up on default service. And, so,  
10 this compensation is towards that difference, between  
11 the default service price and what customers would have  
12 seen had the transfer continued uninterrupted.

13 MS. CHAMBERLIN: One moment.

14 (Atty. Chamberlin conferring with Mr.  
15 Eckberg.)

16 BY MS. CHAMBERLIN:

17 Q. Have you reached a determination of how that payment is  
18 going to be made? Are you issuing a refund? Are you  
19 issuing checks? Or, are you --

20 A. (Noonan) I would defer to PNE on this specifically.  
21 But my understanding is it would be a check cut to  
22 customers. But I would defer to them on that question.

23 Q. So, a check cut and individually mailed to the various  
24 accounts?

1 A. (Noonan) That's my understanding. But, again, I defer  
2 to them with the final.

3 Q. Okay. And, one of the requirements to receive \$9.50 is  
4 to simply waive any right to file any future  
5 complaints, is that correct?

6 A. (Noonan) That is in the Settlement, yes.

7 Q. Okay. The Settlement Agreement says "provide  
8 instructions". Has that been determined what that is  
9 going to be? This is Paragraph 2.2, Article II. They  
10 will "provide instructions to affected customers".

11 A. (Noonan) There were some conversations in the course of  
12 settlement regarding that, but there hasn't been  
13 anything finalized that would be public at this point.

14 Q. And, is the same true of the "notice to customers",  
15 that is subject to further discussion?

16 A. (Noonan) Yes. The general concept regarding the notice  
17 is what I described earlier. The final language of the  
18 notice has not been resolved. However, the notice is  
19 required by the Settlement Agreement to go out to  
20 customers no later than April 12th.

21 Q. And, is it anticipated that the notice will provide  
22 information on the affiliation between Resident Power  
23 and PNE to customers?

24 A. (Noonan) That would be part of the conversation in

1 determining the language of the notice.

2 Q. Are you aware of any notice to customers that have --  
3 or, to the Commission and to customers that describe  
4 the affiliation between PNE and Resident Power?

5 A. (Noonan) I'm sorry, did you say "to customers" or "to  
6 the Commission"?

7 Q. Well, let's start with the customers. Did you issue or  
8 are you aware of any issued notice to customers of this  
9 relationship?

10 A. (Noonan) The Commission posted a notice on its website  
11 on or around February 22nd, to provide customers with  
12 information about what was transpiring. I don't recall  
13 offhand if that notice cited the affiliation between  
14 PNE and Resident Power or simply cited the events that  
15 had transpired, and what customers needed to do at that  
16 point.

17 Q. And, are you aware of any communication between  
18 Resident Power and PNE directly to customers that  
19 describe that relationship?

20 A. (Noonan) I am not, no.

21 Q. In terms of going forward, do you believe there are  
22 some changes to the process that could be made to make  
23 this more smooth in the future?

24 A. (Mullen) When you say "make this more smooth", you

1 know, I think, as laid out in the Stipulation of Facts  
2 when we go through what's going on, in terms of the  
3 situation that happened, you know, there's really no --  
4 there was really no playbook for this type of  
5 situation. And, when I say "this type of situation",  
6 you know, we started with a transfer of customers from  
7 one supplier to another. In the course of that  
8 happening, then we had the default at ISO-New England.  
9 That created a situation, like I say, there's no  
10 playbook for that, and we haven't experienced that in  
11 this state before. So, I think, to make this go  
12 smoother, I think that this has certainly been a  
13 learning process for all parties involved. You know,  
14 and I think as these events occurred, and, you know,  
15 this was a very fluid process. And, I think you had  
16 the various parties, whether it be PNE, Resident Power,  
17 FairPoint Energy, PSNH, and Staff, of all trying to say  
18 "Well, this is going on. How do we deal with this?"  
19 And, I think, you know, I think that everybody was  
20 doing their best to try to deal with this in the most  
21 efficient way, but it was a very fluid process.

22 So, certainly, trying to make something  
23 like this go smoother, I'm hoping we don't have  
24 anything like this again, but it certainly has been a

1 process where I think all parties involved have  
2 certainly learned from it and can use that knowledge  
3 going forward.

4 Q. Did any customers complain of losing power?

5 A. (Noonan) No.

6 Q. So, you have no awareness of any customers being  
7 without power, --

8 A. (Noonan) No --

9 Q. -- due to the PNE default?

10 A. (Noonan) Thank you. Due to this issue, no. We have  
11 received no phone calls of customers receiving power --  
12 or, losing power.

13 Q. And, this is a, as Mr. Mullen pointed out, a case of  
14 first impression in New Hampshire, a supplier has never  
15 gone in default before that affected competition and  
16 choice?

17 A. (Noonan) That's correct.

18 MS. CHAMBERLIN: I have nothing further.

19 CHAIRMAN IGNATIUS: Thank you.

20 Commissioner Harrington.

21 CMSR. HARRINGTON: Good morning.

22 WITNESS MULLEN: Good morning.

23 WITNESS NOONAN: Good morning.

24 BY CMSR. HARRINGTON:

1 Q. First, I wanted to start with the Settlement Agreement  
2 itself, I had just a couple of questions on how that  
3 would work. Referring to Section 2.4, which I assume  
4 you have in front of you.

5 A. (Noonan) Yes.

6 Q. And, it says "Prior to resuming operations as a CEPS in  
7 New Hampshire, PNE will establish an escrow account in  
8 the minimum amount of \$200,000 in satisfaction of the  
9 requirements set forth", and then it lists a couple of  
10 the PUC rules. The first question, I guess, is that  
11 provision the only thing that's preventing PNE from  
12 reestablishing itself or resuming operations as a SEPS  
13 [CEPS?] in New Hampshire?

14 A. (Mullen) Well, in the Commission's Order of Notice,  
15 that directed PNE to cease enrolling new customers, and  
16 for the New Hampshire utilities to not accept any  
17 enrollments, to the extent there were any from PNE.  
18 So, to the extent of implementing -- or, establishing  
19 that new escrow agreement, I don't think there's  
20 anything else that would prohibit that.

21 Q. So, their issues with ISO-New England have all been  
22 resolved?

23 A. (Mullen) Yes, they have. And, I don't remember the  
24 exact date, but it was -- it was, I think, earlier this

1 week that the default, the ISO-New England financial  
2 default was fully cured.

3 Q. Okay. And, that means they're basically approved by  
4 ISO-New England at the present time to be a competitive  
5 supplier?

6 A. (Mullen) Well, I'm not -- I don't have particular  
7 knowledge of all the ISO rules, but I do know that the  
8 financial default was fully cured.

9 Q. Okay. And, I notice in here the minimum amount is  
10 "\$200,000", where you go to the PUC rules, Puc  
11 2003.03(a)(2), it talks about "the greater of", and (a)  
12 is "\$100,000". Can you describe the purpose of setting  
13 it at "200,000" in the Settlement Agreement?

14 A. (Mullen) Yes. Let me just put the rules in front of  
15 me.

16 Q. Sure.

17 A. (Mullen) But I can tell you the "\$200,000" is a result  
18 of settlement. But it says further that "PNE shall  
19 increase the amount of said escrow as required by Puc  
20 2003.03(a)(2)." Which basically reads that any  
21 required financial surety "Be the greater of" either  
22 "100,000; 20 percent of the supplier's estimated gross  
23 receipts in its first", that's "estimated", for "its  
24 first full year of operation; or (c) 20 percent of

1 their actual gross receipts for their preceding year of  
2 operation;" and "not to exceed 350,000".

3 So, what the Settlement basically says  
4 is they're going to start at 200,000. And, to the  
5 extent that their sales become higher, they will  
6 increase the amount -- it requires an increase, and, in  
7 accordance with the rules, they will do so.

8 Q. Okay. So, is it reasonable to believe that they will  
9 probably end up with a surety somewhere in excess of  
10 \$200,000?

11 A. (Mullen) That all goes to where sales go between now  
12 and by the time their registration expires.

13 Q. Okay. But, if they weren't to go to that, then this  
14 higher provision in the rule would stay in effect until  
15 whenever?

16 A. (Mullen) When you say "this higher provision" --

17 Q. Well, where it says, where you have the minimum -- or,  
18 "the greater of 100,000" in the rules, and it's a  
19 "minimum of 200,000" in the Settlement Agreement?

20 A. (Mullen) The 200,000 would stay.

21 Q. Okay. And, just one other clarification. Going to  
22 Section 2.5, which you've just referred to, where it  
23 says "until further notice, New Hampshire electric  
24 utilities would not be required to accept or process

1 new customer enrollments from PNE." If this Settlement  
2 Agreement were to be approved by the Commission, would  
3 the utilities then be required to accept it or is it at  
4 the utility's option?

5 A. (Mullen) Well, I think there would be nothing  
6 restricting -- I mean, PNE would be a registered  
7 supplier. And, as such, any enrollments from a  
8 supplier to PSNH, to Unitil, to Liberty, to the Co-op,  
9 they would go through the process just like anybody  
10 else. It's an automatic -- they get an EDI request  
11 through the system from a supplier, and that just goes  
12 through automatically.

13 Q. Okay. Thank you. Just kind of changing subjects here.  
14 There's been a lot of discussion, we've heard quite a  
15 bit from Public Service and some of the other parties  
16 on how much harm was given to the customers. And, I'm  
17 trying to just get a handle around the sources of the  
18 harm. And, the one I can come up with, maybe there's  
19 others you can help me with, but it would appear that  
20 if somebody was on -- received their energy from PNE,  
21 they were paying a lower rate than the default service  
22 through Public Service. So, if, because of the PNE's  
23 default, they were switched back to default service,  
24 they would incur some additional cost associated with

1 that increase energy rate?

2 A. (Noonan) That's correct.

3 Q. Okay. And, I believe the difference between the two  
4 rates was somewhere in the range of a cent to a cent  
5 and a half a kilowatt-hour, is that in the ballpark?

6 A. (Noonan) Roughly two cents.

7 Q. Roughly two cents, okay. So, at two cents for a 500  
8 kilowatt-hour per month customer, which I think is what  
9 we use as the average usually, that comes out to about  
10 \$10 that it would cost them for a given month.

11 A. (Noonan) Yes.

12 Q. Is that correct?

13 A. (Noonan) Uh-huh.

14 Q. Okay. So, the 9.50 is within the range of the total  
15 damage they'd receive in a month?

16 A. (Noonan) Yes.

17 Q. And, is there any damages or harm that they would have  
18 received?

19 A. (Noonan) For customers of PNE that failed to transfer  
20 to FairPoint?

21 Q. Yes.

22 A. (Noonan) No.

23 Q. Okay. And, let me bring your attention to RSA 374-F:3,  
24 Section II, which is the restructuring statute. And,

1 one of the things it talks about in there, in fact it  
2 says "customers should expect to be responsible for the  
3 consequences of their choices." So, when somebody  
4 chooses to leave a public utility, such as Public  
5 Service, or Unitil, for that matter, and go to a  
6 competitive supplier, they get a better rate, at least  
7 they do right now. But one of the consequences of that  
8 choice is that I guess it's more likely that a  
9 competitive supplier may have financial problems, such  
10 as experienced by PNE, than a public utility would.

11 Would you say that's an accurate statement?

12 A. (Mullen) Yes.

13 Q. Okay. So, customers who chose to go to PNE, and by law  
14 are expected to be responsible for the consequences of  
15 that choice, should not necessarily say "oh, we have to  
16 be compensated for every penny we might have lost if we  
17 had the ability to go to a second competitive  
18 supplier", because, if they stayed with Public Service,  
19 they would have paid more. Is that correct? For  
20 whatever time they were at PNE, they paid less.

21 A. (Mullen) Well, yes. And, you know, there are lots of  
22 -- but there are a lot of facts and circumstances  
23 involved in this case that, you know, get into the  
24 default issues and reverting to default service and all

[WITNESS PANEL: Noonan|Mullen]

1 that. So, taking all those facts into consider -- and  
2 circumstances into consideration, that's how we arrived  
3 at where we did in the Settlement Agreement.

4 Q. I guess my point is, where the law says "the customer  
5 should be responsible for the consequences of their  
6 choices", one of the consequences of that choice would  
7 be that a competitive supplier could have financial --  
8 is, I don't know what the correct term here is, has a  
9 higher possibility of suffering financial problems than  
10 a public utility is. And, if those result in having to  
11 pay the default service rates or go back to default  
12 service rates, that would be one of the consequences of  
13 those choices. Does that make sense?

14 A. (Mullen) I think those types of circumstances are the  
15 types of things you find in any competitive market.

16 CMSR. HARRINGTON: Okay. All right.  
17 Thank you. That's all the questions I had.

18 CHAIRMAN IGNATIUS: Thank you.  
19 Commissioner Scott.

20 CMSR. SCOTT: Thank you. And, good  
21 morning.

22 WITNESS MULLEN: Good morning.

23 WITNESS NOONAN: Good morning.

24 BY CMSR. SCOTT:

1 Q. On the Settlement Agreement, I just want to make sure I  
2 fully understand it. Section 2.1 only applies to those  
3 "placed on default service with PSNH on February 20th".  
4 It doesn't mention any other dates. Does that exclude  
5 anybody who was involuntarily put to default service?

6 A. (Noonan) No. In order to comply with ISO regulations,  
7 PSNH had to accept load responsibility of all those  
8 customers, and all those customers were transferred as  
9 of February 20th.

10 Q. And, was there anybody transferred before involuntarily  
11 that didn't go to FairPoint Energy?

12 A. (Noonan) Not that we're aware of, no.

13 Q. So, I'll ask it a different way, which is really my  
14 question. Are there any customers that were impacted  
15 that you're not aware of being covered by this  
16 Agreement?

17 A. (Mullen) No.

18 Q. Okay. Thank you. On the -- you've kind of alluded to  
19 it, on the mechanism, am I correct from your earlier  
20 statements, that the exact mechanism how these impacted  
21 customers would be -- receive this payment would be  
22 made is not yet defined, is that correct?

23 A. (Noonan) That's correct.

24 Q. Okay. And, I'll try to put this in the form of a

1 question. Understanding Commissioner Harrington's  
2 comments about the statute and certain element of risk,  
3 is not one of the components of what we're talking  
4 about today is the risk also of customer confusion and  
5 correspondence, so that you have, as a customer, you  
6 have a -- obviously, you can do certain things and  
7 elect to do certain things to have a competitive  
8 supplier as a customer, but you need to know what --  
9 the background of what's going on in order to make an  
10 informed decision, is that a fair statement, as a  
11 component of what we're discussing today?

12 A. (Noonan) Yes, I think so.

13 CMSR. SCOTT: I think that's all my  
14 questions, too. Thank you.

15 CHAIRMAN IGNATIUS: Thank you. I have a  
16 few questions as well on the proposal.

17 BY CHAIRMAN IGNATIUS:

18 Q. One is just a very practical one. There's a reference  
19 in 2.3 to being funds -- funds being held by counsel  
20 for PNE. And, in 2. -- well, I guess I'll just stick  
21 with that one. In this case, is it fair that we've had  
22 a number of different people representing the two  
23 companies and multiple law firms and attorneys?

24 A. (Noonan) Yes.

1 Q. So, the reference to "counsel for PNE" holding in their  
2 "IOLTA account", who are we referring to here?

3 A. (Mullen) That would be the firm of Hinckley, Allen &  
4 Snyder.

5 Q. Ms. Noonan, you had said that a rough ballpark was you  
6 thought it was going to be around \$70,000, that maybe  
7 the total, if you work your way through 9.50 times  
8 number of customers. What happens if there is  
9 remaining money in that escrow account? If it does  
10 come to be about \$70,000, and there's \$100,000 in the  
11 escrow account, does the Settlement Agreement  
12 anticipate any disposition of that remaining \$30,000?

13 A. (Noonan) Yes, it does. And, Paragraph 2.3 describes  
14 that process. So that, once all one-time customer  
15 payments have been made, the funds, the full 100,000 in  
16 the IOLTA account, will be released back to PNE.

17 A. (Mullen) So, essentially, the payment to customers  
18 would be done separately from the \$100,000. And, once  
19 that's all accomplished, then the funds would be  
20 released to the Company.

21 Q. Oh. Rather than reduce that account along the way, it  
22 comes from another source, and then is replenished, in  
23 effect, from the \$100,000 being held?

24 A. (Noonan) That's correct.

[WITNESS PANEL: Noonan|Mullen]

1 A. (Mullen) Exactly. The payments would be a condition  
2 precedent to releasing the money.

3 Q. Is there a time limit on when those refunds will be  
4 made?

5 A. (Noonan) We did not establish one in here. That is  
6 perhaps a good point to be discussed.

7 Q. Did you have a sense of what the time period to  
8 commence and complete the refunds would be?

9 A. (Noonan) Our expectation was that it would be done as  
10 quickly as possible. And, perhaps that that's a good  
11 piece to incorporate in the notice to PNE customers.  
12 It would have to -- there would have to be perhaps then  
13 two iterations; one to all former PNE customers and one  
14 to those PNE customers who were affected by this  
15 interruption of the transfer, or could be a separate  
16 notice that would go out to just the group of  
17 customers. But our expectation is that it would happen  
18 soon.

19 Q. Is the notice called for in 2.6 a requirement before  
20 the refunds are made?

21 A. (Noonan) No, not necessarily.

22 Q. Ms. Noonan, you were asked a question that, I think  
23 from the OCA, under 2.1, that, and it may have just  
24 been the wording, and not meaning to make a substantive

1 distinction. I think Ms. Chamberlin asked you that a  
2 condition of receiving the \$9.50 refund was that a  
3 customer would have to "waive future claims against  
4 PNE." Is that what the language of the Settlement  
5 Agreement says? Is it "future claims" or is it "claims  
6 relating to the customer's placement on default  
7 service"?

8 A. (Noonan) It's claims relating to the placement on  
9 default service.

10 Q. So, if six months from now a customer of PNE, who  
11 received this payment, had a new issue unrelated to  
12 what this is all about, would they have a right to make  
13 a claim against them according to the Settlement  
14 Agreement?

15 A. (Noonan) Yes. The language of the Settlement Agreement  
16 would not restrict that.

17 Q. The attachment to the Settlement Agreement, Facts  
18 section, on Page 3, Paragraph 14, says that "PNE has  
19 submitted a request to modify its registration to  
20 indicate that it intends to serve both commercial and  
21 industrial customers", as well as "residential  
22 customers", correct?

23 A. (Mullen) Correct.

24 Q. And, that that's now under review by the Commission?

1 A. (Mullen) Correct.

2 Q. Until a determination has been made, is PNE authorized  
3 to solicit new commercial and industrial customers?

4 A. (Mullen) Until that came in, their current registration  
5 did not indicate that they were going to serve  
6 commercial and industrial, but I don't expect that to  
7 be a lengthy review process.

8 Q. All right. And, so, clearly, there was a difference  
9 between what the registration stated and what the  
10 Company's business actually entailed, and that's  
11 addressed here. But, during the pendency of this  
12 review period for the new modification of the  
13 registration, is PNE authorized to enroll new  
14 commercial or industrial customers?

15 A. (Mullen) I think, upon the Commission approving the  
16 pending request, that would certainly clear things up.

17 Q. Okay. But, prior to the Commission determination,  
18 whether that's a matter of weeks or months, is PNE  
19 authorized to enroll new commercial or industrial  
20 customers?

21 A. (Mullen) Well, I think that that also ties into the  
22 establishment of the escrow account, which is in  
23 another section. Because I think, if I read Section 2.  
24 -- 2.4 of the Settlement, it says "prior to resuming

1 operations as a CEPS in New Hampshire, PNE will  
2 establish an escrow account in the minimum amount of  
3 200,000." So, I think, with the timing of all these  
4 things coming together, I think that can all take place  
5 at roughly about the same time.

6 So, I think that, when it says "prior to  
7 resuming operations", that in and of itself leads to  
8 that they wouldn't be enrolling customers prior to the  
9 establishing the escrow account. And, during that  
10 time, too, we can deal with the commercial and  
11 industrial issue as well.

12 Q. Thank you. The facts that are attached to the  
13 Agreement may not necessarily comport with the facts as  
14 understood by other people who are not participants in  
15 the Settlement. Would you agree?

16 A. (Mullen) I suppose that depends on what facts you're  
17 referring to, and which facts you aren't. There's  
18 certainly a lot more facts that the parties involved in  
19 this Stipulation are aware of, having spent many days  
20 and long nights and phone calls, and going through all  
21 the details.

22 Q. The Settlement Agreement that's proposed, am I correct  
23 that it would resolve all questions of administrative  
24 penalties against PNE and Resident having to do with

1 the issues raised in the Staff's memorandum and the  
2 Order of Notice?

3 A. (Noonan) Yes. That's correct.

4 Q. It would resolve the question of the registration  
5 status of PNE and Resident, and from, Mr. Mullen, your  
6 comments just now sort of set a path for wrapping up  
7 final issues of authorization and escrow account?

8 A. (Mullen) Yes.

9 Q. And, once those issues were resolved, it would grant  
10 PNE, not the Settlement, but it sort of sets out a path  
11 for giving PNE the ability to again be enrolling new  
12 customers?

13 A. (Mullen) That's correct.

14 Q. It would also resolve retail customers' complaints --  
15 claims related to being placed on default service?

16 A. (Noonan) Yes.

17 A. (Mullen) To the extent they accept the payment.

18 Q. Yes.

19 A. (Mullen) That's correct.

20 Q. Let me ask you some things that, as I read it, it does  
21 not address, and you tell me if I'm mistaken. It does  
22 not speak for or attempt to establish anything as to  
23 the ISO-New England issues, other than to note that the  
24 financial default has been cured?

[WITNESS PANEL: Noonan|Mullen]

1 A. (Mullen) I think it establishes that there was a  
2 default, and that the default has been cured, correct.

3 Q. If ISO-New England had any other issues, they would  
4 continue to be things for ISO to pursue?

5 A. (Mullen) Yes.

6 Q. It does not attempt to resolve any issues that PSNH may  
7 have against PNE or Resident?

8 A. (Mullen) No, it does not.

9 Q. And, it does not attempt to resolve any issues that PNE  
10 or Resident may have against PSNH?

11 A. (Noonan) That's correct.

12 Q. It does not attempt to resolve or waive claims on any  
13 future conduct by any of the Companies involved should  
14 something arise in the future?

15 A. (Noonan) That's correct.

16 CHAIRMAN IGNATIUS: Commissioner  
17 Harrington, another question?

18 CMSR. HARRINGTON: Yes.

19 BY CMSR. HARRINGTON:

20 Q. Just on the timing of the payment. I believe you said  
21 that the total amounts of payments covered under  
22 Section 2.1 would be around \$70,000?

23 A. (Noonan) Yes. It's approximately 7,300 customers that  
24 would be receiving these refunds.

{DE 13-059 & DE 13-060} {03-27-13}

1 Q. And, the amount in escrow is \$100,000?

2 A. (Noonan) Yes.

3 Q. So, I guess it would be logical to assume that the  
4 Company would be wanting to make those payments as soon  
5 as possible so they could get their \$30,000 back?

6 A. (Noonan) Well, the full \$100,000 would be held in an  
7 IOLTA account by Hinckley Allen. And, so, in order to  
8 get that full \$100,000 back, the Company would need to  
9 make those refund payments to all affected customers.

10 Q. Okay. So, I guess that even reemphasizes my point, is  
11 that it would be very much in their benefit to make the  
12 payments in an expeditious manner?

13 A. (Noonan) Absolutely.

14 CMSR. HARRINGTON: Thank you.

15 CHAIRMAN IGNATIUS: Thank you.

16 Commissioner Scott.

17 CMSR. SCOTT: Thank you. And, thank  
18 you, madam Chair, for the re -- chance to re-question or  
19 ask.

20 BY CMSR. SCOTT:

21 Q. On the Settlement Agreement, Section 2.2, regarding  
22 "instructions to affected customers".

23 A. (Noonan) Yes.

24 Q. Is there any expectation that PNE will be working with

1 the Staff on those instructions?

2 A. (Noonan) We did not have specific conversations about  
3 that. We did have some settlement conversations about  
4 the general content of the instructions.

5 Q. And, is it -- I understand this to be developed, so I  
6 understand that part from your earlier responses. Are  
7 the instructions basically as simple as -- could they  
8 be as simple as "if you cash the check, that's your  
9 acceptance of this waiver", if you will?

10 A. (Noonan) From Staff's perspective, a key element of the  
11 instructions would be certainly disclosing to the  
12 customers that, by cashing the check, they're waiving  
13 any claims they could make regarding their placement on  
14 default service.

15 Q. Okay. And, in answer to Commissioner Harrington's last  
16 question, it's implied, but I just wanted to hear it.  
17 So, before the 100,000 in escrow would be released to  
18 the Company, they have to make some proof that they've  
19 -- to the Staff that they have effectively paid the  
20 impacted customers. Is that a true statement?

21 A. (Mullen) The Settlement doesn't have any particular  
22 wording about "proof to Staff". I would expect that  
23 they would notify us that it had occurred, but it was  
24 not specifically covered.

1 Q. Perhaps not "proof", but some kind of -- there needs to  
2 be some communication, is that correct, between PNE and  
3 Staff?

4 A. (Noonan) Well, again, you know, the Settlement doesn't  
5 have that specific language in there. However, I would  
6 hazard a guess that there would be communication to  
7 Staff, and, at a minimum, you know, some type of  
8 verification to Hinckley Allen, as the holder of the  
9 client IOLTA account that they had met the terms  
10 required to receive those funds.

11 Q. So, that's certainly an expectation of Staff?

12 A. (Witness Noonan nodding in the affirmative).

13 A. (Mullen) Yes. And, I would say that considering some  
14 of the other terms of the Settlement, and some of the  
15 other collaboration that's going to be on notice to  
16 customers and all that, that will take place over the  
17 next couple of weeks or so. I think, in the course of  
18 those discussions, the subject will certainly be  
19 addressed.

20 Q. Great. And, I think, lastly, perhaps an unfair  
21 question I'll ask Staff is, given these recent events,  
22 do you feel our current 2000 rules, the Puc 2000 rules  
23 are sufficient?

24 A. (Noonan) Well, we've certainly had many conversations

1 about that, and think that there are opportunities to  
2 revisit those rules and see what we can improve upon.

3 CMSR. SCOTT: Thank you.

4 CHAIRMAN IGNATIUS: Thank you. Any  
5 redirect from Mr. Speidel?

6 MR. SPEIDEL: One very quick redirect  
7 question regarding Item 2.3.

8 **REDIRECT EXAMINATION**

9 BY MR. SPEIDEL:

10 Q. There is a phrase that reads, and either witness can  
11 respond, "and shall be held by counsel for PNE in a  
12 client IOLTA account pending the delivery". I think,  
13 would it be fair to say that, in Staff's perspective,  
14 "pending the delivery", there is an implication that  
15 the delivery would have to actually be made and  
16 verified to the counsel for the Companies before that  
17 delivery is noted, and also the transfer of the  
18 \$100,000 is made?

19 A. (Mullen) Yes.

20 A. (Noonan) Yes.

21 MR. SPEIDEL: Thank you.

22 CHAIRMAN IGNATIUS: Thank you. Then,  
23 unless I hear otherwise, the witnesses are excused. I  
24 appreciate your testimony. We have a couple of procedural

1 matters to take care of. I take it there's no other  
2 witnesses, no other evidence to be put on?

3 (No verbal response)

4 CHAIRMAN IGNATIUS: We want to be  
5 certain that Exhibit 3, the customer contacts information,  
6 is scrutinized and submitted in a clean fashion, if  
7 there's any redactions that should have been made. Thank  
8 you again for noting that, Ms. Chamberlin.

9 We also need to decide what we're doing  
10 with the newly submitted Settlement Agreement that  
11 removes, just this morning, the one phrase that remained  
12 redacted. The way it came in this morning from  
13 Mr. Deschenes it appears to remove those words, but the  
14 way we do redactions so you can tell is you have a block  
15 there that -- oh, I'm sorry. I'm forgetting what we did.  
16 It's not confidential, it's not redacted, it's stricken.

17 CMSR. HARRINGTON: It's gone away.

18 CHAIRMAN IGNATIUS: So, I think we, if  
19 anyone's had a chance to double-check and make sure that  
20 this comports with what they thought we were doing, it  
21 looks acceptable to me. Can we substitute the Settlement  
22 Agreement with --

23 MR. SPEIDEL: If I may --

24 CHAIRMAN IGNATIUS: Let's not substitute

1 anything. Let's put it in as a separate document.

2 MR. SPEIDEL: Yes.

3 CHAIRMAN IGNATIUS: The only problem is  
4 we don't have the Statement of Facts. But we can make a  
5 copy of that and attach it, so that it's the full  
6 document. Is that acceptable to everyone?

7 MR. SPEIDEL: Well, yes. There's a  
8 couple of issues. I haven't, Chairman, executed this  
9 version of the document. What would be perhaps a better  
10 approach is, given that the confidential, so to speak,  
11 version had been executed and the public version had been  
12 executed, what we could do is we could go back and  
13 essentially have a final review of this up-to-date  
14 version, the "universal" version, and have each party  
15 execute that one and submit that as a single Exhibit 3.  
16 And, then, the other exhibits could be stricken from the  
17 record, because there wouldn't be any more confidential or  
18 public versions. They would include the stipulations,  
19 which would also have to be appended. If we could rely on  
20 the executions of March 26, that's just one more timesaver  
21 that we could do. And, Staff could resubmit the package  
22 of documents to the Commission for its consideration.

23 CHAIRMAN IGNATIUS: I think, because  
24 there's so much discussion about it in the record, it

1 might be easier just to keep 1 and 2 as they already  
2 are, --

3 MR. SPEIDEL: Okay.

4 CHAIRMAN IGNATIUS: -- and make the new  
5 one "Exhibit 4", and make clear that it is the governing  
6 document at this point. It will need execution, as you  
7 say, and the attachment of statement -- excuse me -- the  
8 stipulated facts. If we could ask the parties and Staff  
9 to work on submitting that by the end of today, --

10 MR. SPEIDEL: Sure.

11 CHAIRMAN IGNATIUS: -- that would be  
12 appropriate. So, let's mark that for identification as  
13 "Exhibit 4".

14 MR. SPEIDEL: Would it be Exhibit 3,  
15 madam Chairman?

16 CHAIRMAN IGNATIUS: No. Three is the  
17 stack of customer contacts.

18 MR. SPEIDEL: Oh, I'm sorry. Just  
19 wanted to clear that up. Thank you.

20 (The document, as described, was  
21 herewith marked as **Exhibit 4** for  
22 identification.)

23 CHAIRMAN IGNATIUS: And, that's all I  
24 have, is those four documents, three of which are variants

1 of the same. So, unless there are any other exhibits, is  
2 there any opposition to striking the identification of  
3 those and making them full exhibits?

4 MR. CARTER: None from the Companies.

5 CHAIRMAN IGNATIUS: All right. Seeing  
6 none, we will do that. And, my hope again is that  
7 Exhibit 3 can be submitted by the end of today as well,  
8 with any further redactions that are required for that.

9 Then, the final thing today would be  
10 oral closing arguments, unless there's anything anyone  
11 else needs to raise?

12 (No verbal response)

13 CHAIRMAN IGNATIUS: All right. Because  
14 the Staff and the Companies are the proponents of the  
15 Settlement Agreement, I'm going to ask the OCA first to  
16 proceed with a closing statement.

17 MS. CHAMBERLIN: Thank you. New  
18 Hampshire customers did not get the benefit of their  
19 bargain. They agreed to have Resident Power represent  
20 them as an aggregator; Resident Power made a contract with  
21 PNE; and PNE entered into default. I appreciate that  
22 there's a certain amount of rough-and-tumble in  
23 competition, and that you get a little bit more risk when  
24 you have lower rates. However, if that is combined with

1 the fact that customers did not know of the affiliate  
2 arrangement, and they did not disclose their changes in  
3 their marketing to the Commission when they started to  
4 include C&I customers, while those are not direct  
5 causation, it's part of the big picture. And, customers  
6 should be compensated as much as possible. And, to have  
7 Resident Power or PNE get change back from the -- from the  
8 escrow amount, which was the whole purpose of is to make  
9 customers whole in the event of default, I simply disagree  
10 with that. The amount we calculate, it's an estimate,  
11 because some customers were on default for different  
12 amounts of time, for different reasons. It's  
13 administratively difficult to calculate an exact rebate,  
14 but I would argue that the maximum amount of the \$100,000  
15 should be given to customers. If that brings it up to  
16 \$10, then that is a better amount. It's *de minimus* any  
17 regard, because I believe the real harm was the confusion  
18 and the -- just general chaos that followed. And, I  
19 appreciate that Resident Power attempted to mitigate harm,  
20 they entered into a covering contract with FairPoint  
21 Energy. However, due to a variety of factors, that did  
22 not result in coverage for all customers. And, from the  
23 customer's perspective, it was difficult, it was  
24 confusing, it was -- created a lot of doubt about the

1 security of their electric service. And, that's a very  
2 real harm, even if it can't be expressly quantified.

3 So, for those reasons, the -- the good  
4 news is that overall the system worked, people were not  
5 without power. We are working through notice issues. I  
6 believe changes to the rules can be made going forward,  
7 should this happen again. But that customers deserve the  
8 full amount of refund that they are -- can possibly be  
9 made available to them. I submit that between \$12 and \$15  
10 is a more accurate calculation. However, again, because  
11 it's an estimate, I would submit that the \$100,000 can be  
12 a cap. But that that money should go to customers. Thank  
13 you.

14 CHAIRMAN IGNATIUS: Thank you.

15 Mr. Carter.

16 MR. CARTER: Thank you very much. On  
17 behalf of the Companies, we believe that the Settlement  
18 Agreement and the stipulations are accurate. They provide  
19 a fair measure of compensation to affected customers. For  
20 some customers, the payment will be far above what their  
21 actual damages are. The payment represents an effort to  
22 place a value that across the spectrum of people affected  
23 will be fully compensated.

24 Chairperson Ignatius, you made the

1 comment that the Stipulation of Facts, you know, read here  
2 today by someone appear different in many respects from  
3 statements in, for example, the Staff memorandum that was  
4 filed on February 27 or in the Order of Notice that was  
5 issued in response to that Staff memo. Over the past  
6 several weeks, there's been, as you pointed out, a great  
7 deal of information is shared by PNE and Resident Power,  
8 much of which is detailed in the prehearing memorandum  
9 that we filed. And, which we believe answers many  
10 misconceptions about the events giving rise to this  
11 matter, and the conduct by PNE and Resident Power during  
12 the course of that.

13 We have worked at length with Staff and  
14 with various members of the OCA over the past several  
15 weeks to bring all that evidence forward. And, I can say  
16 that, from the perspective of the Companies, the  
17 Stipulations and Settlement Agreement fairly reflect the  
18 accurate information that has been shared between Staff  
19 and the Companies.

20 And, we are certainly available here to  
21 answer any further questions that the Commission has about  
22 either any aspect of the Stipulations or the Settlement  
23 Agreement, or any other matters relating to this  
24 proceeding.

1 CHAIRMAN IGNATIUS: Thank you.

2 Mr. Speidel.

3 MR. SPEIDEL: Thank you, Chairman  
4 Ignatius. Staff would like to recommend that the  
5 Commission approve this Settlement Agreement between the  
6 Companies, that is PNE, Resident Power, and the Staff.  
7 Staff believes that this Settlement Agreement and  
8 companion Stipulation of Facts offers a fair resolution of  
9 the matters before the Commission.

10 As indicated by Mr. Mullen on the stand,  
11 Staff has developed an enormous amount of useful  
12 information and useful lessons during the course of this  
13 proceeding and the events of February of 2013 that will  
14 inform our rulemaking and policymaking going forward. So,  
15 there has been a benefit there. And, there's also a  
16 benefit in the form of administrative efficiency, and  
17 ensuring that PNE is able to increase its security in  
18 escrow promptly. And, also, that customers will receive  
19 \$9.50 in compensation for their economic losses promptly.  
20 And, Staff also believes that the facts presented in the  
21 Stipulations give a general overview of the events of  
22 February 2013 that would be useful for the Commission, the  
23 public, and other practitioners, and the world at large.  
24 So, over the course of this proceeding,

1 we have been able to come to settlement that offers many  
2 features that are attractive to different stakeholders.  
3 And, we appreciate the Commission's consideration of this  
4 Settlement. Thank you.

5 CHAIRMAN IGNATIUS: Thank you. I want  
6 to mention a couple of things. It's clear that an awful  
7 lot of ground was covered in what was presented to us  
8 today and in very short order. And, we appreciate the  
9 hard work people put in to trying to resolve it. As I  
10 read the Settlement, what I was struck with is that the  
11 focus seemed to be on customers, and not over the sort of  
12 "who said what to who" and the tit for tat that it could  
13 have resulted in. And, so, for that, keeping the focus on  
14 customers is something that I applaud you all for.

15 We will take it under advisement. We'll  
16 evaluate the terms and all of the arguments made today,  
17 and act very promptly, because we understand that the need  
18 to resolve this quickly has been a driving force  
19 throughout this proceeding, has made it more accelerated,  
20 a little bit of a rollercoaster, and people want to get to  
21 a resolution, which we understand. So, we will endeavor  
22 to do that as quickly as possible.

23 So, unless there's anything further, we  
24 will take this under advisement, we appreciate your time,

1 and we will issue an order forthwith.

2 (Whereupon the hearing ended at 11:03  
3 a.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24